

STUDENTS

Student/Family Human Rights Issue, Incident and Complaint Resolution Procedure

Adopted under the Human Rights, Anti-Discrimination and Anti-Racism Policy

1.0 Objective

- 1.1 The objective of the Student/Family Human Rights Issue, Incident and Complaint Resolution Procedure is to support the implementation of the Durham District School Board's (DDSB) Human Rights, Anti-Discrimination and Anti-Racism Policy (the "Human Rights Policy"). The purpose of this procedure is to give students and families options and accessible ways to raise issues and complaints through non-adversarial informal or formal processes that focus on safety and support for students/families, early resolution and restorative practices. The procedure also outlines transparent, fair and accountable steps to address issues and complaints.
- 1.2 This procedure addresses human rights issues, incidents and complaints against or involving employees for not following or for violating the rights of students under the Human Rights Policy.
- 1.3 As set out in the Human Rights Policy, "discrimination" means all forms of individual, intersectional and system discrimination based on any of the Prohibited Grounds as defined in the Human Rights Policy. Consistent with the Human Rights Policy, there is no hierarchy of rights. This procedure applies equally to all Prohibited Grounds and intersection of grounds and applies to all forms of discrimination, including (and not limited to) racism, ableism, sexism, homophobia, biphobia, transphobia, faithism and classism.
- 1.4 This procedure shall be read together with the:
 - a) Indigenous Education Policy and related procedures;
 - b) Human Rights Policy;
 - c) Human Rights, Anti-Discrimination and Anti-Racism Procedure;
 - d) Human Rights Inclusive Design and Accommodation Procedure; and
 - e) Human Rights Roles, Responsibilities and Accountability Framework (the "Accountability Framework").

Through these policies and procedures, the District recognizes the importance of protecting and promoting human rights to support students' sense of safety, well-being, engagement and belonging, and providing learning and working environments that are free from discrimination where all students are successful and thrive.

- 1.5 The District recognizes the unique and distinct rights of Indigenous Peoples. Indigenous students and families may pursue any right under the Human Rights Policy and this procedure or under the Indigenous Education Policy and procedures, as they may deem appropriate in any given circumstance.

- 1.6 Nothing in this procedure prevents anyone from seeking assistance or information through Ontario's [Human Rights Legal Support Centre](#) or from seeking to address a human rights issue or complaint through the [Human Rights Tribunal of Ontario](#) or as otherwise may be lawfully available through other means or forums.
- 1.7 As outlined in this procedure, students [or their parent(s)/guardian(s)] have the right to:
- a) Raise human rights issues, incidents and complaints without reprisal;
 - b) Accommodation (under the Human Rights Inclusive Design and Accommodation Procedure) throughout the processes set out in this procedure; and
 - c) Have a support person or community or other advocate attend issue, incident and complaint resolution meetings with them.
- 1.8 This procedure does not replace other resolution processes identified in other policies, procedures, or guidelines (for example, Accommodation Review Committee or the Identification, Placement and Review Committee) or those established by law.
- 1.9 Student complaints against other students or District community members will be addressed through the Code of Conduct.

2.0 Definitions

- 2.1 Key terms related to human rights and equity terms used in this procedure are defined in Appendix A (Glossary of Terms) of the Human Rights Policy.

3.0 Procedure

- 3.1 This procedure applies to all students and their parent(s)/guardian(s) who wish to raise a human rights issue, incident or complaint involving a District employee(s). It also sets out District employees' roles, responsibilities and required actions upon becoming aware of a human rights issue, incident or complaint affecting a student(s).
- 3.2 The District shall investigate potential discrimination upon becoming aware of it (or where it should reasonably be known), regardless of whether a formal written complaint has been submitted.

Key Principles

- 3.3 When addressing human rights issues, incidents and complaints, responsible staff will:
- a) Treat all parties involved in the issue or complaint with dignity and respect;
 - b) Handle issues and complaints sensitively and with care;
 - c) Consider and address safety (including emotional/psychological) needs, accommodation needs and related support;
 - d) Provide accessible options that focus on the rights of the student, agency, empowerment, early resolution and restorative practices;
 - e) Uphold principles of procedural fairness;
 - f) Use transparent and accountable processes;
 - g) Support consistent approaches and decision making that are thorough, contextual and flexible to adapt to specific situations and circumstances;

- h) Keep parties informed about the process and next steps, and address issues and complaints in a timely manner;
- i) Reinforce confidentiality and protection from reprisal;
- j) Apply human rights, anti-discrimination and anti-racism principles and analyses, including intersectionality, to all aspects of issue, incident and complaint resolution processes;
- k) Focus on the impacts and effects of conduct (whether intentional or unintentional) that may be discriminatory;
- l) Take appropriate responsive, remedial and corrective actions including discipline to address findings of discrimination, prevent it from happening again and to support learning;
- m) Address potential underlying systemic issues, where appropriate;
- n) Collect and analyze issue, incident and complaint data to identify, address and report on potential trends; and
- o) Uphold Duty Bearer responsibilities under the Human Rights Policy throughout issue, incident and complaint resolution processes.

3.4 To support these principles, students (or their parents/guardians on their behalf) may choose to:

- a) Raise human rights issues and incidents directly with their teacher, principal or another employee (Issue and Incident Reporting and Response Process); or
- b) File a complaint through a formal complaints process, which includes alternative dispute resolution options or an investigation (Complaint Process).

