

Workplace Harassment Prevention Procedure

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RATIONALE:

Hamilton-Wentworth District School Board (the “Board”) is committed to providing a working and learning environment free from Workplace Harassment. The Board holds high expectations for the conduct of its employees, its students and any others associated with the school community. All individuals are treated with respect and dignity.

Any allegation or incident of Workplace Harassment brought by a Board Worker, which for the purposes of this Workplace Harassment Prevention Procedure (the “Procedure”), includes Workplace Sexual Harassment 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 (the Policy) and by application of this Procedure.

The purpose of this Procedure is to provide clarity around the processes in place to establish and maintain a respectful working and learning environment and to ensure that allegations and incidents of Workplace Harassment are dealt with fairly, expeditiously and consistently.

This Procedure is to be read in conjunction with the Policy and other Board policies, procedures, legislation and collective agreements.

TERMINOLOGY:

Balance of Probabilities - is a standard of assessment in which a decision maker will determine if an allegation or alleged incident is more likely than not to be true based on evidence.

Central Joint Health and Safety Committee: A single Joint Health and Safety Committee established to cover multiple workplaces where the committee’s structure has received approval by order of the Minister of Labour.

Complaint Form - is the Workplace Harassment Formal Complaint Form included at Appendix “A” of this Procedure.

Discrimination: Any form of unequal treatment based on a protected ground under the Human Rights Code (the Code), whether imposing extra burdens or denying benefits. It may involve direct actions that are discriminatory on their face, or it may involve rules, practices or procedures that appear neutral, but have the effect of disadvantaging certain groups of people. It can be direct or indirect, individual, or systemic. It may be intentional or unintentional, and it may take obvious forms (direct), or occur in very subtle ways (indirect). In any case, even if there are many factors affecting a decision or action, if discrimination is one factor, that is a violation that could lead to progressive discipline. Hate activities

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and harassment are forms of discrimination. Putting measures to correct, relieve or remedy hardship or systemic discrimination experienced by persons or groups in an attempt to achieve equity is not discrimination.

Supervisor: The person who has charge of a workplace or authority over a worker. This includes a principal, vice-principal or teacher appointed by HWDSB to direct and supervise a school or organizational unit of a school.

Worker: Can be defined as:

- A person who performs work or supplies services for monetary compensation.
- A secondary school student who performs work or supplies services for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled.
- A person who performs work or supplies services for no monetary compensation under a program approved by a college of applied arts and technology, university private Career College or other post-secondary institution. Such other persons as may be prescribed (by the Occupational Health and Safety Act) who perform work or supply services to an employer for no monetary compensation.

Workplace: Any land, premises, location, or thing at, upon, in or near which a worker works. This includes any virtual or digital environments. Examples include, but are not limited to:

- Schools, Board offices, properties, and facilities, as well as vehicles used while completing work and traveling between work sites.
- School-related activities such as extracurricular activities, co-instructional activities, and excursions.
- Conferences, training sessions, workshops and other work-related events or functions.
- Under the Ontario Human Rights Code, protection from workplace harassment and workplace sexual harassment also applies where workers are traveling to and from work-related activities.

This policy also applies to telephone, email, social media, or other communications related to work.

Workplace Violence: The Occupational Health and Safety Act, defines workplace violence as:

- a) The exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker.
- b) An attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to a worker.
- c) A statement or behaviour that is reasonable for a worker to interpret as a threat to exercise physical force against a worker, in a workplace that could cause physical injury to a worker.

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. The Ontario Human Rights

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Code also protects employees from harassment in employment by the employer, agent of the employer or by another employee because of the following prohibited grounds: Race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expressions, age, record of offences, marital status, family status, disability. It is important to note that there is potential for more than one protected ground to intersect, where an employee is protected under multiple identified grounds simultaneously. Further, the Ontario Human Rights Code protects employees from discrimination because of association, relationship, or dealings with another person identified by a protected ground.

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. This could also include 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.

The Ontario Human Rights Code offers protection for workers against harassment because of sex or sexual solicitation by a person in a position to confer benefits. 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 their 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 persons should:

- Be treated with dignity, respect, civility, sensitivity and courtesy.
- Be respected in their ideas, opinions and rights.
- Demonstrate honesty and integrity in their dealings with others.

