



Administrative Procedure: Workplace Harassment

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Administrative Procedure

The Superior North Catholic District School Board (the “Board”) is committed to providing a safe, supportive and professional equitable and inclusive work environment in which all individuals are treated with respect and dignity. Workplace harassment will not be tolerated from any person in the workplace, and any employee who engages in workplace harassment may be subject to disciplinary action, up to and including the termination of their employment for just cause.

This Administrative Regulation applies to all Board workers, and other users including, but not limited to, trustees, parents, managers, supervisors, employees, volunteers, contractors and others who are invited to Board premises or facilities.

Duties and Responsibilities

In order to stop objectionable behaviour, supervisory and managerial personnel must address and attempt to resolve disputes in a timely fashion. It is the expectation of the Board that all complaints will be brought forward in a timely manner and must be reported within one year of the most recent alleged harassing behaviour. A complaint made outside of this time frame may still be considered, at the Board’s discretion. Anyone making a complaint of harassment outside of the one-year time frame is encouraged to consult with the Superintendent of Education or HR Consultant.

The Human Resources Department (“Human Resources”) has the responsibility to designate resources for ensuring the implementation of and compliance with this Policy.

Human Resources will ensure that new employees are informed of this Policy and how it can be accessed and will ensure that it will be reviewed at orientations for all employees.

The Board will review the Work Harassment Policy as often as is necessary, but at least annually. The Policy and Administrative Procedure concerning workplace harassment will be posted at a conspicuous place in the workplace. Employees will receive appropriate instruction on both the Policy and this Administrative Procedure.

Nothing in this Procedure denies or limits access to other avenues of redress available under the law or through the filing of a grievance or through progressive discipline. Where there is such an occurrence, this process will cease until the parties and their respective representatives have met with the Superintendent of Education or HR

Consultant to determine whether a formal investigation will proceed or whether the complainant wishes to proceed under another process. Multiple processes will not be permitted to proceed concurrently, although informal dispute resolution attempts will be permitted at any time with the agreement of the Board and the parties.

Confidentiality

All information about incidents and complaints of harassment, including the identifying information of any individuals involved, will be kept confidential, except to the extent disclosure is necessary for the protection of workers, to investigate the complaint or incident, to take corrective action, or is otherwise required by law.

It is the duty of Human Resources and supervisory and managerial personnel to maintain confidentiality in the complaint process. All complainants, respondents, and other persons involved with the complaint processes under these procedures will ensure that all matters remain confidential. Witnesses should be informed that any statement provided in an investigation would be held in strict confidence, subject to necessary disclosure as set out above.

Procedural fairness requires that the respondent to a complaint be apprised of the nature of the complaint and who has made it so that they have an opportunity to respond to the allegations. A copy of any written complaint will be shared with employee respondents to a complaint.

The Board may be required to provide information obtained during an investigation to an outside agency such as, but not limited to, police services, a court or a tribunal that has the right to require information otherwise protected by the Municipal Freedom of Information and Protection of Privacy Act.

All correspondence and other documents generated under these Procedures must, subject to the Municipal Freedom of Information and Protection of Privacy Act, be marked "PRIVATE AND CONFIDENTIAL" and be stored in a locked and secure file in Human Resources.

Who may Initiate a Complaint

All workers have access to the complaint procedures. Individuals who believe that they are victims of harassment may initiate a complaint. In addition, those who have witnessed harassment directly, have received reports of harassment incidents, or have reasonable grounds to suspect that harassment is occurring, may initiate a complaint.

Anonymous reports will not be entertained for dispute resolution under this Procedure, but may be investigated if appropriate in the circumstances.

Complaints may be initiated on an informal basis by following the Informal Resolution Process (see Appendix A) or by following the Formal Resolution Process (see Appendix B). The Board will ensure that an investigation appropriate in the circumstances is conducted when a complaint of workplace harassment is made or when an incident of workplace harassment occurs.

