

**MOOSE FACTORY ISLAND
DISTRICT SCHOOL AREA BOARD**

ADMINISTRATIVE PROCEDURE NO. 493	
Effective	
Revision Date	

WORKPLACE CONFLICT AND HARASSMENT

PURPOSE

The purpose of this administrative procedure is to foster a working environment that supports productivity and the pursuit of personal goals. This administrative procedure addresses workplace conflict that is unrelated, or not primarily related, to the enumerated grounds described in human rights legislation under the *Ontario Human Rights Code*.

This administrative procedure seeks to prevent workplace conflict by demonstrating a district commitment to establishing and maintaining a respectful working environment and by providing clarity to all staff members about workplace conduct that is considered objectionable and will not be condoned.

DEFINITIONS

Workplace Conflict: Workplace conflict refers to a dispute about conduct directed at an individual by another staff member. The objectionable conduct is often, but not always, persistent, ongoing, vexatious conduct or communication which might reasonably be known to be unwelcome. Objectionable communication may include electronic messages.

Workplace Harassment: Workplace harassment is a course of vexatious comment or conduct directed at a specific individual that serves no legitimate work purpose and renders the workplace environment intolerable for that individual. Workplace harassment occurs when an individual is repeatedly singled out for serious mistreatment, which may include threats, bullying, cyber bullying, verbal assault, taunting, ostracizing or violent gestures and actions.

Management Functions: Management functions include, but are not limited to, supervision, performance appraisal, training, instruction, correction, counselling or discipline. The exercise of management functions 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.

Objective Standard for Assessment: Under this administrative procedure, the determination of whether workplace harassment has occurred shall be assessed using an objective standard. The subjective belief of the complainant that he or she has been harassed shall not be determinative. Rather, what will be determinative is whether, in the same circumstances, a reasonable person would perceive that he or she has been harassed.

Complainant: The complainant is the person allegedly being harassed.

Respondent: The respondent is the person accused of harassing.

Advisor: The advisor is the principal, non-union supervisor, or superintendent to whom a complaint is reported.

Mediator: A mediator is a neutral third person appointed to support informal resolution of the complaint.

Investigator: An investigator is appointed to perform a formal investigation.

PROCEDURES

1. COMMITMENT

- 1.1. This 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.
- 1.2. This administrative procedure also provides formal complaint procedures to address allegations of workplace harassment that, when viewed objectively, would render a staff member's competent performance of work impossible or would make the workplace environment untenable for that individual.

2. APPLICATION

Administrative Procedure 493 applies to all staff members of Moose Factory Island District School Area Board wherever they are performing work or attending work-related functions, including schools and school-related activities, board offices and facilities and off-site conferences, training sessions, and social activities organized or sanctioned by the supervisory officer or designate.

3. INFORMAL RESOLUTION

- 3.1. Informal resolution is a procedure that provides an opportunity for parties to resolve a dispute mutually in a respectful manner, without a formal investigation. The prime objective of the process is to deal quickly and effectively with workplace conflict.
- 3.2. In the case of informal complaints, where the parties are members of a union, federation or association, a resolution facilitated by the appropriate representative(s) is recommended, if acceptable to both parties.
- 3.3. Supervisory or managerial 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 and by obtaining a commitment that the behaviour will stop;
- 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 district 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.

3.4. Informal resolution of workplace conflict may be facilitated if the complainant is willing to work with an advisor to name the alleged harasser, describe the objectionable behavior in detail, and to suggest a preferred method of resolution. The advisor will provide the information to the alleged harasser, inform the respondent of his or her rights under this administrative procedure, and request a written response to the allegations.

3.5. 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. Even if a formal complaint has been made, the parties should consider whether mediation might provide a solution.

3.6. 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.

3.7. 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 his or her 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.

3.8. Successful mediation results in a voluntary agreement to resolve the dispute based on specific, mutually agreeable terms.

3.9. 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.

4. ADVANTAGES OF INFORMAL RESOLUTION

- 4.1. 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. The alleged harasser has access to the support of his or her union, federation, or professional association.
- 4.2. 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.

