



PROCEDURE

Title: **HARASSMENT**

Procedure No.: **3004a**
Effective Date: **2001 February 27**

Department: Organizational Support Services – Human Resources

References:

- *Ontario Human Rights Code*
- *The Child and Family Services Act*
- *Ontario Occupational Health and Safety Act*
- Equity and Inclusive Education Policy
- Health and Safety Policy
- Employee Code of Conduct Policy and Procedure
- Off Duty Conduct Procedure
- Domestic Violence in the Workplace Procedure
- Reporting Child Neglect and Abuse – Board Procedure
- Safe Schools Policy and Procedure
- Progressive Discipline Policy & Procedure
- Regulations made under the *Teaching Profession Act*
- *Trespass to Property Act*
- *Violence in the Workplace Policy & Procedure*

1.0 Fundamental Guiding Principles

- 1.1 The Thames Valley District School Board is committed to providing a safe and positive learning and working environment that is inclusive, fair and equitable.
- 1.2 All members of the Thames Valley District School Board community should be treated with dignity and respect and have the right to an environment that is free of harassment.
- 1.3 All incidents and complaints of harassment are taken seriously and dealt with according to the policy and procedure.
- 1.4 All employees have a responsibility to ensure that harassment and discrimination do not occur.
- 1.5 In addition to setting an example through their own behaviour, supervisors and administrators are responsible for fostering and maintaining a climate that strives to eliminate harassment and discrimination.
- 1.6 Any employee who witnesses harassment or discrimination or becomes aware that an individual is being harassed or discriminated against has a responsibility to report the incident immediately to their supervisor, administrator or to

Administered By: Organizational Support Services – Human Resources

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Organizational Support Services - Human Resources without threat or fear of reprisal.

- 1.7 Any student behavior that is likely to have a negative impact on the school climate will be dealt with according to the Safe Schools Procedure.
- 1.8 Supervisory staff have a higher level responsibility to take immediate action if they become aware that an individual is being harassed or discriminated against.
- 1.9 The resolution process is flexible with a range of corrective action to stop harassment and ensure a healthy environment for all.
- 1.10 Confidentiality will be maintained to the extent possible. Identifying information about any individuals involved will not be disclosed unless the disclosure is necessary for the purposes of investigating, taking corrective action, or is otherwise required by law.
- 1.11 Any individual who lodges a complaint may exercise that right without threat or fear of reprisal. Any employee who retaliates or threatens to retaliate against a person who makes a complaint in good faith will be subject to disciplinary action.
- 1.12 Resources will be applied to resolve incidents and complaints in a fair, objective and timely manner that is appropriate in the circumstances.
- 1.13 Any individual who makes a complaint in bad faith will be subject to disciplinary action.
- 1.14 Notwithstanding the right of an individual to make a complaint to the Ontario Human Rights Tribunal at any time, the Thames Valley District School Board is committed to resolving allegations of harassment as effectively and expeditiously as possible.
- 1.15 It is expected that written complaints will be made as soon as possible but not later than six (6) months after the offending incident(s) unless a delay was justified because of extenuating circumstances and would not result in substantial prejudice to anyone.
- 1.16 The Thames Valley District School Board will review this policy and procedure annually.
- 1.17 The Thames Valley District School Board will report on an annual basis to the Joint Health and Safety Committees.

2.0 Definition of Workplace Harassment

- 2.1 “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; or workplace sexual harassment.

"Workplace Sexual Harassment" means:

- a) engaging in a course of vexatious comment(s) or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment(s) 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.

Appropriate action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not considered workplace harassment.

2.2 Harassment can include:

- a) Behaviour that is unwelcome and/or one-sided, on a single or a repeated basis which humiliates, threatens, insults or degrades. It may take the form of derogatory comments conveyed through any means or media, condescension, or patronizing behaviour that undermines self-confidence. It also may include unwelcome invitations, requests, threats and assault;
- b) Unwanted attention of a persistent or abrasive nature;
- c) Inappropriate behaviour which could reasonably be expected to cause physical, emotional or psychological distress. There may be circumstances where a single incident would not be considered to be harassment but a series of such incidents would constitute harassment;
- d) Inappropriate behaviour which has the purpose or effect of creating an intimidating or hostile learning or working environment. Hostile environment harassment consists of unwelcome conduct when such conduct has the effect of unreasonably interfering with an individual's work or academic performance or such conduct has the effect of creating an intimidating, hostile, or offensive learning or working environment;
- e) Unwanted and/or persistent attention or contact in the work environment directed at an employee where the individuals concerned are/were partners/spouses, or had an intimate or dating relationship.