Each unionized employee has the right and is encouraged to contact his or her union/federation for assistance and advice throughout this process. Non-unionized employees are encouraged to consult with the Superintendent of Education, HR Consultant or the Director of Education.

Assistance for Complainants, Respondents, and Witnesses

Prior to initiating any complaint and throughout the complaint process, complainants have a right to assistance and support. Individuals, who are named as respondents in a complaint, as well as witnesses, also have a right to assistance and support throughout the complaint process. The following people may provide support:

- Parent/guardian/family member
- Professional support staff
- Employee or colleague
- Trained resource person

Union/federation/association representative

Religious advisor

Translator/interpreter (if necessary)

'Other user' complainants should report the complaint to the appropriate supervisory or managerial personnel at the Board or, if they require assistance in reporting.

'Other user' respondents may also want to contact other appropriate personnel; for example, an employee of another organization may want to seek assistance and support from within that organization. For assistance and representation throughout the complaint process, both other user complainants and other user respondents are referred to the suggested support people listed in section 1.3.1 above.

Support people will only be permitted to attend investigation interviews with individuals involved in an investigation if they agree to maintain strict confidentiality of the matters discussed.

The rights of students to a respectful working and learning environment, free from harassment, are dealt with under other appropriate policy, legislation or regulations including, but not limited to, the Education Act, The Superior North Catholic District School Board Code of Conduct, and codes of behaviour. Students should contact their vice-principal, principal, or, where appropriate, their school superintendent for clarification on the process to be followed.

The complainant is free to commence the complaint procedure at the formal or informal stage outlined herein (see Appendices A and B). The complainant is also free to discontinue a complaint at any time. The Board, however, may deem the circumstances worthy of further investigation and initiate its own action.

Board Complaint

In rare circumstances, in recognition of its liability as an employer subject to the Ontario Human Rights Code and the Occupational Health and Safety Act, and to ensure the integrity of the Board's Workplace Harassment Policy, action may be pursued in the absence of a formal complaint. In the event that:

- The complainant is unwilling to file a formal complaint, but there are overriding concerns to be addressed, or;
- Over time, there appears to be a number of complaints against the same person, even though they may not be substantiated on investigation, or;
- Over time, there appears to be a number of complaints initiated by the same person, even though they may not be substantiated on investigation, or;
- The complainant is subject to any retaliation or intimidation for having pursued a matter under this Policy, or;
- The Board, or its administration, deem an event or activity to be inappropriate and contrary to the spirit of this Policy, then the Board, or its administration, will commence the complaint procedure at any one of the three Steps outlined herein.

Misuse of the Complaint Procedures

If there is a determination on a balance of probabilities that a complaint has been filed in bad faith, the complaint process may discontinue and disciplinary action may occur.

Record Keeping

The Board will keep records of all investigations conducted under this Regulation, including a copy of the complaint or details about the incident, a record of the investigation including notes, and a copy of the investigation report (if any). The Board will also keep a record of the summary of the investigation results provided to the worker who made the complaint or report, and to the alleged harasser (if a worker), as well as a record of the corrective action taken.

All records will be kept for at least two years, and will be kept confidential and will not be disclosed unless necessary to investigate an incident or complaint of workplace harassment, to take corrective action, to protect a worker, or unless otherwise required by law.

Reprisals

Reprisals against individuals because they have reported a complaint are strictly forbidden. Alleged reprisals will be investigated as formal complaints and, if substantiated, are subject to the same consequences as complaints of harassment.

Terms and Definitions

Workplace Harassment

WORKPLACE HARASSMENT

- a. Engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or
- b. workplace sexual harassment;

Reasonable action taken by the Board or Supervisory and Managerial Personnel relating to the management and direction of employees or the workplace is not workplace harassment.

Workplace Sexual Harassment

- a. Engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- b. Making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome;

Workplace

The workplace is any place where employees perform work or work-related duties or functions. Schools and school-related activities, such as extra-curricular activities and excursions, comprise the workplace, as do Board offices and facilities. Conferences and training sessions fall within the ambit of this Regulation. Off-duty conduct may fall within the scope of this Regulation, to the extent that it has an impact on the workplace.

