Administrative Procedure 406

Respect and Inclusion in the Workplace: Reporting & Investigating Workplace Harassment & Discrimination

The following Procedure sets out the process of reporting and investigating allegations or complaints of violation of AP 405: Respect and Inclusion in the Workplace: Understanding Harassment & Discrimination. This Procedure should be read and applied in conjunction with AP 405 so that reports of harassment and discrimination can be resolved internally using an alternate dispute resolution process or through formal investigation. The goal of this Procedure is to correct and remedy situations involving harassment or discrimination in a non-punitive manner, although discipline may result.

This Procedure does not prevent complainants from exercising their rights under other reporting avenues, but complainants can only utilize one forum at a time. Individuals with special needs (e.g., documents in alternate formats, interpreters, off-hour meetings) should contact Human Resources so that parties can fully participate in the resolution process.

1. Definitions

1.1. Allegation is an unproven assertion or statement based on a person's perception that The Code or this Procedure has been violated.

1.2. Balance of Probabilities is the civil standard of proof upon which findings of fact will be made and is satisfied where a reasonable proposition is more probable than not and more probable than any other proposition based on the evidence.

1.3. Complaint is the formal claim, report, or statement that asserts that discrimination or harassment occurred.

1.4. Complainant is the person or persons alleging that discrimination or harassment occurred.

1.5. Employee means full-time, part-time, temporary, probationary, and casual employees, co-op students, and volunteers.

1.6. Reasonable Person Test is an objective standard to measure whether a comment or conduct is discrimination or harassment. It considers what a reasonable person's reaction would have been under similar circumstances and in a similar environment. It considers the recipient's perspective and not stereotyped notions of acceptable behaviour. This standard is used to assess human rights complaints under this Procedure.

1.7. Reprisal is any act of retaliation that occurs because a person has complained of or provided information about an incident of workplace harassment.

1.8. Respondent is the person who is alleged to be responsible for the discrimination or harassment. There can be more than one respondent in a complaint.

1.9. Informal Resolution is the remedial and restorative process under this Procedure for the early and expedient resolution of complaints of Discrimination and may be appropriate in certain circumstances.

1.10. Mediation is a voluntary process where parties in dispute consent to meet with a trained mediator to determine whether the dispute can be resolved in a mutually satisfactory manner. Mediation discussions between parties are treated as private and confidential to the full extent permitted by law.

1.11. LDSB Community Members means co-op students, parents/guardians, trustees, full-time, part-time, temporary, probationary, casual and contract employees, permit holders, vendors, service providers, contractors, volunteers, visitors, bargaining agents and associations, and all other persons invited to or who work on Board property.

1.12. LDSB Complaint Mechanism is any LDSB process, as established through applicable LDSB policies, procedures, collective agreements and/or terms and conditions, for addressing complaints

1.13. Vexatious complaints are complaints that are inappropriate, unnecessary, and/or

brought forward without sufficient merit, solely to harass, annoy, distress, demean, embarrass, and/or humiliate. Vexatious Complaints are an abuse of this Procedure. Examples of vexatious complaints may include making a complaint:

- Regarding a matter that has already been addressed (unless it is a complaint that the matter was not adequately addressed) or is currently being addressed through another LDSB Complaint Mechanism, creating a duplicity of processes
- Against any LDSB community member due to a personal adverse reaction, hurt feelings or discomfort with the content or delivery of Board-directed training, education and/or professional development aligned with LDSB's commitment to equity, anti-racism, anti oppression, de-colonized perspectives, dismantling Discrimination, addressing historical disadvantage, promoting and supporting human rights, culturally responsive and relevant pedagogy
- Solely in retaliation against an LDSB Community Member for making a complaint
- To improperly circumvent a Board process

2. Reporting Harassment and/or Objectionable Behaviour

2.1. All reports are encouraged to be filed as soon as possible but must be filed within twelve months of the most recent instance of alleged harassment and/or discrimination. Informal reports that are submitted outside of this timeframe may be considered by consulting the appropriate supervisor. Formal complaints filed outside of this timeframe may be considered in consultation with the Superintendent of Human Resources or designee. In addition, those individuals who have witnessed harassment or objectionable behaviour directly or have reasonable grounds to suspect that it is occurring may initiate a report.