5. THE FORMAL COMPLAINT PROCESS

- 5.1. Formal complaints 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 the supervisory officer is not satisfied that reasonable efforts have been made to resolve the dispute informally.
- 5.2. The staff member will make a written complaint containing sufficient information about the allegations to give the alleged harasser a meaningful opportunity to respond.
- 5.3. The staff member will submit the complaint to his or her immediate supervisor. If the supervisor is the respondent or is alleged to condone the objectionable behaviour, the complaint shall be reported to the individual to whom that supervisor reports.
- 5.4. When both parties are teachers, the teacher making the complaint must meet the reporting obligations found in paragraph 18 (1) (b) of the Regulation Made Under the Teaching Profession Act.
- 5.5. A staff member who is alleged to have demonstrated harassing conduct has a right to know in a timely manner that he or she is the subject of a formal complaint, who the complainant is, and what the specific 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.
- 5.6. Any administrator or manager who observes an incident that, in his or her opinion, meets the definition of workplace harassment has a positive duty to initiate a complaint under this administrative procedure.

6. THRESHOLD ASSESSMENT AND DECISION

- 6.1. All complaints filed under this administrative procedure shall be subject to an immediate threshold assessment by a person designated by the supervisory officer

to determine whether the alleged conduct would, if proven, meet the definition of workplace harassment.

- 6.2. If the threshold assessment determines that the complaint filed:
- a) would not, if true, meet the definition of workplace harassment;
 - b) 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) is vexatious, frivolous or trivial, has not been made in good faith or would, if investigated, constitute an abuse of this administrative procedure;

the complainant shall be so advised in writing together with brief reasons for the decision.

7. REVIEW OF THRESHOLD DECISION

- 7.1. Upon being notified that the complaint, as framed, will not trigger the application of this administrative procedure, the complainant will have ten (10) school days within which to appeal this decision, together with written reasons to the supervisory officer. The supervisory officer shall independently consider the complaint, the written explanation as to why the complaint did not pass the threshold assessment, the complainant's appeal submissions, and any written response to the complainant's appeal submissions.
- 7.2. The supervisory officer shall have absolute discretion to reconsider the threshold assessment to determine whether the alleged conduct would, if proven, meet the definition of workplace harassment. The supervisory officer shall communicate this decision to the complainant, and the decision shall be final.

8. PREVENTING MULTIPLE PROCESSES

- 8.1. The complainant must select one process for the investigation and resolution of the complaint. If the complainant raises the same issues in another process, either under another administrative procedure or under the applicable collective agreement, any investigation commenced under Administrative Procedure 493 shall cease immediately and shall not later resume, even in the event the complainant is not satisfied with or received an unfavourable outcome under another administrative procedure or process.
- 8.2. Nothing in this administrative 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)*. However, in the event the complainant chooses to pursue the issue in either or both of these external bodies, processing of the complaint under this administrative procedure shall be stayed unless or until there is resolution by the external body.

9. THE FORMAL COMPLAINT PROCESS

- 9.1. A complaint of workplace harassment must be made within six (6) months of the most recent incident that gives rise to the allegations. A complaint outside of this timeline may be permitted to proceed to investigation if, in the judgment of the supervisory officer or designate, the respondent's right to provide a meaningful response has not been prejudiced and if the complainant has a reasonable explanation for the delay.
- 9.2. If a complaint satisfies the threshold assessment referred to in section 6 above, the supervisory officer shall appoint an investigator. The investigator shall have no prior connection with the unsuccessful informal resolution process and shall have training and experience in investigating allegations of serious misconduct in the workplace.
- 9.3. Both parties to a complaint are entitled to seek support and representation from their union, federation, or professional association at any stage of the process. The investigator shall make a reasonable effort to accommodate the schedules of the parties and one representative each in scheduling interviews and meetings.
- 9.4. The parties to a complaint are required to keep the matter confidential, subject to their right to confide in their union, federation, or professional association and/or family members. Any witnesses interviewed for the purposes of the investigation shall be advised of their obligation to maintain confidentiality regarding the investigation.
- 9.5. All notes and records generated by the complaint and its investigation shall be kept by the board in compliance with the *Municipal Freedom of Information and Protection of Privacy Act*.
- 9.6. Every effort shall be made to ensure the conclusion of the investigation process, including final disposition of the complaint, within three months of receiving the complaint.
- 9.7. The parties to the complaint shall be entitled to a copy of the investigator's interim and final reports, so long as they sign an undertaking to keep the report(s) confidential. Any breach of confidentiality under this procedure by either party to a complaint shall be grounds for discipline, up to and including dismissal.