Reprisal

Reprisal is any act of retaliation, either direct or indirect, relating to an individual's complaint or reporting of workplace harassment, or participation in any workplace harassment investigation.

Time Limits

The Board adopts the one-year time frame prescribed by the Human Rights Code. This time limit can be extended if, upon the determination of the Board and/or Superintendent of Education or HR Consultant, or designate, there is an appropriate reason for doing so, or if both parties agree.

Supervisory and Managerial Personnel

Where referred to, supervisory and managerial personnel include principals, vice-principals, managers, supervisors, Superintendents of Education, and the Director of Education.

References/Related Documents

Canadian Charter of Rights and Freedoms
Ontario Human Rights Code
Ontario Occupational Health and Safety Act
Municipal Freedom of Information and Protection of Privacy Act
Teaching Profession Act
Ontario College of Teachers Act, 1996
Education Act
Early Childhood Educators Act, 2007
Social Work and Social Service Work Act, 1998
Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2016 (Bill 132)
Code of Ethics for Catholic School Trustees
Superior North Catholic District School Board Workplace Harassment Policy

Related Administrative Procedures

AP-FOI-305, Records and Information Management

AP-FOI-306, Privacy of Personal Information

Related Forms

Workplace Harassment Complaint Process Flow-chart (Appendix A)

Workplace Harassment Formal Complaint Form (Appendix B)

Appendix A

Informal Resolution Process

The first step is for the complainant to inform the individual that his or her behaviour is unwelcome and must stop immediately. Many disputes can be resolved quickly and effectively using this approach. In some cases, the complainant may not feel comfortable performing this step. The complainant is free to begin the complaint process at the formal or informal stage as outlined herein.

Informal Resolution is a procedure that provides an opportunity for parties to resolve a dispute mutually in a respectful manner. Supervisory and managerial personnel are expected, in consultation with union/ federation representatives, to first engage in Informal Resolution as a means of resolving issues.

Supervisory and managerial personnel may become aware of workplace harassment in the working or learning environment in different ways. They may observe harassment directly or receive a report from the individual affected. Supervisory and managerial personnel may also receive reports from third parties.

It is important that supervisory and managerial personnel pay attention to symptoms arising out of possible objectionable behavior such as reduced productivity, changes in behavior, absenteeism, requests for transfers, or rumors. Without assistance, the targets of objectionable behavior may be embarrassed or reluctant to report a situation.

A speedy resolution of a complaint can prevent escalation and further negative consequences while promoting restoration of a healthy learning and working environment.

Informal Resolution Steps

Supervisory or managerial personnel, in consultation with union/federation representatives as appropriate, will attempt to facilitate an informal resolution by:

- Suggesting that the complainant confront the problem by making it clear to the individual alleged to have engaged in workplace harassment that the behavior is not acceptable and by obtaining a commitment that the behavior will stop;

- Informing the individual of the complainant's concern regarding the alleged objectionable behavior and the Board's expectation for appropriate behavior, providing a copy of the Workplace Harassment Policy and/or other relevant Board policies, and obtaining a commitment that the behavior will stop; and
- Following up with the complainant to ensure that the behavior has stopped.
- A reasonable timeline for the above points will be expected

Supervisory and managerial personnel may initiate mediation by a neutral third party in appropriate circumstances.

Informal Resolution Follow-up

In cases where an informal plan of action is implemented, supervisory and managerial personnel will follow up by monitoring the situation, holding, if necessary, subsequent meetings with the parties, and taking further steps to ensure that the harassment has stopped.

All notes and/or information prepared in the course of the informal complaint process will be forwarded to Human Resources for storage in a confidential workplace incident file separate from the personnel file. Only a record of negative consequence, warning, or caution will be placed in the respondent's personnel file.

