

ADMINISTRATIVE GUIDELINE

Title: Human Rights

Effective Date: September 2009

Responsibility: Superintendent of Business

PURPOSE

This policy is designed to prevent discrimination and harassment through greater awareness of and responsiveness to their deleterious effects and to ensure that human rights complaints are dealt with expeditiously and effectively through consistently applied policy and procedures. Nothing in this policy or procedures denies or limits access to other avenues of redress, such as a complaint to the Human Rights Tribunal of Ontario or a grievance.

The Near North District School Board is committed to providing and maintaining a working and educational environment which actively promotes and supports human rights such that all persons are treated with respect and dignity. Every person has the right to work and be educated in a safe and supportive atmosphere which promotes equal opportunities and is free from discrimination and harassment. The Board expects all employees to carry out their responsibilities in a professional manner, working in compliance with the requirements of all Board policies and procedures, administrative guidelines, collective agreements, the Education Act and all other relevant legislation. This commitment stems from the Board's own philosophy and its obligations under the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code by providing safe schools and workplaces that respect the rights of every individual.

TO WHOM DOES THIS ADMINISTRATIVE GUIDELINE APPLY?

This administrative guideline applies to all Board employees, students, trustees, and volunteers (including Co-operative Education students, student teachers, and students with placements in Board facilities) and other members of the school community such as members of consultative committees, approved initiative or activity, clients of the Board, parents, volunteers, permit holders, contractors, and employees or organizations not related to the Board but who nevertheless work on or are invited onto Board premises. This policy also covers discrimination and harassment by such persons which occur outside the study/work place, and which are proven to have repercussions that adversely affect the Board's learning/working environment.

Note: For the purposes of the procedures outlined in this administrative guideline, Co-operative Education students, enrolled in a Board school or program, will be considered as "students".

1 – OVERVIEW

1.1 DUTIES AND RESPONSIBILITIES

A school board has a duty to maintain an environment respectful of human rights and free of discrimination and harassment for all persons served by it. It must be diligent of anything that might interfere with this duty.

It is the responsibility of **every Board employee** to:

- prevent discrimination and harassment
- treat all students with respect and take all reasonable steps to ensure that their learning environment is safe
- support individuals who are, or have been, targets of discrimination and harassment
- take reasonable steps to remove any discriminatory barriers in employment policies and practices and in accessing programs, resources, and facilities
- be aware of and sensitive to issues of discrimination and harassment
- take all allegations of discrimination and harassment seriously and respond promptly
- provide positive role models
- respect the need for confidentiality in these incidents
- not demonstrate, allow or condone behaviour contrary to this policy, including reprisal
- report immediately hate group activity

It is the responsibility of **school administrators, supervisors, superintendents and managers** to:

- review this administrative guideline and to follow the steps outlined in the operational procedure when he/she receives information about any alleged incident of employee culpable behaviour
- ensure that all existing and new employees within their area of supervision become familiar with this guideline.
- apply this administrative guideline.

The **Superintendent of Business** shall recommend a budget for the education and training of staff about culpable behaviour and for the implementation of this administrative guideline.

1.2 MAKING A COMPLAINT IN BAD FAITH

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

1.3 REPRISALS

The Board will not tolerate any type of reprisal, including a threatened reprisal against a person who initiates or contemplates initiating a complaint. An individual who invokes, participates, or

is involved in a reprisal against a complainant, potential complainant, witness, supervisor, investigator or decision-maker will be subject to disciplinary action up to and including dismissal. Allegations of reprisals will be investigated as formal complaints under these procedures.

1.4 ASSISTANCE FOR COMPLAINANTS, RESPONDENTS AND WITNESSES

Complainants, respondents and witnesses have a right to assistance throughout the procedure. The following people may provide support and may attend meetings related to the complaint, if the complainant, respondent or witness so requests:

- Union/association representative
- A colleague
- A principal, supervisor or manager
- A centrally-assigned staff person

Where the complainant, respondent or witness is a student, the following people may provide support and attend meetings related to the complaint, if the complainant, respondent or witness so requests:

- A teacher
- Another supportive adult in the school
- A fellow student
- A parent/guardian/other caregiver

1.5 COMMUNICATIONS:

Principals and staff shall not communicate with other students, other parents or the community about incidents of alleged human rights violations or criminal charges without specific direction from the office of the Director. Any person who is found to be in breach of confidentiality will be subject to disciplinary action.

