

Windsor-Essex Catholic District School Board



Section: Human Resources

**ADMINISTRATIVE PROCEDURE:
PR H: 08 Workplace
Harassment**

NUMBER:	PR H: 08
EFFECTIVE:	January 11, 2000
AMENDED:	June 8, 2010
RELATED POLICIES:	See References
REPEALS:	
REVIEW DATE:	2017 - 2018

1.0 OBJECTIVES:

- 1.1 These procedures are to provide a mechanism for implementing the Board's Workplace Harassment Policy.

2.0 GENERAL:

- 2.1 Nothing in these procedures denies or limits access to other avenues of redress available under the law or through the filing of a grievance or through progressive discipline. In such a case, any process within this procedure shall cease until the parties and their respective representatives have met with the Superintendent of Human Resource Services to determine whether a formal investigation will proceed or whether the complainant wishes to proceed under another process. Multiple processes shall not be permitted to proceed concurrently, although informal dispute resolution attempts shall be permitted at any time with the agreement of the Board and the parties.

2.2 Who May Initiate a Complaint?

- i. All workers who believe that they have experienced 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 these procedures. Third party disclosures will only go forward (to the formal stage) with the alleged victim's consent.
- ii. A complainant is free to discontinue a complaint at any time. The Board, however, may deem the circumstances worthy of further investigation and initiate its own action.
- iii. Each employee has the right and is encouraged to contact his/her Union/Federation for assistance and advice throughout this process. Non-unionized employees are encouraged to consult with the Manager of Human Resources or the Superintendent of Human Resources.

2.3 Timelines

- i. All complaints should be reported as soon as possible and must be reported within one (1) year of the most recent alleged harassing behaviour. A complaint outside this time frame may be considered by consulting the Superintendent of Human Resources.

2.4 Confidentiality

- i. It is the duty of the 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 supervisory and managerial personnel, in obtaining a statement, will maintain such statement in strict confidence, subject to their ability to conduct a full and thorough investigation.
- ii. Notwithstanding the above, procedural fairness requires that the respondent to a complaint be apprised of the nature of the complaint and by whom it has been made so that they have an opportunity to respond to the allegations. This may require the disclosure of witness names and statements to the parties.
- iii. The Board may be required to provide information obtained during an investigation to an outside agency, such as police services, Ministry of Labour, court or tribunal that has the right to require information otherwise protected by the *Municipal Freedom of Information and Protection of Privacy Act*.

2.5 Records

- i. All correspondence and other documents generated under these procedures must, subject to the *Municipal Freedom of Information and Protection of Privacy Act*, be stored in a locked and secure file in the Human Resources department.

2.6 Misuse of the Complaint Procedures

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

2.7 Reprisals

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

3.0 INFORMAL RESOLUTION:

- 3.1 Supervisory and managerial personnel may become aware of workplace harassment in the working environment in different ways. They may observe it directly or receive a report from the individual affected. They may also receive reports from third parties. If the supervisor is the party alleged to be responsible for the objectionable behaviour, the concern should be reported to the appropriate manager above the supervisor.

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

3.3 Informal Resolution Steps

- i. Supervisory or managerial personnel, as well as union/federation representatives, 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 behaviour is not acceptable and by obtaining a commitment that the behaviour will stop; and/or
 - informing the individual of the complainant's concern regarding the alleged objectionable behaviour and the Board's expectation for appropriate behaviour, providing a copy of the Workplace Harassment Policy and/or other relevant Board policies, and obtaining a commitment that the behaviour will stop; and/or
 - convening a meeting(s) with the supervisor, parties and representatives.

3.4 Information Resolution Follow-up

- i. 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 concerns have been addressed.
- ii. All notes and/or information prepared in the course of the informal complaint process will be forwarded to the Human Resources Department 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.

4.0 FORMAL COMPLAINT PROCEDURES:

4.1 Initiating a Formal Complaint

- i. A complainant (as defined in section 2.2 above) and/or a respondent may initiate a formal complaint once all reasonable efforts have been made to resolve the conflict informally. The Superintendent of Human Resources will have the discretion to refer a formal complaint back to the appropriate supervisor and the parties if he/she is not satisfied that reasonable efforts have been made to resolve the dispute informally.

