



Northeastern
Catholic District
SCHOOL BOARD

Northeastern Catholic District School Board

Workplace Harassment Prevention Program

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1.0 BACKGROUND

The Northeastern Catholic District School Board (the Board) believes that all workers have the right to a respectful workplace. The Board is committed to providing a work environment that is free of workplace harassment, as defined by the Occupational Health and Safety Act. The Board is committed to the implementation of measures and procedures to report and deal with incidents and complaints of workplace harassment, and to provide workers with information on the contents of the workplace harassment policy.

2.0 PURPOSE

This program is intended to provide a greater awareness of the value of establishing and maintaining respectful working and learning environments and of responsiveness to the damaging effects of harassment in the workplace.

3.0 REFERENCES AND RELATED DOCUMENTS

- *Workplace Violence and Harassment: Understanding the Law*, Occupational Health and Safety Branch, Ministry of Labour, March 2010
- *Ontario Occupational Health and Safety Act*
- *Canadian Charter of Rights and Freedoms*
- *Ontario Human Rights Code*
- *Municipal Freedom of Information and Protection of Privacy Act*
- *Teaching Profession Act*
- *Ontario College of Teachers Act, 1996*
- *Ontario Education Act*
- *Safe Schools Act*
- Board Policy H-1, *Health and Safety*
- Board Policy H-3, *Workplace Violence Prevention*
- Board Policy H-2, *Workplace Harassment Prevention*
- Board Policy E-24, *Safe, Accepting and Inclusive Schools*
- Administrative Procedure APE-001, *School Board and Police Protocol*
- *Workplace Harassment Resolution Process, Appendix A*
- *Workplace Harassment Formal Complaint Form, Appendix B*

4.0 SCOPE

- 4.1 These procedures apply to all work activities that occur while on Board premises, or while engaging in workplace activities or workplace social events.
- 4.2 These procedures apply to all members of the Board community, including but not limited to, trustees, students, employees, visitors, parents, community members, volunteers, permit holders, contractors, and employees of other organizations who work on or are invited onto Board property.

5.0 TERMS AND DEFINITIONS

WORKPLACE HARASSMENT means 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, or workplace sexual harassment. Harassment may, dependent on the circumstances, consist of a single action or a series of incidents. The normal proper exercise of supervisory responsibilities, including training, evaluation, counselling, and discipline when warranted, does not constitute workplace harassment. Examples: Making remarks, jokes or innuendos that demean, ridicule, intimidate or offend; bullying; displaying or circulating offensive pictures or materials in print or electronic form; inappropriate sexual touching, advances, suggestions or requests.

SEXUAL HARASSMENT means engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identify or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome. Or making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

SEXUAL VIOLENCE means any sexual act or act targeting a person's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against a person without the person's consent. This includes sexual assault, sexual harassment, stalking, indecent exposure, voyeurism, and sexual exploitation.

WORKPLACE is any place where employees perform work or work-related duties or functions. Schools and school-related activities, such as extra-curricular activities and excursions, comprise the workplace, as do Board offices and facilities. Conferences and training sessions fall within the parameters of this policy.

REPRISAL is any act of retaliation, either direct or indirect.

6.0 INFORMATION AND INSTRUCTION ON WORKPLACE HARASSMENT

- 6.1 All training must be documented and records must be kept. A copy of the record must be sent to the Manager of Human Resources for filing.
- 6.2 Instruction or training on the contents of the Workplace Harassment Prevention policy and program will be done on a regular basis;
- when there are significant changes to risks encountered;
 - when there are significant changes to the workplace violence policy or program; and/or
 - when circumstances indicate additional instruction or training is needed such as when procedures are not being followed or workers do not know about them.

7.0 PROCEDURES

7.1 Nothing in this Procedure denies or limits access to other avenues of redress available under the law or through the filing of a grievance or through progressive discipline. Where there is such an occurrence, this process will cease until the parties and their respective representatives have met with the Manager of Human Resources to determine whether a formal investigation will proceed or whether the complainant wishes to proceed under another process. Multiple processes will not be permitted to proceed concurrently, although informal dispute resolution attempts will be permitted at any time with the agreement of the Board and the parties.

