



Niagara Catholic District School Board

EMPLOYEE WORKPLACE HARASSMENT POLICY

ADMINISTRATIVE OPERATIONAL PROCEDURES

200 – Human Resources

Policy No 201.7

Adopted Date: March 26, 2002

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The Niagara Catholic District School Board recognizes the need to provide respectful workplaces in which employees can work, students can learn, trustees can govern, and volunteers can participate; workplaces that:

- foster respect for the dignity, worth and well-being of all members of the Board’s community;
- provide an opportunity for all individuals to develop their full potential;
- are conducive to the pursuit of excellence; and
- are committed to on-going education and awareness of the issues of discrimination and harassment.

The Niagara Catholic District School Board will not tolerate discrimination or harassment, in any workplace of the Board, including sexual harassment that is in violation of the Ontario Human Rights Code or in violation of the Occupational Health and Safety Act.

STATEMENT OF COMMITMENT

The Niagara Catholic District School Board is committed to providing respectful workplaces in which employees can work, students can learn, trustees can govern and volunteers can participate. In making this commitment, the Board recognizes the rich diversity of our social fabric and the benefits which diversity brings to all members of the Board’s community. The Board is also committed to encouraging the tolerance and valuing of differences; in particular, those differences which are recognized in the Ontario Human Rights Code.

Under the Ontario Human Rights Code, discrimination and harassment are illegal practices. It is the policy of the Niagara Catholic District School Board that it will not tolerate discrimination or harassment on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, same-sex partner status, disability, age, marital status or family status, and, in the case of employment, record of offences, which is contrary to the Ontario Human Rights Code.

The Niagara Catholic District School Board also recognizes that employees have the right to feel safe at work. The Occupational Health and Safety Act requires the Board to investigate all allegations of workplace harassment, including sexual harassment, in order to provide a safe working environment for all employees.

DEFINITIONS

Discrimination: unequal treatment on the basis of age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status (including single status), gender identity, gender expression, sex (including pregnancy), sexual orientation, and, in the case of employment, record of offences as defined by the Ontario Human Rights Code.

Discrimination may also occur where a supervisor or employee accepts, condones or fails to deal with discrimination or harassment by someone for which the supervisor or employee is responsible against another in the school board’s community.

Indirect Discrimination: or systemic discrimination is not blatantly discriminatory but nevertheless has the result, when applied, of excluding, restricting or giving preference to a group that is identified by a protected ground under the Ontario Human Rights Code.

Harassment: vexatious comment or conduct which is known or ought reasonably to be known to be unwelcome. Harassment normally involves persistent comments or conduct, but may include a single act. Supervision, evaluations and corrective actions by a Supervisor in the normal course of business will not usually be found to be harassment.

Workplace Harassment is defined under the Occupational Health and Safety Act as any vexatious comment or conduct against an employee that is known or ought reasonably to be known to be unwelcome. Workplace harassment can be directed at a co-worker, subordinate or manager. A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.

The most common forms of harassment under the Ontario Human Rights Code are racial harassment and sexual harassment; harassment on any ground protected under the Code is prohibited.

For a clearer understanding of harassment, and not to suggest that other forms of harassment are permissible, examples of conduct which would constitute racial or sexual harassment are set out below:

i. Racial Harassment:

Racial harassment occurs where a person engages in a course of activity or comment that refers to or emphasizes the race or other race-related characteristics of an individual and where it could be reasonably anticipated that such comment or conduct would be unwelcome.

The offensive activity need not expressly refer to a person's race, place of origin, creed, and so on, but need only be motivated by those considerations in circumstances where an individual is consistently treated in a less favourable manner compared with others in the same position, where the differential treatment is motivated by the person's race.