Note: If a student (or their parent/guardian) initially chooses (a) and is not satisfied with the response, they may choose to proceed with (b).

3.5 This procedure has three main parts:

- a) Part I is the Issue and Incident Reporting and Response Process;
- b) Part II is the Complaint Process; and
- c) Part III are general requirements and considerations that apply to both processes [including safety and support, union/federation/association representation (where applicable), support persons, confidentiality, timelines, protection from reprisal, and accommodation needs].

I. Issue and Incident Reporting and Response Process

3.6 This part sets out the process for reporting and responding to issues and incidents of discrimination based on a Prohibited Ground(s) and intersecting grounds.

3.7 A student (or their parent/guardian) may speak with their teacher or the school principal (or any other school employee) about an issue or incident of discrimination that affects students at school or at a school-related activity or event, or that affects the learning environment.

3.8 Anyone who witnesses or becomes aware of an incident or issue that affects students in District learning environments should report it to a District employee.

Employee Responsibilities

- 3.9 When a District employee becomes aware of an issue or incident (or sees or overhears discriminatory actions or words), the employee must report it to the principal or to their supervisor (or if the matter involves the principal or supervisor, to the next level manager not involved or implicated in the issue or incident). Further, the employee must, wherever possible:
- a) Interrupt and intervene immediately to stop the conduct;
 - b) Determine potential safety needs or supports for individuals involved or impacted in the matter; and
 - c) State that what was said or done was inappropriate and harmful (in a way that is appropriate to the circumstances).
- 3.10 Where an issue, incident or complaint raises a suspicion on reasonable grounds that a child may be in need of protection, steps will be taken immediately to contact the Children's Aid Society (see the Board's Procedure on Reporting Children and Youth in Need of Protection). This decision is not to be based on biases, stereotypes or assumptions about the student or their parent/guardian based on any Prohibited Ground or combinations of grounds.

Principal Responsibilities

- 3.11 If an issue or incident involves a possible hate crime (refer to Glossary of Terms), the principal must contact Positive School Climates, the Family of Schools superintendent and the police. District responses and the principal's actions (as outlined below) may need to await police direction/investigation. In such circumstances, the principal will consult with the police on any steps the District can take to support safety and to communicate to the affected student(s) (and their parents/guardians).
- 3.12 For all other incidents involving students, the principal will:
- a) Assess if any immediate or additional steps or safety/supports are required, and if so, will act on it;
 - b) Notify the parent/guardian as soon as possible, subject to sections 3.88 and 3.89 (Safety, Supports and Interim Measures) and considering and addressing potential accessibility and accommodation needs;
 - c) Notify the superintendent within one day;
 - d) Contact Human Resource Services if an employee(s) is involved;
 - e) Contact emergency services if medical attention is required;
 - f) Note the names of any witnesses and preserve any pertinent evidence or information; and
 - g) Document all actions taken on the incident reporting form [template].

Depending on the circumstances, all steps above may not be necessary or may not happen sequentially; the principal will assess the circumstances and act based on the nature of the incident, steps/action already taken and what may be required to immediately address the situation.

- 3.13 The principal may need to speak to the parties involved and those impacted to gather preliminary information and details about the incident. Where the principal has sufficient information, the principal may take appropriate steps to resolve the issue.

- 3.14 All incidents and issues must be reported to the superintendent. This is a mandatory requirement regardless of the circumstances, including where the principal assesses that the situation does not require any further action or response. The principal will submit the completed incident reporting form to the superintendent, with a copy to the Human Rights and Equity Advisor.

Superintendent Responsibilities

- 3.15 The responsible Family of Schools superintendent will assess steps taken, may consult the Human Rights and Equity Advisor, and will consider if further action is appropriate based on whether:
- a) The issue has been appropriately resolved at the school level;
 - b) Any further supports, actions or communications are required to immediately address the incident, as well as longer-term impacts; and
 - c) The situation requires an integrated response team (discussed below).
- 3.16 The superintendent will also assess if there is sufficient information to take appropriate restorative and corrective action including discipline against the person(s) who engaged in the discriminatory incident, in consultation with the superintendent responsible for human resources, where applicable. If further information is required, the superintendent and/or principal will arrange to meet with students and/or employees, including potential witnesses, to gather additional information and take action.
- 3.17 The superintendent will report all issues and incidents to the Associate Director of Equitable Education. Where the issue/incident involves a hate crime, the superintendent will notify the Director of Education.
- 3.18 If the superintendent determines that further action is required, the superintendent will:
- a) Direct the principal to take additional action and will document all steps taken to address the issue; and
 - b) Consider convening an integrated response team to collaborate on additional actions that may be required, based on the following criteria:
 - Severity, scale, extent and intensity of the impact of the incident;
 - Previous incidents at the school or involving same party(ies);
 - Nature of impact (or number of people involved or impacted);
 - Risks to persons and/or property;
 - Legal and/or reputational risks;
 - Public interest and impacts;
 - Potential systemic issues;
 - Other reporting or consulting requirements (e.g., under Positive School Climates policies and procedures);
 - Expertise required to address the issue; and
 - Other relevant factors based on the circumstances.

- 3.19 If the superintendent determines that an integrated response team is appropriate, the superintendent will:
- a) Notify the Associate Director of Equitable Education and the Human Rights and Equity Advisor; and
 - b) Convene an integrated response team within three days of being notified of the incident.

