

**ADMINISTRATIVE PROCEDURE**

SECTION:	STAFF - GENERAL	A.P. NO.:	<b>5-26</b>
TOPIC:	<b>WORKPLACE HARASSMENT PREVENTION PROGRAM</b>	PAGE:	Page 1 of 6
		DATE:	June 2010
REVIEW DATE:	May 2015	REVISED:	December 2010

**General**

In accordance with our District School Board of Niagara (DSBN) Workplace Violence and Harassment Prevention Policy E-15, this Administrative Procedure provides a mechanism for dealing with complaints of harassment occurring in the working and learning environment.

This Administrative Procedure is not intended to limit or constrain the reasonable exercise of management functions in the workplace. Reasonable action or conduct by the employer, manager or supervisor that is part of his or her normal work function would not normally be considered workplace harassment.

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.

In such a case, this process shall cease until the parties and their respective representatives have met with the Superintendent of Human Resources and/or Senior Manager of Human Resources to determine which dispute resolution process will proceed.

**Definitions**

*Workplace Harassment is defined in the Occupational Health and Safety Act (OHSA) 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.*

*Worker is defined in the Occupational Health and Safety Act (OHSA) as a person who performs work or supplies service for monetary compensation.*

**Who May Initiate a Complaint?**

Anyone who meets the definition of a worker as defined above may initiate a complaint based on reasonable grounds. Individuals who believe that they have been subjected to such conduct may report the harassment. In addition, those who have witnessed harassment directly, or have reasonable grounds to suspect that it is occurring, may initiate a report. Anonymous reports will not be entertained. Third party disclosures will only go forward (to the formal stage) with the alleged victim's consent.

**Timelines for Initiating a Complaint**

All reports must be filed within twenty calendar days of the most recent alleged harassment. A complaint outside this time frame may be considered by consulting the Superintendent of Human Resources and/or Senior Manager of Human Resources. Any alleged harassment that occurred prior to the June 15, 2010, Bill 168 implementation date, will not be considered.

**Confidentiality**

All complainants, respondents and other persons involved with the complaint processes under this Procedure will ensure that all matters remain confidential. Witnesses should be informed that supervisory and managerial personnel, in obtaining a statement, will maintain said statement in 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 speak to the complaint.

The DSBN 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*.

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**Records**

All correspondence and other documents generated under this Procedure 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 the Human Resources Department.

**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 will be discontinued and disciplinary action may occur.

**Reprisals**

A worker who files a complaint in good faith or individuals involved in the process shall not be subject to reprisal. Alleged reprisals may be filed and investigated as complaints as outlined in this procedure and, if substantiated, are subject to the same consequences as complaints of workplace harassment.

**INFORMAL RESOLUTION**

Every attempt should be made to resolve matters through an informal resolution. An employee seeking informal resolution must contact (his/her) Principal/Supervisor, to arrange a confidential meeting to deal with the alleged workplace harassment complaint. If the Principal/Supervisor is the party alleged to be responsible for the harassment or alleged to condone the workplace harassment, the complaint must be filed with the appropriate supervisory individual above the Principal/Supervisor. The Principal/Supervisor will complete the Workplace Harassment – Informal Complaint Record Form (Appendix A). This individual may facilitate an informal resolution by:

- suggesting that the complainant confront the problem by making it clear to the individual alleged to have engaged in harassment that the behaviour is not acceptable and by obtaining a commitment that the behaviour will stop;
- informing the respondent of the complainant's concern regarding the alleged harassment and the Board's expectation for appropriate behaviour, providing a copy of the Board's Policy and Procedure on Workplace Harassment and/or other relevant Board policies, and obtaining a commitment that the alleged harassment will stop;
- following up with the complainant to ensure that the alleged harassment has stopped.