More direct examples of racial harassment could include, but are not limited to:

- racial epithets;
- demeaning comments made to a person because of race;
- jokes or cartoons making fun of a racial group;
- inappropriate comments about cultural differences (e.g., accents, clothing or dress);
- comments or conduct motivated by consideration of a person's membership in a racial group which may not be intentionally offensive, but may still be unwelcome and constitute a violation of the Code; and
- physical assault which is racially motivated.

ii. Sexual Harassment:

- a. 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
- b. ii. 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 types of conduct which can be found to constitute sexual harassment could include, but are not limited to:

- the use of sexually profane language;
- rude or suggestive remarks of a sexual nature;
- sexually-based jokes or cartoons, whether communicated in person or electronically;
- photographs of sexually provocative poses;
- unwanted physical contact, including patting, touching or grabbing;

- wolf-whistles or cat-calls which cause embarrassment;
- degrading, sexually-based nick-names;
- conduct or remarks which denigrate an individual's sexuality;
- indicating that a person has limited potential because of their gender;
- intimidating behaviour such as blocking a person's way or pinning them to the wall;
- stalking;
- insistent requests for dates.

Sexual harassment also includes any actions taken as a reprisal against a person who has declined a sexual advance or invitation.

Sexual harassment does not include:

- A hug between friends or a mutual flirtation.
- Conduct which both parties find acceptable such as an occasional compliment,
- An occasional or appropriate comment which a reasonable person, in their circumstances, would not take to have an unwelcome sexual connotation.
- Relationships between consenting adults which are voluntary. However, when such a relationship ends, continued unwanted attention may constitute sexual harassment

Age is defined as over the age of 18 years.

Family status is limited to being in a parent and child relationship only. It does not extend to aunts, uncles, nephews, nieces or cousins.

Complainant refers to any person who feels they have been harassed or discriminated against.

Contractor includes any person or company which enters into a contract with the Board or a school to provide services or goods to the Board or a school, or any employee or agent who acts on behalf of such person or company.

Employee refers to any employee of the Niagara Catholic District School Board. The complaint processes available to employees are also available to volunteers and, for that purpose, the word "employee" should be read to include volunteer.

Trustee, refers to a member of the Board of Trustees of the Niagara Catholic District School Board.

Respondent refers to any person who is accused of the harassing or discriminatory behaviour.

Volunteer includes any parent or other community member who provides assistance in classrooms or around the school, or who belongs to any school or board committee and who is not remunerated for their activities.

COMPLAINT RESOLUTION PROCEDURES

Who Can Use these Procedures:

Any employee, trustee or volunteer has the right to file a complaint about discriminatory or harassing behaviour, whether they are directly involved as the victim of the behaviour or have observed the behaviour exercised against another or others.

The procedures set out below should also be used by any complainant who believes they have been the subject of any act of reprisal for bringing an instance of discriminatory or harassing conduct to the attention of the Board through these procedures or otherwise.

Harassment or discrimination involving a student of the Board will be addressed under the Safe Schools Act and should be reported to the school or Board administration.

Locations Affected by these Procedures

These procedures are intended for all locations where business or social activities of the Niagara Catholic District School Board are conducted. Discrimination or harassment can include incidents that happen away from Board property and/or outside of normal business hours that are linked to the workplace and employment or have a detrimental impact on the workplace.

Timelines

A complaint should be brought to the attention of the Board within three (3) months of the occurrence of the events which gave rise to the complaint. However, where a reasonable circumstance exists for failing to bring the complaint within three (3) months and the delay would not result in any prejudice to the respondent, a complaint may be accepted beyond the three (3) month limit.

Mediation

At any time throughout the process, either the complainant or respondent or the official responsible for conducting the investigation may request mediation of the complaint. If all other parties (including the Board) are in agreement, the process will be adjourned in order that mediation may be conducted. Mediation will be facilitated on a without prejudice and “off the record” basis by a mediator. Without prejudice and “off the record” mediation means nothing that is said by any party in the course of the mediation may be used against them should the mediation not be successful and the investigation be resumed. Each party will be able to take their own notes as necessary. A representative of the Board will be a party in the mediation. Should the mediation be successful, the agreement reached between the parties will be confirmed in writing and signed by all parties.

Mediation may not be appropriate in all cases. Mediation is voluntarily entered into by both parties, signals that neither party wants the concern(s) to escalate, and that all parties hope to attain a mutually agreeable resolution.