- ii. The complainant must put the complaint in written form and must include the specifics of the allegation(s), including times, dates and alleged conduct. The written complaint must be provided to the Superintendent of Human Resources, who will provide a copy to the respondent (s). The respondent (s) will be given a copy of the complaint and provided time to prepare a full and complete response to the allegations.

4.2 Assistance for Complaints, Respondents and Witnesses

- i. Prior to initiating any complaint and throughout the complaint process, complainants and respondents have the right to seek assistance from various support persons, including colleagues and/or union/federation/association representatives.

4.3 Threshold Assessment

- i. 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.
- ii. If the Superintendent of Human Resources, 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 shall be so advised and no further action shall be taken under the Workplace Harassment Policy.

4.4 Procedures for Resolving a Formal Complaint

- i. In all cases, where the Superintendent of Human Resource Services has determined that the parties have made reasonable efforts to resolve the dispute informally, and has conducted a threshold assessment to determine that a formal complaint should proceed, he/she shall direct the appropriate supervisory and managerial personnel to take action to resolve the formal complaint under this policy.

4.5 Formal Investigation and Resolution

- i. A manager/supervisor who is independent of the complaint and informal resolution process shall be designated by the Superintendent of Human Resources to investigate the formal complaint.

- ii. In a formal investigation, the designated supervisor/manager who conducts the investigation shall ensure that the following steps are taken, as soon as possible:
 - A. take appropriate measures to ensure the safety of the complainant;
 - B. notify the complainant(s), the respondent(s) and witness(es) that they are entitled to seek support and assistance throughout the process;
 - C. ensure that the respondent(s) have a copy of the complaint and provide an opportunity for response;
 - D. interview the complainant(s) and/or the third party reporting the complaint;
 - E. interview the respondent(s);
 - F. interview witness(es);
 - G. Consider whether mediation meeting is appropriate and convene such meeting with agreement of parties;
 - H. 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);
 - I. 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
 - J. take appropriate action(s) to resolve the situation.
- iii. 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.

4.6 Standard of proof

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

4.7 Outcomes in formal investigations

- i. 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 trivial, vexatious or an abuse of the process, the complainant may be subject to disciplinary action as outlined in section 4.8. However, if there is need to restore a positive learning or working environment, appropriate recommendations will be made.

4.8 Disciplinary Actions - Employee Respondents

- i. Based on the results of the investigation, the Superintendent of Human Resources may impose discipline as appropriate and consistent with the circumstances.
- ii. The principles of progressive discipline will be applied in dealing with disciplinary actions under this policy. These would include the following possibilities:

- verbal warning;
- written reprimand;
- suspension with pay;
- suspension without pay; or
- dismissal from employment with the Board.

4.9 Disciplinary Actions - Other Respondents (non-employees – i.e. Permit holders, parents, visitors, etc.)

- i. 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.

5.0 APPEALS:

5.1 In the event a complainant or respondent to a formal complaint has one or both of the specific concerns listed below, a written letter of appeal may be made to the Director of Education. The letter of appeal must be forwarded to the Director within 10 days of the final decision of the Superintendent of Human Resources. The Director of Education or his/her designate will then review the decisions based on the following grounds:

- i. The investigators did not comply with the procedures; or
- ii. New evidence has become known after the Superintendent of Human Resources final decision but before the expiry of the ten working days limitation period for requesting a review.

5.2 The Director/designate is not required to meet with the parties and will make his/her decision based on the evidence obtained during the investigation, the findings of the investigator and/or the Superintendent of Human Resources, the discipline decision, and the written submissions of the parties on appeal.

5.3 The Director/designate shall affirm or amend a final decision or may require that a new investigation be undertaken.

6.0 REFERENCES:

Canadian Charter of Rights and Freedoms
Municipal Freedom of Information and Protection of Privacy Act
Ontario Human Rights Code
Ontario Occupational Health and Safety Act
Teaching Profession Act
Ontario College of Teachers Act, 1996

Related Board Policies:

A: 14 Antiracism and Ethno cultural Equity
H: 08 Workplace Harassment