



**MOOSONEE DISTRICT
SCHOOL AREA BOARD**

ADMINISTRATIVE PROCEDURE HUMAN RESOURCES: NO. 472	
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WORKPLACE HARASSMENT

PURPOSE

The Moosonee District School Area Board believes that the workplace must provide and encourage a climate that recognizes and promotes the dignity and self-esteem of all staff members. The Board recognizes that workplace harassment undermines personal and professional growth and negatively impacts upon the opportunity for individuals to work in an environment of mutual trust and respect.

This administrative procedure is intended to foster a working environment that supports productivity and the pursuit of personal goals. It has been developed to inform staff members about the measures and procedures to be used in reporting and dealing with incidents and complaints of workplace harassment.

DEFINITIONS

Harassment: Harassment is defined in the Ontario Human Rights Code as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.” Harassment may be based on discrimination, which negatively affects the status of a person based upon a prohibited ground under the Ontario Human Rights Code. Harassment can include sexual harassment as defined pursuant to the Code.

Prohibited Grounds: The Ontario Human Rights Code defines prohibited grounds as: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed (religion), sex (includes gender identify and pregnancy), sexual orientation, age, record of offences, marital status, family status, and/or disability (includes perceived disability). [From Human Rights at Work. Third Edition, p. 14]

Workplace Harassment: Workplace harassment is defined in the Occupational Health and Safety Act 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.” Workplace harassment may or may not be related to a prohibited ground under the Human Rights Code. It is often (but not always) persistent, ongoing, vexatious conduct or communications in any form, of attitudes, beliefs, or actions towards an individual in the workplace which might reasonably be known to be unwelcome and which create an untenable working environment for that person.

A “course” of comment or conduct usually requires more than one occurrence, when an individual is repeatedly singled out for serious mistreatment which includes words or actions that disparage or cause humiliation. However, it may include a single severe incident. It is the impact of the comment or conduct on the individual, rather than the number of occurrences, that determines whether an untenable work environment has been created. Jokes, insults, pictures, and printed materials can constitute harassment as well as physical contact.

What is Not Harassment: The exercise of management functions by an administrator or supervisor is deemed to constitute a legitimate work purpose and **does not constitute workplace harassment,**

unless such functions are carried out in a demonstrably abusive manner. This is the case even if there are unpleasant consequences for a worker. Examples could include changes in work assignments, changes in scheduling, job assessment and evaluation, workplace inspections, implementation of dress codes, and disciplinary action.

The accepted social interaction or consensual relations between staff members are not to be construed as harassment. Differences of opinion or minor disagreements between co-workers would also not generally be considered workplace harassment.

APPLICATION

This administrative procedure applies to prohibited behaviour under the Ontario Human Rights Code, and also addresses workplace conflict and harassment that is unrelated, or not primarily related, to the enumerated grounds described in human rights legislation.

This procedure applies to the working environment, which is any place where employees, students, and other users perform work or work-related duties or functions, including Board/school social functions. It applies to all school and school-related activities as well as Board offices and facilities.

All those who work on or are invited onto Board premises are accountable for complying with this procedure, and for maintaining a positive climate that is free from workplace harassment.

PROCEDURES

1. Board Expectations

- 1.1 Workplace harassment, as a serious abrogation of the rights of employees, is prohibited and all harassment complaints will be dealt with as expediently, judiciously, and confidentially as possible.
- 1.2 Any staff member shall have the right to lodge a complaint of harassment without fear of reprisal or threat of reprisal for doing so.
- 1.3 The complainant is encouraged to keep personal notes on the events surrounding the alleged harassment, including the details of the harassment, times, dates, locations, names of witnesses, and to collect and retain any relevant documentation.
- 1.4 Nothing in this procedure shall be construed so as to prevent a complainant from seeking recourse for allegations of discrimination from the Human Rights Tribunal of Ontario or from pursuing any remedies under the Criminal Code (Canada), or through his or her union, federation, or professional association. Complaints under the Human Rights Code should be filed as soon as possible, and in any case within six (6) months of the date of the facts upon which the complaint is based. However, in the event the complainant chooses to pursue the issue in an external body, processing of the complaint under this administrative procedure may be stayed until there is a resolution by the external body.
- 1.5 Where any staff member is aware that harassment has occurred or is occurring, they are expected to report the incident(s) to the appropriate supervisor. When the staff member is a supervisor, they will take immediate and appropriate action to remedy the situation.
- 1.6 Confidentiality will be maintained throughout the investigation process to the extent that is practicable and appropriate under the circumstances. However, confidentiality is to be distinguished from anonymity. A complainant who wishes to seek a remedy through this

procedure must be prepared to be identified to the respondent and those involved in the resolution of the complaint. These provisions of confidentiality are meant to protect both the complainant and the alleged harasser. 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 he or she has an opportunity to speak to the charges.

