

**Classification:** Staff/Volunteers

**No.** 226.1

**Cross Reference:** Policy 226

**Legal Reference:** Ontario Human Rights Code, [Occupational Health and Safety Act](#)

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## Safe Workplace - Workplace Harassment

### 1. General

In accordance with the Safe Workplace – Workplace Harassment policy (# 226), this procedure provides a mechanism for dealing with complaints of workplace harassment occurring in the working and learning environment. Nothing in this procedure denies or limits access to other avenues of redress available under the law or through the filing of a grievance or through progressive discipline. In such a case, this process shall cease until the parties and their respective representatives have met with the Superintendent of Human Resources to determine which dispute resolution process will proceed and which one(s) will be held in abeyance pending completion of the chosen process.

The rights of students to a respectful learning environment free from harassment and objectionable behaviour are dealt with under other appropriate policies, legislation or regulations including, but not limited to, Codes of Behaviour, Safe Schools Act (now section XIII of the Education Act, Professional Codes of Conduct). Students should contact their Principal for clarification on the process to be followed.

### 2. Definitions

- 2.1. Harassment - Harassment means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome contrary to any ground prescribed by the *Ontario Human Rights Code*. Harassment can include sexual harassment as defined pursuant to the *Code*.
- 2.2. Objectionable Behaviour - Objectionable behaviour 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. A single serious act or expression can constitute objectionable behaviour. Objectionable behaviour is not the normal exercise of supervisory responsibilities, including training, direction, instruction, performance appraisal, counselling or discipline.
- 2.3. Workplace Harassment - Workplace harassment is defined in the *Occupational Health and Safety Act* (OHSA) 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.
- 2.4. Employee - Under this Procedure, the work employee includes all persons employed by the board.  
Other users – include Trustees, parents, volunteers and community members who are neither students nor employees while on Board premises or attending Board or school

programs/functions at other premises or in a business/social community relationship with the Board.

- 2.5. Complainant – This is the person who is making the complaint under this procedure. The employer may be the complainant under these procedures.
- 2.6. Respondent – This is the person against whom the complaint is made.
- 2.7. Standard of Proof-A Standard of Proof is used to make judgements in legal proceedings. For purposes of this procedure, a civil standard of proof will be used; that is, proof on the balance of probabilities.

The “balance of probabilities” is a standard of proof based upon the weighing of evidence to determine the most appropriate judgment. It is often distinguished from another standard of proof, “beyond a reasonable doubt” which is used in the criminal system.

This standard will be objective. It will not be sufficient for a complainant to prove that s/he found the alleged conduct unwelcome. The complainant must demonstrate that the conduct itself was workplace harassment or objectionable behaviour based on an objective assessment of that conduct (i.e. would another reasonable person in the same situation find the conduct to be harassment).

### **3. DUTIES AND RESPONSIBILITIES**

UCDSB is a system of character that promotes caring, cooperation, honesty, humour, integrity, respect, responsibility and academic excellence in a safe learning and teaching environment. All persons in its learning/working environment will create and contribute to a climate of understanding and mutual respect for the rights and dignity of each individual by:

- Respect differences in people, their ideas and opinions;
- Treat one another with dignity and respect at all times, and especially when there is a disagreement
- Respect the rights of others;
- Show courtesy and self-discipline in actions and words
- Respecting rules, regulations and practices in place
- Demonstrate honesty, integrity and behaviours that are representative of a positive and supportive atmosphere
- Show proper care and regard for Board property and for property of others;
- Demonstrate honesty and integrity and
- Respect the needs of others to work in an environment of learning and working

The UCDSB has a duty to maintain an environment respectful of human rights and free of harassment and objectionable behaviour for all persons served by it. The Board expects that all persons in its learning and working environment will:

- Be aware of and sensitive to issues of harassment or objectionable behaviour;
- Support individuals who are, or have been, targets of harassment or objectionable behaviour;
- Prevent harassment or objectionable behaviour through training;
- Take all allegations seriously and respond promptly;
- Provide positive role models; and
- Not demonstrate, allow or condone behaviour contrary to the procedure, including reprisal

## **4. ADMINISTRATIVE PROCEDURES**

### **4.1. Reporting Complaints**

All individuals covered by the Policy have access to complaint procedures. Individuals who believe that they have been subjected to harassment or objectionable behaviour may file a complaint and are entitled to have access to the dispute resolution processes. In addition, those who have witnessed objectionable behaviour or harassment, or have reasonable ground to believe that these are occurring, may initiate a complaint. Anonymous reports will not be entertained for dispute resolution under this Procedure.