1.6 GENERAL:

The Superintendent of Business, in consultation with the Director, may decide to postpone, suspend or cancel any or all parts of the investigation process if the continuance of the investigation would duplicate or prejudice another proceeding. The filing of a grievance under any collective agreement will not necessarily halt the investigation of a complaint filed under this guideline.

Nothing in this guideline shall be construed so as to alter, diminish or eliminate any right of any employee under the applicable collective agreement, his/her contract of employment with the Board, or by virtue of the common law or any Act of Parliament or of the Ontario Legislature.

2.1- HUMAN RIGHTS VIOLATIONS:

Discrimination, under the Ontario Human Rights Code, results when an individual or group is negatively affected by any practice or behaviour based on one of the following prohibited grounds:

- Age
- Ancestry
- Citizenship
- Colour
- Creed (religion or faith)
- Disability
- Ethnic origin
- Family status
- Marital status
- Place of origin
- Race
- Record of offences
- Same-sex partnership status
- Sex (including gender identity, pregnancy)
- Sexual orientation

Note: Being in receipt of public assistance is a prohibited ground for housing issues only.

There are four types of discrimination: direct, indirect or constructive (also called “adverse effect”), systemic and harassment. Discrimination may be direct or indirect; for example: an action, whether intended or not, that differentiates between persons based on their membership in a protected group as set out in this policy (other than special programs designed to address the conditions of individuals or groups); the deliberate overlooking or acceptance of discriminating or harassing behaviour, especially by supervisory or managerial staff. Discrimination may be systemic, for example: arising from policies, procedures, practices and conduct which may not be discriminatory in their intent but adversely impact individuals or groups protected by this policy where the adverse impact arises from one of the prohibited grounds of discrimination.

Expressions of **harassment based on the prohibited grounds** include but are not limited to:

- Actions or comments that are known or ought reasonably to be known to be unwelcome, inappropriate, intimidating and/or hostile
- Unwelcome remarks, jokes, innuendoes or taunting
- Displays of offensive pictures or other materials, including the sending of unwelcome emails
- Unwelcome and/or unnecessary physical advance, contact or sexual touching
- Reprisal or the threat of reprisal if sexual attention is rejected

Note: Workplace harassment involves harassment of a more general nature that is not related to the grounds prohibited under Human Rights legislation. Allegations of workplace harassment are addressed in the Workplace Harassment Administrative Guideline.

See Appendix A for some examples of harassment under the Human Rights legislation.

2.2 MAKING A COMPLAINT

DEFINITIONS:

For the purposes of this administrative guideline:

- The “complainant” is the person making the allegation of a violation of their rights under the Human Rights Code.
- The “respondent” is the person who is alleged to have engaged in the violation.
- The “superintendent” in this administrative guideline is the Superintendent of Schools and Program who is responsible either for a school and/or staff in a central board program or the Superintendent of Business in his/her responsibility for staff in a central board function.

(a) Who May Initiate a Complaint?

Anyone to whom this policy applies is entitled and encouraged to complain if they believe they are targets of discrimination or harassment prohibited by Human Rights legislation. In addition, those who have witnessed discrimination directly, have received reports of discrimination incidents or have reasonable grounds to suspect that discrimination is occurring, may initiate a complaint. Third party disclosures should only go forward with the victim’s consent.

(b) Making a Complaint:

A complaint can be made orally or in writing.

(c) Timelines:

All complaints of discrimination and/or harassment under Human Rights legislation must be reported within twelve months of the most recent discriminating or harassing behaviour.

2.3 STEPS TO RESOLUTION

There are two procedures that a complainant may follow: the Informal Resolution Procedure and the Formal Complaint Procedure.

There is no requirement that the Informal Resolution Procedure be followed first. A complainant may request going to the Formal Complaint Procedure immediately. Superintendents, in consultation with the Superintendent of Business, may also determine that the allegations be addressed under the Formal Complaint Procedure without first going through the Informal Resolution Procedure.

Notes:

- If the principal, supervisor or manager is the person who allegedly behaved in a discriminatory or harassing behaviour, then the superintendent will be responsible for these steps.
- If the superintendent is the person who allegedly behaved in a discriminatory manner, then the Director or designate will be responsible for these steps.
- If the person who has allegedly behaved in discriminatory manner is the individual's principal, supervisor or manager, the complainant may approach the Manager of Human Resources for assistance in resolving the situation.
- When principals, supervisors or managers are informed about an alleged incident of discrimination, they shall immediately contact the superintendent who will determine with them whether the Informal Resolution Procedure or the Formal Complaint Procedure will be employed. The Superintendent will consult with the Superintendent of Business before finalizing that determination and the Superintendent will be responsible for overseeing the implementation of this procedure.

2.4 THE INFORMAL RESOLUTION PROCEDURE

- Individuals who feel that they have been subject to discrimination or harassment under the Human Rights legislation are encouraged (but not required) to advise the person(s) concerned that the behaviour is unwelcome and offensive and must stop. If the individual feels uncomfortable approaching the alleged violator but wishes to address the situation informally, the complainant may approach his/her principal, supervisor or manager for assistance in resolving the situation.
- If the person who has allegedly engaged in a violation of human rights is the individual's principal, supervisor or manager, the complainant may approach another principal, supervisor, manager or a superintendent for assistance in resolving the situation.
- When principals, supervisors or managers are informed about an alleged violation of human rights, they shall immediately contact the superintendent who will determine with them whether the Informal Resolution Procedure or the Formal Complaint Procedure will be employed. The superintendent will consult with the Superintendent of Business before

finalizing that determination and will be responsible for overseeing the implementation of this procedure.

- When principals, supervisors and managers are attempting to resolve the situation informally, they must:
 - Provide copies of this guideline to the complainant and the respondent
 - Determine the details of the complaint and advise the respondent of the details of the complaint
 - Interview witnesses, if required
 - Maintain written, dated notes
 - Assist the complainant and the respondent in determining an appropriate resolution
 - Ensure that the parties implement the resolution
 - Complete this process within ten (10) working days of being notified of the alleged violation of this policy.
- Where the parties have made a commitment to the resolution and the situation seems to have been resolved through the Informal Resolution Procedure, principals, supervisors and managers will:
 - Follow up with the parties to confirm that the resolution was successful
 - Monitor the situation to ensure the behaviour does not recur.
- If there is no informal resolution of the complaint within ten (10) working days, the principal, supervisor or manager will report such to their superintendent who will then institute the Formal Complaint Procedure.

2.5 FORMAL COMPLAINT PROCEDURE:

(a) The formal complaint:

When **principals, supervisors and managers** receive a complaint under the Formal Complaint Procedure, they shall immediately inform the Superintendent of Business or Manager of Human Resources.

The complaint will be made in writing to the individual's principal, supervisor or manager or to the superintendent.

- Complaints of violations of this policy against the investigator shall be made to the Director.
- Complaints against the Director shall be made to the Chair of the Board.

(b) The Formal Complaint Procedure:

The Superintendent of Business or Manager of Human Resources shall, upon receipt of the complaint, immediately take appropriate steps to ensure the safety of the complainant. Within five (5) working days of receiving the complaint, the Superintendent of Business and/or the Manager of Human Resources shall:

- determine, on the basis of the alleged incident(s), whether the complaint constitutes a potential violation of this section of the administrative guideline or of another administrative guideline.
- inform the respondent that a complaint has been made under this guideline and procedure and that he/she will be informed of the details of the complaint as soon as possible by the person named as investigator

The **investigator** shall:

- ensure both the complainant(s) and the respondent(s) have a copy of this procedure
- remind the complainant(s), respondent(s) and witnesses that they may have assistance throughout the process [see Section 1.4 of this guideline]
- interview the complainant(s) to ascertain all of the relevant facts concerning the complaint
- inform the respondent(s) of the allegations and provide an opportunity for response
- interview the respondent(s)
- interview witnesses named by either the complainant(s) or the respondent(s) as well as witnesses chosen by the investigator
- consider any other relevant evidence
- prepare a draft report that includes:
 - the details of the complaint
 - a description of the investigator's fact finding process
 - the investigator's findings of fact and the respondent's responses
 - conclusions

Note: Investigation reports may be prepared without the names of witnesses whenever deemed appropriate by the investigator.
- provide the complainant(s) and the respondent(s) with a draft copy of the report with its findings and conclusions and give them five (5) working days to respond, in writing.
- consider any response to the draft report and prepare a final report within twenty-five (25) working days of being appointed to investigate the complainant. This timeline may be extended by the Director depending on the circumstances in the particular case.

If the respondent(s) declines to participate in the Formal Complaint Procedure, the investigation shall proceed. The respondent(s) should be encouraged to participate.

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

Upon receipt of the report from the investigator, the Director shall, within five (5) working days after receipt of the report from the investigator:

- review the report
- come to conclusions about whether or not a specific incident did or did not occur based on a balance of probabilities
- determine what actions need to be taken, in consultation with the Superintendent of Business

- provide the complainant(s) and the respondent(s) with a copy of the final report and inform them of the actions he/she will take

Possible outcomes include the following:

- If the complaint is not substantiated, no further action will be taken. All records relating to the investigation will be forwarded to the Director.
- If the complaint is upheld against an employee, disciplinary action will be taken, in consultation with the Superintendent of Business. The principles of progressive discipline will be applied and may include the following in accordance with the Board's administrative guideline:
 - Recorded Verbal warning
 - Letter of reprimand
 - Suspension
 - Dismissal

The superintendent shall ensure that a record of disciplinary action be placed in the employee respondent's personnel file as per the relevant collective agreement.

- If the complaint is upheld against a student, the appropriate procedures for addressing student misconduct, as outlined in the *Education Act* and its Regulations and other specific Board administrative guidelines will be followed.
- Regardless of the outcome, there may be a need to restore a positive working relationship/environment and/or a need for counselling. There also may be a need for specific training, workshops or the permanent separation of the complainant(s) and the respondent(s) from each other. Appropriate steps will be taken to meet these needs in consultation with the Superintendent of Business and appropriate Union if applicable.

Review:

Within ten (10) working days of receiving the final report, the complainant(s) and/or the respondent(s) may request a review. This request must be made in writing to the Director. The Director will appoint a reviewer who will report his/her findings to the Director who will then affirm or amend the final decision or require that a new investigation be undertaken.

There are two grounds for such a request:

- The investigator did not comply with the procedures outlined in this guideline
- New evidence has become known after the final decision but before the expiry of the ten (10) 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 based on findings of fact were incorrect.

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

3.1 CONFIDENTIALITY AND SECURITY OF BOARD RECORDS

- The Board understands that it is difficult to come forward with a complaint of discrimination and recognizes a complainant's interest in keeping the matter confidential.
- All principals, supervisors and managers, complainants, respondents and other persons involved with the complaint process under these procedures will take all reasonable steps to ensure that all matters remain confidential.
- Witnesses should be informed that personnel investigating the complaint will maintain their statements in strict confidence, subject to their ability to conduct a full and thorough investigation process to the extent practicable and appropriate under the circumstances and subject to any disclosures required by law.
- All records of complaints, including but not limited to contents and/or notes of meetings, interviews, results of investigations or inquiries and other relevant material will be kept confidential by the Board and by all other involved personnel, except where disclosure is required by a disciplinary or other remedial process or where required by law or as a consequence of litigation, potential or actual. For example: The board may be required to provide information obtained during an investigation to an outside agency that has the right to require information otherwise protected by the *Municipal Freedom of Information and Protection of Privacy Act* (e.g. a tribunal or court).
- All records pertaining to a complaint which has not yet been resolved will be treated as highly confidential and kept in a secure place.
- The respondent, the complainant and witnesses shall, upon request, be permitted representation by a union/association representative, or be accompanied by a support person of his/her choice at any interviews or meetings in any process of investigating and resolving an incident of alleged culpable behaviour.
- In the event that the allegation of human rights violation is not supported, no report of the investigation shall be placed in the personnel file of the employee who was alleged to have engaged in culpable behaviour.
- There shall be no record in the complainant's personnel file of that individual's complaint against an employee unless it relates to disciplinary action taken as a result of a complaint that was unfounded and/or motivated by malice. In such an instance, the name of the employee shall not appear in any such report in the file of the complainant.

COMPLAINTS UNDER HUMAN RIGHTS

The following are examples of complaints under Human Rights; the list is not meant to be exclusive. The examples are stated very briefly for the purposes of example only; the circumstances around real, individual cases will impact on the determination of an actual complaint.

EXAMPLES OF HUMAN RIGHTS COMPLAINTS
Referring to a colleague using racial slurs
Constantly telling a female employee that she should not consider becoming pregnant if she wants to be considered for promotion
Repeatedly cornering a fellow student of the opposite sex in an enclosed space
A principal who continually makes jokes to his Office Administrator about homosexuals, even though he knows that he/she is gay