10. THE INVESTIGATOR'S ROLE

The investigator shall review this administrative procedure, and be provided with a copy of the formal complaint. The investigator's mandate shall be limited to investigating and reporting on whether the allegations of workplace harassment have been proven. In the course of the investigation, the investigator shall:

- a) provide the respondent with a written copy of the complaint and a copy of this administrative procedure;
- b) enable the respondent and/or the respondent's representative to provide a written response to the complaint, if the respondent so chooses;

- c) interview the complainant and receive a list of the complainant's suggested witnesses;
- d) interview the respondent and receive a list of the respondent's suggested witnesses;
- e) interview those witnesses suggested by both parties that the investigator believes will be able to provide information relevant to the complaint;
- f) consider the evidence of the parties and all of the witnesses and re-interview the complainant and/or the respondent if it is necessary to enable one or both of them to respond to the evidence provided by others;
- g) take and maintain detailed notes of all interviews;
- h) summarize the evidence in a written report, which shall contain conclusions as to whether the allegations have been proven on a balance of probabilities;
- i) provide a copy of the written report to the parties and receive their feedback; and
- j) prepare a final written report and submit it to the parties and to the supervisory officer or designate.

11. REVIEW

Within two (2) weeks of having received the investigator's final written report, either party may request, in writing, a review of the investigator's conclusions and/or report for one or both of the following reasons:

- a) the investigator did not comply with this administrative procedure; or
- b) new evidence has arisen that was not known to the parties or the investigator prior to the writing of the report.

No party shall be permitted to seek a review of the investigator's conclusions merely on the basis that the party disputes a finding of fact.

The supervisory officer shall undertake the review and shall report the results of the review to the parties involved. The supervisory officer shall affirm or amend the investigator's final report, or direct that a new investigation be undertaken.

12. DISCIPLINE AND OTHER OUTCOMES

The supervisory officer or designate may impose discipline as appropriate in the circumstances, up to and including termination of the respondent's employment with the board. In addition to or instead of imposing discipline, the director or designate may direct any of the following:

- a) appropriate counselling or training;
- b) strategies for restoring a positive work environment;
- c) mediation;
- d) transfer or separation of the parties to the complaint; and/or
- e) other restorative measures deemed appropriate, with input from the parties.

13. COMPLAINTS MADE IN BAD FAITH

If, following the investigation, the investigator determines, on a balance of probabilities, that the complainant's allegations have been made in bad faith and/or constitute an abuse of this administrative procedure, the investigator shall include this finding in the report.

The supervisory officer or designate may impose discipline on the complainant as appropriate in the circumstances, up to and including termination of the complainant's employment.

14. REPRISALS

A respondent shall not engage in reprisals against a complainant for having made a complaint under this administrative procedure. Alleged reprisals shall be investigated and, where proven, may result in discipline as appropriate in the circumstances, up to and including termination of the respondent's employment.

Legal References:

Criminal Code (Canada)

Ontario Human Rights Code

Ontario Labour Relations Act

Municipal Freedom of Information and Protection of Privacy Act

Ontario Regulation 437/97 Professional Misconduct under the *Ontario College of Teachers Act*

Regulation Made Under The *Teaching Profession Act*

Policy/Program Memorandum No. 128 The Provincial Code of Conduct and School Board Codes of Conduct

Board References:

Board Policy GOV-01 Mission, Vision, and Values

Board Policy GOV-07 Learning and Working Environment: Equity and Inclusion

Board Policy GOV-09 Safe Schools: Code of Conduct

Administrative Procedure 494 Violence in the Workplace

Resources:

Colman, S. A. & Otten, A. L. (2007). *An Educator's Guide to Understanding Workplace Harassment*. Ontario Principals' Council. Aurora: Canada Law Book. A Division of The Cartwright Group Ltd.