Follow-up possibilities:

- counselling for the parties;
- application of strategies to restore a positive learning/working environment;
- specific information and instruction for the complainant or respondent;
- workshops for the staff and/or others in the school/workplace regarding their responsibilities (Appendix C);
- permanent separation of respondent and complainant from each other;
- restorative measures;
- Letter of Counsel/Expectations (non-disciplinary);
- progressive discipline (Administrative Procedure 7-2).

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**FORMAL COMPLAINT PROCEDURES**

**Threshold Assessment**

All formal complaints filed under this Procedure are subject to a threshold assessment to determine whether the alleged harassment, if proven, meets the definition of workplace harassment.

If the DSBN, following this threshold assessment, determines that the complaint 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 frivolous or trivial, has not been made in good faith or would, if investigated, constitute an abuse of this Procedure then the complainant shall be so advised and no further action shall be taken under this Procedure .
- Where allegations relate to discrimination on the basis of a ground prohibited by the Ontario *Human Rights Code*, they shall be addressed using the appropriate Board policy, *i.e.*, *Human Rights Policy E-9*.

**Initiating a Complaint**

Worker complainants must contact their Principal/Supervisor, in order to file the Workplace Harassment - Formal Complaint Form (Appendix B).

If the Principal/Supervisor is the party alleged to be responsible for the harassment or alleged to condone the workplace harassment, the complaint must be filed with the appropriate supervisory individual above the Principal/Supervisor.

Principal/Supervisors who receive a Formal Complaint Record Form shall follow the procedures set out in the section entitled Procedures for Resolving a Complaint.

**Respondents to a Complaint**

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 date, time, location and alleged conduct. Respondents will be apprised of the complaint and given time to prepare a full and complete response to the allegations.

**Assistance for Complainants, Respondents and Witnesses**

Prior to initiating any complaint and throughout the complaint process, complainants have a right to assistance and support (DSBN representation/Association/Union). Individuals, who are named as respondents in a complaint, as well as witnesses, also have a right to assistance and support (DSBN representation/Association/Union) throughout the complaint process.

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**PROCEDURES FOR RESOLVING A COMPLAINT**

In all cases, Principals/Supervisors have a duty to respond to and take action(s) to resolve any alleged situations involving workplace harassment.

**Formal Investigation and Resolution**

Formal complaints require an investigation of the complaint allegations. Investigations will most often be done by the Principal/Supervisor of the complainant and/or respondent. Principals/Supervisors have the right to assistance and support from Human Resources at any stage of the complaint process. In a Formal investigation, Principals/Supervisors who conduct the investigation shall ensure that the following steps are taken as soon as possible:

1. Take appropriate measures to ensure the safety of the complainant;
2. Notify the complainant(s), the respondent(s) and witness(es) that they are entitled to support and assistance (DSBN representation/Association/Union) throughout the process;
3. Ensure that the respondent(s) are apprised of the complaint;
4. Interview the complainant(s) separately;
5. Inform the respondent(s) of the allegation and provide an opportunity for response;
6. Interview the respondent(s) separately;
7. Interview witness(es) separately;
8. Determine whether the alleged workplace harassment did or did not occur based on a balance of probabilities;
9. 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;
10. Take appropriate action(s) to resolve the situation.

If the respondent declines to participate in the formal investigative process, the investigation shall proceed. The respondent should be encouraged to participate in the interest of a balanced and fair process.

**Standard of Proof**

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

**Outcomes in Formal Investigation**

In the event a complaint is not substantiated, no further action will be taken, subject to the section on Records. However, if there is a need to restore a positive learning/working environment, steps may be taken to meet such needs.

Follow-up possibilities:

- counselling for the parties;
- application of strategies to restore a positive learning/working environment;
- specific information and instruction for the complainant or respondent;
- workshops for the staff and/or others in the school/workplace regarding responsibilities (Appendix C);
- permanent separation of respondent and complainant from each other;
- restorative measures;
- Letter of Counsel/Expectations (non-disciplinary);
- progressive discipline (Administrative Procedure 7-2).