7.2 The complainant is free to commence the complaint procedure at the formal or informal stage outlined herein. The complainant is also free to discontinue a complaint at any time. The Board, however, may deem the circumstances worthy of further investigation and initiate its own action. At any stage an employee has a right to file a complaint:

- through the Human Rights Code;
- through their affiliated Union/Association or collective agreement;
- through the Board Harassment procedures;
- through the Police or other authority;
- or to drop the matter.

7.3 WHO MAY INITIATE A COMPLAINT

All persons who are included under section 1.5 in the Workplace Harassment Prevention Policy have access to the complaint procedures. Individuals who believe that they are targets of 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 this Procedure.

Each employee has the right and is encouraged to contact his or her Union/Association for assistance and advice throughout this process. Non-unionized employees are encouraged to consult with the Manager of Human Resources or the Director of Education.

7.4 TIMELINES

It is the expectation of the Board that all complaints will be brought forward in a timely manner. All complaints must be reported within one year of the most recent alleged harassing behaviour. A complaint outside this time frame may be considered by consulting the Manager of Human Resources, or the Director of Education where the Manager of Human Resources is the respondent.

7.5 DUTIES AND RESPONSIBILITIES

In order to stop objectionable behaviour, supervisory and managerial personnel must address and attempt to resolve disputes in a timely fashion. The Manager of Human Resources has the

responsibility to designate resources for ensuring the implementation of and compliance with this Policy.

The Manager of Human Resources will ensure that new employees are informed of this Policy and how it can be accessed and will ensure that it will be reviewed at orientations for all employees. The Board will review the Policy with respect to workplace harassment as often as is necessary, but at least annually.

7.6 CONFIDENTIALITY

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.

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.

The Board may be required to provide information obtained during an investigation to an outside agency, such as but not limited to police services, court or tribunal that has the right to require information otherwise protected by the *Municipal Freedom of Information and Protection of Privacy Act*.

7.7 RECORDS

All correspondence and other documents generated under these Procedures must, subject to the *Municipal Freedom of Information and Protection of Privacy Act*, be marked "PRIVATE AND CONFIDENTIAL" and be stored in a locked and secure file in Human Resources.

7.8 POSTING

The Policy and Program concerning workplace harassment will be posted at a conspicuous place in the workplace.

7.9 MISUSE OF THE COMPLAINT PROCEDURES

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

7.10 REPRISALS

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

7.11 PRE-STEP

The first step is for the complainant to inform the individual that his or her behaviour is unwelcome and must stop immediately. Many disputes can be resolved quickly and effectively using this approach. In some cases, the complainant may not feel comfortable performing this step. The complainant is free to begin the complaint process at the formal or informal stage as outlined herein.

7.12 INFORMAL COMPLAINT RESOLUTION PROCESS

Supervisory and managerial personnel may become aware of workplace harassment in the working or learning environment in different ways. They may observe harassment directly or receive a report from the individual affected. Supervisory and managerial personnel may also receive reports from third parties.

It is important that supervisory and managerial personnel pay attention to symptoms arising out of possible objectionable behaviour such as reduced productivity, changes in behaviour, absenteeism, requests for transfers, or rumours. Without assistance, the targets of objectionable behaviour may be embarrassed or reluctant to report a situation.

A speedy resolution of a complaint can prevent escalation and further negative consequences while promoting restoration of a healthy learning and working environment.

Informal Resolution is a procedure that provides an opportunity for parties to resolve a dispute mutually in a respectful manner. The Board will require supervisory and managerial personnel, in consultation with Union/Association representatives, to first engage in Informal Resolution as a means of resolving issues.

a) INFORMAL RESOLUTION STEPS

In keeping with the Joint Protocol for Enhancing Positive Relationships in the Workplace, supervisory or managerial personnel, in consultation with Union/Association 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;
- 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 Prevention Policy and/or other relevant Board policies, and obtaining a commitment that the behavior will stop; and
- following up with the complainant to ensure that the behavior has stopped.

Supervisory and managerial personnel may initiate mediation by a neutral third party.

b) INFORMAL RESOLUTION FOLLOW-UP

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 the harassment has stopped.

All notes and/or information prepared in the course of the informal complaint process will be forwarded to Human Resource Services 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.

