

Workplace Harassment Prevention Procedure

RATIONALE:

Hamilton-Wentworth District School Board (HWDSB) is committed to providing a working and learning environment free from discrimination and harassment where all individuals are treated with respect and dignity. HWDSB holds high expectations for the conduct of its employees, its students and any others associated with the school community.

Where allegations relate to harassment or discrimination on the basis of a ground prohibited by the Ontario Human Rights Code or the Occupational Health and Safety Act, they shall be addressed using the Board's Workplace Violence and Harassment Prevention Policy.

This Procedure is intended to provide greater awareness of the value of establishing and maintaining a respectful working and learning environment. This procedure has been developed to ensure that disputes attributed to harassment are dealt with fairly, expeditiously and consistently. In most cases, these disputes can be resolved using the informal mechanisms herein. All workplace harassment complaints shall be dealt with as set forth.

TERMINOLOGY:

Bad Faith: Insincerity, especially as evidenced by actions that do not accord with somebody's stated intentions.

Balance of Probabilities: Balance of probabilities also known as the preponderance of the evidence, is the standard required in most civil cases. The standard is met if the proposition is more likely to be true than not true.

Frivolous: Describes an activity or object which is silly or unimportant rather than useful or serious.

Supervisor/Manager: A person whose job is to supervise someone or something. Somebody who is responsible for directing and controlling the work and staff.

Vexatious: causing trouble – provoking irritation or anxiety by causing trouble. Brought with intention of annoying – describes legal proceedings put forward on insufficient grounds and with the intention of causing annoyance to the defendant.

Workplace: any land, premises, location or thing at, upon, in or near which a worker works.

Workplace Harassment: 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

Workplace Harassment Prevention Procedure

Workplace Sexual Harassment: 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, 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.

Examples of workplace harassment include but are not limited to: offensive or intimidating comments or jokes; bullying or aggressive behaviour; displaying or circulating offensive pictures or materials; inappropriate staring; workplace sexual harassment; isolating or making fun of a worker. A reasonable action taken by the employer or supervisor related to the management and direction of workers or the workplace is not harassment.

Harassment in employment (Ontario Human Right Code)

Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee.

Every person has a right to be free from, a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

PROCEDURES:

APPLICABILITY:

1.0 Guiding Principles

1.1 All members of the school community shall:

Workplace Harassment Prevention Procedure

- Treat one another with dignity, respect and civility, sensitivity and courtesy, especially when there is disagreement;
- Respect differences in people, their ideas, opinions and rights;
- Demonstrate honesty and integrity; and
- Use non-violent means to resolve conflict.

1.2 Conflicts will be resolved quickly and fairly

1.3 This procedure is aligned with the Workplace Violence and Harassment Prevention Policy and other Board Policies/Procedures, Legislation, and Collective Agreements.

2.0 To Whom Does This Procedure Apply

2.1 This procedure applies to all Board employees and addresses harassment from all sources including employees, trustees, students, teacher candidates, and others such as members of consultative committees, clients of the Board, parents/guardians, volunteers, permit holders, contractors, visitors and employees of other organization not related to the Board, but who nevertheless work on Board related activities or are invited onto Board premises.

Complaints against staff by members of the school community shall be recorded and investigated as set forth within this procedure.

3.0 Duties and Responsibilities

3.1 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;

3.2 The Board shall ensure that all employees and contractors receive a copy of this procedure. New employees shall receive this information during the on boarding/ orientation process.

3.3 School supervisory personnel must ensure all their staff and all members of their school community clearly understand the expectations and standards for individual behaviour. School supervisory personnel have the responsibility of ensuring this procedure is carried out in the workplace.

Workplace Harassment Prevention Procedure

- 3.4 Managerial personnel must ensure all their staff and all other parties (contractors, partners, visitors) clearly understand the expectations and standards for individual behaviour. Managers/Supervisors have the responsibility of ensuring this procedure is carried out in the workplace.
- 3.5 All Supervisory/Managerial staff are to forward the investigation report outlined in Appendix B (Workplace Harassment Investigation Form) to the Senior Manager of Human Resources. All relevant incident notes and documents must be forwarded as well.
- 3.6 All staff have a duty to report incidence of discrimination or harassment in the workplace that they have witnessed or become aware of.
- 3.7 School supervisory and managerial personnel must ensure that all their staff complete the compliance training module related to workplace violence and harassment.

4.0 Group Complaints

- 4.1 Group complaints are not permitted (i.e. individuals must submit separate complaints). In addition, those who have witnessed workplace harassment directly, or have reasonable grounds to suspect that workplace harassment is occurring, may initiate a report to their supervisor. Anonymous reports will not be accepted for dispute resolution under these procedures.

5.0 Reporting Complaints

- 5.1 The Board encourages Informal Resolution as a means of resolving issues. This can prevent escalation of the situation and further negative consequences while promoting a positive culture of well-being.
- 5.3 In instances where one is fearful of his/her personal safety, staff are to report this immediately to their supervisor. In such cases, the workplace violence prevention procedure shall be followed.