Appendix B

Formal Resolution Process

Formal complaints will only be initiated once all reasonable efforts have been made to resolve the conflict informally, or unless it is not appropriate in the circumstances to engage in an informal resolution process. A Workplace Harassment formal complaint form shall be completed, signed, placed in a sealed envelope marked private and confidential, and if the complainant is a worker, forwarded to the worker's supervisor or the Superintendent of Education or HR Consultant. The Superintendent of Education or HR Consultant will have the discretion to refer a formal complaint to the appropriate supervisor and the parties if he or she is not satisfied that reasonable efforts have been made to resolve the dispute informally and if it is appropriate to do so in the circumstances given the nature of the allegations.

If the alleged harasser is the Superintendent of Education or someone in Human Resources complaints and reports of workplace harassment should be directed to the Director of Education.

Other user complainants should report the complaint to the appropriate supervisory or managerial personnel at the Board or, if they require assistance in reporting. If the appropriate supervisory or managerial personnel engaged in the workplace harassment, the employee may contact the Superintendent of Education or HR Consultant. If the Superintendent or the Director is the harasser, the complainant will contact the Trustee Chair.

Other user respondents may also want to contact other appropriate personnel; for example, an employee of another organization may want to seek assistance and support from within that organization. For assistance and representation throughout the complaint process, both other user complainants and other user respondents are referred to the suggested support people listed in the procedure.

Respondents to a Claim

Individuals who are named as respondents in a complaint have a right to know in a timely manner that they are the subject of a complaint, who the complainant is, what the allegations are, and what approach to a resolution is being considered. In particular, a respondent has a right to know the specifics of an allegation, including times, dates, and alleged conduct. Respondents will be given a copy of the complaint and given time to prepare a full and complete response to the allegations.

Teachers are also advised to refer to the statutory requirements when making a report in accordance with subsection 18.1 (b) of the Teaching Profession Act.

Threshold Assessments

All formal reports filed under the Workplace Harassment Policy will be subject to an immediate threshold assessment to determine whether the alleged conduct would, if proven, meet the definition of workplace harassment.

If the Board, following this threshold assessment, determines that the report filed:

- Would not, if true, meet the definition of workplace harassment;
- Does not provide sufficient details of the alleged harassment, provided the complainant is given notice that insufficient details have been provided and given reasonable time to provide sufficient details; or
- Is vexatious, frivolous or trivial, has not been made in good faith or would, if investigated, constitute an abuse of the Workplace Harassment Policy,

The complainant will be so advised and no further action will be taken under the Workplace Harassment Policy.

Where allegations relate to discrimination on the basis of a ground prohibited by the Ontario Human Rights Code, they will be addressed using the appropriate Board policy.

Procedures for Resolving a Formal Complaint

In all cases, where the Superintendent of Education or HR Consultant has determined that the parties have made reasonable efforts to resolve the dispute informally, and/or has conducted a threshold assessment to determine that a formal complaint should proceed, he or she will direct the appropriate supervisory and managerial personnel to take action, or he or she will take action, to resolve the formal complaint under this Policy.

Formal Investigation and Resolution

Formal complaints require an investigation of the complainant's allegations. Investigators will most often be the supervisory staff of the complainant and/or respondent or someone in Human Resources, unless such person(s) actively participated in the unsuccessful informal resolution process, in which case, an independent investigator will be appointed. Where the complainant and the respondent have different reporting structures, supervisory and managerial personnel involved and Human Resources will determine whom the appropriate person is to take responsibility for the investigation. If appropriate in the circumstances, an external third party will be retained to conduct the investigation.

Formal investigations must be completed in a timely manner, and generally within 90 days or less, absent extenuating circumstances warranting a longer investigation (e.g. illness or a complex investigation).