Every attempt should be made to resolve matters through an informal resolution. The first step is to inform the individual that his/her behaviour is unwelcome and must stop immediately. In order to stop such conduct, supervisory and managerial personnel must address and attempt to resolve disputes in a timely fashion.

If the supervisor is the party alleged to be responsible for the harassment or alleged to condone the behaviour, the complaint should be reported to the appropriate manager above the supervisor.

### **4.2. Support for Parties Involved**

All parties to a complaint, including the complainant, respondent and any witnesses are entitled to have support while participating in the Safe Workplace and Workplace Harassment policy and procedure. This may take the form of having a support person present at the meetings where the individual is required and/or permitted to attend. Appropriate support persons may include a spouse, a friend, a colleague, a supervisor, a union representative or legal counsel. Other parties to the complaint and/or individuals already supporting another party in the same matter will not be considered a suitable support person.

### **4.3 Timelines for initiating a complaint**

A complaint must be filed within six (6) months of the most recent instance of alleged harassment/objectionable behaviour. Formal complaints filed outside of this timeframe may be considered by the Superintendent of Human Resources or designate.

### **4.4 Confidentiality**

It is the duty of the supervisory and managerial personnel to maintain confidentiality in the complaint process. All complainants, respondents and other persons involved with the complaint process under this Procedure will ensure that all matters and the process remains confidential.

Witnesses will be informed that supervisory and managerial personnel, in obtaining a statement, will maintain such statement in confidence, subject to their ability to conduct a full and thorough investigation.

Notwithstanding the above, 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 they have an opportunity to respond to the allegations.

The Board may be required to provide information obtained during an investigation to an outside agency that has the right to require information otherwise protected by the Municipal Freedom of Information and Privacy Act.

### **4.5 Records**

All correspondence and other documents generated under this Procedure must, subject to the Municipal Freedom of information and Privacy Act, be marked "PRIVATE and CONFIDENTIAL" and be stored in a secure manner in the Human Resources department.

#### 4.6 Misuse of the complaint procedures

If there is a determination on a balance of probabilities that a complaint has been filed in bad faith, the complaint process may discontinue and disciplinary action may occur. Taking action to address an individual who has made a complaint in a vexatious, bad faith or malicious manner shall not be considered reprisal under this procedure.

#### 4.7 Reprisals

Reprisals against individuals because they have reported a complaint are strictly forbidden. Alleged reprisals shall be investigated as formal complaints and if substantiated, are subject to the same consequences as complaints of workplace harassment or objectionable behaviour.

## 5. DISPUTE RESOLUTION PROCESSES

### 5.1 Informal Resolution Process (Verbal)

- 5.1.1 Supervisory or managerial personnel may become aware of harassment or objectionable behaviour in the working and learning environment in different ways. They may observe it directly or receive a verbal report from the individual affected. This procedure requires that all those who are covered by this procedure immediately report alleged occurrences. Consequently, managerial or supervisory personnel may receive third party reports.

It is important that supervisory and managerial personnel pay attention to symptoms arising out of possible harassment or objectionable behaviour such as reduced productivity, changes in behaviour, absenteeism, rumours and requests for transfers. Without assistance, the targets may be embarrassed or reluctant to report a situation.

- 5.1.2 Informal resolution is a process that provides an opportunity for parties to mutually resolve a dispute in a respectful manner. The Board encourages supervisory and managerial personnel, as well as union representatives, to first attempt informal resolution as a means to resolving the issues.
- 5.1.3 A timely (speedy) resolution of a complaint can prevent escalation and further negative consequences, while promoting restoration of a healthy learning and working environment.
- 5.1.4 When an informal complaint comes forward, the appropriate supervisor/manager is to ensure that an informal investigation has taken place and that a discussion has been facilitated. They, along with union representatives, may facilitate an informal resolution by:
- Encouraging the complainant to confront the problem by making it clear to the individual alleged to have engaged in harassing behaviour that the behaviour is not acceptable and by obtaining a commitment that the behaviour will stop;( note if the person who feels they are being harassed has any concerns for his or her personal safety, he or she should not approach the alleged harasser. )
  - Informing the individual of the complainant's concern regarding the alleged harassing behaviour and the Board's expectation for appropriate behaviour
  - Providing a copy of the Board's procedure # 226 – Safe Workplace-Workplace Harassment
  - Obtaining a commitment that the behaviour will stop; and
  - Following up with the complainant to ensure that the behaviour has stopped
- 5.1.5 In cases where an informal plan of action is implemented, supervisory and managerial personnel shall follow up by monitoring the situation, holding, if necessary, subsequent meetings with the parties and taking further steps to ensure

that the objectionable behaviour has stopped.

