

ADMINISTRATIVE PROCEDURES

WORKPLACE HARASSMENT (Policy Statement: Workplace Harassment)

Purpose

The Algonquin and Lakeshore Catholic District School Board believes that the climate in the workplace must be one which recognizes and promotes a sense of dignity among all employees and encourages the development of an attitude of respect among employees and others associated formally and informally with the operation of the school system. To this end, the Board will provide mechanisms and support for the investigation of harassment complaints and will pursue vigorously, appropriate corrective, educational and/or disciplinary interventions when such instances of intentional harassment are confirmed.

References

Education Act
Ontario Human Rights Code
Ontario Occupational Health and Safety Act
Criminal Code of Canada
Canadian Charter of Rights and Freedom

Procedures

1. Definitions:

1.1 Harassment

Under the Ontario Human Rights Code, harassment is defined as conduct or a vexatious course of conduct that includes, among other things, disparaging comments (i.e., inappropriate gender related comments), distribution of discriminatory materials, behaviour intended to incite hatred or other verbal or physical conduct of a nature which is known, or ought reasonably to have been known, to be unwelcome when such conduct involves any of the following prohibited grounds of discrimination:

- a) race
- b) ancestry
- c) place of origin
- d) colour
- e) ethnic origin
- f) citizenship
- g) creed (religion)
- h) age
- i) record of offences (in employment – a conviction for an offence under provincial law or a conviction under the Criminal Code for which a pardon has been granted and not revoked)
- j) sex (includes pregnancy)
- k) sexual orientation
- l) family status (parent and child relationship)
- m) marital status
- n) disability or perceived disability (under the Ontario Human Rights Code) “because of handicap” means that the person has or has had, or is believed to have or had:
 - any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the forgoing, including diabetes, mellitus, epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, or physical reliance on a guide dog or on a wheelchair or other remedial appliance or device,
 - a condition of mental retardation or impairment,
 - a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
 - a mental disorder, or
 - an injury or disability for which benefits were claimed or received under the Workplace Safety & Insurance Act.

The definition is further expanded under the Occupational Health and Safety Act as engaging in vexatious comment or conduct against a worker in a workplace that is known or ought reasonably be known to be unwelcome or sexual harassment.

1.2 Sexual Harassment

In the case of employment, workplace sexual harassment is defined as:

- 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;
- b) one or a series of incidents involving sexual advances, that are unwelcome;
- c) requests for sexual favours or other verbal or physical conduct of a sexual nature which are known, or ought reasonably to have been known, to be offensive;
- d) or for reprisal or threat of reprisal for rejection of a sexual solicitation or advance,

when the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement.

1.3 Workplace Harassment

Workplace harassment is defined in the Occupational Health and Safety Act (OHS) as 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.

1.4 Types of Behaviour

- a) Types of behaviour associated with the prohibited grounds of discrimination which may constitute harassment include, but are not limited to:
- jokes causing embarrassment or offence, told or carried out after the person telling jokes has been advised that they are offensive, or that are by their nature clearly embarrassing or offensive;
 - racial epithets;

 - mimicking of person's accent or pronunciation of words;
 - comments ridiculing individuals because of race related characteristics or religious dress;
 - the display of offensive material and graffiti (including electronic format, fax or voice mail);
 - the display of symbols or emblems, including dress code, that indicates or incites hatred or notions of supremacy;
 - degrading words used to describe a person;
 - derogatory remarks directed towards members of a group protected under the Ontario Human Rights Code;
 - verbal and non-verbal abuse, intimidation or threats
 - Unwelcome words or actions that are know or ought reasonably to be known to be offensive, embarrassing, humiliating or demeaning.
- b) Types of behaviour associated with sexual harassment include, but are not limited to:
- leering (prolonged and intense staring);
 - sexually suggestive or obscene comments or gestures;
 - unwelcome sexual flirtations, advances, propositions;
 - sexual solicitation or advance from a person in a position to confer, grant or deny a benefit;
 - unwanted gifts;
 - unwanted and persistent requests for dates;
 - requests for sexual favours;
 - unwanted touching;

- bragging about sexual prowess;
- questions or discussions about sexual activities;
- stalking;
- rating;
- persistent unwanted contact or attention after the end of a consensual relationship;
- sexual assault;
- gay-bashing;
- reprisals or threat of reprisal for rejection of a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit.

c) Workplace Harassment may include:

- bullying;
- intimidating or offensive jokes or innuendos;
- displaying or circulating offensive pictures, materials;
- offensive or intimidating phone calls.

Bullying is a form of harassment and means a repeated pattern of intentional inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, performed by one or more persons against another person or group of people, which could reasonably be regarded as undermining the individual's right to dignity at work.

Bullying Tactics can take on a number of forms such as verbal, physical, social and electronic. Examples include but are not limited to:

- Falsely accusing target of "errors" not made
- Nonverbal intimidation
- Discounting target's thoughts and feelings in meetings
- Silent treatment
- Inconsistent emotional behaviour
- Disregarding satisfactory or excellent work
- Rumors or gossip
- Singling out and isolating
- Verbal aggression
- Stealing credit for work done
- Abusing the evaluation process
- Being "insubordinate"
- Misusing confidential information
- Retaliation
- Sabotage
- Stalking or spying

1.5 Poisoned Environment

The notion/concept of a poisoned environment is one where, for example, inappropriate gender-related or racially-based comments or conduct may be significant or substantial enough to constitute a breach of the Code, by creating a “poisoned environment” for some individuals because of their membership in a group protected under the Code. However, one does not have to be the person targeted by the comments or conduct to experience a poisoned environment. The inappropriate comments or conduct need not occur continuously or repeatedly, but the impact or effect of the negative comments or actions creates a “poisoned environment” for certain individuals by subjecting them to differential terms and conditions in employment and services. Negative comments or conduct which humiliates, demeans and is devaluing of members of groups targeted by the unwelcome behaviour can be considered to poison a workplace or academic environment. A “poisoned environment” could result from a serious and single event, remark or action.

1.6 What is Not Harassment

Harassment does not include the normal exercise of supervisory duties and responsibilities, including teaching, training, direction, instruction, performance appraisal, counseling and discipline when necessary. This policy and administrative procedure is not intended to address concerns that individuals may have regarding leadership, communication style, or overall performance of Board employees.

Differences of opinion or minor disagreements between co-workers would also not generally be considered workplace harassment.

1.7 No Reprisals

For the purposes of this policy, “reprisal” against an individual will be treated as harassment when such actions occur for:

- a) having invoked this policy (whether on behalf of oneself or another individual);
- b) having participated or cooperated in any inquiry under this policy; or
- c) having associated with a person who has invoked this policy or participated in these procedures.

In the event that an individual is shown to have initiated proceedings under this policy in a frivolous or malicious manner, the Board may take formal disciplinary action against the complainant. Documentation regarding the disciplinary action will be placed in the employee’s record file.

2. Administration:

2.1 The Administration of the Board is responsible for:

- a) Discouraging and responding to employment-related harassment and harassment in the provision of services;
- b) Promoting an environment free from harassment within the workplace, including, Employees, Students, Parents and any other third-party contractors;
- c) Investigating complaints of harassment;
- d) Applying appropriate remedial and preventive measures, which may include discipline up to and including dismissal for employees when a complaint of harassment is found to have been substantiated;
- e) Providing appropriate procedural assistance to an individual(s) complaining of harassment as well as to an individual(s) who has been named as harasser(s);
- e) Informing the complainant of the outcome of an investigation and formally acknowledging to a person found to have been harassed that harassment has taken place and to provide him/her with support and assistance as appropriate;
- f) Formally acknowledging to a person who has been named as a harasser if harassment is not found to have taken place;
- g) Regularly reviewing the procedures of this Policy to ensure that they adequately meet the Policy objectives;
- h) Maintaining the records as required by this Policy;
- i) Making all those working for and using the services of the Board aware of its commitment to providing a harassment-free environment and the existence of the procedures under this Policy; and
- j) Providing information and resources for all those working for and using the services of the Board to fulfill their responsibilities under this Policy.

3. Reporting Harassment:

All employees of the Board are expected to promote a working and learning environment that is free from harassment and to assist anyone who believes he/she is being or may have been harassed. Anyone who believes a colleague or another person employed by the Board is being or may have been harassed is encouraged to notify the supervisor or Principal or persons above the rank of supervisor or Principal of the person believed to be the victim of harassment.

4. Procedure for Complaint from Staff:

Please note the following references are used for convenience:

A person who considers that he/she has been subject to harassment or harassment related reprisal will be referred to as the "Complainant" even though that individual may not lay a formal written complaint. Similarly, a person named as harasser in a complaint will be referred to as the "Respondent".

Throughout the Complaint Procedure the employees may have the representation of the Union.

References to “harassment” will refer to any alleged behaviour that appears to meet the definition of harassment found in 4.0 Definitions.