2.3 Workplace Sexual Harassment can include:

- a) A threat or an action by a person in a position to grant or deny a benefit against another who rejects their sexual advance;

- b) Sexual advances, requests for sexual favours or other verbal or physical conduct of a sexual nature when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile or offensive work environment;
- c) Denial of any promotion, benefit or opportunity based on sex, sexual orientation, gender identity, gender expression, or same-sex partnership status;
- d) Denial of normal co-operation on sex, sexual orientation, gender identity, gender expression or same-sex partnership status.
- e) Other Types of Harassment.

2.4 Sexual Harassment can include:

- a) Written or verbal remarks, slurs, references, jokes, conduct, or display of offensive or derogatory material of a sexual nature or about a person's sexual orientation, gender identity or gender expression, made by any employee, agent of the Board, trustee, volunteer, student, visitor, whether the behavior occurs on Board property, or at a Board sanctioned event elsewhere. Regardless of the means or media in which it is conveyed, any of these actions would be known or ought reasonably to be known to be unwelcome in that it may cause insecurity, discomfort, offense or humiliation to another person or group.
- b) *Sexual harassment does not necessarily include an occasional compliment, or relationships between consenting adults providing said relationships do not involve an adult who, as a student, is also in a student-employee relationship with the other adult.*

2.5 Racial Harassment can include:

- a) Written or verbal remarks, slurs, references, jokes or stories based on a person's racial or ethnic background, conveyed through any means or media, related to colour, place of birth or origin, citizenship, ancestry, customs, dress, creed or religion which are known or ought reasonably to be known to be unwelcome, made by any employee, agent of the Board, trustee, volunteer, student, visitor or any person coming onto Board property, or at a Board sanctioned event elsewhere;
- b) The display of racist, derogatory or racially offensive pictures or material, which is known or ought to be known to be unwelcome;
- c) Denial of any promotion, benefit or opportunity based on racial or ethnic grounds;
- d) Denial of normal co-operation on ethnic or racial grounds.

2.6 Harassment of Persons with Disabilities can include:

- a) Written or verbal remarks, slurs, references, jokes or the display of offensive or derogatory material about a person's disability, conveyed through any means or media, which are known or ought reasonably to be known to be unwelcome, made by any employee, agent of the Board, trustee, volunteer, student, visitor or any person coming onto Board property, or at a Board sanctioned event elsewhere;
- b) Denial of any promotion, benefit or opportunity based on disability;
- c) Denial of reasonable co-operation on the ground of disability.

2.7 Personal Harassment can include:

- a) Intentional taunts, insults or offensive comments or actions which could reasonably be expected to demean or humiliate an individual made by any employee, agent of the Board, trustee, volunteer, student, visitor or any person coming onto Board property, or at a Board sanctioned event elsewhere;
- b) Improper use of authority or position, with its implicit power, to undermine, sabotage or otherwise interfere with the career of an employee or academic success of a student;
- c) Denial of any promotion, benefit or opportunity based on age, record of offenses as per the *Ontario Human Rights Code* provisions, marital status or family status;
- d) Patterns of comment or conduct of an excessive nature that are unwelcome, unwanted, offensive, intimidating, hostile or inappropriate. Such behaviours include physical intimidation and/or threats of violence; use of profanity (swearing) or vulgarity or derogatory name calling conveyed through any means or media including inappropriate use of computer images, video recordings, emails, electronic text and websites;
- e) Bullying tactics such as ridiculing, taunting, threatening, belittling, excluding or humiliating another person.

3.0 Complaint Procedure

Any time there is concern for the personal safety of an individual, the Superintendent of Student Achievement and/or Superintendent of Human Resources should be contacted immediately. Police shall be contacted in the case of a threatening situation.

3.1 Harassment of Employees

- a) An employee who feels they are being harassed may choose to inform the individual (verbally or in writing) that their behaviour is unwelcome and must stop immediately. Workplace disputes can often be resolved if an employee is comfortable using this approach.

- b) If the behaviour does not end immediately, or causes severe or ongoing discomfort, an employee should advise their supervisor, Superintendent of Student Achievement or Superintendent of Human Resources.
- c) An employee should advise their supervisor if they feel uncomfortable addressing the behaviour directly with the individual. If the individual allegedly harassing the employee is their supervisor, the employee should inform the Superintendent of Student Achievement or the Superintendent of Human Resources. All matters involving supervisory officers will be referred to an Associate Director. All matters involving an Associate Director will be referred to the Director. All matters involving the Director will be referred to the Chair of the Board.
- d) Information regarding the allegations should be provided in as much detail as possible including any previous action(s) taken and anticipated outcome(s). The Superintendent of Human Resources, or designate, may be consulted to determine what action is appropriate in the circumstances. Necessary steps will be taken to safeguard the learning and working environment throughout the process.