1.2 Allegations and incidents of Workplace Harassment should be dealt with quickly, fairly, and consistently so as to restore a respectful working and learning environment, and to maintain the dignity of the parties.

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2.0 To Whom Does This Procedure Apply

- 2.1 This procedure applies to all employees and addresses Workplace Harassment from all sources, including employees, trustees, students, teacher candidates, union officials, 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.
- 2.2 For greater clarity, complaints against Board Workers by members of the school community, including but not limited to parents, guardians, caregivers, partners, trustees, volunteers, permit holders, contractor and visitors shall be addressed through the Code of Conduct policy, as appropriate, and not by this procedure.

3.0 Duties and Responsibilities

- 3.1 Every person has the responsibility to create a working and learning environment free from Workplace Harassment by:
- Acting in accordance with the Policy and the Board's Code of Conduct
 - Respecting rules, regulations and practices that are in place
 - Reporting incidents of Workplace Harassment they have witnessed or become aware of.

The Board

- 3.2 The Board shall ensure that all employees, contractors, and as appropriate, any other person in the Workplace receive a copy of this procedure. New employees shall receive this information during the onboarding/ orientation process.
- 3.3 The Board shall oversee the review and revisions to this Procedure to ensure that Workplace Harassment is addressed in an appropriate manner in keeping with the Board's obligation.

School Supervisory Personnel

- 3.4 School supervisory personnel must ensure Board Workers 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 followed in the workplace.

Supervisors

- 3.5 Supervisors shall ensure that Board Workers and all members of their school community clearly understand the expectations and standards for individual behaviour. Supervisors

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shall ensure that all Board Workers complete the training related to the Policy and have the responsibility of ensuring this procedure is carried out in the workplace.

- 3.6 Where there is an allegation of Workplace Harassment, supervisors shall forward the investigation report outlined in section 10 of this Procedure, and all relevant incident notes and documents to the Manager, Labour Relations or their delegate(s).

4.0 Assistance for Complainants, Respondents and Witnesses

- 4.1 Complainants, respondents, and witnesses have a right to assistance and support for matters addressed by this Procedure by way of a support person. Support persons are not permitted to interfere with the complaint process and/or, if initiated, the investigation process. For clarity, the support person is an observer only and, with the exception of a translator/interpreter, is not to speak on behalf of the complainant, respondent, or witness.

- 4.2 The following people may provide support/be a support person:

- Union/Federation Representative
- Parent/Guardian/Caregiver
- Counselors and mental health support staff
- Joint Health and Safety Committee Member
- Supervisor
- Translator/Interpreter

- 4.3 A person who is a party or a witness to the allegations raised in a complaint or who otherwise is, or perceived to be, in a conflict of interest as determined by the Board, cannot be a support person.

- 4.4 A support person must be approved by the Board, with their identity shared prior to any meeting. Only one support person will be permitted unless otherwise agreed by the Board.

5.0 Confidentiality

- 5.1 Confidentiality is beneficial to everyone involved in the complaint process. As such, confidentiality shall be maintained throughout the process in this Procedure, to the extent possible in the circumstances.

- 5.2 All complainants, respondents and other persons involved in the complaint process under this Procedure (including support persons and union representatives) shall ensure that all matters remain confidential.

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- 5.3 Confidentiality does not mean anonymity. Procedural fairness requires that the respondent to a complaint be provided with a copy of the complaint as submitted by a complainant or supervisor so that they have an opportunity to respond to the allegations. Additionally, procedural fairness may require the disclosure of witness names and statement to the complainant and/or the respondent.

PROBLEM RESOLUTION:

6.0 Withdrawing a Complaint

- 6.1 A complainant has the right to withdraw a complaint at any point in the process defined in this Procedure. However, the Board may be required to continue to act on and/or investigate the allegation and incidents identified in the complaint in order to comply with its legal obligations.

7.0 Informal Resolution

- 7.1 In most cases unwelcomed behaviour not raising to the level of Workplace Harassment can be resolved informally. Board Workers who are comfortable doing so, are encouraged but not required, to approach the individual engaging in the unwelcome behaviour to discuss the matter privately and ask that the behaviour cease immediately.
- 7.2 There may be some instances in which the parties to the unwelcome behaviour are unable to resolve the issue independently and wish to have a supervisor be present to facilitate the discussion or are uncertain whether Workplace Harassment had occurred. In this instance, some or all parties may ask their immediate supervisor to help. The supervisor may set out any agreements or understandings reached to both parties via email.