- 5.1.6 Where disputes are resolved informally, there will be no formal reports about such disputes. Every effort will be made to protect the privacy of individuals.

For informal complaints, where the parties are members of a union or the school community, a resolution facilitated by the appropriate representative(s) is recommended, if acceptable to the parties.

## **5.2 Formal Complaint Process (Written)**

### **5.2.1 Initiating a complaint**

Employee complainants wishing to file a formal complaint should complete the Workplace Conduct Complaint Form then forward it to the Superintendent of Human Resources or Designate. If an employee requires assistance in completing the formal complaint form another individual such as a supervisor, colleague, union representative may provide support.

### **5.2.2 Responding to a complaint**

Individuals who are named as respondents in a complaint have a right to know in a timely manner that they are the subject of a complaint, who the complainant is, what the allegations are and what approach to a resolution is being considered. In particular, a respondent has a right to know the specifics of an allegation, including times, dates and alleged conduct. Respondents will be provided a copy of the Workplace Conduct Complaint Form and given time to prepare a full and complete response to the allegations.

Other user respondents may wish to contact other appropriate personnel; for example, an employee of another organization may wish to seek assistance and support from within that organization.

### **5.2.3 Assistance for complainants, respondents and witnesses**

Prior to initiating any complaint and throughout the complaint process, complainants have a right to assistance and support.

Individuals, who are named as respondents in a complaint, as well as witnesses, also have a right to assistance and support throughout the complaint process. The following people may provide support:

- Trained resource people
- Professional support staff
- Union representative
- Employee or colleague
- Translator/interpreter
- Others, deemed appropriate by the supervisor

### **5.2.4 Procedures for resolving a complaint**

In all cases, supervisory and managerial personnel have a duty to respond to and take action to resolve any alleged or suspected situations involving harassment or objectionable behaviour.

### **5.2.5 Threshold Assessment**

- 5.2.5.1 All formal complaints filed under this procedure shall be provided in writing using

Workplace Conduct Complaint Form and shall be subject to an immediate threshold assessment to determine whether the alleged conduct would, if proven, meet the definition of harassment, workplace harassment or objectionable behaviour. Complaints should be forwarded to the Superintendent of Human Resources or designate.

5.2.5.2 If the threshold assessment determines that the report filed:

- Would not, if true, meet the definition of harassment, objectionable behaviour, workplace harassment; or
- Does not provide sufficient details of the alleged behaviour, provided the complainant is given notice that insufficient details have been provided and given reasonable time to remedy the deficiency; or
- Is frivolous, trivial or vexatious, has not been made in good faith or would, if investigated, constitute an abuse of the procedure the complainant shall be so advised and no further action shall be taken under this Policy or Procedure.

5.2.5.3 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).

5.2.5.4 Where the allegation relates to violence in the workplace under the Ontario Health and Safety Act, (as amended June 2010) they shall be addressed using the appropriate Board policy and procedure (i.e. [Violence in the Workplace policy # 421](#)).

5.2.5.5 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 may be stayed or until there is a resolution by the external body.

### 5.3 Formal Investigation and Resolution

5.3.1 Formal complaints require an investigation of the complainant's allegations. The Superintendent of Human Resources, or designate, will appoint a trained investigator (s). A person who assisted with the complaint at any stage may not serve as the investigator(s). The standard of proof to be applied is the balance of probabilities.