7.13 FORMAL RESOLUTION PROCESS

Formal complaints will only be initiated once all reasonable efforts have been made to resolve the conflict informally. The Manager of Human Resources will have the discretion to refer a formal complaint to the appropriate supervisor and the parties if he or she is not satisfied that reasonable efforts have been made to resolve the dispute informally.

Prior to initiating any complaint and throughout the complaint process, complainants have a right to assistance and support. Employee complainants are encouraged to contact their appropriate supervisor, a colleague, Union or Association representative for assistance and representation throughout the complaint process. If an employee requires assistance in completing the formal complaint form, another individual such as a colleague, Union or Association representative should make the complaint on the employee's behalf. If the supervisor is the party alleged to be responsible for the objectionable behaviour or alleged to condone the objectionable behaviour, the complaint should be reported to the appropriate manager above the supervisor.

For assistance and representation throughout the complaint process, both employee complainants and employee respondents are referred to the list in section 7.13 (b) below.

Other user complainants should report the complaint to the appropriate supervisory or managerial personnel at the Board or, if they require assistance in reporting.

Other user respondents may also want to contact other appropriate personnel; for example, an employee of another organization may want to seek assistance and support from within that organization. For assistance and representation throughout the complaint process, both other user complainants and other user respondents are referred to the suggested support people listed in section 7.13 (b) below.

The rights of students to a respectful working and learning environment, free from harassment, are dealt with under other appropriate policy, legislation or regulations including, but not limited, to the *Education Act*, the *Safe Schools Act*, and the *Ontario Schools Code of Conduct*, and codes of behaviour. Students should contact their vice-principal, principal, or, where appropriate, their school superintendent for clarification on the process to be followed.

a) RESPONDENTS TO A CLAIM

Individuals who are named as respondents in a complaint have a right to know in a timely manner that they are the subject of a complaint, who the complainant is, what the allegations are, and what approach to a resolution is being considered. In particular, a respondent has a right to know the specifics of an allegation, including times, dates, and alleged conduct. Respondents will be given a copy of the complaint and given time to prepare a full and complete response to the allegations.

Teachers are also advised to refer to the statutory requirements when making a report in accordance with Section 18.1 (b) of the *Teaching Profession Act* as follows:

“A member shall, on making an adverse report on another member, furnish him (her) with a written statement of the report at the earliest possible time and not later than three days after making the report.”

b) ASSISTANCE FOR COMPLAINANTS, RESPONDENTS, AND WITNESSES

Prior to initiating any complaint and throughout the complaint process, complainants have a right to assistance and support. Individuals who are named as respondents in a complaint, as well as witnesses, also have a right to assistance and support throughout the complaint process. The following people may provide support:

- parent/guardian/other caregiver
- professional support staff
- employee or colleague
- trained resource person
- Union/Association representative
- religious advisor
- translator/interpreter (if necessary)

c) THRESHOLD ASSESSMENTS

All formal reports filed under the Workplace Harassment Prevention Policy will be subject to an immediate threshold assessment to determine whether the alleged conduct would, if proven, meet the definition of workplace harassment.

If the Board, 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 Prevention Policy, then the complainant will be so advised and no further action will be taken under the Workplace Harassment Prevention Policy.

Where allegations relate to discrimination on the basis of a ground prohibited by the Ontario *Human Rights Code*, they will be addressed using the appropriate Board policy.

d) PROCEDURES FOR RESOLVING A FORMAL COMPLAINT

In all cases, where the Manager of Human Resources 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 or she will direct the appropriate supervisory and managerial personnel to take action to resolve the formal complaint under this Policy.

e) FORMAL INVESTIGATION AND RESOLUTION

Formal complaints require an investigation of the complainant's allegations. Investigators will most often be the supervisory staff of the complainant and/or respondent, unless either actively participated in the unsuccessful informal resolution process, in which case, an alternate investigator will be appointed. Where the complainant and the respondent have different reporting structures, supervisory and managerial personnel involved will determine who the appropriate person is to take responsibility for the investigation.