8.0 Formal Complaint

- 8.1 If at any time the complainant wishes to file a formal complaint of Workplace Harassment, they may do so by completing and submitting a Complaint Form to their supervisor. Supervisors may otherwise become aware of or witness an alleged incident of harassment. Supervisors should record the incident using the Complaint Form. The complainant should confirm the content of the Complaint Form as accurate.
- 8.2 If the supervisor is the party alleged to be responsible for, or to have allegedly condoned the Workplace Harassment, the Complaint Form should be submitted to the Manager, Labour Relations or their delegate(s).

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- 8.3 Where the Manager, Labour Relations is the respondent, the Senior Manager, Human Resource Services and Staff Well-Being should receive the Complaint Form. Complaints against the Senior Manager of Human Resource Services and Staff Well-Being should be sent to the Superintendent of Human Resource Services and Staff Well-Being. Where the Superintendent of Human Resource Services and Staff Well-Being is the alleged party, the Director of Education should receive the Complaint Form. Where the Director of Education is the respondent to the complaint, the Complaint Form should be submitted to the Chair of the Board of Trustees.
- 8.4 Group complaints are not permitted (i.e., individuals shall submit separate complaints).
- 8.5 Individuals who witness Workplace Harassment or have reasonable grounds to suspect that Workplace Harassment is occurring, may initiate a report by completing and submitting a copy of the Complaint Form as per 8.2 and 8.3 above.
- 8.6 In instances where an individual is fearful for their physical safety, a report must be immediately made to their supervisor. If the concern is against the supervisor, the report should be directed to the Manager, Occupational Health and Safety. In such cases, the Workplace Violence Prevention Procedure shall be followed.

9.0 Respondents to a Complaint

- 9.1 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.
- 9.2 To meet the obligation in 9.1, respondents will be given a copy of the complaint as submitted by a complainant or supervisor. The respondents shall prepare a full and complete response to the allegations, in writing, within 10 school/academic days of receiving the complaint, unless provided additional time by the Board or unless the requirement is waived at the Board's discretion. A request for additional time or to forego the written response should be made in writing by the respondent to the person who provided the complaint.
- 9.3 If the respondent declines to participate in the formal investigative process, the investigation shall proceed in the respondent's absence. Any respondent is encouraged to participate in the interest of a balanced and fair process. Respondents who refuse to participate may also be subject to discipline for that refusal.

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10.0 Supervisory Formal Investigation and Resolution

10.1 All formal complaints filed under this Procedure shall be subject to an immediate threshold assessment by the complainant's supervisor, supported by Labour Relations, or their delegate(s), to determine whether the alleged conduct by the respondent(s) would, if proven, meet the definition of Workplace Harassment.

10.2 If, following this threshold assessment, it is determined that the complaint filed

- would not, if true, meet the definition of Workplace Harassment
- does not provide sufficient details of the alleged Workplace Harassment, provided the complainant is given notice that insufficient details have been provided and given reasonable time to provide sufficient details
- is vexatious, frivolous, has not been made in good faith or would, if investigated, constitute an abuse of the Policy or Procedure
- more than one (1) year after the Workplace Harassment, with the exception of Sexual Harassment, is alleged to have occurred.

The complainant and respondent shall be so advised in writing by the Manager, Labour Relations, or their delegate(s). The parties may be referred to resolve the matter using the Informal Resolution process.

10.3 If, following the threshold assessment, it is determined that the incidents in the complaint would meet the definition of Workplace Harassment, if the allegations therein are proven, the Board will conduct an investigation appropriate in the circumstances.