2.2. Where concerns or complaints are raised anonymously or the person bringing them forward requests that their name not be disclosed, they may be investigated at the discretion of the Human Rights and Equity Advisor or Human Resources:

- where sufficient information is provided to establish that a human rights violation may have occurred
- where it does not appear to be vexatious
- where principles of procedural fairness can be maintained

2.3. Complainants, Respondents, and witnesses have a right to have a support person prior to and throughout the reporting and investigative process. Support persons may include: A union representative, a colleague, family member, community member, or translator/interpreter

2.4. Any questions, concerns, or requests for information should be directed to the Superintendent of Human Resources or the Human Rights or Equity Advisor.

2.5. Interim measures may be put in place where there is a concern for safety, to maintain a positive and productive learning and working environment, and/or to preserve the integrity of a process under this Procedure.

Interim measures may include:

- No contact or communication between Parties during a process under this Procedure beyond what is necessary for legitimate operational requirements or job functions, including no unnecessary or unwarranted, emails, texts, meetings, exchanges, interactions, or communications
- Requiring that communications between Parties, if further to legitimate operational requirements or job functions, be done in writing, and not by telephone or in-person meeting, where practicable

- Temporarily relocating a Party to another location during a process under this Procedure

- Being placed on home assignment or being removed from the learning environment during a process under this Procedure

3. Confidentiality

3.1. Harassment and discrimination are very sensitive issues and all persons involved with a complaint are expected to treat the matter as confidential. Human Resources and the Human Rights and Equity Advisor will preserve confidentiality as much as is possible and will not share information without consultation with a party to a dispute, or as legally required or permitted, subject to the requirements of a fair investigation.

3.2. Confidentiality must be maintained during the reporting process. All complainants, respondents, and other persons involved in the reporting processes under this procedure will ensure that all matters remain confidential. Therefore, witness statements will be maintained in confidence, subject to the ability of management, Human Resources, or the Human Rights and Equity Advisor to conduct a full and thorough investigation.

Notwithstanding the above, procedural fairness requires that the respondent to a complaint is 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.

3.3. Further to the above, based on the nature of the allegations, 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.

3.4. All correspondence and other documentation generated under these procedures must, subject to the Municipal Freedom of Information and Protection of Privacy

Act, be marked as "PRIVATE & CONFIDENTIAL" and be stored in a locked and secure location within Human Resources.

4. Informal Resolution

4.1. An informal approach, where appropriate, can foster prompt resolution, without a formal investigation. Quick resolution of a complaint can prevent escalation and further negative consequences and is best achieved if issues are raised as soon as possible. All persons who believe that they have experienced harassment and/or discrimination should keep detailed notes about the issue.

4.2. Employees may benefit from having information and advice before deciding how to proceed with reporting harassment and/or discrimination. It is the employee's choice as to who they seek advice from to help them resolve a situation involving harassment and/or discrimination. Employees can consult their direct supervisor/manager, their respective Supervisory Officer, Human Resources staff, the Human Rights and Equity Advisor, or Employee Assistance Program staff. Each of these individuals has a responsibility to take action to resolve and prevent harassment and discrimination and can provide advice, assistance, coaching, and referrals to assist employees in addressing harassment or discrimination themselves. Employees may also consult their union or staff association, who can help prevent the problem from escalating and promote the timely restoration of a harassment and/or discrimination-free workplace. All consultations will remain confidential to the extent possible or as legally required.

4.3. Self-resolution before raising a complaint

- All employees are encouraged, where comfortable, to attempt to resolve matters themselves before filing a complaint. If an employee feels they have been harassed or discriminated against, they should immediately make known to the person that their conduct is unwelcome or offensive and a violation of the Respect and Inclusion in the Workplace: Understanding

Harassment & Discrimination Procedure. This message must be clear and unambiguous. When presented with such a concern, all employees, including management staff are expected to make reasonable adjustments to their behaviour to resolve the matter. If addressing the person responsible could lead to an escalation of the harassment or discrimination, to safety risks, or is not appropriate, employees may pursue other resolution options outlined in this procedure.

- If an employee is unable to resolve the issue themselves or harassment or discrimination continues after asking the person to stop, the employee may request management, supervisory staff, Human Resources and/or their Union to intervene to facilitate resolution. Most concerns can be resolved at this stage without a formal investigation. This option may include a more in-depth examination of the concerns and allegations, including consulting, advising, meeting with and/or interviewing appropriate parties as well as reviewing relevant documentary evidence.

  This is an opportunity for parties to resolve a concern, ensure the workplace is free from harassment and discrimination, and address broader issues that caused or contributed to the situation.

- Depending on the nature of the concern and the complainant's desired outcome, respondents may not be informed of a concern against them, i.e., where the concern does not warrant exploration, where the concern is outside procedural mandates, or where an issue can be resolved through a remedy such as training.

- Where appropriate, management is responsible for intervening as a first step and addressing reports of personal (non-Code) harassment / objectionable behaviour. Human Resources will only respond to reports of personal (non-Code) harassment once other resolution options have been exhausted or are not appropriate. Employees should raise their personal harassment concerns

to their superior. If the concern involves the employee's superior, the employee may raise the concern with that person's supervisor, Human Resources, or their Federation/Union. Human Resources staff can advise parties where there are concerns about real or perceived conflict, fairness, etc., in exploring concerns.

- Notwithstanding the above, and for informal concerns only, where the parties are members of a union, federation, association, or school community, a resolution that is facilitated by the appropriate representative(s) is recommended, where appropriate and acceptable to the parties involved.

- . Every effort will be made to protect the privacy of the individuals involved.

5. Formal Reports and Investigations

5.1. A formal complaint and investigation are necessary if the above approaches are not effective or appropriate to resolve a situation, the allegation is of a serious nature, such as sexual assault, systemic in nature, or alleges a violation of the Code. Formal complaints can be made online using the Workplace Harassment and Discrimination Reporting Form. Formal complaints of personal (non-code) harassment will be referred to Human Resources and complaints based on a violation of the Ontario Human Rights Code will be referred to the Human Rights and Equity Advisor for investigation. Individuals may also report an incident to the Human Rights and Equity Advisor directly. Human Resources and/or the Human Rights and Equity Advisor will assess whether a formal complaint and investigation is the only appropriate way to address the concern. Where appropriate, mediation may be proposed for consideration by the parties. Human Resources will be solely responsible for investigating personal (non-Code) harassment.

5.2. All formal reports of harassment or discrimination will be subject to an immediate threshold assessment. If the incident meets the threshold assessment for

Administrative Procedure 406 Respect and Inclusion in the Workplace: Reporting & Investigating Workplace Harassment & Discrimination, the respondent will be notified in writing with a summary of the complaint. An investigation is required where there is a connection between the alleged conduct or adverse differential impact and grounds of discrimination or other prohibited conduct under AP 406.

5.3. No further action will be taken in cases where:

- There is no connection between the alleged conduct or adverse differential impact and grounds of discrimination or other prohibited conduct under AP 405.
- The formal report does not provide sufficient details of the incident, despite subsequent requests for more detail.
- The allegation(s) is frivolous or trivial, has not been made in good faith, or would, if investigated, constitute an abuse of the Procedure.

5.4. Appropriate measures will be taken, as necessary and appropriate to ensure the safety of the complainant.

5.5. The Board will make every effort to initiate the process within ten (10) business days. Respondents to an allegation will be notified as soon as practicable during the investigation process.

5.6. Human Resources will determine, in consultation with others, as necessary, and on a case-by-case basis, whether the complainant or respondent should be placed on a paid leave, relocated within the Board, or provided with an alternate reporting relationship during an investigation.

5.7. Human Resources, the Human Rights and Equity Advisor, or designate will conduct a thorough, fair investigation, which will include interviewing the complainant(s), respondent(s), and witnesses, gathering and reviewing documentary evidence, and

exploring whether broader issues contributed to the report.

5.8. At the conclusion of an investigation, the investigator will prepare a written report that includes the allegations, respondent's position, witnesses interviewed, and documentary evidence considered, factual findings, conclusions, and discussion about procedure violation(s). The investigator's report does not contain recommendations on what administrative, corrective/ restorative, and/or disciplinary action should be taken.

5.9. The investigation report will be shared with the Director of Education, the Superintendent of Human Resources or designate, the Human Rights and Equity Advisor, and appropriate supervisory officers. These parties will be given an opportunity to submit comments before a final decision is made to resolve the complaint.

5.10. The final decision regarding the disposition of a report will be made by the Superintendent of Human Resources, or designate, and communicated in writing to the parties. The parties will be provided with a summary of the report.

5.11. Human Resources or the Human Rights and Equity Advisor may make recommendations to correct any existing problems and/or to prevent similar problems from occurring in the future.

5.12. Proceedings under the procedure will be completed within six months of initiation of a formal complaint. Exceptions may be made in extenuating circumstances.

6. Use of External Consultants/Investigators

6.1. Human Resources will retain a qualified external consultant to conduct an investigation, where appropriate and/or necessary, or where there is a potential conflict of interest. Human resources will apprise the respective Union/Federation of this decision.

7. Reprisals

7.1. This Procedure strictly prohibits any retaliation, either direct or indirect, against an individual for:

- Exercising their rights under the policy
- Initiating a complaint in good faith
- Investigating a complaint
- Being a decision-maker in a complaint
- Participating as a witness in an investigation
- Being a respondent to a complaint
- Having been associated with or representing a complainant, witness, or respondent

7.2. Employees found to have engaged in reprisals may be subject to discipline. Appropriate discipline for a violation of a procedure is not considered a reprisal.

8. Mediation

8.1. Mediation involves an unbiased third party acting as a facilitator in direct communication between the parties who voluntarily agree to the 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.

8.2. Where appropriate, Human Resources or the Human Rights and Equity Advisor may offer to mediate the complaint at any point during an investigation. Participation in mediation is voluntary. All mediation discussions will be held on a confidential,

"without prejudice" basis.

8.3. Mediation is appropriate when all parties agree that a mutually agreeable solution is achievable and desirable. The investigator will request approval to mediate or retain a trained mediator from the Board's list of approved mediators when the parties have expressed an interest in a mediated resolution. (In cases where mediation is sought, the department of the Board responsible for human resources management shall provide trained mediators who are acceptable to both parties.)

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

8.5. 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. This agreement shall only be shared between the parties and the mediator. Supervisory and managerial personnel shall ensure that the terms that the parties have agreed to have been met.

8.6. While parties can represent themselves at a mediation, they are free to have a representative present, to listen. Their representative can be a friend, family member, or Union Representative. Mediation is a mechanism for alternative dispute resolution and while either party can retain legal counsel to advise them, they cannot be represented by legal counsel during mediation.

9. Records of Reports

9.1. Records of a report will only be placed on an employee's personal file when disciplinary action is taken. This record of discipline is subject to the provisions of any applicable collective agreement. All records pertaining to enquiries and reports under this Procedure will be kept in confidential secure storage – separate from personnel files. All records are subject to the provisions of the Municipal Freedom

of Information and Protection of Privacy Act and the LDSB Record Retention Manual. Records will be kept for 5 years from the date of the event.

10. Investigation Outcomes

10.1. Any employee who engages in harassment, discrimination, or other objectionable behaviour, reprisals, or breaches confidentiality may be subject to appropriate disciplinary action up to and including termination of employment as per AP 415: Progressive Discipline. Staff who are in a supervisory position and fail to take action when advised of harassment, discrimination, or other objectionable conduct will may also be subject to disciplinary action. Disciplinary action may also be taken if a complaint is found to have been made fraudulently and with malicious intent.

10.2. Where a violation of the Procedure is found, Human Resources and the Human Rights and Equity Advisor shall take any steps necessary to repair the effects of the discrimination or harassment on the complainant and to prevent any further recurrences of harassment or discrimination.

10.3. Consequences for Procedure violations may include but are not limited to: an apology, counselling, education and training, a verbal or written reprimand, suspension with or without pay, a transfer, or termination of employment. In determining appropriate consequences, factors including, but not limited to the nature of the violation, the severity, whether the individual has previously violated the Procedure, or whether there is relevant discipline on file, will be taken into account.

10.4. Where a complaint is not substantiated, no further action will be taken. However, if there is a need to restore positive learning or working environment or if the complainant and/or respondent require counselling, supplemental action may be taken, as appropriate, including, but not limited to:

- Counselling for the parties

- Mediation between affected parties
- Training
- Separation of the parties/transfer to alternate sites
- Other restorative measures to regain a positive learning/working environment

11. Complaints Involving Human Resources Staff & the Human Rights & Equity Advisor

11.1. Where Human Resources staff or the Human Rights and Equity Advisor are directly or indirectly implicated in a complaint of harassment, discrimination, or other objectionable conduct, such concerns will be submitted to the Director of Education for review and follow-up.