5.3.2 In a formal investigation, the following steps will be taken as soon as possible:

- a. Take the appropriate measures to ensure the safety of the complainant
- b. Notify the complainant (s), the respondent(s) and the witness(es) that they are entitled to support and assistance throughout the process
- c. Ensure that the respondent(s) has a copy of the complaint
- d. Interview the complainant(s) and/or third party who reported the complaint
- e. Inform the respondent(s) of the allegations and provide an opportunity for response
- f. Interview the respondent(s)
- g. Interview the witness(es)
- h. Come to conclusions about whether there was objectionable behaviour/harassment 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;
- j. Will take appropriate action (s) to resolve the situation

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. The Investigator should notify Human

Resources early in the process should the respondent decline participation.

#### **5.4 Outcomes of a Formal Investigation**

##### **5.4.1 Complaint NOT substantiated**

In the event a complaint is not substantiated, no further action will be taken, subject to the section on maintaining records. However, if there is a need to restore a positive learning and working environment or if the complainant and/or respondent require counselling, appropriate steps shall be taken to meet such needs.

The steps that may be taken are, but not limited to:

- Counselling for the parties
- Application of strategies to restore a positive leaning and working environment
- Specific training for the complainant or respondent
- Workshops for staff and/or others in the school/workplace regarding their rights and responsibilities
- Permanent separation of the respondent and complainant from each other
- Restorative measure

If the complaint is found too trivial, vexatious or an abuse of power, then appropriate measures may be taken up to and including dismissal.

##### **5.4.2 Complaint Substantiated**

###### **5.4.2.1 Respondent is employee of the Board**

The appropriate supervisor or manager shall impose discipline as appropriate and consistent with the circumstances.

The principles of progressive discipline will be applied in dealing with disciplinary action under this procedure. These could include, but are not limited to, the following possibilities:

- Verbal warning
- Written reprimand
- Suspension with pay
- Suspension without pay; or
- Dismissal from employment with the Board

###### **5.4.2.2 Respondent is another User**

Actions must be determined as appropriate for the individual situation and may include such response as a letter of disapproval and warning, a revoking of permits or contracts, an issuing of a trespass warning, or other remedies as provided by the common law and/or the appropriate legislation. The involvement of the appropriate Superintendent is recommended in these cases.

#### **5.5 Dispute/Conflict Resolution – Mediation**

5.5.1 Dispute resolution techniques, such as mediator and conflict coaching, can be explored at any stage in the complaint process. These techniques encourage the parties to interact with each other with a view to restoring the respectful workplace.

5.5.2 Mediation involves an unbiased third party acting as a facilitator in direct communication between the parties who voluntarily agree to enter into this process. It is an opportunity to resolve disputes in a respectful and confidential manner. It

provides the opportunity to generate a variety of options for resolution and contributes to restoring the working relationship between the parties.

- 5.5.3 Where there is a formal complaint being investigated under these procedures, at any time during the investigation, the parties may agree to hold the investigation in abeyance and attempt to achieve a mediated resolution. Mediation will only occur if the employer agrees to use this as an option to resolving a particular dispute.
- 5.5.4 Mediation is appropriate when all parties agree that a mutually agreeable solution is achievable and desirable. The investigator will request approval to mediate or attain a trained mediator when the parties have expressed an interest in a mediated resolution. (In cases where mediation is sought, the Superintendent of Human Resources or designate shall engage the mediator acceptable to both parties).
- 5.5.5 Meetings required for mediation sessions shall be scheduled as soon as possible and, where practical, in a time and place convenient for the complainant, the respondent and the mediator.
- 5.5.6 When matters are resolved through mediation, the complainant and the respondent will sign a memorandum of agreement outlining the terms to which they have agreed. Supervisory and managerial personnel shall ensure that the terms that the parties have agreed to are met.
- 5.5.7 Mediation is voluntary and the complainant or the respondent may choose to withdraw at any time.

## **6 REVIEW OF DECISION**

- 6.1 A request for a review may be made within 10 working days of the issuance of the report subject to meeting one or both of the following grounds:
  - The investigator (s) fails to comply with these procedures; or
  - New evidence becomes known after the final decision but before the expiry of ten (10) working days limitation period for requesting a review
- 6.2 If one or both of the above grounds exist, the complainant or the respondent may make a request for review to the Director or designate who will appoint a Reviewer.
- 6.3 No review of the final decision will be undertaken with regard to the claim that the conclusions drawn by the investigator(s) based on the finding of facts were incorrect.
- 6.4 The Reviewer will report his/her findings to the Director or designate, who will affirm or amend the final decision, or require that a new investigation be undertaken.