3.1.1 Resolution Processes

In an effort to address complaints in a fair, constructive and respectful manner, resolution may be attempted using any of the following processes. Employees may have support from a union/federation/association representative as required.

- a) **Facilitated Discussion** provides an opportunity for an employee to engage in a meaningful conversation with the alleged harasser in the presence of a supervisor or administrator. This collaborative, problem-solving approach allows the parties to address concerns and focus on solutions to meet their needs.
- b) **Mediation** involves a neutral party who meets with the employees, separately and/or together, in an attempt to support them in resolving the situation. This voluntary process allows the parties to create solutions for themselves by focusing on their needs, rights and interests. The mediator assists them in negotiating their own settlement. If achieved, an agreement will be prepared outlining the details of the resolution which will be signed by the parties and the Superintendent of Human Resources, or designate.
- c) **Conciliation** is a voluntary process involving a neutral party who conducts structured meetings with the employees, separately and together. After gaining a comprehensive understanding of the situation, the conciliator develops and proposes a potential resolution in an attempt to settle the issue. If mutually acceptable, the details will be outlined in an agreement which will be signed by the parties and the Superintendent of Human Resources, or designate.

- d) **Investigative Inquiry** is a process used to collect and review relevant documents and information about the allegation(s) whereby a supervisor, administrator or neutral third-party initiates an informal investigation into a complaint. This process involves separate interviews with the employees and any relevant witnesses, in the sequence and frequency required.

The supervisor, administrator or neutral third-party will document the details and findings of the resolution process.

Necessary action will be determined in consultation with the Superintendent of Student Achievement and/or Superintendent of Human Resources, or designate, as required.

While the goal of these processes is to restore respectful workplace relationships, there may be corrective and/or disciplinary action(s) taken as appropriate, which could include, but are not limited to the following possibilities:

- Apology, in writing and/or in person;
- Training and/or counselling through the Employee Family Assistance Program (EFAP) or other service provider;
- Written commitment to cease any and all offensive behaviour;
- Verbal or written warning;
- Suspension;
- Demotion and/or transfer;
- Termination of employment.

Any resulting disciplinary action shall be documented and placed in the employee's personnel file as appropriate.

e) **Formal Complaint Procedure**

An employee may choose to submit a formal complaint initially, or if alternative resolution processes are unsuccessful.

- i) The primary parties involved in the Formal Complaint Procedure include the complainant(s) (an individual(s) alleging harassment), the respondent(s) (an individual accused of harassment), and the Superintendent of Human Resources, or designate.
- ii) The complainant(s) should complete the *Complaint Form for Harassment Involving Employees* (available in Electronic Forms under Organizational Support Services - Human Resources) and submit it to the Superintendent of Human Resources.
- iii) This form should include the type of complaint, name and position of the complainant(s) and respondent(s), general context, nature of allegation(s) and/or impact of allegations, specific details of each incident(s) including date(s), location(s), time(s), witness(es), and further information if applicable. The complainant(s) should also summarize the previous action(s) taken. The Superintendent of Human Resources, or designate, will send confirmation upon receipt of the complaint form.

- iv) A preliminary assessment will be conducted using objective standards that consider the unique circumstances and context of each complaint. This assessment determines whether there will be a formal harassment investigation under the Formal Complaint Procedure or if action is required through an alternative resolution process.
- v) When a formal harassment investigation does not proceed, the Superintendent of Human Resources will notify the complainant(s) and provide appropriate direction or advice.
- vi) When a formal harassment investigation proceeds, the Superintendent of Human Resources will appoint an investigator and will send a copy of the complaint to the complainant(s) and the respondent(s) along with the name of the investigator assigned.
- vii) The investigator will be a neutral party who has a thorough understanding of harassment issues, knowledge of relevant legislation, and will conduct an impartial, objective investigation following the principles of procedural fairness.
- viii) The investigator will conduct separate interviews with the complainant(s), respondent(s) and any relevant witnesses in the sequence and frequency required. Parties may have a supporter present who is a union/federation/association representative, a supervisor or another individual, provided they are not a potential witness or a party to the complaint.
- ix) The investigator will collect and review any relevant documents and will ensure that appropriate notes and statements are taken during interviews.
- x) During the investigation process, and in consultation with the Superintendent of Human Resources, the investigator may attempt to resolve the complaint using the conciliation process described in this procedure.
- xi) The investigator will prepare a complete and comprehensive report which concludes if workplace harassment is found based on the balance of probabilities. The investigation report is reviewed by the Superintendent of Human Resources who will determine appropriate action which may result in corrective and/or disciplinary measures. These could include, but are not limited to the following possibilities:
 - Training and/or counselling through the Employee Family Assistance Program (EFAP) or other service provider;
 - Verbal or written warning;
 - Suspension;
 - Demotion and/or transfer;
 - Termination of employment.

- xii) The complainant(s) and respondent(s) will be provided with the results in writing which will include a summary of findings of the investigation, whether harassment has been found and any corrective action taken. Either party may wish to submit a written response to the Superintendent of Human Resources within ten (10) business days of receipt.
- xiii) All records of the investigation shall be kept in a confidential harassment file. Any resulting disciplinary action shall be documented and placed in the employee's personnel file as appropriate.
- xiv) This process does not impede the complainant's legal rights under the *Ontario Human Rights Code* or the *Ontario Occupational Health and Safety Act*.

3.2 Harassment of Others

- a) **Any time there is a concern for the personal safety of an individual, the Superintendent of Student Achievement and/or Superintendent of Human Resources should be contacted immediately. Police shall be contacted in the case of a threatening situation.**
- b) A student or other individual, not employed by the Board, who feels they are being harassed by an employee, acting in that capacity, should inform an administrator or manager who will document the allegation(s). If the allegation(s) is about an administrator, the individual should contact the Superintendent of Student Achievement and/or Superintendent of Human Resources, or designate.
- c) If the individual is a student and feels uncomfortable, they should tell an adult they trust at home and/or at the school. The student may wish to have support from a friend or a parent/guardian at any time during this process.
- d) The individual should report what happened in as much detail as possible. Where the allegation(s) indicates circumstances in which a child (under the age of eighteen) could be found to be "in need of protection" under The *Child and Family Services Act*, the administrator will take immediate action under the Board's *Reporting Child Neglect and Abuse Procedure*. In this situation, the administrator or Superintendent of Student Achievement will notify the student's parent/guardian of the allegations.
- e) If the allegation(s) is not related to protection concerns, the administrator will notify the Superintendent of Student Achievement who, in consultation with the Superintendent of Human Resources, will take action that is appropriate in the circumstances.
- f) Relevant documents and information will be collected and reviewed following the principles of procedural fairness. The employee may have support from a union/federation/association during this process.

- g) The results, which will include a summary of findings of the investigation, will be provided to the Superintendent of Human Resources who will determine appropriate action which may include discipline up to and including termination. The individual who has allegedly experienced harassment and the employee who is the alleged harasser will be informed of the outcome. Any resulting disciplinary action shall be documented and placed in the employee's personnel file as appropriate.
- h) This process does not impede the ability of the individual, student or their parent(s)/guardian(s) to contact the Ontario Human Rights Tribunal and/or the professional regulatory body of the employee, if applicable.

DEFINITIONS FROM THE ONTARIO HUMAN RIGHTS CODE

“age” means an age that is eighteen years or more;

“disability” means,

- a. any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and without limiting the generality of the foregoing, including diabetes, mellitus, epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- b. a condition of mental impairment or a developmental disability,
- c. a learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- d. a mental disorder, or
- e. an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*;

“family status” means the status of being in a parent and child relationship;

“marital status” means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage;

“record of offences” means a conviction for,

- a. an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked; or
- b. an offence in respect of any provincial enactment;

16. (1) Canadian Citizenship – A right under Part 1 to non-discrimination because of citizenship is not infringed where Canadian citizenship is a requirement, qualification or consideration imposed or authorized by law;
17. (1) Disability – A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability;
19. (2) Duties of teachers – This Act does not apply to affect the application of the *Education Act* with respect to the duties of teachers;
20. (1) Restriction of facilities by sex – The right under section 1 to equal treatment with respect to services and facilities without discrimination because of sex is not infringed where the use of the services or facilities is restricted to persons of the same sex on the ground of public decency.

IMPLEMENTATION PLAN FOR HARASSMENT POLICY/PROCEDURE

The primary purpose of any Harassment Policy is to prevent harassment and stop harassment as soon as possible after an event occurs. A proactive approach to education and awareness is required to meet these goals.

All Superintendents, Principals and Managers are responsible for providing staff training or information about harassment on a regular and ongoing basis. The degree or extent to which training is required is dependent upon the particular needs of the school or work site. In all cases, the following actions should be taken:

- Upon hiring, all new employees will receive appropriate information regarding the Harassment Policy and Procedures outlining the rights and responsibilities of staff;
- The Harassment Policy and Procedures should be prominently displayed within the school or work site including the Health and Safety bulletin boards.