



Niagara Catholic District School Board

## **EMPLOYEE WORKPLACE HARASSMENT POLICY**

### ADMINISTRATIVE OPERATIONAL PROCEDURES

200 – Human Resources

Policy No 201.7

Adopted Date: March 26, 2002

Latest Reviewed/Revised Date: October 22, 2019

The expected duties of a Supervisor of the Niagara Catholic District School Board are comprised of but not limited to being positive role models with the responsibilities of training, evaluating, counselling, supervising and disciplining when warranted. These duties in itself do not constitute harassment.

### **WORKPLACE HARASSMENT**

Means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought to reasonably be known to be unwelcome or, workplace sexual harassment.

### **ETHNOCULTURAL HARASSMENT**

Is one or a series of unwanted, unsolicited remarks, behaviours or communications, in any form, directed toward an individual or members of an identifiable group because of a prohibited ground of discrimination, which has the effect of:

- Creating an intimidating, hostile, or offensive psychological or emotional climate for work or study, and/or
- Undermining work/academic performance, and/or
- Preventing or impairing full and equal enjoyment of employment/educational services, benefits, and/or opportunities.

### **SEXUAL HARASSMENT IS:**

Unwanted sexual attention of a persistent or abusive nature made by a person who knows, or ought to know, that such attention is unwanted;

- Implied or expressed threat or reprisal in the form either of actual reprisal or the denial of opportunity for refusal to comply with a sexually oriented request; and
- Sexually oriented remarks, gestures and/or behaviour which may reasonably be perceived to cause humiliation or a negative psychological and/or emotional environment for work or study.
- 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

#### **Sexual Harassment may include:**

- The display or distributing of offensive material such as pictures, cartoons, e-mails and graffiti in schools, or in other Board premises,
- Unwanted and unnecessary physical contact,
- Unwelcome remarks, jokes or other gestures of a sexual nature.

- Unwelcome sexual innuendo, sexual advances, inappropriate body contact, request for sexual favours and the display of exploitive material.

**Sexual Harassment is not:**

- 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.

**COMPLAINT RESOLUTION PROCEDURES - INFORMAL RESOLUTION (VERBAL PROCESS)**

- 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.

Available informal resolution processes include:

- The complainant may speak directly to the accused, in order to:
  - identify the specific conduct, action or attitudes which are alleged to be harassing
  - demand that the conduct, action or attitudes cease
- The complainant may choose to speak to their Immediate Supervisor, or another Supervisor, in an attempt to resolve the complaint.
- This Supervisor may arrange informal meetings to resolve the issue and the parties concerned may be accompanied by an advocate to attend the meetings if they so choose.
- In some circumstances training (such as sensitivity awareness training or group harassment/discrimination awareness training) can be considered for the complainant and the respondent.
- No formal written records are necessary at this stage. It is strongly suggested, however, that the parties should keep personal documentation of the meeting(s).

**COMPLAINT RESOLUTION PROCEDURES - FORMAL RESOLUTION**

- This complaint procedure is not intended to affect the employee's rights and duties as outlined in relevant legislation and/or Collective Agreements or Terms of Employment.
- If the complainant is not satisfied that the informal resolution procedure has produced acceptable results, or if circumstances warrant further action, then the complainant may initiate the formal resolution procedure.
- The complainant has the right to bring forward a formal complaint and to obtain a review of their complaint in an atmosphere of respect and confidentiality without fear of embarrassment or reprisals.
- The formal complaint shall be in written form.
- The formal complaint should be brought to the attention of the Immediate Supervisor with copies to the appropriate Superintendent and the Senior Administrator of Human Resources.
- Resolution to the formal complaint process shall be initiated through the Immediate Supervisor or Senior Administrator of Human Resources.
- When the accused is the Immediate Supervisor the complaint shall be directed to the appropriate Superintendent, with a copy to the Senior Administrator of Human Resources.
- When the accused person is a Superintendent or Senior Administrator of Human Resources the complaint shall be directed to the Director of Education.
- When allegations are made against the Director the complaint shall be directed to the Chairperson of the Board.
- When allegations are made against a Trustee the complaint shall be directed to the Director of Education who will follow the process according to the Trustee Code of Conduct Policy.

- The formal written complaint shall include:
  - identification of the accused individual(s) involved
  - identification of the specific conduct, action, or attitudes which the complainant considers harassing
  - identification of any witnesses to the conduct, action or attitudes
  - a suggested resolution
- A copy of this complaint must be sent by the complainant to the accused within three (3) working days of the registration of the complaint.
- If the complaint is directed at another member of the College of Teachers, teachers are required to comply with section 18 1(b) of the regulation made under the **Teaching Profession Act**.