Reprisals

A reprisal is any negative action experienced by an individual for making a complaint of harassment or discrimination or for participating in an investigation of harassment or discrimination. The Board recognizes the right of all of its community members to bring forward instances of harassment and discrimination. It requires individuals named as witnesses or otherwise to participate fully in the investigation process. The Board does not condone any form of reprisals for participants in this process and will investigate all reprisal claims.

Written Records

Any person who believes that they are the victim of harassment or discrimination should keep a diary or record of the incident. Such record should include the day, time and location of the incident, together with details of what occurred and any witnesses who may have observed the conduct.

Confidentiality

The complainant and respondent and any witnesses interviewed in the investigation of a complaint, together with the Board official(s) involved in dealing with the complaint, will be expected to maintain strict confidentiality about the complaint. However, it must be understood that, because of the Board’s

obligations under the Ontario Human Rights Code, the Board cannot promise any person absolute confidentiality.

The names of the complainant, respondent or witnesses will not be disclosed except as may be necessary for the purposes of carrying out the resolution procedures provided for in this procedure, where a legal process has been taken against the Board or as required by law.

Alternative Routes for Dealing with Complaints

Notwithstanding anything else provided for in these resolution procedures, where in unusual or extenuating circumstances the Board determines that a complaint should be dealt with outside these resolution procedures, then any other procedure which the Board determines to be appropriate in the particular circumstances will be followed.

Nothing in these procedures should be interpreted as denying or limiting access to other avenues of redress open under the law.

NOTE: At any stage in, before or after this process, a complainant may choose to refer the complaint to the Police, the Human Rights Tribunal of Ontario, their Professional Organization or Association or trade union. The Executive Officer of Human Resources may choose to involve the Police or other entity.

COMPLAINT RESOLUTION PROCESS - INFORMAL RESOLUTION

Informal Resolution

Informal resolution processes are used to resolve concerns and complaints in order to move working relationships forward constructively.

Complainants are encouraged to attempt to resolve concerns at the Informal Resolution Stage, within two (2) working days or timelines agreed upon by both parties. However, if the complainant believes circumstances make this difficult to do; the complainant may follow the Formal Resolution procedures.

This Informal Resolution Process uses a tiered approach:

STEP 1 (THE MAJORITY OF CASES ARE RESOLVED AT THIS STEP.)

Where possible, the complainant should advise the respondent that they consider the conduct in question to be offensive and request the respondent to stop. If the respondent fails to stop, or if the complainant does not feel comfortable in confronting the respondent, then the complainant should move to STEP 2.

In many instances the respondent does not realize that their behaviour is unwelcome and offensive, and often this will stop the offensive behaviour.

STEP 2

The complainant or witness will contact the immediate supervisor and establish an agreed to plan of action for addressing the concern(s). The immediate supervisor is required to contact the Human Resources Department for a consultation within 24 hours.

(If the immediate supervisor is the respondent then move to Step 3)

This plan of action may include:

- the arrangement of a meeting between the immediate supervisor, complainant and the respondent to discuss and reach a resolution,
- the arrangement of a meeting between the immediate supervisor and the respondent to discuss the concern(s),
- referral of the concern(s) to STEP 3,

- referral to other procedures as the Board considers appropriate.

Any agreement reached between the parties will be confirmed in writing. Each party receives a copy and a copy is also forwarded to the Human Resources department. If no agreement is reached, move to STEP 3.

STEP 3

STEP 3 is failure to reach resolution at STEP 1 and/or STEP 2, or, if the source of the complaint is the complainant's supervisor.

To enter into STEP 3 contact the Executive Officer of Human Resources who will co-ordinate the process from this point forward.

A meeting will be set up between the complainant and the Executive Officer of Human Resources to discuss the complaint.

If it appears to the Executive Officer of Human Resources, after meeting with the complainant, that the complaint may be resolved informally, an effort to do so will be made by the Executive Officer of Human Resources. This may involve meeting with the respondent separately and/or convening a meeting between the complainant and the respondent; alternatively, the matter may be referred to mediation; or some other resolution satisfactory to the complainant and the Board may be entered into.

Where the matter is not conducive to informal resolution, or where the informal efforts to resolve the complaint have failed or have not been completed within one (1) week (or such longer period as the complainant may agree to), the complaint will, if it raises a breach of the Ontario Human Rights Code, be referred to the next stage of the resolution process.

Note: If it appears to the Executive Officer of Human Resources, or designate(s), at the point the complaint is received that the complaint would not likely be settled informally, then the complaint will be moved forward to the formal resolution process.

COMPLAINT RESOLUTION PROCESS - FORMAL RESOLUTION

The complaint must be put in writing on the Complaint Form and forwarded within five (5) working days to the Executive Officer of Human Resources. The Executive Officer of Human Resources will assign the matter to an investigator (hereafter referred to as "the investigator"). The investigator will meet with the complainant to ensure that they fully understand the particulars of the complaint and to obtain the names of any witnesses or other persons who the complainant feels may be helpful to the investigation. (Should the complainant require a longer period to complete their written complaint for a justified reason, a longer period will be provided.)

The investigator will undertake to investigate the complaint within ten (10) working days of the receipt of a complaint form. In exceptional situations, upon approval of the Executive Officer of Human Resources, an outside investigator may be retained and timelines extended.

Prior to interviewing the respondent, the investigator will provide the respondent with a summary of the allegations to allow the respondent to prepare for the interview.

The investigator will interview the respondent(s) and all persons named as witnesses in the complaint. If it appears to the investigator that other persons, not named, may be able to contribute relevant information to the investigation, every effort will be made to interview these potential witnesses. The investigation shall be completed as expeditiously as possible.

In most circumstances, the complainant will be interviewed first and the respondent will be interviewed second, given that the respondent has the right to reply fully to allegations made against them, including dates, times, locations and name their witnesses etc.

All participants in the investigation process will be required to sign a confidentiality agreement.

The investigator shall complete a final report. Should it appear that disciplinary action may be required

as a consequence of the investigation, the Executive Officer of Human Resources, or designate if necessary, will determine the appropriate discipline.

The investigator shall, together with any other necessary Board official, meet individually with the complainant and the respondent to provide each of them, orally, with a summary of the conclusions reached by the investigator. The information provided in this meeting will be confirmed in writing to the complainant and to the respondent.

OUTCOMES

The Executive Officer of Human Resources will confer with the appropriate Superintendent and/or Supervisor to outline finding and review appropriate action. Steps may include but not limited to training, coaching, disciplinary action and/or termination.

Where the complaint is not upheld, no consequences will be imposed for the respondent unless it is determined that, while the respondent did not breach the Ontario Human Rights Code or the Occupational Health and Safety Act, neither did they act appropriately. In that event, one of the consequences set out above may ensue. Where the complaint is not upheld, there shall be no consequences for the complainant unless it is determined that the complaint was made vexatiously or otherwise in bad faith against the respondent. In this event, the complainant may be subject to any one of the consequences outlined above.

DOCUMENTATION

Final outcome letters will be retained in the employee's electronic personnel file and access will be restricted to only those individuals requiring access.

All other documentation, including the resolution agreement, all reports, the complaint form, all material provided to the investigator(s) by any of the parties, as well as letters sent to the parties, will be kept in a secure area which will be maintained by the Human Resources Services Department. This information will be stored electronically.

Such documentation will be kept for at least seven years. At the end of that period, the Executive Officer of Human Resources will determine whether the documentation should be retained for a longer period or disposed of in accordance with the Board Records and Information Management Policy (600.2). Any file which is retained will be reviewed, and a decision regarding retention or disposal made, at least every two years after its initial retention.

OTHER OVERLAPPING PROCEDURES

This process does not abrogate or deny the rights of any employee granted or contained in any other provincial or federal legislation or collective agreements.

The initiation of other proceedings by a complainant which may duplicate the processes under this procedure will not result in the termination of any processes commenced under this procedure except where carrying on the process may result in prejudice to the Board. The Executive Officer of Human Resources will be responsible for making the decision to terminate or, if a decision to terminate has been made, to reinstitute a process which has been commenced under this procedure.

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