Integrated Response Team

- 3.20 Depending on the nature of the incident, the integrated response team may include (where appropriate) representatives from:
- a) Administration at the affected school (unless they are involved or implicated in the incident);
 - b) Leads from relevant portfolios:
 - Indigenous Education
 - Equity and Inclusive Education
 - Positive School Climates
 - Inclusive Student Services
 - Mental Health and Well-Being
 - Student Success/Curriculum
 - c) Human Rights and Equity Advisor;
 - d) General Counsel; and
 - e) Other internal DDSB personnel as may be deemed appropriate by the superintendent based on the specific incident(s) and any further input/expertise required to address the matter (for example, Human Resource Services, Associate Director of Equitable Education, Director of Education, etc.).

While they would not be part of the integrated response team, critical friends, subject matter experts or other individuals may be consulted at the discretion of the superintendent, provided that the identity of the students, employees, parents/guardians and other District community members involved shall not be disclosed by any District employee without consent.

- 3.21 The integrated response team will respect and maintain confidentiality and develop an appropriate response based upon consideration of all relevant facts and circumstances including:
- a) Safety and supports for affected students, parents/guardians, employees and community members;
 - b) Responsive, restorative, remedial and corrective action, including discipline up to and including termination of employment (for employees), suspension or expulsion (for students) and other actions as necessary to address inappropriate behaviours and to restore the learning environment; Note: any information or discussions about outcomes for specific employees [for example, potential corrective action for an employee(s)] will be strictly limited to Human Resource Services, the employee's supervisor and senior team members as may be required;
 - c) Potential systemic issues or actions that may be required;

- d) Individual, team/group, school or organizational learning and growth (e.g., professional development/learning needs, including coaching/mentoring and other potential preventative individual or systemic actions for the classroom, school or District);
- e) Communications to those impacted and the broader school, District/DDSB community (including the Director of Education and Trustees), where appropriate; this may include interim communications while an appropriate response is developed and implemented; and
- f) Monitoring and follow up as may be required to ensure that the response was appropriate and to consider if:
 - Additional or ongoing support or actions are required; and
 - Any new or continuing issues or incidents need to be addressed.

3.22 Based on the work of the response team, the superintendent will develop a response action plan [attached form] with timelines to implement the response and recommendations. The principal and other identified leads will fulfill the required actions and report back to the superintendent once completed.

3.23 After the response has been implemented, the superintendent and principal will debrief to discuss potential lessons learned, promising practices and potential preventative measures.

II. Complaint Process

3.24 The superintendent, or their designate, is responsible for administering the complaint process.

3.25 Where there is a concern that the Board's Human Rights Policy has been breached or is not being following, a student (or a parent/guardian on the student's behalf) may report and raise a complaint using the attached complaint form [template] and submit it to their superintendent (or if the complaint involves the superintendent, to the next level manager not involved in the matter). This could include concerns that a student's needs related to a Prohibited Ground(s) have not been accommodated to the point of undue hardship or concerns as to systemic barriers.

3.26 Before filing a complaint, and where they feel safe to do so, individuals are encouraged to tell the person who is engaging in discriminatory actions to stop. However, this step is not required.

3.27 The individual raising a complaint (a complaint "reporter") may withdraw a complaint at any time during the resolution process. Depending on the circumstances and the stage of the complaint resolution process, the District may speak with the reporter to determine if the withdrawal is because of safety concerns or fear of reprisal, and the District will attempt to address those concerns.

3.28 In the case of a withdrawal, the District will assess the available information and may proceed with an investigation, in which case the reporter may be considered a witness.

3.29 Where the District receives an anonymous human rights complaint, the District may be limited in how it can address the complaint. The District will review the complaint but may not be able to investigate the complaint further if procedural fairness cannot be maintained due to the anonymous nature of the complaint.

- 3.30 Group complaints (i.e., where several individuals file a complaint dealing with the same or similar issue or involving the same respondent) raise potential procedural concerns and other investigative challenges. The District will typically treat any such complaint as individual complaints. The District therefore encourages people who have human rights complaints to raise them individually. Where the District receives multiple complaints involving the same situation or same respondent, the District may assign the matters to the same investigator.
- 3.31 Where the District becomes aware of potential discrimination in the absence of a formal complaint or where a reporter withdraws a complaint, the District may proceed with a management-initiated complaint. This is to support the District's commitment to addressing potential discrimination. The principal (or manager/supervisor) will consult with their superintendent, the Human Rights and Equity Advisor and General Counsel before initiating a complaint.

Preliminary Assessment

- 3.32 Upon receipt of a complaint, the superintendent will review and assess if the matter falls under the scope of the Human Rights Policy and procedures, in consultation with the Associate Director of Equitable Education and the Human Rights and Equity Advisor. The superintendent will consider if any of the allegations, if they were found to be true, would amount to discrimination under the Human Rights Policy. If a complaint involves allegations about the conduct of an employee(s), the superintendent responsible for human resources (or designate) will also be consulted.
- 3.33 If the allegations involve a hate crime or other criminal activity, the superintendent will contact the Positive School Climates superintendent, the Associate Director of Equitable Education, and the police for direction on next steps, including support for and communications to the reporter.
- 3.34 If the superintendent assesses that the matter does not fall under the Human Rights Policy, the superintendent will consider whether the complaint is best addressed through another policy or procedure (for example, Code of Conduct) and may take appropriate action to address it or refer the matter to the principal or another appropriate area for handling and shall notify the reporter in writing of the determination.
- 3.35 Where there is clear information that the complaint may be frivolous or vexatious, the superintendent, in consultation with the Associate Director of Equitable Education and the Human Rights and Equity Advisor, will also consider whether to proceed with the complaint. The reporter will be advised of the decision and rationale.
- 3.36 If the complaint is assessed to fall under the scope and application of the Human Rights Policy and procedures, the superintendent shall:
- a) Determine if interim safety or supports are required pending the resolution of the matter; and
 - b) Consider potential early resolution options.