6.0 Assistance for Complainants, Respondents and Witnesses

- 6.1 Throughout the complaint process, complainants have a right to assistance and support. Individuals who are named as respondents in a complaint, as well as witness, also have a right

Workplace Harassment Prevention Procedure

to assistance and support throughout the complaint process. The following people may provide support.

- Parent/Guardian/Caregiver
- Professional Support Staff
- Joint Health and Safety Committee Member
- Supervisor
- Union/Federation Representative
- Translator/Interrupter

PROCEDURES:

7.0 Confidentiality

Confidentiality is beneficial to everyone involved in the complaint process. To protect the interests of all parties involved, confidentiality is maintained throughout the complaint process to the extent possible, under the circumstance, subject to all relevant legal considerations.

- 7.1 It is the duty of all persons to maintain confidentiality in the complaint process. All complainants, respondents and other persons involved with the complaint processes under these procedures must ensure that all matters remain confidential. Witnesses should be informed that supervisory and managerial personnel, in obtaining a statement, will maintain such statement in confidence, subject to their ability to conduct a full and thorough investigation.
- 7.2 Confidentiality does not mean anonymity. Procedural fairness requires that the respondent to a complaint, as early as possible, 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 statement to the parties.
- 7.3 A complainant has the right to withdraw a complaint at any stage defined in these procedures. At the same time, HWDSB may be required to continue to act on the issues identified in the complaint in order to comply with its legal obligations and to address its concerns regarding systemic issues. When the Board determines the safety of an individual or the community is at risk, it will act to the best of its ability to address this situation.

PROBLEM RESOLUTION:

8.0 Informal Resolution

Workplace Harassment Prevention Procedure

- 8.1 In most cases unwelcomed behaviour can be resolved informally. If you have perceived an individual behaviour as workplace harassment and feel comfortable doing so, you are encouraged but not required to approach the individual to discuss the matter privately and ask that the behaviour cease immediately. In most cases, this will resolve the issue.
- 8.2 There are some instances in which the two parties involved have been unable to resolve an issue or wish that the supervisor/manager of either party be present. In this instance, one or both parties may ask their immediate supervisory to help mediate. The supervisor will facilitate the discussion. A commitment that the alleged harassment will stop should be obtained as a result of the discussion. The majority of issues should be resolved at this level. The supervisor shall provide the results and corrective actions (if any) to be taken to both parties via email. Where the respondent is not a board employee, a copy of the corrective actions and findings is not required to be provided.

9.0 Formal Complaint

- 9.1 If at any time the complainant wishes to file a formal complaint, they may do so by completing and submitting a copy of Appendix A – Workplace Harassment Formal Complaint Form to their supervisor
- 9.2 If the supervisor is the party alleged to be responsible for, or to have allegedly condoned the harassment the complaint should be submitted to the Senior Manager of Human Resources.
- 9.3 Where the Senior Manager of Human Resources is the alleged party, the Director of Education should receive the complaint form.
- 9.4 An external third party will be retained to conduct an independent workplace harassment investigation into allegations made against the Senior Manager of Human Resources or the Director of Education.

10.0 Respondents to a Complaint

- 10.1 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. Respondents will be given a copy of the complaint form and given time to prepare a full and complete response to the allegations. Where possible this should occur within 5 days of being informed of the complaint.

11.0 Supervisory Formal Investigation and Resolution

- 11.1 An investigation must be conducted using Appendix B as a guide when an employee makes a formal complaint or when the employer or supervisor becomes aware of an incident (for example, if a supervisor witnesses the incident).

Workplace Harassment Prevention Procedure

11.2 Supervisory or managerial personnel who conduct the investigation shall ensure that the following steps are taken as soon as possible:

1. Take appropriate interim measures, if necessary, pending the completion of the investigation;
2. Notify the complainant(s), the respondent(s) and witness(es) that they are entitled to support and assistance throughout the process;
3. Ensure that the respondent(s) is/are informed of the allegations, have a copy of the complaint and are provided an opportunity for a written response;
4. Interview the complainant(s) and/or the third party reporting the complaint; respondent(s) and witness(es) and ensure appropriate statements and notes are taken;
5. Collect and review any relevant documents
6. Produce a written report with the information gathered using Appendix B as your guide of the steps taken during the investigation, the allegations, the responses, the evidence of any witnesses and documents gathered, and come to a conclusion about whether on the balance of probabilities that workplace harassment occurred.
7. Provide a summary of the findings to the complainant and to the respondent (employee only) including any corrective actions that have or will be taken and give them an opportunity to respond to same; and
8. Send the investigative report to the Senior Manager of Human Resources and the appropriate Superintendent

Note: The **summary of the findings and corrective actions are not the same as the investigative report** as the board has an obligation not to disclose information bound by protection of law or statute or information not relevant to resolving the matter.

11.3 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.