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**DISCIPLINARY ACTIONS**

**Worker Respondents**

In the event a complaint is substantiated on the balance of probabilities, the Principal/Supervisor may impose discipline as appropriate and consistent with the circumstances.

**Other Respondents**

Actions must be determined as appropriate for the individual situation and may include such responses as a letter of disapproval and 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 appropriate Superintendent is recommended in these cases.

**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 will only occur if the employer agrees to use it as an option in resolving a particular dispute.

Mediation is appropriate when all parties agree that a mutually agreeable solution is achievable and desirable. Mediation is voluntary and the complainant and respondent may choose to withdraw at any time. The person conducting the investigation will request approval from the Superintendent of Human Resources and/or Senior Manager of Human Resources. A Human Resources staff member may act as a mediator or a trained individual may be assigned.

The parties, DSBN representation/Association/Union representing the complainant, DSBN representation/Association/ Union representing the respondent, shall equally share the cost associated with mediation. Meetings required for mediation sessions shall be scheduled as soon as possible. When matters are resolved through mediation, the complainant, respondent and a DSBN representative will sign a memorandum of agreement outlining the terms to which they have agreed. If mediation is unsuccessful, the formal investigation process will continue.

**REVIEW OF DECISION**

In the event a complainant or respondent to a formal complaint has one or both of the specific concerns listed below, a request, in writing within ten calendar days of the receipt of the written findings and decision of the person conducting the investigation, may be made to the Director or Designate to convene a Review. A Reviewer will be appointed by the Director or Designate.

The grounds for review are:

- the person conducting the investigation failed to comply with this procedure;
- new evidence becomes known after the final decision but before the expiry of the ten calendar 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/her findings to the Director or Designate, who will affirm or amend the final decision, or require that a new investigation be undertaken.

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**WORKPLACE HARASSMENT PREVENTION PROCEDURE POSTING**

The Workplace Harassment Prevention Administrative Procedure shall be in written form and shall be posted at a conspicuous place in the workplace. This does not apply if the number of employees regularly employed at the workplace is less than six.

**INFORMATION AND INSTRUCTION**

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

Attachment

- Appendix A: Workplace Harassment – Informal Complaint Record Form
- Appendix B: Workplace Harassment – Formal Complaint Record Form
- Appendix C: Workplace Harassment – Workplace Harassment Prevention Responsibilities

References

- Policy E-15: Workplace Violence and Harassment Prevention
- Policy E-3: Health and Safety
- Policy E-9: Human Rights
- Administrative Procedure 5-10: Human Rights: Discrimination/Harassment Complaint Process
- Administrative Procedure 5-27: Workplace Violence Prevention Program
- Administrative Procedure 7-2: Guidelines for Effective Employee Documentation and Progressive Discipline

ADMINISTRATIVE PROCEDURE

PRIVATE AND CONFIDENTIAL

WORKPLACE HARASSMENT - INFORMAL COMPLAINT RECORD FORM

(To be completed by Principal/Supervisor)

**Name(s) of Complainant(s):** \_\_\_\_\_  
 School/Department/Worksite: \_\_\_\_\_  
 Complainant, Job Title: \_\_\_\_\_

**Name(s) of Person(s) suspected of harassment (respondent):** \_\_\_\_\_  
 School/Department/Worksite: \_\_\_\_\_  
 Respondent, Job Title: \_\_\_\_\_

**Name(s) of Witness(es) if applicable:** \_\_\_\_\_  
 School/Department/Worksite: \_\_\_\_\_  
 Witness, Job Title: \_\_\_\_\_  
 Description of their respective role in the incident: \_\_\_\_\_

**Description of Alleged Workplace Harassment:** (provide a detailed accounting of the alleged workplace harassment which includes dates, time, locations, and action of the respondents, use additional pages if necessary):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Facilitated informal resolution steps:**

Step 1. It was suggested to the complainant to confront the problem by making it clear to the individual alleged to have engaged in harassing behavior that the behavior is not acceptable and to obtain a commitment that the behavior will stop.