In a Formal Investigation, supervisory or managerial personnel who conduct the investigation will ensure that the following steps are taken as soon as possible:

- take appropriate measures to ensure the safety of the complainant;
- notify the complainant(s), the respondent(s), and witness(es) that they are entitled to support and assistance throughout the process;
- ensure that the respondent(s) have received a copy of the complaint;
- interview the complainant(s) and/or the third party reporting the complaint;
- inform the respondent(s) of the allegations and provide an opportunity for response;
- interview the respondent(s);
- interview the witness(es);
- 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);
- 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
- take appropriate action(s) to resolve the situation.

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.

f) STANDARD OF PROOF

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

g) SUBSTANTIATION

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, in which case the complainant may be subject to disciplinary action as outlined in section 7.13 (h) below. However, if there is need to restore a positive learning or working environment or if the complainant and/or respondent require counselling, appropriate steps will be taken to meet such needs.

Follow-up possibilities:

- counselling for the parties;
- application of strategies to restore a positive learning/working environment;
- mediation;
- specific training for the complainant or respondent;
- workshops for the staff and/or others in the school/workplace regarding their rights and responsibilities;
- permanent separation of respondent and complainant from each other; and/or
- restorative measures.

h) DISCIPLINARY ACTIONS

i. Employee Respondents

The appropriate supervisor or manager may impose discipline as appropriate and consistent with the circumstances.

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.

ii. Other Respondents

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. The involvement of the Manager of Human Resources is recommended in these cases.

i) MEDIATED RESOLUTION

Mediation involves an unbiased third party acting as a facilitator in direct communication between the parties who voluntarily agree to enter into this process. It is an opportunity to resolve disputes in a respectful manner. It provides the opportunity to generate a variety of options for resolution and contributes to restoring the working relationship between the parties.

Where there is already a formal complaint being investigated under these Procedures, at any time during the investigation the parties may agree to hold the investigation in abeyance and attempt to achieve a mediated resolution.

Mediation is appropriate when all parties agree that a mutually agreeable solution is achievable and desirable. The investigator will request approval to mediate when the parties have expressed an interest in a mediated resolution.

Meetings required for mediation sessions will be scheduled as soon as possible and, where practical, in a time and place convenient for the complainant, the respondent, and the mediator.

When matters are resolved through mediation, the complainant and the respondent will sign a memorandum of agreement outlining the terms to which they have agreed. Supervisory and managerial personnel will ensure that the terms that the parties have agreed to have been met.

Mediation is voluntary and the complainant or the respondent may choose to withdraw at any time.

7.14 REVIEW

In the event a complainant or respondent to a formal complaint has one or both of the specific concerns listed below, a request may be made to the Director of Education to convene a review within ten working days of the final decision. A reviewer will be appointed by the Director of Education.

The grounds for review are:

- the investigators did not comply with the procedures; or
- new evidence has become known after the final decision but before the expiry of the ten 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(s) based on findings of fact were incorrect.

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

7.15 BOARD COMPLAINT

In rare circumstances, in recognition of its liability as an employer subject to the *Ontario Human Rights Code*, and to ensure the integrity of the Board's Policy, action may be pursued in the absence of a formal complaint. In the event that:

- the complainant is unwilling to file a formal complaint, but there are overriding concerns to be addressed, or;
- over time, there appears to be a number of complaints against the same person, even though they may not be substantiated, or;
- over time, there appears to be a number of complaints initiated by the same person, even though they may not be substantiated, or;
- the complainant is subject to any retaliation or intimidation for having pursued a matter under this Policy, or;
- the Board, or its administration, deem an event or activity to be inappropriate and contrary to the spirit of this Policy, then the Board, or its administration, will commence the complaint procedure at any one of the three Steps outlined herein.

7.16 ALTERNATE PROCESS

Where the Director, a Supervisory Officer or a Manager is the respondent to the complaint, the duties normally assigned to the Manager of Human Resources under this policy and program shall be assigned to a third party investigator.

8.0 PROGRAM REVIEW

The Workplace Harassment Prevention Program shall be reviewed as necessary but at least annually and will focus on the effectiveness of the measures and procedures in the program. This is to ensure they are being used and are continuing to protect workers from workplace harassment.

A review or revision of this program should be undertaken if:

- workers, or the Joint Health and Safety Committee or health and safety representative, indicate measures or procedures are not adequate;
- the process of dealing with a harassment complaint shows that measures or procedures are not adequate; and/or
- the workplace's response to a harassment complaint shows the reporting or investigation procedure need to be revised.