12.0 Third Party Investigation and Resolution

12.1 Third parties with expertise in workplace harassment and/or Human Rights Code complaints investigation shall be retained by the board where applicable as per section 9.4.

12.2 Any conflict of interest at any time shall deem the third party ineligible.

12.2 Such parties will adhere to the requirements of this procedure.

Workplace Harassment Prevention Procedure

13.0 Outcomes in Formal Investigations

13.1 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 vexatious, frivolous, made in bad faith or would if investigated, constitute an abuse of the procedure, the complainant may be subject to disciplinary action.

13.2 Follow-up action can include:

- Counseling for the parties
- Application of strategies to restore a positive learning/working environment
- Specific training for the complainant or respondent
- Separation of respondent and complainant
- Contract negated
- Access restrictions
- Other restorative/corrective measures
- Potential disciplinary action

14.0 Disciplinary Actions

Employee Respondents

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

14.2 The principles of progressive discipline will be applied in dealing with disciplinary actions under this procedure.

These may include the following possibilities:

- Verbal warning
- Written reprimand
- Suspension without pay
- Dismissal from employment with the Board

Other Respondents

14.3 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, restricting the primary means of contact (e.g. email, telephone, etc.), or

Workplace Harassment Prevention Procedure

other remedies as provided by common law and/or the appropriate legislation. The involvement of the appropriate Superintendent is required in these cases.

15.0 Review (Appeal) Process

- 15.1 Within two calendar weeks of having received the summary of findings, the complainant or respondent may request, in writing, to the Senior Manager of Human Resources for a review of the findings for one or both of the following reasons:
- Non-compliance with the procedure; or
 - New evidence has arisen that was not known to the parties or the Investigator prior to the writing of the report.
- 15.2 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.
- 15.3 The Senior Manager of Human Resources shall direct an undertaking to review the findings. Every effort will be made to complete this review and render his/her report to the Senior Manager of Human Resources within three calendar weeks.
- 15.4 The Senior Manager of Human Resources may affirm or amend the findings or require that a new investigation be undertaken.

16.0 Records

- 16.1 All correspondence and other documents generated under these procedures must, subject to all legal considerations, be marked "Private and Confidential" and be stored in a locked and secure file in the Human Resources Department. Records will be retained per legislated requirements.

17.0 Reprisals

- 17.1 The Board will take appropriate action against any student, parent, teacher, administrator or other Board personnel who retaliates against any person who reports an incident or any person who testifies, assists or participates in a proceeding, investigation or hearing relating to such misconduct. Retaliation includes but is not limited to any form of reprisal. Alleged reprisals shall be investigated under this procedure and, where proven on a balance of probabilities, may result in discipline as appropriate in the circumstances.
- 17.2 Workers are not to be penalized for reporting an incident or participating in an investigation of harassment in while acting in good faith.

Workplace Harassment Prevention Procedure

18.0 Annual Review

- 18.1 This procedure will be reviewed as often as is necessary but at least annually in consultation with the Central Joint Health and Safety Committee

Workplace Harassment Prevention Procedure

If there have been multiple occurrences of workplace harassment, please attach details of those incidents. Please include any supporting documents as well (hand written notes, photographs, correspondence, etc.)

Complainant's Signature

Date

Supervisor's Signature

Date Received

If the supervisor is the party alleged, the form should be submitted without the supervisor's signature to the Senior Manager of Human Resources. If the Senior Manager is the alleged, the complaint form should be sent to the Director of Education.

Workplace Harassment Prevention Procedure

Appendix B

Workplace Harassment Investigation Report Guide

Investigation Plan

The following investigative steps are provided as a guide to aide investigators. Follow these steps as appropriate in the circumstance:

1. Obtain the worker(s) concerns of harassment in writing (Appendix A), if possible. Assistance should be provided in completing the form where necessary.
2. Take any interim or corrective actions required while the complaint is being investigated.
3. An investigator needs to interview the worker who allegedly experienced workplace harassment and the alleged harasser (if a worker of the employer). If the alleged harasser is not a worker of the employer, the investigator should make reasonable efforts interview him or her.
4. Make a list of possible relevant witnesses including those listed in Appendix A and any cited by the respondent.
5. Interview relevant witnesses. Ask specific questions about what they have observed, are aware of or have personally experienced. If the witnesses are not workers of the employer, the investigator should make reasonable efforts to interview those witnesses.
6. Collect and review relevant documents from the worker, alleged harasser, witnesses and the employer. This may include copies of emails, photos, documents, hand written notes, etc.
7. Take detailed notes.
8. Keep the investigation confidential. Instruct the worker who allegedly experienced workplace harassment, the alleged harasser and witnesses not to talk to others about the investigation unless it is necessary, for instance, to obtain advice or counselling.
9. Formulate the investigator's report by setting out the allegations, the responses, who was interviewed, what evidence was obtained and an analysis of the evidence to determine whether workplace harassment occurred.

Report provided to:

- ✓ Appropriate Superintendent
- ✓ Senior Manager of Human Resources