Early Communication with the Parties

- 3.37 The superintendent will notify the respondent about the complaint in writing and provide a summary of the complaint so that the respondent has sufficient information to respond. Where appropriate, the superintendent will also inquire if the respondent would be willing to participate in early resolution efforts.
- 3.38 The respondent may provide the superintendent with a written response to the complaint.

3.39 The superintendent will remind the parties of the following as outlined in this procedure:

- a) Confidentiality;
- b) Protection from reprisal; and
- c) The right to have a support person.

The superintendent will also inquire if the parties have any human rights accommodation needs (for example, translator) to participate in a resolution process.

Holding the Complaint in Abeyance

3.40 The superintendent will also consider if there are other factors that affect if the matter can proceed or may need to be held in abeyance if, for example:

- a) One or both parties are not able to participate in the investigation because of medical or other issues that cannot be accommodated;
- b) The matter is being addressed through another process (for example, an application to the Human Rights Tribunal of Ontario); or
- c) The complaint involves a criminal matter, and the police are investigating.

Where appropriate, the District will continue to provide necessary supports and interim safety measures. The superintendent will inform the parties that the complaint is being held in abeyance, why (without disclosing any confidential information about the parties) and when the District expects to proceed with the complaint.

Direct Action

3.41 Where the information and any supporting documents provided in a complaint and response to a complaint provides clear evidence of a violation of the Human Rights Policy, the superintendent may be able to make a finding and take direct action to address the violation. If the respondent is an employee, the superintendent will consult with Human Resource Services.

3.42 The superintendent will provide the respondent with an opportunity to respond before taking any action and will consider mitigating and aggravating factors as part of bias aware progressive discipline and employment related progressive discipline policies and practices.

3.43 The superintendent will take appropriate actions and communicate the findings and any corrective action that has been taken to the parties.

Early Resolution

3.44 Where a reporter requests a form of alternative dispute resolution (ADR), or the superintendent assesses that the complaint may be resolved through ADR, the superintendent will seek the parties' consent and arrange a resolution conference meeting or a more structured mediation. Note: It is recognized that some complaints may not be suitable or appropriate for early resolution processes.

3.45 A resolution conference or a mediation is confidential, without prejudice and voluntary. Both parties must agree to participate. Any party can revoke their consent/agreement at any time, including during the resolution conference.

3.46 The purpose of these processes is to bring the parties together to collaboratively explore ways to create their own solution to resolve the complaint and restore or repair relationships.

- 3.47 Mediation may include a restorative circle or other facilitated resolution options to address a complaint. The facilitator may be a trained mediator, community leader or other person agreeable to the parties to the complaint.
- 3.48 The superintendent must approve the terms of settlement before they are binding. This will help ensure that the matter is appropriately resolved, including as to any systemic issues or power imbalances.

Investigation

- 3.49 An investigation is a process of gathering information to determine if the policy has been violated and to make findings of fact related to the complaint. This includes determining, based on evidence and a balance of probabilities, if the allegations amount to a violation of the policy. An investigation assists with decision making and may also help identify potential underlying issues and concerns. An investigation typically involves interviewing the reporter, respondent and witnesses, and collecting, reviewing and assessing documentary and other information and records.
- 3.50 The investigation process must be fair, objective, impartial, thorough, timely and confidential. Investigations must also follow the principles and rules of administrative/procedural fairness which includes, among other things, that respondents have the right to know about the complaint and to respond to it, to identify witnesses and to produce relevant information.
- 3.51 All investigators, whether internal or external to the District, will apply human rights, anti-discrimination, intersectional and trauma informed principles and approaches to the investigation process, analysis and decision.
- 3.52 If the superintendent determines that an investigation is appropriate to address the complaint, the superintendent will consult with the Associate Director of Equitable Education (and the superintendent responsible for human resources if the investigation involves an employee) and decide on an appropriate investigator: the principal, the superintendent (or delegate), another District employee or an external investigator. When making this decision, they will consider factors including but not limited to:
- a) Any real or perceived conflicts of interest;
 - b) Knowledge and awareness of human rights issues and analyses, including systemic and intersectional analyses;
 - c) Scope of the investigation (for example, number of people to be interviewed);
 - d) Complexity of the allegations and analyses required;
 - e) Understanding of the legislative framework and the DDSB's Human Rights Policy and procedures;
 - f) Investigation procedures; and
 - g) Availability and capacity to conduct the investigation in a timely manner.
- 3.53 The superintendent will notify the parties that the complaint has been assigned to an investigator and explain the role of the investigator, and shall remind the parties about the terms of the Human Rights Policy and this procedure as to confidentiality, protection from reprisal, the right to have a support person (including an employee's union/federation representative, where applicable) and identifying any accommodation needs to participate in the investigation process. The superintendent will also provide all parties with a copy of the Human Rights Policy and this procedure.

- 3.54 As the investigation proceeds, the superintendent will assess potential opportunities to resolve the matter. The reporter or respondent may also request resolution at any time. If the parties agree to a resolution and the complaint is resolved, the investigation will not proceed.

Conducting the Investigation

- 3.55 The investigator is responsible for ensuring a thorough, fair and impartial investigation of the allegations in the complaint, and for completing the investigation as expeditiously as possible in the circumstances.
- 3.56 The investigator will interview (separately) the reporter, respondent and any identified or potential witnesses and review and request relevant documents or materials. Prior to interviewing the respondent, the investigator will provide the respondent with a summary of the allegations to allow the respondent to prepare for the interview, and so that the respondent may also identify potential witnesses. Where the respondent is a member of a union/federation/association, the respondent has the right to union/federation/association representation during the investigation meeting(s).
- 3.57 District employees are required to participate in investigations and cooperate with the investigator.
- 3.58 The investigator will interview the reporter, respondent(s) and witness(es) using a trauma informed approach. The respondent should be given the opportunity to respond to each of the specific allegations raised by the reporter.
- 3.59 Parties may need to be interviewed more than once to clarify information and to address new information that the investigator may learn during the investigation. Relevant parties to the complaint are entitled to know of this new information and have a full opportunity to respond.
- 3.60 Where an investigator assesses potential systemic issues, the investigator will notify the Director of Education to determine if the systemic concerns will fall under the scope of the investigation or will be addressed as part of a separate systemic review process. If the scope includes potential systemic concerns, the investigator may also request and review additional information (for example, other District policies, procedures, data, etc.) to help identify potential barriers, disparities and disproportionalities that may affect the complaint.

Investigation Findings

- 3.61 The investigator will review all interview statements and evidence gathered to make findings of fact and determine if the incident(s) of alleged discrimination took place and, if so, assess if the incident(s) amounts to discrimination under (or any other violation of) the Human Rights Policy.
- 3.62 The District recognizes that in some instances, it can be difficult to find evidence of discrimination because it can often be subtle, systemic and/or not overt. The investigator may make inferences based on evidence available and systemic human rights analyses.
- 3.63 The investigator will apply the appropriate standard of proof to the evidence, factual findings and analysis. The standard of proof for human rights investigations is the legal “balance of probabilities” standard. This means that an allegation(s) is supported if the evidence and information provided or gathered shows that the allegation was more likely than not to have occurred.
- 3.64 The investigator will determine if, on a balance of probabilities, the alleged incident(s) of discrimination took place and whether it amounts to a breach of the Human Rights Policy.

Vexatious or Bad Faith Complaint

- 3.65 If it is determined based on objective, clear and compelling evidence that a complaint is vexatious or was filed in bad faith, the investigation process may be discontinued, and corrective action including discipline may be taken against the person(s) responsible for making the complaint.
- 3.66 People who have human rights issues and concerns should raise them. A vexatious or bad faith complaint is not the same thing as an unsubstantiated complaint (for which the investigator has not found sufficient evidence on a balance of probabilities that an incident occurred and that it amounted to discrimination).

Investigation Report

- 3.67 The investigator will prepare a written report summarizing the allegations and responses, the steps taken during the investigation, the evidence gathered, the analysis of the evidence, and the investigation findings and conclusions (the "Investigation Report").
- 3.68 The investigator will provide a copy of the draft Investigation Report to the Human Rights and Equity Advisor, who will review it to ensure that the appropriate human rights analyses have been applied and that the findings are supported by the evidence. The purpose of this review is not to advise on the investigation or to question, challenge or influence the outcome. It provides an opportunity to raise potential or perceived gaps in the investigation process, report, evidence or human rights analyses. This is in keeping with the District's responsibility to ensure that investigation reports and analyses are sound and can withstand third party scrutiny.
- 3.69 The investigator will invite the reporter and respondent individually to a meeting (in-person or virtual) to verbally share a summary of the findings and conclusions in the draft Investigation Report and will provide the parties with an opportunity to comment. The investigator will consider any potential accessibility and accommodation needs that may need to be addressed in order for the reporter or respondent to review the report and provide comments.
- 3.70 The investigator will consider any comments and may adjust the report at the investigator's sole discretion. The investigator will issue a final Investigation Report to the Associate Director of Equitable Education.

Requesting a Review of the Investigation Findings

- 3.71 A reporter or respondent who wishes to request a review of an investigator's findings may submit a written request to the Associate Director of Equitable Education explaining the reasons for the request and providing any supporting information.
- 3.72 Subject to accommodation needs, the review request must be submitted in writing within ten regular business days from the date the final summary investigation report was received.
- 3.73 The Associate Director of Equitable Education will only consider a review request if the request asserts:
 - a) Lack of procedural fairness;
 - b) That the lack of procedural fairness could have had an impact on the findings or outcome of the investigation;
 - c) That the findings of fact do not support the conclusion; or

d) New facts or evidence that could affect the outcome decision and that could not have been reasonably obtained during the investigation.

- 3.74 The request for review is not intended to duplicate the investigation that was completed and is not a process or mechanism to reinvestigate a complaint.
- 3.75 The Associate Director will inform the other party that a review has been requested and provide the other party an opportunity to respond, including as to any new information provided as part of the review request.
- 3.76 The Associate Director will determine if the investigator's findings stand, should be adjusted or if the matter requires further or a new investigation and will communicate the decision to the parties. There is no further internal appeals mechanism or process.

Investigation Outcomes: Corrective and Other Action

Complaint Not Substantiated

- 3.77 Where a complaint is found to not be substantiated, the Associate Director of Equitable Education will nonetheless assess whether any action is required to address any findings in the investigation report (for example, inappropriate behaviour that does not amount to discrimination or potential evidence or findings of systemic issues in the environment).

Complaint Substantiated (in whole or in part)

- 3.78 Where one or more of the allegations are found to be substantiated, the District will, in accordance with the below process:
- a) Consider the complaint on an individual basis and assess the specific facts, circumstances and findings; and
 - b) Take appropriate responsive, remedial, restorative and corrective actions including discipline, as appropriate, to address the findings.
- 3.79 Consideration shall also be given to addressing any potential underlying or systemic issues.
- 3.80 To support this process, the superintendent responsible for Human Resources shall convene a committee known as the Investigation Outcome Committee ("IOC") made up the Associate Director of Equitable Education, the Human Rights and Equity Advisor and the respondent's superintendent. At the discretion of the superintendent responsible for Human Resources, additional supervisory staff may be engaged based on the findings and issues outlined in the Investigation Report and in accordance with relevant policies, procedures and collective agreement provisions (where applicable). The IOC will consider all relevant findings, factors and circumstances and will make recommendations to the Associate Director of Equitable Education about the appropriate response, including potential systemic actions, to address the substantiated complaint. The recommendations will be documented in an investigation response action plan (template). The Associate Director of Equitable Education will document which of the recommendations are being acted upon, including corrective actions that may be appropriate, in consultation with Human Resource Services. The IOC will maintain confidentiality.

Possible Corrective Actions

- 3.81 Where the respondent is an employee, corrective action(s) will be in accordance with discipline policies, procedures and collective agreements and may include:

- a) A restorative meeting or approaches;
- b) An apology;
- c) A permanent separation of the parties;
- d) Training or professional development;
- e) Counseling;
- f) Letter of expectations/letter of counsel; and
- g) Discipline, up to and including termination of employment.

Possible Corrective Systemic Actions

3.82 Possible systemic actions in response to a complaint may include:

- a) Learning, training or professional development for groups (for example, at a school, system department or system level);
- b) Review of a policy, procedure, practice or professional development to identify, prevent and address barriers in accordance with anti-discrimination principles in the Human Rights Policy; and
- c) A systemic review of the learning environment.

Notifying the Parties and Communicating the Outcome

- 3.83 The Associate Director of Equitable Education will provide the reporter and respondent with written notification of the investigation findings and conclusions and of any corrective action taken.
- 3.84 The Associate Director of Equitable Education will keep the Director of Education informed about substantiated findings and actions adopted from the investigation response action plan and may also share this information with supervisory employees as may be required to support the implementation of corrective and systemic actions. The Associate Director will consider additional communications that may be required, depending on the circumstances, while protecting confidentiality.
- 3.85 For some employee groups, the District may also have obligations to report substantiated findings to applicable employee professional associations and colleges.

Concerns About the Findings or Outcome of the Investigation

- 3.86 Where a reporter or respondent is dissatisfied with the outcome of the complaint, they may pursue other options/remedies such as filing an application with the Human Rights Tribunal of Ontario or as may be available under collective agreements, contract, or otherwise at law.

Monitoring and Follow Up: Restoring Relationships and Learning Environments, and Preventing Discrimination

- 3.87 Human rights issues, incidents and complaints affect parties and witnesses (and relationships among them) and other people in the learning and working environment. As part of the resolution of all issues, incidents and complaints, the District will take appropriate action to help restore relationships and the environment and to prevent potential recurrences (for example, restorative meetings, learning and professional development).

III. General Requirements and Considerations

Safety, Supports and Interim Measures

- 3.88 When addressing issues, incidents and complaints, the District will explore, assess and address potential immediate and ongoing safety needs or other interim measures for any impacted parties, pending the outcome of the matter. This includes providing support to any District community member who witnesses or has been affected by an incident of discrimination in District learning or working environments. It may also involve separating parties (where feasible and in a way that does not penalize the reporter) and developing a safety plan.
- 3.89 The District will also consider unique identity-based and other safety and privacy concerns that need to be addressed in safety planning related to stigma, biases, barriers and stereotypes based on ancestry, race, disability, sexual orientation, gender identity, gender expression, creed and all Prohibited Grounds. For example, 2SLGBTQI students may not be “out” with their parents/guardians and may have safety concerns related to communications, and they may not have access to a safe support person to attend complaints resolution meetings. In addition, international students, newcomers, undocumented students, English language learners and children and youth in care may require additional support.
- 3.90 Employees who witness incidents of discrimination may contact the Employee and Family Assistance Program (for employees for whom this service is available) or their principal or manager/supervisor for support.

Union/Federation/Association Representation

- 3.91 Respondents who are employees and who are members of a union, federation or association have the right to union/federation/association representation at issue or complaint resolution meetings and investigations.

Support Person

- 3.92 Reporters, respondents and witnesses have the right to have a support person accompany them during an issue, incident or complaint resolution process. The support person must not be a party or witness to the complaint or have a real or perceived conflict of interest. A support person may include: parent/guardian, colleague or family member, union/federation/association representative (where applicable), a friend, school staff, another student, teacher, or community advocate, member or representative.
- 3.93 All persons acting as a support person within the scope of these procedures must keep any information regarding the complaint confidential. A support person may be required to sign a confidentiality agreement when attending investigation or other issue, incident or complaint resolution meetings.
- 3.94 Subject to accommodation needs, support persons must not answer questions on behalf of the interviewee or obstruct the investigation process in any way.

Confidentiality

- 3.95 Information about the issue or complaint is provided only to those who need to know in order to address and resolve the issue or complaint.

- 3.96 All individuals involved in reporting/raising, responding to, or the administration of an issue or complaint under this procedure must keep all information related to the issue or complaint strictly confidential, except as may be required to administer any corrective action in response to the complaint, or as required or permitted by law.
- 3.97 General anonymized summary data about issues, incidents, complaints and actions taken to address them, including any systemic actions, may be included as part of annual reports and trends analyses.

Protection from Reprisal

- 3.98 Reprisal is a violation of the Human Rights Policy and is unacceptable and will not be condoned. No student (or their parent/guardian) or community member will be penalized, threatened, negatively treated or be subject to reprisal for seeking information about or asserting their rights under the Human Rights Code or the Human Rights Policy and procedures, including:
- a) Requesting an accommodation;
 - b) Raising a human rights issue, incident or complaint;
 - c) Raising a concern about an issue, incident, complaint or accommodation process or outcome;
 - d) Filing an application to the Human Rights Tribunal of Ontario or raising a complaint to another external body to assert their rights; and
 - e) Providing information related to an issue or complaint or participating as a party or witness in a complaint or issue resolution process.
- 3.99 Protection from reprisal extends to any District community member who is a reporter, witness, advisor, support person or representation, investigator, decision maker or District representative responsible for implementing the outcome of a complaint, or employee who reports a human rights issue or incident under section 3.9 (Employee Responsibilities).
- 3.100 All complaints about reprisal should be raised to the superintendent (or if the matter involves the superintendent, the next level supervisor) as soon as possible. Where reprisal is substantiated, it will be reported to the Director of Education. Persons who are found to have reprised against students, parents/families/guardians, employees or community members are subject to corrective action, including discipline up to and including termination of employment (for employees) or expulsion (for students).

Investigations into Allegations of Discrimination

- 3.101 The District recognizes that in some cases, incidents of individual or systemic discrimination (for example, racism, sexism, ableism, homophobia, biphobia, transphobia and faithism) may be overt and in other cases, it may be subtle with little or no direct evidence. Assessing allegations of discrimination requires (among other things):
- a) Applying human rights and anti-discrimination principles [for example, discriminatory effect or impact instead of intent, intersectional analyses, determining if a Prohibited Ground(s) is a factor (and not necessarily the sole or main factor) in the alleged discrimination] and assessing the effects of historical and ongoing systemic discrimination as they may relate to the specific complaint;
 - b) Considering how dominant discriminatory ideologies, biases, assumptions and stereotypes are “normalized” and internalized and may affect perspectives and decision making;

- c) Understanding how discrimination operates in systems and structures (for example, in policies and practices which may appear neutral but that create or perpetuate disadvantage and may discriminate against or exclude people based on ancestry, race, disability, sexual orientation, gender identity, gender expression, creed/religion, socioeconomic status and all other Prohibited Grounds and intersection of grounds, and how this affects services, learning environments and cultures); and
- d) Analyzing comparative evidence and drawing inferences based on patterns of behaviour and decision making (for example, reviewing data to assess potential disparities and disproportionalities), where appropriate.

With these principles in mind, each complaint and allegation will be examined on an individual, case by case basis and will consider all relevant facts and circumstances within the full context of the complaint.

Timelines to Raise an Issue, Incident or Complaint

- 3.102 Issues, incidents or complaints should be raised as soon as possible, and within one year from the date of the incident that led to the issue or complaint (or, if the complaint is about a series of connected incidents, then one year from the date of the last incident). The District will consider reasonable exceptions where:
- a) There is a good faith reason for not raising the matter sooner;
 - b) No party to the complaint will be negatively affected or substantially prejudiced by the delay; and
 - c) The issue, incident or complaint raises significant concerns.

Timelines to Address an Issue, Incident or Complaint

- 3.103 Timelines to address an issue, incident or a complaint may vary depending on several factors, including and not limited to the nature of the issue, incident or complaint, the complexity of the allegations, number and availability of parties/witnesses and resolution method(s). The District is committed to addressing and resolving issues, incidents and complaints as quickly as is reasonably possible in all of the circumstances. Persons involved in addressing the matter (for example, superintendent, mediator, investigator) will advise parties of expected timelines and will keep parties informed of next steps and any potential delays throughout the process.

Flexible Procedures

- 3.104 It is recognized that in some situations or where there are extenuating circumstances, resolution procedures may need to be adapted to best fit the situation or to resolve a matter outside of these procedures. In these cases, the responsible staff will document the rationale and inform the parties. Any adapted approach must maintain the principles of the Human Rights Policy and this procedure.

Interference with an Investigation

- 3.105 Any participant (reporter, respondent, witness, support person, etc.) in an issue, incident or complaint investigation process has an obligation to cooperate and not interfere in the process. Interference in an investigation is a violation of the Human Rights Policy and this procedure.