- 1.7 Every effort will be made by the Board to ensure that everything is done that is fair and reasonable in the circumstances to protect persons against complaints or accusations made by other staff members that are trivial, frivolous, or made in bad faith. Complaints that are falsely made in an irresponsible and willful fashion could result in the accused taking any legal action deemed appropriate.
- 1.8 Responses to harassment may take the form of one or more of the following, depending upon individual circumstances:
 - a) a verbal warning which states the consequences should there be a recurrence, accompanied by a copy of this administrative procedure;
 - b) a direction that the offender makes an oral and/or written apology;
 - c) a requirement that the offender provide a written statement that there will be no repetition of the offensive conduct;
 - d) a written warning which states the consequences should there be a recurrence, accompanied by a copy of this administrative procedure;
 - e) a transfer;
 - f) a suspension;
 - g) dismissal; and
 - h) any other action deemed appropriate by the supervisory officer.
- 1.9 Any disciplinary action taken under this procedure shall be consistent with the requirements of the Education Act, Regulations, the Teaching Profession Act, or any collective agreement by which the alleged offender is bound.
- 1.10 It is important that supervisory personnel be aware of and respond to symptoms arising out of possible workplace harassment such as reduced productivity, changes in staff relations and behaviour, absenteeism, requests for transfers, or rampant rumour mongering. Without assistance, the targets of workplace harassment may be embarrassed or reluctant to report a situation.

Complaint Procedures

2. Early Resolution: Step 1

- 2.1 All those who are covered by this procedure have a right to report harassment and are entitled to have access to the dispute resolution process. Every attempt will be made to resolve matters through an informal process.
- 2.2 This administrative procedure supports early resolution of workplace conflict in order to restore working relationships in the most effective and timely way. In most cases, workplace conflict will be resolved using the informal mechanisms described below.
- 2.3 Staff members are encouraged to raise concerns about inappropriate conduct of their co-workers or supervisors at an early stage to avoid further breakdown of professional relationships and escalation of the dispute. The Board encourages administrators and

supervisors as well as union and federation representatives to make every attempt to support informal resolution as a means of resolving issues.

- 2.4 The first step is to inform the individual that his/her behaviour is unwelcome and must stop immediately. Many disputes can be resolved quickly and effectively using this approach.
- 2.5 If the individual does not wish to bring the matter directly to the attention of the person responsible, or where such an attempt is not successful, the individual shall proceed to Step 2.
3. **The Informal Process: Step 2 [Required Step if Not Previously Resolved]**
 - 3.1 Informal resolution is a procedure that provides an opportunity for parties to resolve a dispute in a respectful manner. The key characteristic of an informal resolution process is that it does not involve a formal investigation. The prime objective of the process is to deal quickly and effectively with workplace conflict.
 - 3.2 Informal complaints of harassment will normally be made to the staff member's immediate supervisor. If the complaint involves the immediate supervisor, the complaint will be made to the person to whom the supervisor reports.
 - 3.3 In the case of informal complaints, where the parties are members of a union, federation, or professional association, a resolution may be facilitated by the appropriate representative(s), if acceptable to both parties.
 - 3.4 Supervisory staff members as well as union/federation representatives may facilitate an informal resolution by:
 - a) suggesting that the complainant confront the problem by making it clear to the offending party that the behaviour is not acceptable, if the complainant has not already done this;
 - b) suggesting a support person to help the complainant confront the offending party, if the staff member finds it difficult to do this alone;
 - c) informing the staff member accused of harassment of the concern regarding the behaviour and of Board expectations for appropriate behaviour; providing a copy of this administrative procedure; and obtaining a commitment that the behaviour will stop;
 - d) following up with the complainant to ensure that the behaviour has stopped.
 - 3.5 Support of an advisor: Informal resolution of workplace conflict may be facilitated if the complainant is willing to work with an advisor to complete a written complaint.
 - 3.5.1 The complainant will be asked to name the alleged harasser, describe the objectionable behaviour in detail, and to suggest a preferred method of resolution.
 - 3.5.2 The advisor will provide the information to the alleged harasser, inform the respondent of their rights under this administrative procedure, and request a written response to the allegations.
 - 3.6 Mediation: Informal early resolution strategies may include mediation, if the staff members involved agree that the assistance of a neutral third party would help them work through their differences and restore their relationship.
 - 3.6.1 Even if a formal complaint has been made, the parties should consider, with the assistance of the supervisory officer or designate, whether mediation might provide a solution.

- 3.6.2 Mediators do not recommend or impose discipline or otherwise dictate the outcome of mediation. The process is confidential and without prejudice to either party. All documents and information disclosed in the course of the mediation will be kept confidential by the mediator. The parties must agree that anything disclosed to them by the other party will be kept confidential by them, as well.
- 3.6.3 The parties must participate fully in the mediation process for it to have a chance of success. Each party has a right to be accompanied and assisted during the mediation by someone of their choosing, but no one else will be involved in the process. The support persons must agree to the same terms of confidentiality if they are to be involved. The parties may withdraw from the mediation at any time.
- 3.6.4 Successful mediation results in a voluntary agreement to resolve the dispute based on specific, mutually agreeable terms.
- 3.7 Ongoing monitoring: In cases where an informal plan of action is implemented, supervisory or managerial staff members shall follow up by monitoring the situation. They will hold, if necessary, subsequent meetings with the parties and take further steps to ensure that the objectionable conduct has stopped.
- 3.8 Advantages of informal resolution: The informal resolution process is the most efficient way to address workplace conflict. It gives the offending staff member the benefit of the doubt that he or she may have been unaware of the concern caused by the behaviour. It provides a method of dealing with misconduct before it causes real harm to one or more staff members, and is the best chance to restore working relationships and enable staff members to work together productively.
- 3.8.1 Informal resolution provides an opportunity to deal with objectionable behaviour before it becomes so serious as to trigger a formal complaint of workplace harassment.
- 3.8.2 Early resolution strategies are not intended to be disciplinary or threatening to the staff member who is accused of objectionable conduct. This staff member will be told that the matter is being raised informally and that no formal report will be made of the discussion.
- 3.8.3 If the complaint is resolved informally, the administrator or supervisor will consider the issue settled without further action. Related documents are not placed in the personnel file of the respondent.
- 4. Initiating a Formal Complaint: Step 3**
- 4.1 A formal complaint shall only be initiated once all reasonable efforts have been made to resolve the conflict informally. The supervisory officer or designate shall have the discretion to refer a formal complaint to the appropriate supervisor and the parties concerned if they are not satisfied that reasonable efforts have been made to resolve the dispute informally.
- 4.2 If the complainant feels that a satisfactory resolution has not been reached, they may file a formal complaint as outlined in this section.
- 4.3 If the alleged harasser is not satisfied with the informal resolution of the complaint, they may have the matter referred to the supervisory officer for a formal investigation as set out in this section.

- 4.4 If both parties are teachers, the teacher making the complaint must meet the reporting obligations of paragraph 18 (1) (b) of the Regulation Made under the Teaching Profession Act.
- 4.5 A staff member who is alleged to have demonstrated harassing conduct has a right to know in a timely manner that they are the subject of a formal complaint, who the complainant is, and what the allegations are. The staff member making the accusation and the respondent staff member are advised to contact their union, federation, or association representative for support during the process.
- 4.6 Any administrator or supervisor who observes an incident that, in their opinion, meets the definition of workplace harassment has a positive duty to initiate a complaint under this administrative procedure.
5. **Threshold Assessment**
- 5.1 All complaints filed under this administrative procedure shall be subject to an immediate threshold assessment by the supervisory officer or designate to determine whether the alleged conduct would, if proven, meet the definition of harassment or workplace harassment.
- 5.2 The supervisory officer:
- a) will interview the complainant, prepare detailed keyed notes of the incident(s), have the complainant review them, make any corrections, and have the complainant sign and date them;
 - b) will advise the alleged offender that the complainant has made a formal complaint of harassment against them, that the complaint will be investigated, that if the complaint meets the threshold assessment the alleged harasser will be given written details of the complaint and an opportunity to provide a defense or explanation;
 - c) may advise the alleged harasser to avoid contact with the complainant until the investigation has been completed; and
 - d) will interview any witnesses to the incident(s), prepare detailed keyed notes, have the witnesses review them, make any corrections, and have the witnesses sign and date them.
- 5.3 If the threshold assessment finds any of the three following points, then the complainant and alleged harasser will be advised that no further action will be taken to investigate the complaint:
- a) The complaint would not, if true, meet the definition of harassment or workplace harassment;
 - b) The complaint does not provide sufficient details of the alleged workplace harassment, provided the complainant is given notice of this deficiency and a reasonable time to remedy it; or
 - c) The complaint is frivolous or trivial, has not been made in good faith, or would, if investigated, constitute an abuse of this administrative procedure.
6. **Formal Investigation**
- 6.1 The supervisory officer or designate will ensure that the following steps are taken as soon as possible:
- a) take appropriate measures to ensure the safety of the complainant;
 - b) notify the complainant, the respondent, and witness(es) that they are entitled to support and assistance throughout the process;
 - c) ensure that the respondent has a copy of the complaint;

- d) interview the complainant and/or the third party reporting the complaint;
- e) inform the respondent of the details of the allegations and provide an opportunity for response;
- f) interview the respondent;
- g) interview witness(es);
- h) come to conclusions about whether a specific incident did or did not occur based on a balance of probabilities;
- i) 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
- j) take appropriate action(s) to resolve the situation.

- 6.2 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.
- 6.3 If a complaint is not substantiated, no further action will be taken. If there is a need to restore a positive learning or working environment or if the complainant and/or respondent require counselling, appropriate steps shall be taken to meet such needs.
- 6.4 The appropriate administrator or supervisor shall impose discipline as appropriate and consistent with the circumstances. The principles of progressive discipline as set out in Administrative Procedure 480 will be applied in dealing with disciplinary actions under this procedure. These include the following alternatives: verbal clarification or warning; letter of professional expectation; letter of discipline; letter of discipline with suspension (with or without pay); or dismissal from employment with the Board.

7. **Records**

- 7.1 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. Access to the files is limited to the supervisory officer and the finance & HR administrator.
- 7.2 Where an investigation is completed and the determination made that workplace harassment did not occur, the materials collected will be kept for a period of two years.
- 7.3 In all other circumstances, all correspondence relating to the matter will remain with the human resources department indefinitely.

8. **Review Process**

- 8.1 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 supervisory officer or designate to convene a review within ten (10) days of the final decision.
- 8.2 A reviewer will be appointed by the supervisory officer or designate. The grounds for review are:
- a) the investigator(s) failed to comply with these procedures; or
 - b) new evidence became known after the final decision, but before the expiry of the ten working days limitation period for requesting a review.

- 8.3 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.
- 8.4 The reviewer will report his/her findings to the supervisory officer or designate, who will affirm or amend the final decision, or require that a new investigation be undertaken.
9. **Protection from Reprisals**
- 9.1 Complainants, witnesses, representatives, investigators, and decision-makers shall be protected from reprisals for participating in the complaint process.
- 9.2 Reprisals shall be investigated as formal complaints and, if substantiated, are subject to the same consequences as complaints of workplace harassment.

REFERENCE DOCUMENTS

Legal:

Education Act, Section 169.1 Board Powers and Duties: Positive School Climate Education Act, Section 264 Duties of Teacher: Cooperation of Effort among Staff Members Education Act, Section 265 Duties of Principal: Cooperation of Effort among Staff Members Teaching Profession Act

Regulation Made Under the Teaching Profession Act: Furnish a Member with a Copy of an Adverse Report

Ontario Regulation 437/97 Professional Misconduct Ontario's

Equity and Inclusive Education Strategy 2009

PPM No. 119 Developing and Implementing Equity and Inclusive Education Policies 2009, rev. 2013

PPM No. 128 The Provincial Code of Conduct and School Board Codes of Conduct

Criminal Code of Canada Ontario

Human Rights Code

Occupational Health and Safety Act

The Municipal Freedom of Information and Protection of Privacy Act

Board:

Board Policy GOV-01 Board Philosophy, Goals, and Values

Board Policy GOV-03 Role of the Corporate Board

Board Policy GOV-04 Role of the Supervisory Officer

Board Policy GOV-07-0 Equity and Inclusive Education

Board Policy GOV-08 Safe Schools

Board Policy GOV-09 Safe Schools: School Code of Conduct

Board Policy GOV-18 Health and Safety: Working Environment

Administrative Procedure 470 Assaults on / Threats to Staff

Administrative Procedure 480 Progressive Discipline: Employees

Resources:

Ministry of Labour (2010) *Workplace Violence and Harassment: Understanding the Law.*

Ministry of Labour (2017) *Workplace Violence in School Boards: Guide to the Law*