10.4 The individual conducting the investigation will follow the steps below, as necessary, to conduct an investigation appropriate in the circumstances, as soon as possible:

- Obtain the Worker's (or Workers') concerns of Workplace Harassment in writing via the Complaint Form, if possible. Assistance may be provided in completing the Complaint Form where necessary.
- Take appropriate interim measures, if necessary, pending the completion of the investigation
- Ensure that the respondent has a copy of the complaint, including any attachments, and provides a written response, unless otherwise agreed
- Notify the complainant(s), the respondent(s) and witness(es) that they are entitled to support and assistance throughout the process by way of a support person
- Interview the complainant(s), supervisor(s), and/or the other individual(s) reporting the complaint, the respondent(s) and witness(es) and ensure appropriate statements and notes are taken
- Collect and review any relevant documents

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- Review the allegations, the responses, witness and documentary evidence and conclude whether on a Balance of Probabilities, Workplace Harassment occurred and assess whether or not the complaint was malicious, vexatious or brought in bad faith
- Produce a confidential written report with the information gathered and provide only to the Manager of Labour Relations or their designate(s) or their supervisor as appropriate; and,
- Provide a written summary of the findings to the complainant and to the respondent (if they are a Board Worker), including whether any corrective actions that have or will be taken and give them an opportunity to respond to same.

Note: The summary of the findings and corrective actions are not the same as the investigative report. The Board will not disclose the investigation report to the complainant, respondent or any other third party other than its legal representative unless required by law.

11.0 Third Party Investigation and Resolution

- 11.1 Third parties with expertise in Workplace Harassment and/or Human Rights Code complaint investigations shall be retained by the board where necessary, which may include but is not limited to when allegations are made against the Manager, Labour Relations; Senior Manager, Human Resource Services and Staff Well-Being; the Superintendent, Human Resource Services and Staff Well-Being; or the Director of Education.
- 11.2 Any conflict(s) of interest between the third-party investigator and the complainant(s) or respondent(s) may render the third-party investigator ineligible to conduct the investigation. All parties involved in the investigation process shall immediately disclose any potential conflicts of interests for consideration and determination of whether a different investigator is required.
- 11.3 Third-party investigators shall adhere to the requirements of this Procedure.

12.0 Outcomes in Formal Investigations

- 12.1 In the event a complaint is not substantiated, no disciplinary action will be taken against the respondent, subject to the section on maintaining Records.
- 12.2 In cases where the complaint is found to be malicious, vexatious, frivolous, made in bad faith or would, if investigated, constitute an abuse of the Procedure, the complainant may be subject to disciplinary action.

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- 12.3 Follow-up or corrective action where a respondent is found to have engaged in Workplace Harassment can include but are not limited to:
- Counseling;
 - Application of strategies to restore a positive learning/working environment;
 - Training;
 - Separation of respondent and complainant;
 - Access restrictions;
 - Other restorative/corrective measures; and
 - Potential disciplinary action up to and including termination of employment

- 12.4 Follow up actions for non-Board Workers include but are not limited to:
- a letter of disapproval and warning;
 - revoking of permits or contracts;
 - issuing of a trespass warning; and
 - restricting the primary means of contact (e.g. email, telephone, etc.)

13.0 Records

- 13.1 All correspondence and other documents generated under this Procedure shall be marked "Private and Confidential" and are to be stored in a locked and secure file in the Human Resource Services and Staff Well-Being Division. Records will be retained per legislated requirements.

14.0 Reprisals

- 14.1 The Board will take appropriate action against any student, parent, teacher, administrator or other Board Worker 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, will result in discipline as appropriate in the circumstances.
- 14.2 Board Workers will not to be penalized for reporting an incident or participating in an investigation of Workplace Harassment in good faith.

15.0 Annual Review

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

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Appendix A

Workplace Harassment Formal Complaint Form (Note: To be shared with the respondent)

Complainant:

Worksite:

Position:

Respondent:

Worksite:

Position:

Date of incident:

Location of Incident:

Description of incident (attach additional notes if more space is required):

Name(s) of any witnesses (note any documents/evidence they may have):

Actions that complainant indicates have already been taken, and subsequent results: (i.e., informal discussion with respondent)

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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 respondent, the form should be submitted without the supervisor's signature to the Manager, Labour Relations. Where the Manager, Labour Relations is the alleged party, the Senior Manager, Human Resource Services and Staff Well-Being should receive the Complaint Form. Complaints against the Senior Manager, Human Resource Services and Staff Well-Being should be sent to the Superintendent of Human Resource Services and Staff Well-Being. Where the Superintendent of Human Resource Services and Staff Well-Being is the respondent, the Director of Education should receive the Complaint Form. Where the Director of Education is the respondent to the complaint, the Complaint Form should be submitted to the Chair of the Board of Trustees.