In a Formal Investigation, the investigator will ensure that the following steps are taken as soon as possible:

- Take appropriate measures to ensure the safety of the complainant;
- Notify the complainant(s), the respondent(s), and witness (as) that they are entitled to support and assistance throughout the process;
- Ensure that the respondent(s) have a copy of the complaint;
- Interview the complainant(s) and/or the third party reporting the complaint;
- Inform the respondent(s) of the allegations and provide an opportunity for response;
- Interview the respondent(s);
- Interview witness (as);

- Come to conclusions about whether a specific incident did or did not occur based on a balance of probabilities (The question of whether behaviour is objectionable will be assessed using objective standards.);
- Provide a written summary of the findings and conclusions to the complainant and to the respondent and give them an opportunity to respond to same; and
- Take appropriate action(s) to resolve the situation.

If the respondent declines to participate in the formal investigative process, the investigation will still proceed. The respondent should be encouraged to participate in the interest of a balanced and fair process.

The standard of proof to be applied is the balance of probabilities.

In the event a complaint is not substantiated, no further action will be taken, subject to the section on maintaining records. In cases where the complaint is found to be made in bad faith, vexatious, or an abuse of the process, the complainant may be subject to disciplinary action as outlined in paragraph (h) below, if appropriate. However, if there is need to restore positive learning or working environment or if the complainant and/or respondent require counselling, appropriate steps will be taken to meet such needs.

Follow-up possibilities:

- Counselling for the parties;
- Application of strategies to restore a positive learning/working environment;
- Mediation;
- Specific training for the complainant or respondent;
- Workshops for the staff and/or others in the school/workplace regarding their rights and responsibilities;
- Permanent separation of respondent and complainant from each other; and/or
- Restorative measures.

Disciplinary Actions

Worker Respondents

The appropriate supervisor or manager may impose discipline as appropriate and consistent with the circumstances.

The principles of progressive discipline will be applied in dealing with disciplinary actions in response to workplace harassment. These would include the following possibilities:

- Verbal warning;

- Written reprimand;
- Suspension with pay;
- Suspension without pay; or
- Dismissal from employment with the Board.

Both the complainant and respondent to a complaint will be informed in writing of any corrective action taken.

Other User Respondents

Actions must be determined as appropriate for the individual situation and may include such responses as a letter of disapproval and caution or warning, a revoking of permits or contracts, an issuing of a trespass warning, or other remedies as provided by the common law and/or the appropriate legislation. The involvement of the Superintendent of Education or HR Consultant is recommended in these cases.

Mediated Resolution

Mediation involves an unbiased third party acting as a facilitator in direct communication between the parties who voluntarily agree to enter into this process. It is an opportunity to resolve disputes in a respectful manner. It provides the opportunity to generate a variety of options for resolution and contributes to restoring the working relationship between the parties.

Where there is already a formal complaint being investigated under these Procedures, at any time during the investigation the parties may agree to hold the investigation in abeyance and attempt to achieve a mediated resolution.

Mediation is appropriate when all parties agree that a mutually agreeable solution is achievable and desirable. The investigator will request approval to mediate or attain a trained mediator from the Board's list of approved mediators when the parties have expressed an interest in a mediated resolution. (In cases where mediation is sought, the department of the Board responsible for human resources management will provide trained mediators who are acceptable to both parties.)

Meetings required for mediation sessions will be scheduled as soon as possible and, where practical, in a time and place convenient for the complainant, the respondent, and the mediator.

When matters are resolved through mediation, the complainant and the respondent will sign a memorandum of agreement outlining the terms to which they have agreed. Supervisory and managerial personnel will ensure that the terms that the parties have agreed to have been met.

Mediation is voluntary and the complainant or the respondent may choose to withdraw at any time.

Review

In the event a complainant or respondent to a formal complaint has one or both of the specific concerns listed below, a request may be made to the Director of Education to convene a review within ten working days of the final decision. The Director of Education will appoint a reviewer.

The grounds for review are:

- the investigators did not comply with the procedures; or
- new evidence has become known after the final decision but before the expiry of the ten working days limitation period for requesting a review.

No review of the final decision will be undertaken with regard to the claim that the conclusions drawn by the investigator(s) based on findings of fact were incorrect.

The reviewer will report his or her findings to the Director of Education who will affirm or amend a final decision or require that a new investigation be undertaken.