



ADMINISTRATIVE GUIDELINE

Title: Workplace Harassment

Effective Date: September 2012

Responsibility: Superintendent of Business

The Near North District School Board is committed to providing a working and learning environment in which all persons are treated with respect and dignity in accordance with the provisions of the Ontario *Human Rights Code*. Every person has the right to work and be educated in a safe and supportive atmosphere which promotes equal opportunities and is free from 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, collective agreements, the Education Act and all other relevant legislation.

This policy is intended to provide a greater awareness of and responsiveness to the damaging effects of harassment. Procedures have been developed to ensure that workplace harassment complaints are dealt with expeditiously, using appropriate resources.

TO WHOM DOES THIS ADMINISTRATIVE GUIDELINE APPLY?

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

1 – OVERVIEW

1.1 DUTIES AND RESPONSIBILITIES

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

- be aware of and sensitive to issues of workplace harassment
- support individuals who are, or have been targets of harassment
- provide positive role models

- bring forward to a principal, supervisor or manager any alleged incident of employee workplace harassment complaint
- respect the need for confidentiality in these incidents
- take all allegations of employee workplace harassment seriously and respond promptly
- not demonstrate, allow or condone behaviour contrary to the administrative guideline, including reprisal.

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 workplace harassment complaint
- 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 workplace harassment 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

1.5 COMMUNICATIONS:

Principals and staff shall not communicate with other students, other parents or to the community about incidents of alleged workplace harassment 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 WORKPLACE HARASSMENT

Definition of Workplace: The workplace is any place where employees, students and other members of the school community perform work or work-related duties or functions. Schools and school-related activities, such as extracurricular activities and excursions, are also included in the workplace, as are Board offices and facilities. Conferences and training sessions fall within the ambit of this administrative guideline.

Definition of Harassment: Harassment is often but not always, persistent, ongoing conduct or communication, in any form, of attitudes, beliefs or actions towards an individual or group which might reasonably be known to be unwelcome. A single act or expression can constitute harassment. Harassment may be either subtle or blunt. Harassment is not the normal exercise of supervisory responsibilities, including training, direction, instruction, counseling, conducting a job performance appraisal and imposing discipline.

Definition of Workplace Harassment: Workplace harassment is broadly defined as harassment that occurs in the workplace but **is not one of the prohibited grounds under the Human Rights legislation**. The workplace includes related work environments such as training sessions and other functions that take place off board property and environments away from work but resulting from work such as a threatening phone call to an employee's home. It is often, but not always, persistent, ongoing conduct or communication, in any form, of attitudes, beliefs or actions toward an

individual or group which makes the workplace environment intolerable for the individual or group. It can be demeaning to a person's self-respect and can include intimidation and/or threats.

Workplace harassment may be either subtle or blatant. Although it is usually is a persistent act or communication, a single act or expression can constitute harassment (e.g. if it is a serious violation or if it is from a person in authority).

Examples of workplace harassment include, but are not limited to the following:

- Criticizing the work of another in the presence of other staff, students or the public.
- Inappropriate interference of a person doing his/her job.
- Inappropriate statements damaging to a person's reputation.
- Inappropriate exclusion from group activities or assignments.
- Excluding or isolating someone socially.
- Spreading malicious rumours, gossip or innuendo that is not true.
- Misuse of a supervisor's power (e.g. constantly changing work guidelines without reason, establishing impossible deadlines that will set up the individual to fail, purposely giving incorrect job-related information).
- Yelling or using profanity.
- Belittling a person's opinions.
- Tampering with a person's personal belongings or work equipment.

Contained in the *Ontario North East Region Police and School Protocol* is the definition of "criminal harassment" that appears in the Criminal Code of Canada. This may help in determining when workplace harassment is actually criminal harassment and requires that the *Ontario North East Region Police and School Protocol* be followed rather than this administrative guideline.

Note: Workplace harassment involves harassment of a more general nature that is not one of the grounds prohibited under Human Rights legislation.

See Appendix A for some examples of workplace harassment.

2.1 MAKING A COMPLAINT

The following procedures provide a mechanism for dealing with workplace harassment complaints. Nothing in these procedures denies or limits access to other avenues of redress available under the law or the filing of a grievance. In such a case, this process and the procedures shall cease.

DEFINITIONS:

For the purposes of this administrative guideline:

- The “complainant” is the person making the allegation of workplace harassment.
- The “respondent” is the person who is alleged to have engaged in workplace harassment behaviour.
- 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?

All those individuals who are covered by this policy have access to complaint procedures and may initiate a complaint if they feel they are targets of harassment. 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. 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.

2.2 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 harassing manner, then the superintendent will be responsible for these steps.
- If the superintendent is the person who allegedly behaved in a harassing manner, then the Director or designate will be responsible for these steps.

- If the person who has allegedly behaved in harassing 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 harassment, 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.

2.3 THE INFORMAL RESOLUTION PROCEDURE

- Individuals who feel that they have been subject to workplace harassment 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 workplace harassment behaviour 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 incident of workplace harassment, 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 detailed written records
 - Assist the complainant and the respondent in determining an appropriate resolution
 - Ensure that the respondent makes a commitment that the behaviour will stop
 - Complete this process within ten (10) working days of being notified of the alleged violation of this policy.
- Where the respondent has made a commitment that the behaviour will stop and the situation seems to have been resolved through the Informal Resolution Procedure, principals, supervisors and managers will:

- Follow up with the complainant to confirm that the behaviour has stopped
- Monitor the situation to ensure the workplace harassment 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 the superintendent who will then institute the Formal Complaint Procedure.

2.4 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.

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 superintendents 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, in consultation with the Superintendent of Business, shall determine who will handle the investigation. The superintendent will be responsible for overseeing the implementation of this procedure.

The **superintendent** 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 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 section of the 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
- determine who will investigate the complaint:
 - The principal, supervisor or manager
 - The superintendent
- inform both the complainant and the respondent of the name of the 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 Superintendent of Business 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 superintendent 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 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.

- 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 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

- 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 workplace harassment.
- In the event that the allegation of workplace harassment 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 workplace harassment 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 following are examples of harassment; 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 of harassment will impact on the determination of actual harassment.

APPENDIX A

WORKPLACE HARASSMENT COMPLAINT

**WORKPLACE HARASSMENT
BEHAVIOUR EXAMPLES**

Belittling a colleague in front of other workers with such statements as “no one would date such a wimp”.

A vice-principal who swears in frustration at a secretary whom he/she judges to be competent but lazy.

Tampering with a colleague’s handouts for his/her students so that he/she appears to other staff and the principal as a very disorganized and lazy teacher.

A Supervisor who consistently ignores a subordinate whenever he/she tries to participate in discussions at meetings.