

APPENDIX B

Workplace Harassment Prevention Administrative Procedure 508

FORMAL RESOLUTION PROCESS

Formal complaints will only be initiated once all reasonable efforts have been made to resolve the conflict informally. A Workplace Harassment Formal complaint Form shall be completed, signed, placed in a sealed envelope marked *private and confidential*, and forwarded to the Superintendent of Schools/Human Resources Services. The Superintendent of Schools/Human Resource Services will have the discretion to refer a formal complaint to the appropriate supervisor and the parties if he or she is not satisfied that reasonable efforts have been made to resolve the dispute informally.

Other user complainants should report the complaint to the appropriate supervisory or managerial personnel at the Board or, if they require assistance in reporting. If the appropriate supervisory or managerial personnel is engaged in the workplace harassment, the employee may contact the Superintendent of Schools/Human Resources Services.

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

(a) RESPONDENTS TO A CLAIM

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

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

(b) THRESHOLD ASSESSMENTS

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

If the Board, following this threshold assessment, determines that the report filed:

- would not, if true, meet the definition of workplace harassment;

APPENDIX B

Workplace Harassment Prevention Administrative Procedure 508

- does not provide sufficient details of the alleged harassment, provided the complainant is given notice that insufficient details have been provided and given reasonable time to provide sufficient details; or
- is vexatious, frivolous or trivial, has not been made in good faith or would, if investigated, constitute an abuse of the Workplace Harassment Prevention Policy,

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

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

(c) PROCEDURES FOR RESOLVING A FORMAL COMPLAINT

In all cases, where the Superintendent of Schools/Human Resource Services has determined that the parties have made reasonable efforts to resolve the dispute informally, and has conducted a threshold assessment to determine that a formal complaint should proceed, he or she will direct the appropriate supervisory and managerial personnel to take action to resolve the formal complaint under this Policy.

(d) FORMAL INVESTIGATION AND RESOLUTION

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

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

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

APPENDIX B

Workplace Harassment Prevention Administrative Procedure 508

- come to conclusions about whether a specific incident did or did not occur based on a balance of probabilities (The question of whether behaviour is objectionable will be assessed using objective standards.);
- provide a written summary of the findings and conclusions to the complainant and to the respondent and give them an opportunity to respond to same; and
- take appropriate action(s) to resolve the situation.

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

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

(f) In the event a complaint is not substantiated, no further action will be taken, subject to the section on maintaining records. In cases where the complaint is found to be trivial, vexatious, or an abuse of the process, in which case the complainant may be subject to disciplinary action as outlined in section 1.13 (h) below. However, if there is need to restore positive learning or working environment or if the complainant and/or respondent require counselling, appropriate steps will be taken to meet such needs.

Follow-up possibilities:

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

(g) *DISCIPLINARY ACTIONS*

Employee Respondents

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

The principles of progressive discipline will be applied in dealing with disciplinary actions under this Policy. These would include the following possibilities:

- verbal warning;
- written reprimand;
- suspension with pay;

APPENDIX B

Workplace Harassment Prevention Administrative Procedure 508

- suspension without pay; or
- dismissal from employment with the Board.

Other User Respondents

Actions must be determined as appropriate for the individual situation and may include such responses as a letter of disapproval and caution or warning, a revoking of permits or contracts, an issuing of a trespass warning, or other remedies as provided by the common law and/or the appropriate legislation. The involvement of the Superintendent of Schools/Human Resource Services is recommended in these cases.

(h) MEDIATED RESOLUTION

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

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

Mediation is appropriate when all parties agree that a mutually agreeable solution is achievable and desirable. The investigator will request approval to mediate or attain 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 will provide trained mediators who are acceptable to both parties.)

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

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

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

(i) REVIEW

APPENDIX B

Workplace Harassment Prevention Administrative Procedure 508

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

The grounds for review are:

- the investigators did not comply with the procedures; or
- new evidence has become known after the final decision but before the expiry of the ten working days limitation period for requesting a review.

No review of the final decision will be undertaken with regard to the claim that the conclusions drawn by the investigator(s) based on findings of fact were incorrect.

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