APPENDIX A

Workplace Harassment Complaint Process

This flow-chart provides an overview of major steps in the workplace harassment complaint process. Persons seeking further information regarding the complaint process are advised to refer to the NCDSB Workplace Harassment Prevention Policy and Program.

INCIDENT	A person engages in a course of vexatious comment or conduct against a worker in his or her workplace that is known or ought reasonably to be known to be unwelcome.
PRE-STEP Speak up	Bring the matter to the attention of the alleged harasser. Inform him or her that the behavior is unwelcome and must stop immediately. Document the event details and the communication.

THE COMPLAINANT IS FREE TO COMMENCE THE COMPLAINT PROCEDURE AT THE FORMAL OR INFORMAL STAGE OUTLINED HEREIN. THE COMPLAINANT IS ALSO FREE TO DISCONTINUE A COMPLAINT AT ANY TIME.

INFORMAL RESOLUTION	<p>Each of the 2 parties involved should seek the advice/assistance of a colleague or Union/Association representative.</p> <p>Contact the appropriate supervisory/managerial personnel to request assistance in resolving the issue.</p> <p>Document the process.</p>
FORMAL COMPLAINT - Documentation and Notification	<p>File a formal written complaint outlining the particulars of the allegation and any initial attempted resolutions.</p> <p>The formal complaint is recorded on the <i>Workplace Harassment Complaint Form</i> and is submitted to the Manager of Human Resources.</p> <p>The Manager of Human Resources may refer a complaint to the appropriate supervisor and the parties if she or he is not satisfied that reasonable efforts have been made to resolve the dispute informally.</p> <p>The Manager of Human Resources will provide copies to the complainant, respondent, and their supervisory officer(s).</p>
FORMAL COMPLAINT - Threshold Assessment	The Manager of Human Resources will conduct a Threshold Assessment to ensure that the alleged conduct, if proven, would meet the definition of workplace harassment.

<p>FORMAL COMPLAINT - Investigation</p>	<p>An investigator(s) will be assigned. An investigation of the complainant's allegations will be completed.</p> <p>The respondent will be given an opportunity to respond to the allegations.</p> <p>Interviews will be conducted and conclusions will be drawn based on the balance of probabilities.</p>
<p>FORMAL COMPLAINT - Report and Conclusion</p>	<p>A written summary of the findings and conclusions will be provided to the complainant and the respondent. They will be given an opportunity to respond.</p> <p>Appropriate actions will be taken to resolve the issue.</p>
<p>FORMAL COMPLAINT - Review</p>	<p>If within ten working days of the final decision a complainant or respondent to a formal complaint has grounds for review, a reviewer will be appointed by the Director of Education.</p> <p>The findings of the review will be reported to the Director of Education who will affirm or amend the final decision or require that a new investigation be undertaken.</p>
<p>* MEDIATED RESOLUTION</p>	<p>At any time during the formal complaint investigation, and at the request of both the complainant and respondent, an unbiased third party may be requested to act as a facilitator of communication between the parties.</p> <p>Any formal investigation into the allegations will be held in abeyance while mediation is ongoing.</p> <p>Mediation is voluntary and the complainant or respondent may choose to withdraw at any time.</p>

APPENDIX B

PRIVATE AND CONFIDENTIAL

Workplace Harassment Formal Complaint Form

Prior to completing this form, users are advised to review the NCDSB Workplace Harassment Prevention Policy and Program.

“Workplace Harassment” is defined 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.

COMPLAINANT INFORMATION	
Harassment was directed towards:	
Name of Complainant:	
Title/Position:	Worksite:
Supervisor/Manager’s Name	Supervisor Title/Position:
Supervisor Work Phone:	
Additional Information:	

RESPONDENT INFORMATION	
Harassment was directed by:	
Name of Respondent:	Title/Position:
Worksite:	

INITIATOR INFORMATION <i>(Complete this section only if the employee who initially identified the offensive behavior is different from the complainant.)</i>	
Name of Respondent:	Title/Position:
Worksite:	

PRE-STEP
Was the respondent advised that the behavior was unwelcome? Yes / No
Date complainant advised respondent that the behaviour was unwelcome:

