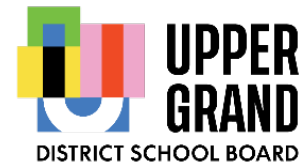


Harassment in the Workplace Procedures Manual 408-A



Category:	Human Resources
Administered by:	Executive Officer, Human Resources
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1. General

- 1.1 These procedures set out the roles, rights and responsibilities of complainants, responders, external investigators, mediators, and the Executive Officer of Human Resources. Also included are the processes involved in lodging, investigating and resolving a harassment charge.
- 1.2 All board employees and members of the school community are expected to comply with this policy.
- 1.3 It is the intent of the board that every attempt should be made to resolve a complaint of workplace harassment informally through dialogue with the persons subject to the complaint. The informal process must not minimize the concerns of complainant or create a form of intimidation.
- 1.4 All persons working on board premises are required to take action to stop harassment by relaying reports of allegation or incidents to the supervisor/principal for investigation unless the observation of report of workplace harassment indicates circumstances in which a child (under the age of 16) could be found “in need of protection” under the Child and Family Services Act. If the supervisor/principal are party to the allegations or incidents, the Executive Office of Human Resources should be notified.
- 1.5 While it is desirable for complaints of workplace harassment to be resolved with the board using this policy and procedures, complainants have the right to proceed directly to the Human Rights Tribunal of Ontario.
- 1.6 Violations of this policy can lead to disciplinary action, up to and including termination of employment.
- 1.7 An individual filing a complaint that was found following the appropriate resolution to be frivolous or vexatious may be subject to disciplinary action.

2. Definitions

These definitions are not intended to limit interactions or relationships based on mutual consent, nor do they refer to normal social contact between employees.

Workplace harassment does not include the normal direction, counselling, training, evaluation or discipline involved in carrying out the responsibilities and rights of the supervisor/administrator.

While each (reported) incident of workplace harassment will be examined on an individual basis, the following definitions will generally apply.

Workplace Harassment

Workplace harassment is defined by the *Occupational Health and Safety Act* (OHAS) 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 includes sexual harassment and racial/ethno-cultural harassment as defined below.

Workplace Sexual Harassment

Workplace sexual harassment is defined as:

- 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) 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.

It includes but is not limited to:

- sexual solicitation or advance made by a person in a position to grant, confer or deny a benefit or advantage to a person
- a reprisal or 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 grant, confer, or deny a benefit or advantage to the person
- sexual jokes when they are clearly offensive or degrading

- the display and/or distribution especially by any electronic medium of sexually offensive or degrading material, derogatory remarks directed toward members of one sex or sexual orientation
- sexually offensive or degrading words, suggestive comments, obscene comments or gestures
- derogatory remarks directed towards members of one sex or sexual orientation
- unwelcome sexual flirtations, leering, advances, propositions, gifts or requests for sexual favours
- unwanted touching
- verbal abuse or threats of sexual nature
- sexual assault

Racial/Ethno-cultural Harassment

Such workplace harassment involves any action that ridicules, degrades or expresses hatred or undue attention based on race, ethnic group, skin colour, language, dress or religion. It includes, but is not limited to:

- demeaning comments, unwelcome remarks, jokes, innuendoes or taunting about a person's group, race, ancestry, place of origin, colour, ethnic origin, citizenship or creed
- the display and/or distribution, especially by any electronic medium, of racist, derogatory, or offensive pictures or material
- the production and distribution of hate literature using any media form including the electronic media
- exclusion because of one's racial, ethnic or religious background
- slurs and remarks about a group meant to demean and degrade that group in the presence of an individual (not necessarily a member of the group mentioned) that create a poisoned environment
- threats, abuse, or assault

3. General Rights and Responsibilities

3.1 A party to a complaint has the right to:

- be heard in an unbiased manner and to be taken seriously

- confidentiality to the extent possible
- know the names of the individual parties to the complaint and the appointed investigator

3.2 A complainant has the right, in addition to those in 3.1 above, to:

- seek assistance and support
- have the allegation taken seriously and to be assured that all efforts will be made to investigate the allegation in a fair and expedient manner
- be informed of decisions to the extent possible that appropriate corrective action has been taken
- protection from reprisal or threat of reprisal

3.3 A respondent has the right, in addition to the rights noted in 3.1 above, to:

- seek assistance and support
- respond to the allegations
- know the identity of the complainant
- know the details of the complaint
- protection from being prejudged

3.4 It is the responsibility of a complainant to:

- report the concern to a principal/supervisor, a supervisor's supervisor, a union or association representative, a superintendent/senior administrator, or the Director if the concern involves a superintendent/senior Administrator
- bring forth information in a timely fashion that is an accurate account/description of the alleged incident(s)
- maintain confidentiality
- co-operate with the individual(s) involved in the complaint and the resolution process
- report any further occurrence of workplace harassment, or reprisal, or threat of reprisal

3.5 It is the responsibility of the respondent to:

- bring forth information in a timely fashion that is an accurate account/description of the alleged incident(s)
- maintain confidentiality
- co-operate with the individual(s) involved with the complaint and the resolution process
- refrain from reprisal or threats of reprisal

4. Procedures

An individual has the right, based on observed events, to lodge a complaint of workplace harassment with the board, without fear of reprisal or threat of reprisal for doing so.

4.1 Allegations of Workplace Harassment: Employee(s) by Employee(s)

Note: All information obtained and actions taken must be documented in writing.

An employee who feels that they have been the subject of workplace harassment should do the following:

- 4.1.1 Tell the harasser that their behaviour is unwelcome and to stop.
- 4.1.2 Keep records of incidents in as much detail as possible. Record dates, times, locations, possible witnesses, what happened, and your reaction in as much detail as possible. It is not necessary to have a record of events to file a complaint, but it can help remember details.
- 4.1.3 If the behaviour does not stop immediately, the individual does not feel comfortable approaching the alleged harasser, or the behaviour was of such a nature that it causes the individual ongoing discomfort, the individual should contact one of the following, who will attempt to resolve the issue or advise the individual of their right to file a formal complaint:
 - a principal or supervisor
 - a supervisor's supervisor

- a union or association representative
 - a superintendent/senior administrator,
 - the Director if the concern involves a superintendent/senior administrator
- 4.1.4 To lodge a formal complaint, the complainant sends a written and signed complaint form (Form 408-1 Workplace Harassment Report Form) to the Executive Officer, Human Resources identifying the nature of the workplace harassment and other particulars. The Executive Officer, Human Resources determines whether the complaint falls within this policy and if so, ensures that a copy of the complaint is sent to the respondent.
- 4.1.5 The respondent shall have ten (10) working days to provide a written response to the complaint.
- 4.1.6 Within ten (10) working days of the complaint being filed, the Executive Officer, Human Resources, appoints an investigator. The investigator may be an individual from another board or agency, or a staff member with administrative responsibilities, such as a principal or superintendent. The investigator should have received training to conduct an investigation.
- 4.1.7 The investigator will make contact with the parties and initiate the investigation within ten (10) working days of being appointed.
- 4.1.8 The investigator will:
- 4.1.8.1 meet with the complainant to clarify the complaint and obtain additional information and will obtain a signed written statement from the complainant
 - 4.1.8.2 after meeting with the complainant, meet with the respondent and give him or her an opportunity to respond to the allegations and will obtain a signed, written statement from the respondent
 - 4.1.8.3 interview any witnesses with relevant information regarding the complaint and obtain signed, written witness statements
- 4.1.9 At any time prior to or during the investigation process, mediation

can be an effective and efficient method of complaint resolution that maintains the dignity of the parties and is consistent with the spirit of the Ontario Human Rights Code.

- 4.1.10 If the parties agree to mediation, the Executive Officer, Human Resources shall appoint a neutral mediator who shall attempt to resolve the matter.
- 4.1.11 Should mediation resolve the matter, the mediator shall prepare a Settlement Document outlining the details of the resolution. The parties and the Executive Officer, Human Resources will sign the report. Any discipline resulting from the document will be noted and the copy will be placed in the individual's H01 (personnel) file.
- 4.1.12 If mediation is unsuccessful, the investigator shall prepare a written report of the findings of fact and a summary of the findings, and submit them to the Executive Officer, Human Resources. The summary of the findings shall be sent to the complainant and the respondent.
- 4.1.13 The Executive Officer of Human Resources may, at their discretion, facilitate an informal meeting with the parties to discuss the findings of the report.
- 4.1.14 Should discussion at this stage resolve the matter, the Executive Officer, Human Resources shall prepare a Settlement Document which outlines the details of the resolution. The parties and the Executive Officer, Human Resources shall sign the document. Any discipline resulting from the report will be noted and a copy will be placed in the individual's H01 file.
- 4.1.15 If mediation is not possible, the Executive Officer, Human Resources shall prepare a written decision outlining the findings, disciplinary actions, if any, and other non-disciplinary actions such as education and training as necessary. Disciplinary actions may include, but are not limited to:
- requiring the harasser to apologize in writing, and/or in person
 - requiring the harasser to seek counseling through the Employee Assistance Program or other service provider

- disciplinary letter placed in the employee's H01 file
- suspending the harasser from work with or without pay, and/or
- terminating the employment of the harasser

If the complaint is found to be vexatious or improperly motivated the complainant may be subject to the sanctions noted above.

- 4.1.16 The decision report should be prepared within thirty (30) days of the receipt of the investigation report, and should be held in the confidential workplace harassment files of the Executive Officer, Human Resources and shared with the parties as appropriate.
- 4.1.17 An individual who has been disciplined as a result of these proceedings, may request recourse after a period of not less than two (2) years, to have the disciplinary letter, if any, removed from the H01 file. The decision of the Executive Officer, Human Resources in this regard, is final.

4.2 Allegations of Workplace Harassment: Employee(s) by Student(s)

Note: All information obtained and actions taken must be documented in writing.

- 4.2.1 Employees who believe a student has harassed them should report the incident(s) to the principal or immediate supervisor who will report the incident to the principal.
- 4.2.2 Upon receiving a formal complaint, the principal shall conduct an immediate investigation into the incident(s). The processes of procedural fairness should guide the investigation. To ensure procedural fairness the respondent will be provided with an opportunity to know the allegations made against them (and the name of the complainant), and an opportunity to respond to the complaint. There will be an opportunity for each side to know the outcome. Should it be determined that the student has harassed the employee, the principal shall refer to the board's policy 503 Safe Schools to determine the appropriate outcome.

4.3. Allegations of Harassment: Employee(s) by Other(s)

Note: All information obtained and actions taken must be documented in writing.

4.3.1 Reporting

If an employee feels that they have been the subject of workplace harassment by someone other than an employee or student, they should report by contacting a principal, manager, superintendent, or union/association representative, who shall advise the employee's immediate supervisor.

4.3.2 Resolution

To attempt to resolve the situation, when the immediate supervisor is informed of the situation, they will obtain details of the incident. In some circumstances, it may be prudent to attempt to conduct an investigation of the complaint, to the extent possible, given the nature of the relationship between the alleged harasser and the board. Where that is the case, the investigation steps (noted in 4.1.8 Formal Complaint above) should be followed. If it is found that workplace harassment has occurred, the supervisor, in consultation with the appropriate senior administrator or designate shall take whatever action is appropriate to stop the harassment. Options may include, but are not limited to:

- 4.3.2.1 telling the person that their comments and or behaviour are inappropriate and in contravention of board policy (and/or the Ontario Human Rights Code), and that the harassment must stop
- 4.3.2.2 issuing a notice of trespass to the outsider and a warning that the police will be called if attempts are made to enter the property
- 4.3.2.3 the principal excluding a person from the school under section 265(m) of the *Education Act*
- 4.3.2.4 ensuring that the complainant has another staff member present if they are required to interact with the individual

in the future (as in the case of workplace harassment perpetrated by a parent or guardian)

- 4.3.2.5 requesting that a vendor or other service provider send a different representative to conduct business on board property
- 4.3.2.6 contacting the police in the case of a threatening situation where there is concern for the safety of an employee or others.

4.4 Allegations of Harassment: Student(s) by Other Student(s)

Note: All information obtained and actions taken must be documented in writing.

- 4.4.1 A student who believes that they have been harassed by another student should report the incident(s) to the principal.
- 4.4.2 Upon receiving a formal complaint the principal shall conduct an immediate investigation into the incident(s). The processes of procedural fairness should guide the investigation. Should it be determined that the student has harassed another student, the principal shall refer to the board's Policy 503 Safe Schools to determine the appropriate outcome.

To ensure procedural fairness, the respondent will be provided with an opportunity to know the allegations made against them, the name of the complainant and an opportunity to respond to the complaint. There will be an opportunity for each side to know the outcome.

4.5 Allegations of Harassment: Student(s) by Staff Member(s)

Note: All information obtained and actions taken must be documented in writing.

- 4.5.1 It is the responsibility of the principal or vice-principal to investigate all student complaints of workplace harassment by staff. The student should be aware that the term "staff members" includes but is not limited to teachers, guidance counselors, coaching staff, principals and vice-principals, custodians and secretaries. Workplace harassment may involve an abuse of

power if the student is coerced into granting favours to the staff member. Coercion may be evidenced by actions such as threats of receiving a low mark or a failing mark, or in the form of a promise of a reward, special favour or receiving an unearned passing grade or higher mark. Harassment may be persistent and ongoing inappropriate comments, gestures or touching.

4.5.2 Any allegation of workplace harassment shall be taken seriously, and listened attentively to in a manner that does not humiliate or degrade the student making the allegation. A student who believes that they have been harassed by a staff member is to take the following steps:

4.5.2.1 The student should report the harassment directly to the principal or vice-principal. Otherwise the student is to tell someone whom they trust at home and/or at the school (parent/guardian, the school advisor, a classroom teacher, guidance counselor, or any other adult in the school) about the harassment as soon as possible. A student may wish to take along a friend or support person when reporting the incident(s).

4.5.2.2 The trusted adult shall report the alleged harassment to the principal/vice-principal.

Note: if the alleged harasser is the principal or vice-principal, the complaint is to be made directly to the Superintendent of Education.

4.5.3 The principal or vice-principal will notify the Superintendent of Education of the alleged occurrence(s). The Superintendent of Education will consult with Human Resources. Parents/guardians will be informed depending on the nature of the harassment and based on the notification of victim's parents as outlined in board Policy 503 Safe Schools. The Superintendent of Education and the Executive Officer, Human Resources will oversee the board's investigation as necessary.

4.5.4 The student will be asked to tell a person conducting the investigation what happened in as much detail as possible. A friend, peer, teacher or someone else may accompany them. Witnesses will be interviewed independently. The alleged

harasser will have an opportunity to respond to the allegation, if they so choose.

- 4.5.5 The alleged harasser may be accompanied by a representative of their association/union during the interview related to the complaint. If the alleged harasser is not represented by a union/association, they may be accompanied by a support person.
- 4.5.6 The respondent has the right to make a written response to the allegations including any additional claims that may be found during the investigation.
- 4.5.7 The investigator shall prepare a report of the findings of facts, and a summary of the findings and submit them to the Executive Officer, Human Resources. The summary of the findings shall be sent to the claimant and the respondent.
- 4.5.7 Consequences, including sanctions for a vexatious complaint or disciplinary action for harassing behaviour, may result.
- 4.5.8 The completed report shall be forwarded to the Human Resources Department for filing in the confidential harassment files of the Executive Officer, Human Resources.