Complainant agreed to implement the above suggestion by \_\_\_\_\_ (Date)

Complainant did not agree to implement suggestion

Step 2. The complainant's Principal/Supervisor informs the respondent's Principal/Supervisor that a complaint has been made.

Step 3. Respondent will be informed by the complainant's Principal/Supervisor and the respondent's Principal/Supervisor (if applicable) by \_\_\_\_\_ (Date) of the complainants concern regarding the alleged harassing behaviour, the Board's expectation for appropriate behaviour. Providing a copy of the Board's Policy and Procedures on Workplace Harassment and/or other relevant Board policies, and obtaining a commitment that the alleged harassment will stop;

Step 4. The Principal/Supervisor will follow-up with the complainant to ensure that the alleged harassment has stopped by \_\_\_\_\_ (Date).

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Principal/Supervisor)

The information contained in this form is confidential and every reasonable step will be taken to maintain confidentiality in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. **(When the complainant and respondent are both teachers, the complainant must meet the reporting obligations of Section 18(1)(b) of the Regulation made under the Teaching Profession Act)**

INSTRUCTIONS FOR HANDLING THIS FORM

Please place this form in a sealed envelope marked "PRIVATE AND CONFIDENTIAL" and send it to the Superintendent of Human Resources, District School Board of Niagara, 191 Carlton Street, St. Catharines, ON, L2R 7P4.

**ADMINISTRATIVE PROCEDURE**

**PRIVATE AND CONFIDENTIAL**

**WORKPLACE HARASSMENT - FORMAL COMPLAINT RECORD FORM**

(To be completed by Complainant)

<b>Name(s) of Complainant(s):</b> _____ School/Department/Worksite: _____ Complainant, Job Title: _____
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<b>Name(s) of Person(s) suspected of harassment (respondent):</b> _____ School/Department/Worksite: _____ Respondent, Job Title: _____
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<b>Name(s) of Witness(es) if applicable:</b> _____ School/Department/Worksite: _____ Witness, Job Title: _____ Description of their respective role in the incident: _____
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<b>Description of Alleged Workplace Harassment:</b> (provide a detailed accounting of the alleged workplace harassment which includes dates, time, locations, and action of the respondents, use additional pages if necessary): _____ _____ _____ _____ _____
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>How did you react to the harassment?</b> _____ _____
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<b>If applicable, describe any incident that took place previously:</b> _____ _____ _____
-------------------------------------------------------------------------------------------------

**Date respondent was informed that the workplace harassment was unwelcome:** \_\_\_\_\_

**Date of attempt at informal resolution: (if applicable)** \_\_\_\_\_

I hereby certify that to the best of my knowledge the above-mentioned information is true, accurate and complete. Making false or frivolous allegations is in violation of this Administrative Procedure and subject to discipline as appropriate and consistent with the circumstances.

**Complainant(s) Signature(s):** \_\_\_\_\_ **Date:** \_\_\_\_\_

The information contained in this form is confidential and every reasonable step will be taken to maintain confidentiality in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. (When the complainant and respondent are both teachers, the complainant must meet the reporting obligations of Section 18(1)(b) of the Regulation made under the Teaching Profession Act)

**INSTRUCTIONS FOR HANDLING THIS FORM**

Please place this form in a sealed envelope marked "PRIVATE AND CONFIDENTIAL" and send it to the **appropriate Supervisor, (NAME)** District School Board of Niagara, **(MAILING ADDRESS)**. Principal/Supervisor must contact the Superintendent of Human Resources and/or Senior Manager of Human Resources immediately.



**ADMINISTRATIVE PROCEDURE**

**WORKPLACE HARASSMENT PREVENTION RESPONSIBILITIES**

**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 for the property of others.
- telling the individual(s) concerned that the workplace harassment is unwelcome and must cease
- reporting workplace harassment to their Supervisor