Resource people referred to below include: Director, Superintendents, Supervisors, Principals, Managers and the Unions.

4.1 Speak Up

A person (Complainant) who considers that he/she has been subjected to harassment or harassment related reprisal should bring the matter to the attention of the person responsible for the conduct (Respondent) making direct and clear objection indicating that the comment or conduct is unwelcome. This may resolve the issue. It is important that the Complainant document (note the details of) any communication he or she has with the Respondent (for example, date, time, place, witnesses, etc.).

4.2 Obtain Assistance and Information

Where a person (Complainant) does not feel able to bring the matter directly to the attention of the person responsible (Respondent), or where such an approach is attempted and does not produce a satisfactory result, the Complainant should seek the advice of a resource person (Supervisor, Principal, Manager, Superintendent, Director) of his/her choice for assistance in resolving the matter.

The resource person will advise the Complainant of the following:

- a) the option of requesting the assistance of his/her Principal or Supervisor in resolving the complaint (provided the Principal/Supervisor is not the person named by the Complainant). If the alleged harasser is the immediate Supervisor, the Complainant should contact his/her Supervisory Officer or Director of Education;
- b) the availability of counselling and other support services provide by the Board;
- c) the employees right to discuss the issues with their Union Representative;
- d) the right to lay a formal written complaint under this policy when the alleged harasser is an employee of the Algonquin and Lakeshore Catholic District School Board;
- e) the expectation that a formal written complaint would be laid within six (6) months of the incident unless a delay was justified on the basis of extenuating circumstances and will not result in substantial prejudice against any person affected by the delay;
- f) a right to be represented or assisted by a person of his or her choice (i.e., a friend, colleague, a union representative) throughout the process;
- g) the right to withdraw from any further action in connection with the complaint at any stage (even though the Algonquin and Lakeshore Catholic District School Board may continue to investigate the complaint);

- h) other avenues of recourse such as the right to utilize the provisions of the Collective Agreement, to file a complaint with the Ontario Human Rights Commission to take civil action, or where appropriate, the right to lay a charge under the Criminal Code;
- i) the issue to be maintained strictly confidential.

4.3 Seeking Resolution

The Complainant may decide not to take any action or to do the following:

- a) Request assistance from his/her Principal/Supervisor:
 - meet with his/her Supervisor/Principal to discuss the matter;
 - explore the notion of conflict resolution, mediation or any other options to affect a satisfactory solution.

Note: The respondent is not identified unless the solution necessitates such.
- b) Seek counselling through the Board's Employee Assistance Policy (E.A.P.).
- c) Lay a formal complaint (refer to 5.4 Formal Complaint Process).
- d) Take other avenues of recourse:
 - utilize applicable provisions of the Collective Agreement;
 - file a complaint with the Ontario Human Rights Commission;
 - resolve the issue through federation/union mechanism if both Complainant and Respondent are members of the same bargaining unit;
 - take civil action;
 - report the incident to the police and take action under the Criminal Code.

4.4 Formal Complaint Process

The Complainant will inform the resource person (5.2) that she/he wishes to lay a formal written complaint. Throughout the Formal Complaint Process the employees may have the representation of the Union.

The resource person will outline the formal complaint process.

a) Stage 1: Documentation and Notification Process

The resource person may assist the Complainant in drafting a formal, written complaint, detailing the particulars of the allegation. The particulars should include the name(s) of the person involved (Respondent) and a description of the incident(s).

The formal written complaint must be signed by the Complainant.

The resource person will give copies of the complaint, without delay, to the Complainant, the Respondent and to the appropriate Supervisory Officer(s)/designate.

Both parties will be advised that even if the matter is resolved to the satisfaction of the Complainant, the Algonquin and Lakeshore Catholic District School Board may, nonetheless, be obliged under this policy to continue the inquiry into the complaint and to take whatever remedial action is appropriate.

b) Stage 2: Investigation

The Supervisory Officer/designate will collect evidence by meeting with the Complainant and Respondent (separately), interview witnesses (in a safe and confidential environment) and

otherwise investigate all aspects of the matter which are relevant in determining whether or not the allegations of harassment are substantiated.

Where either the respondent or the complainant is in a direct reporting relationship, or a conflict of interest is present, to the appropriate Supervisory Officer/designate, the internal investigation shall be conducted by an alternate Supervisory Officer or designate.

All individuals who are interviewed will be advised that they may be accompanied by a representative of their choice.

A written confidential record must be kept by the Supervisory Officer/designate.

The Board may choose to have the investigation conducted by an external third party investigator.

c) Stage 3: Report and Conclusion

At the conclusion of the inquiry, the Supervisory Officer/designate will prepare a report for the Supervisory Officer responsible for the Workplace Harassment Policy who will review it and authorize its release to all parties to the complaint. The Complainant and Respondent will be given ten (10) working days to respond to the analysis of evidence in the report and provide new evidence or information that should be considered prior to a final decision being made.

The appropriate Supervisory Officer responsible for the Workplace Harassment Policy will review the responses to the report and will then consider whether or not further investigation is necessary and, if not, whether the complaint or parts of the complaint are substantiated. The Supervisory Officer responsible for the Workplace Harassment Policy will recommend to the Director of Education what remedial action to take in the circumstances.

Such rehabilitative or disciplinary action may include, but not be limited to:

- Counselling
- Education on Harassment
- Formal written apology
- Change of work assignment of the Complainant and/or Respondent
- Disciplinary action up to and including dismissal

The Supervisory Officer will advise both the Complainant and Respondent, in writing, of the results of the inquiry and any disciplinary and/or remedial action to be taken.

Where the results do not support the complaint of harassment, both parties will be informed in writing and the file will be closed.

All documentation collected during the formal process must be kept confidential and maintained in a filing system in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*. All documents must be kept in a sealed envelope in the office of the Director of Education.

d) Stage 4: Appeal of the Decision

Within ten (10) working days of receiving the decision of the Board. The Complainant and/or Respondent may appeal the decision to the Director of Education who will review the report and any other supporting documentation.

The grounds for appeal are:

- i. The investigator did not comply with the process under this administrative procedure;
- ii. New evidence was made known after the decision was rendered, but before the expiration of the ten (10) day appeal period.

No review of the 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 Director of Education will confirm or reverse the decision of the report, in writing, to the Complainant and Respondent.

- e) Unsubstantiated Complaints – If a person, in good faith, files a harassment complaint that is not supported by evidence gathered during an investigation, that complaint will be dismissed and no record of it will be put in the accused harasser’s file. As long as the complaint was made in good faith there will be no penalty to the person who complained, and no record in her or his file.

5. Consequences of Engaging in Harassment:

5.1 Under Statute

Persons who engage in harassment prohibited by the Human Rights Code are liable under the Code for damages payable to the Complainant. In addition, a person who violates the Code or who obstructs a human rights investigation may also be liable to prosecution under the Code and, on conviction, to a fine of not more than \$25,000. Persons who have knowledge of, or who acquiesce in, harassment may be found in violation of the Human Rights Code as having indirectly engaged in prohibited activity and are subject to the same consequences as those who directly engage in discrimination or harassment.

Persons found to have engaged 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 may be liable to prosecution under the Occupational Health and Safety Act and, on conviction, to a fine of \$100,000 and/or a jail sentence of 12 months.

Persons who engage in harassment that are not employed by the Board but negatively affect the workplace as defined by this policy will be dealt with on a case by case basis and under the appropriate policy, i.e. Safe Schools.

5.2 At Common Law

Persons who engage in harassment or discrimination, directly or indirectly, may be sued.

5.3 In Employment

Employees who engage, directly or indirectly, in discrimination or harassment may be disciplined up to and including dismissal.

5.4 Confidentiality, Retaliation and Malicious Reporting

The Algonquin and Lakeshore Catholic District School Board understand that it is difficult to come forward with a complaint of harassment and recognizes a Complainant’s interest in keeping the matter confidential.

In the event that a complaint was made in bad faith (with malicious intent to harm another person's reputation) that person will be subject to the appropriate disciplinary action in accordance with the Board's Human Resources policies.

Anyone who retaliates in any way against a person who has complained of harassment or has assisted in the investigation of a complaint will have their behaviour investigated and be dealt with in accordance with the Board's applicable Human Resources policies.

To protect the interests of the Complainant, the person complained against and any others who may report incidents of harassment, confidentiality will be maintained throughout the investigation process to the extent practicable and appropriate under the circumstances.

All records of complaints, including contents of meetings, interviews, results of inquiries and other relevant material will be kept confidential by the Algonquin and Lakeshore Catholic District School Board, except where disclosure is required by a disciplinary or other remedial process or required by operation of law or as a consequence of contemplated or actual litigation. These records will be retained in a confidential file in the office of the Director of Education.

Appendices

Appendix 1: Resolution Procedures and Options

Appendix 2: Formal Complaint Process

Forms

Associated Documents

Approved: January 25, 2011

Amended: April 2019