Competing Rights

- 3.106 The District recognizes that in a complex and diverse service and employment organization, rights may come into conflict with one another. The District:
- a) Recognizes that no rights are absolute and there is no hierarchy of human rights;
 - b) Respects the importance of all sets of rights;
 - c) Will assess each situation on a case by case basis; and
 - d) Will collaboratively explore options and solutions in consultation with appropriate internal resources and expertise to maximize rights for everyone consistent with the Ontario Human Rights Commission's Policy on Competing Rights framework, human rights and legal principles and relevant case law.

Accommodation to Participate in the Complaint or Issue Resolution Process

- 3.107 Students (or their parents/guardians) may have needs related to a Prohibited Ground(s) (for example, disability, language barrier, etc.) that affect their ability to raise or respond to issues, incidents or complaints and/or to understand their rights, responsibilities and options under the Human Rights Policy and this procedure. If so, they will be accommodated to the point of undue hardship (e.g., with alternate formats, translation services, assistance completing forms, etc.). To support accessibility and reduce barriers to bringing forward complaints, students (or their parents/guardians) may:
- a) Submit a complaint in the language of their choosing; and/or
 - b) Raise a complaint in an alternative way (for example, verbally) if they are unable to submit it in writing.

The District employee who receives the issue or complaint will document it on the complaint form. Other flexible options will be explored as may be needed on an individualized, case-by-case basis.

- 3.108 Students, parents/guardians, support persons or community members involved in an issue, incident or complaint resolution process may require accommodation (for example, translator, other supports) to participate in resolution meetings, and should make their human rights related needs known in advance by submitting the attached accommodation request form [template] and collaboratively engaging in the accommodation process so that the District can facilitate appropriate accommodation.

Organizational Trends Analysis

- 3.109 The Director of Education and designates will collect and analyze issue, incident and complaint data in accordance with Human Rights Policy, related procedures and Accountability Framework to monitor organizational human rights trends and issues. Where appropriate, this data may be used to inform:
- a) Professional development planning;
 - b) Revisions to relevant procedures and practices; and

- c) Special initiatives, programs strategies, plans or actions to address unique and intersecting issues or barriers that affect students and employees based on ancestry, race, disability, sexual orientation, gender identity, gender expression, creed/religion, and any other Prohibited Ground or combination of grounds. The District will engage and co-create any such programs with communities the District serves and those who are most affected by the program.

Communications and Information Sharing

- 3.110 The Director and designates will communicate about and publicly post this procedure in accordance with the requirements of the Human Rights Policy, procedures and Accountability Framework. Alternative formats will be made available upon request.
- 3.111 This procedure shall be referenced in School Codes of Conduct, School Handbooks, and on school websites. It should also be referenced in newsletters, reports, meetings, school websites and other appropriate communication tools to help bring awareness of the procedure to the community.
- 3.112 The District will regularly share information about its commitment to human rights and the issue, incident and complaint resolution process. This will be posted on the District's website and will also be communicated in, among other things, student application, registration and returning student materials, orientation packages, student information forms, newsletters, survey invitations, etc.

Review Process

- 3.113 The Director of Education and designates will review and update this procedure as necessary and appropriate, but it shall be reviewed at least every five years. To support the review process, the review will include:
 - a) Information, trends and data (for example, school climate and well-being survey data, student census/identity survey, workforce census data, complaints data, accommodations data, etc.);
 - b) Input from students, parents/guardians and employees; and
 - c) Evolving human rights law, policy and/or practices.

4.0 Reference Documents

4.1 Policies

- [Indigenous Education](#)
- [Human Rights, Anti-Discrimination and Anti-Racism](#)
- [Policy Formulation and Review](#)
- [Equity and Inclusive Education](#)
- [Positive School Climate](#)
- [Safe and Respectful Workplace and Harassment Prevention](#)
- [Code of Conduct and Discipline for Students](#)

4.2 Procedures

- [Indigenous Education Procedure on Classroom Practices: Teaching and Learning](#)
- [Human Rights, Anti-Discrimination and Anti-Racism](#)
- [Human Rights Inclusive Design and Accommodation](#)
- [Human Rights Roles, Responsibilities and Accountability Framework](#)
- [Consultative Process](#)

- [Equity and Inclusive Education](#)
- [Positive School Climate](#)
- [Complaints Procedure - Human Rights, Safe and Respectful Workplace and Workplace Harassment Prevention](#)
- [Code of Conduct and Discipline for Students](#)

4.3 Other Documents

- [Universal Declaration of Human Rights](#)
- [United Nations Declaration on the Rights of Indigenous Peoples](#)
- [United Nations Convention on the Rights of the Child](#), [Rights of Persons with Disabilities](#), [Yogyakarta Principles](#) and other United Nations documents and instruments
- [Canadian Charter of Rights and Freedoms](#)
- [Ontario Human Rights Code](#)
- [Anti-Racism Act](#)
- [Accessibility for Ontarians with Disabilities Act](#)
- [Education Act](#)
- [Ontario Human Rights Commission's Policies and Guidelines](#), reports and resources
- [Anti-Racism Directorate's Anti-Racism Policy](#), [Anti-Black Racism Strategy](#) and [Data Standards for the Identification and Monitoring of Systemic Racism](#)
- Ministry of Education strategies, plans, and policy and procedures memoranda
- Toronto District School Board's [Reporting and Responding to Racism and Hate Incidents Involving or Impacting Students in Schools Operational Procedure](#)

Appendix:

[NOTE: Forms and templates referenced in procedure to be added]

Effective Date

2022-05-16