## INVESTIGATIVE PROCEDURE OF THE COMPLAINT BY THE SUPERVISOR

- Upon receipt of a formal complaint the Supervisor shall ascertain that a copy of the complaint has been provided to the accused and to the appropriate Superintendent and the Senior Administrator of Human Resources.
- The Supervisor shall arrange a meeting within two (2) working days of the written complaint being sent to the accused. Each party to this meeting may have an advocate present during the meeting. This advocate may be a Principal, Vice Principal, Supervisor, trusted staff member, friend, association or union representative.
- During this meeting the Supervisor shall review the complaint, allow each party to present their position relative to the complaint, and question the parties for clarification.
- **No Merit**  
A written report is expected if the Supervisor concludes after an internal investigation that the complainant's allegations have no merit. This report shall be completed with a rationale for ending the investigation. The report shall be communicated to the parties within ten (10) working days of the meeting. A copy of this report shall be forwarded to the appropriate Superintendent and to the Senior Administrator of Human Resources. If there is a determination that a report of harassment has been filed in bad faith, the investigation process will be discontinued and disciplinary action may occur.
- **With Merit**  
An internal investigation is expected if the Supervisor concludes that the allegations have merit. Upon completion of the Supervisor's internal investigation:
  - If it is determined that the respondent's behaviour did constitute harassment/discrimination, the respondent will be required to provide a written plan that outlines what will be done to prevent any reoccurrence of the harassing behaviour(s).
  - The plan will also address future interactions with the complainant to ensure that there will be no overt or subtle intimidation or retaliation. The plan may include specific action regarding harassment/discrimination prevention education or counselling provided in the community.
  - The complainant's requests regarding future interactions with the respondent will be considered in the development and the final approval of the plan.
  - The Superintendent of Human Resources will determine the appropriate disciplinary action to be taken.
- If either party is not accepting of the findings the matter may be referred to the Director of Education. The Director of Education may elect to proceed with an investigation through their office or refer the matter to an independent third party. Selection of the third party shall be the exclusive decision of the Director of Education.
- Should the Director of Education choose to investigate the matter through the Director of Education's office the Director of Education may request, in writing a meeting with either party for the purpose of reviewing the decision reached by the Supervisor. This request must be made within fourteen (14) working days of the decision by the Supervisor. The Director of Education will hold a meeting with both parties.
- After a meeting with the Director of Education a written final decision will be presented to both parties. A copy of this final decision including any prescribed action and discipline will be filed with the Senior Administrator of Human Resources.

- The final decision of the Director of Education may be appealed to the Chair of the Board. This request shall be made in writing to Committee of the Whole/or the Board by either party and is not to exceed sixty (60) school days of the Director's decision.
- If the complaint is against the Director of Education the Chair of the Board will refer the issue to the Board after conducting an informal investigation in order to assess merit.
- If the complaint is against a Trustee, the Director of Education will refer the issue to the Chair of the Board after conducting an informal investigation in order to assess merit.
- If the complaint is against the Chair, the Director of Education will refer the issue to the Vice- Chair of the Board after conducting an informal investigation in order to assess merit.
- The Board will ensure the worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, are informed in writing of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation

## RECORDS

- All records for cases determined to have merit, shall be sealed and placed in the accused person's electronic personnel file and are accessible only to authorized Board personnel, the accused and any representative of the accused with the appropriate written permission of the accused. If there are no further complaints that are deemed to have merit, within a three (3) year period this individual may request, in writing, that their record be removed and destroyed.
- At the written request of the accused, the Director of Education and/or delegate may review the appropriate harassment file after a three (3) year period provided the individual has fully complied with the Board's Employee Workplace Harassment policy during that time period.
- The Director of Education and/or delegate may, at their discretion, determine that the harassment file be retained or destroyed following the review.

## OTHER CONSIDERATIONS

- All investigations, accusations and all matters dealing with the Employee Workplace Harassment complaints will be conducted in a respectful manner with regard to due process and confidentiality.
- Any breach of confidentiality by those parties involved may result in disciplinary action.
- The process does not abrogate or deny the rights of any employee granted or contained in any other provincial acts or regulations, federal legislation or collective agreements.
- If the most recent incident giving rise to the complaint occurred prior to the current school year or prior to six months before initiation of the complaint, the complaint must have a reasonable explanation of why the complaint was not promptly made and the Supervisor, in consultation with the appropriate Supervisory Officer and/or Controller of Facilities Services, must be satisfied that the delay was incurred in good faith and no substantial prejudice will result to any individual affected by the delay.
- If the complaint is made by a student or a parent against an employee of the Board the appropriate Supervisor will exercise the relevant procedures or regulations as set out in the Police Protocol section of the Safe Schools Policy (302.6) as well as the FACS Protocol.
- The Board shall make all employees aware of this policy as well as the Employee Assistance Program (EAP, Complaint Resolution Policy and Employee Code of Conduct Policy).
- This policy will be implemented in accordance with the Municipal Freedom of Information and Protection of Privacy Act.
- Timelines to the investigation and the process listed in this policy may be adjusted with the approval and agreement of the parties.
- Copies of this policy will be submitted to the complainant and harasser upon receipt of the complaint.

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