11.2. Reports of harassment, discrimination, or other objectionable behaviour made by or regarding the direct personal behaviour of Human Resources staff or the Human Rights and Equity Advisor may be handled by a qualified external consultant at the discretion of the Director of Education. Parties to a complaint under this provision of the Procedure have the right to a representative of their choice, including legal counsel. Final decisions in such matters will be made by the Director of Education.

12. Review of Decision

12.1. A complainant or respondent to a formal complaint may request a review of the investigation by the investigator within ten working days of the final decision being released where new evidence becomes known after the final decision but before the expiry of the ten-working day limitation period for requesting a review.

12.2. The investigator will report their findings to the Director or designate, who will affirm or amend the final decision, or require that a new investigation be

undertaken.

12.3. A complainant or respondent to a formal complaint may request a review of the investigation by the Director of Education within ten working days of the final decision being released where the investigator did not comply with this Procedure.

13. Procedure Review

13.1. The Respect and Inclusion in the Workplace: Reporting & Investigating Workplace Harassment & Discrimination must be reviewed as often as is necessary, but at least annually or as otherwise provided for through collective agreement provisions.

14. Education and Training

14.1. The Board shall provide employees with information and training that is appropriate for the worker on the contents of the procedure and program with respect to workplace harassment and any other prescribed information.

15. Student Complaints

15.1. The rights of students to a respectful working and learning environment, free from harassment, discrimination, and objectionable behaviour, are dealt with under other appropriate procedures, legislation or regulations including, but not limited to, Codes of Behaviour, Safe Schools Act, and Professional Codes of Conduct. Students should contact their Principal or Vice-Principal for clarification on the process to be followed.

Legal References:

Ontario Human Rights Code

Ontario Occupational Health & Safety Act

Related Procedures:

AP 405: Respect & Inclusion in the Workplace: Understanding Harassment & Discrimination

AP 407: Violence in the Workplace

AP 408: Reporting Violence in the Workplace

AP 415: Progressive Discipline

Appendix A

Respect in the Workplace: Anti-Harassment and Discrimination

Rights and Responsibilities

Everyone has the right to work and learn in an environment that is free from unwelcome or intimidating behaviour that could create an unsafe and /or unhealthy environment as well as interfere with job performance and the ability to learn.

Responsibilities of All Persons in Board Learning/Working Environments

It is the responsibility of every person to create and contribute to a climate of understanding and mutual respect for the rights and dignity of each individual by:

- Showing courtesy and self-discipline in actions and words;
- Seeking informal problem solving of issues;
- Respecting rules, regulations, and practices that are in place which provide for safe and secure learning and working environments;
- Demonstrating honesty, integrity, and behaviours that are representative of a positive and supportive atmosphere;
- Showing proper care and regard for Board property and the property of others.

Responsibilities of the Board

It is the responsibility of the Board to:

- Recognize the dignity and worth of every person and provide for fairness

and equal opportunities without discrimination

- Work towards the elimination of objectionable behaviour in our schools and workplaces
- Maintain an environment that is safe, nurturing, and positive for all persons served.

By knowing your rights and responsibilities, you can stop workplace harassment. Anyone who feels that they are being subjected to objectionable behaviour has the right and responsibility to tell the individual concerned that the behaviour is offensive, unwelcome, and must cease. They also have the right to report the behaviour to someone in a position of authority who can facilitate the resolution of the matter.

If you are experiencing harassing or other objectionable behaviour, contact your Principal, Manager/Supervisor or Supervisory Officer, or Union/Federation.

Appendix B

Investigation Checklist

Where allegations of harassment, discrimination or other objectionable conduct are brought forward, the following steps should be taken when pursuing a formal investigation:

- 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 through the process
- Provide the respondent(s) a copy of the complaint and provide an opportunity to respond
- Provide a copy of the respondent's reply to the complainant, removing any names not included in the complaint.
- Interview the complainant(s) and/or the third party making the report
- Interview the respondent
- Interview witnesses
- Determine whether alleged incident(s) took place, based on a balance of probabilities
- Provide a written summary of the findings and conclusions to the complainant and to the respondent, giving them each an opportunity to respond
- Take appropriate action to resolve the situation