



## **ADMINISTRATIVE GUIDELINE**

### **Title: Incidents of Abuse and Neglect of Students** **Under 16 Years of Age**

**Effective Date: September 2009**

**Responsibility: Superintendent of Business**

### **INCIDENTS OF PHYSICAL, EMOTIONAL AND VERBAL ABUSE OF STUDENTS AND NEGLECT OF STUDENTS: STUDENTS UNDER 16 YEARS OF AGE**

The Near North District School Board is committed to providing each and every student with a safe, nurturing, positive and respectful learning environment.

The Near North District School Board has a duty to prevent, detect, intervene in and report abuse or neglect of any students.

The guiding principle of this policy is that no student shall experience corporal punishment, physical mistreatment, sexual, emotional or verbal abuse by employees or volunteers. In addition, they shall also be protected from violence and harassment, including threats, and/or bullying and inappropriate sexual behaviour by other students.

For the purpose of this policy, abuse is any form of physical harm, sexual mistreatment, emotional harm, verbal harm or neglect, which can result in injury or psychological damage. The use of physical force is unacceptable unless necessary to ensure the safety of students or other persons.

The Near North District School Board, therefore, shall have zero tolerance in all of its learning environments for physical, sexual and emotional abuse and/or neglect of students.

This administrative guideline should be read in conjunction with the Board's *Child Abuse/Child Protection Protocol*.

There are other administrative guidelines that may also be relevant when dealing with alleged incidents of abuse and neglect of students, including the following:

- *Human Rights Complaint*
- *Safe Schools: Access to School Premises*
- *Safe Schools: Consultations and Definitions*
- *Workplace Harassment Complaint*

## 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.

*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

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

- remain vigilant about neglect and abuse
- treat all students with respect and take all reasonable steps to ensure that their learning environment is safe
- be aware of and sensitive to issues around the physical, emotional and verbal abuse and neglect of students
- be aware of and sensitive to issues of harassment
- bring forward to a principal, supervisor or manager any alleged incident of employee culpable behaviour
- report his/her suspicions of abuse or neglect of students by Board employees or volunteers to the persons or institutions outlined in this guideline immediately
- support victims of abuse and neglect
- respect the need for confidentiality in these incidents
- take all allegations of employee culpable behaviour seriously and respond promptly

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.
- implement 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.

### **1.3 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.

### **1.4 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.

### **1.5 COMMUNICATIONS:**

Principals and staff shall not communicate with other students, other parents or the community about incidents of alleged culpable behaviour 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.*

### **2.0 REPORTING TO THE CHILDREN'S AID SOCIETY**

- The *Child and Family Services Act* requires that reasonable suspicions of abuse or neglect be reported forthwith to a Children's Aid Society.
- A person who has reasonable grounds to suspect that a student under age 16 is being or has been abused or neglected by an employee or volunteer or is at risk of being abused or neglected by an employee or volunteer MUST forthwith report his/her suspicions to the Children's Aid Society. He/she must then inform the principal or designate of the suspicion and of the contact with the Children's Aid Society.
- In cases where the person with the suspicion is unable to report the suspicion to the Children's Aid Society, the principal or designate will make the report in the presence of that person, where possible.

- If the principal or designate is not immediately available, the person with the suspicion must make the report to the Children’s Aid Society and inform the principal as soon as possible thereafter.
- While the person with the suspicion has the legal duty to report it, he/she may request the presence of the principal or designate while making the report to the Children’s Aid Society.
- If the person with the suspicion is unsure as to whether the matter is reportable, that person may consult with a CAS Intake Worker. If the Intake Worker considers the incident to be non-reportable, the person should document the call including the name of the Intake Worker and the date.

*The responsibility to report lies with the employee or volunteer who received the disclosure or who suspected abuse or neglect.*

**Confidentiality:**

- Do not identify the student to other staff or students.
- The law prevents the public identification of a victim of a sexual offence or a victim of any child abuse/neglect.
- The law also prohibits revealing the identity of an offender under the age of 18 or an offender of any age where the act of identification may tend to identify the victim(s).
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**2.1 THE PRINCIPAL’S DUTIES**

**Notes:**

- If the principal is the person who allegedly abused or neglected a student, then the superintendent will be responsible for these steps.
- If the superintendent is the person who allegedly abused or neglected a student, then the Director or designate will be responsible for these steps.

When the principal has been informed of an allegation of abuse or neglect of a child by an employee or volunteer, the principal shall:

- Immediately inform the superintendent.
  - Where the alleged violation is sexual misconduct, the superintendent will inform the Director whose office will then determine the next steps.
  - The superintendent will discuss with the principal any steps required to ensure the safety of the child/children.
- After informing the superintendent, meet with the accused employee/volunteer to inform him/her that:
  - a complaint has been made under this procedure about the employee’s conduct with a student
  - all information is confidential and he/she should not discuss this matter with any student or employee
  - employees have the right to assistance from his/her union/association and support services of the Board such as the EAP
  - a response by the employee is neither requested nor advised at this point

- the circumstances of the complaint are reportable to the CAS and/or involves the police (if known at the time)
- (if the person who allegedly abused or neglected a student is an employee) he/she is being placed on home assignment as of this moment and that he/she may be assigned to alternate duties until the matter is resolved
- (if the person who allegedly abused or neglected a student is a volunteer) he/she must remain off Board property until the matter is resolved
- Review with the superintendent any alternate work assignment and the process and timing of informing the parents of the student involved.
- Ascertain with the CAS the outcome of any investigation begun pursuant to this procedure.
- Contact the Superintendent of Business if he/she is not satisfied or certain that the child has been protected.
- Complete all required documentation.

Prior to the CAS and police investigation, no employee or volunteer shall be questioned by Board staff regarding the allegation.

## **2.2 DEALING WITH THE EMPLOYEE/VOLUNTEER WHO HAS ALLEGEDLY ABUSED OR NEGLECTED A STUDENT**

- The employee may be placed on home assignment. The Superintendent and/or the Director have the responsibility to determine whether the staff member continues their duties during the investigation. A volunteer under investigation will be denied access to all schools under Regulation 474 of the *Education Act*, Section 3 (1) until the matter is resolved.
- Upon completion of the police investigation or where there has been an acquittal or conviction, the Director or designate will:
  - make a decision whether or not to conduct an internal investigation of the allegations. The procedures for the internal investigation will be the procedures outlined in this guideline under Section 2.3.
  - take disciplinary action if the internal investigation determines, on a balance of probabilities, that the employee mistreated the student. The principles of progressive discipline will be applied and may include the following:
    - Verbal warning
    - Letter of reprimand
    - Suspension without pay
    - Dismissal of employment from the Board
  - deny access to all schools under Regulation 474 of the *Education Act*, Section 3 (1) to the volunteer if the internal investigation determines, on a balance of probabilities, that the volunteer mistreated the student.

## **2.3 IF THERE IS NO POLICE INVESTIGATION**

- If there is no police investigation, the **superintendent** will, within five (5) working days of receiving the complaint determine who will conduct the investigation (in consultation with the Superintendent of Business) and will inform both the student and the employee/volunteer of the name of the investigator:
  - The principal, vice-principal, supervisor or manager

- The superintendent
- The **employee** will immediately be placed on home assignment, with or without pay, or will be assigned to suitable alternate duties not in a school and not involving contact with students until the matter is resolved. A **volunteer** under investigation will immediately be denied access to all schools under Regulation 474 of the *Education Act*, Section 3 (1) until the matter is resolved.
- The **investigator** shall:
  - Ensure both the student and the employee/volunteer have a copy of this procedure
  - Remind the student, the employee/volunteer and witnesses that they may have assistance throughout the process as follows:

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

- Interview the student to ascertain all of the relevant facts concerning the complaint
- Inform the employee/volunteer of the allegations and provide an opportunity for response
- Interview the employee/volunteer
- Interview witnesses named by either the student or the employee/volunteer as well as witnesses chosen by the investigator
- Consider any other relevant evidence
- Come to conclusions about whether or not a specific incident did or did not occur based on a balance of probabilities
- Prepare a draft report that includes:
  - The details of the alleged mistreatment
  - 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 student and the employee/volunteer with a draft copy of the report with its findings and conclusions and give them five (5) working days to respond, either orally or 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 Superintendent of Business depending on the circumstances in the particular case.

If the employee/volunteer declines to participate in this investigation, the investigation shall proceed. The employee/volunteer 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 superintendent shall, within five (5) working days after receipt of the report from the investigator:
  - review the report
  - determine what actions need to be taken, in consultation with the Superintendent of Business
  - provide the student and the employee/volunteer 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:
    - Recorded Verbal warning
    - Letter of reprimand
    - Suspension
    - Dismissal
  
  - If the complaint is upheld against a volunteer, the Director or designate will determine whether or not the volunteer will continue to act as a volunteer in any of the Board's schools or programs.
  - The superintendent shall ensure that a record of disciplinary action be placed in the employee respondent's personnel file. All records relating to the investigation will be forwarded to the Director.
  - 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 Principal, Manager or Superintendent.

- **Review:**

Within ten (10) working days of receiving the final report, the student or the employee/volunteer may request a review. This request must be made in writing to the Superintendent of Business. The Superintendent of Business will appoint a reviewer who will report his/her findings to the Superintendent of Business 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 Superintendent of Business who will affirm or amend a final decision or require that a new investigation be undertaken.

### **3.1 CONFIDENTIALITY AND SECURITY OF BOARD RECORDS**

- 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 throughout the 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 culpable behaviour 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.
- **The provisions of the *Ontario Student Record (OSR) Guideline 2000* will determine whatever material, if any, relating to a complaint of alleged abuse or neglect of a student will be included in the student's OSR.**