

Complaints Procedure - Human Rights, Safe and Respectful Workplace and Workplace Harassment Prevention

1.0 Objective

- 1.1 This Procedure is adopted to support the implementation of the Durham District School Board's Human Rights, Anti-Discrimination and Anti-Racism Policy (the "Human Rights Policy") and the Safe and Respectful Workplace and Harassment Prevention Policy (the "Safe and Respectful Workplace Policy")
- 1.2 Through these policies, the Durham District School Board (the "District" or the "employer") recognizes that protecting and promoting human rights, anti- oppression and respectful learning and working environments that are free from discrimination and harassment are critically important for supporting:
 - Students, community members and employees' sense of safety, well-being, mattering, engagement and belonging; and
 - A culture of care where students and employees are successful and thrive.
- 1.3 The District is committed to providing services, employment and learning and working environments that centre Indigenous rights, human rights and equity and are welcoming, respectful, safe, inclusive, equitable, accessible and free from oppression, discrimination (including and not limited to all forms of racism, ableism, sexism, homophobia, biphobia, transphobia, faithism and ageism), harassment and harm.
- 1.4 This procedure must be read together with the Safe and Respectful Workplace Policy and the Human Rights Policy and Procedures. These documents set out commitments and organizational roles, responsibilities and accountabilities to promote and uphold human rights and to prevent discrimination, harassment and disrespectful conduct in the workplace.
- 1.5 This procedure provides a mechanism for dealing with any alleged violations by District employees of the Safe and Respectful Workplace Policy and/or of the Human Rights Policy (conduct of parents/families is to be dealt with under the school Code of Conduct).
- 1.6 Incidents of discrimination, workplace harassment and disrespectful conduct are unacceptable in District working environments and will not be condoned. Any such incidents or allegations will be addressed as outlined in this procedure in a fair, appropriate, timely and confidential manner.
- 1.7 Nothing in this procedure denies or limits access to other avenues of redress available under the law. At any stage, a complainant may choose to report the matter to the Police, bring proceedings before the Human Rights Tribunal of Ontario, or seek to address the matter through their Professional Organization or Association. Typically, multiple processes will not be permitted to proceed concurrently, although informal dispute resolution attempts will be permitted at any time with the agreement of the District and the parties. The Superintendent responsible for Human Resources or designate will, after consulting with the parties, determine how to proceed in circumstances where there are concurrent processes underway.

2.0 Definitions

- 2.1 The definitions from the Human Rights Policy and the Safe and Respectful Workplace Policy are adopted for this procedure. In this procedure “complainant” refers to the worker bringing forward an alleged breach of the Human Rights Policy or the Safe and Respectful Workplace Policy. The “respondent” is the person alleged to have committed the breach.

3.0 Reporting/Complaint

- 3.1 A complaint may be initiated by any Worker (as defined in the Human Rights Policy and the Safe and respectful Workplace Policy) who is aware of any potential breach of the Human Rights Policy or the Safe and Respectful Workplace Policy.
- 3.2 All Workers have a right to report/make a complaint of harassment, discrimination, disrespectful conduct or any other conduct that is in breach of the Human Rights Policy and/or the Safe and Respectful Workplace Policy.
- 3.3 The complainant is advised to keep a written record including the name of the respondent, date, time, location, description of the conduct at issue, potential witnesses and who has been informed.
- 3.4 Provided they feel safe to do so, a complainant is encouraged to inform the respondent that their conduct may be in breach of the Human Rights Policy and/or the Safe and Respectful Workplace Policy. Complainants are also encouraged to seek support from a colleague, union or association representative, if applicable.
- 3.5 Complaints of an alleged breach should typically be made to the complainant’s supervisor and to the Superintendent responsible for Human Resources. However, if the respondent is the supervisor, reports should be made by the complainant directly to the Superintendent responsible for Human Resources or if the allegation is against a manager senior manager or a member of the senior team, to the Director of Education, the General Counsel or the Superintendent responsible for Human Resources as the complainant may deem most appropriate in the circumstances. Complaints against the Director of Education should be made to the Chair of the Board of Trustees and one of either the General Counsel or the Superintendent for Human Resources, as the complainant may deem appropriate in the circumstances,
- 3.6 A report/complaint of an alleged breach of the Human Rights Policy and/or the Safe and Respectful Workplace Policy shall be made using the Complaint Form attached as Appendix “A” and must include the following information:
- Name(s) of the complainant(s), position and contact information;
 - Name of the respondent (s) position and contact information (if known);
 - Names of the witness(es) (if any) or other person(s) with relevant information to provide about the incident (if any) and contact information (if known); and
 - Details of what happened including date(s), frequency and location(s) of the alleged incident(s).
- 3.7 Individuals seeking information or resources about how to address issues or concerns regarding workplace conduct may contact their supervisor, union or association representative (where applicable), a joint health and safety committee member, the Employee and Family Assistance Program, the Superintendent responsible for Human Resources or the General Counsel.

- 3.8 Reprisals against individuals because they have reported a complaint in good faith are strictly prohibited.

4.0 Process/Timelines for Initiating a Complaint

- 4.1 Complaints are to be made using the Complaint Form attached as Appendix "A".
- 4.2 Complaints must be initiated within one (1) year of the most recent alleged breach. However, at the good faith discretion of the Superintendent for Human Resources, a complaint outside this time frame may be considered (for example where the complainant was sick, on leave or the like).
- 4.3 Within five (5) working days or as soon as possible thereafter, the Superintendent responsible for Human Resources or designate will provide written confirmation of receipt of the complaint to the complainant.
- 4.4 The Superintendent responsible for Human Resources or designate may take immediate steps to limit the interaction of the parties, including a non-disciplinary temporary separation of the parties (for example, shift change or reassignment of either the complainant or the respondent) as may be appropriate in the circumstances.
- 4.5 Within ten (10) working days or as soon as possible thereafter of issuing the written confirmation of the complaint, the Superintendent responsible for Human Resources or designate will initiate the process of an investigation.
- 4.6 The Superintendent responsible for Human Resources shall designate an internal or external investigator and may consult with the General Counsel on the retainer of any external investigator. Complaints engaging Human Rights issues shall be investigated by someone with knowledge and experience addressing such issues.

5.0 Informal or Mediated Resolution

- 5.1 The Superintendent responsible for Human Resources may, at any time, pursue a negotiated resolution of a complaint informally or through mediation, where appropriate in the circumstances of the complaint. The complainant and the respondent must consent and must agree that a mutually agreeable solution is achievable and desirable.
- 5.2 Mediation involves a neutral, objective 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 manner. It provides the opportunity to generate a variety of options for resolution and may contribute to restoring the working relationship between the parties.
- 5.3 The complainant and the respondent may choose to withdraw from any negotiation or mediation at any time.
- 5.4 Where a complaint is already being investigated, the parties may agree to hold the investigation in abeyance while they attempt to achieve a negotiated resolution.
- 5.5 If the parties agree to mediation, the investigator may, with the consent of the parties and the Superintendent responsible for Human Resources, act as the mediator, or the Superintendent responsible for Human Resources may retain an independent mediator acceptable to both parties.

- 5.6 When matters are resolved through a negotiated resolution, the complainant and the respondent will sign a memorandum of agreement outlining the terms to which they have agreed. The Superintendent responsible for Human Resources or the General Counsel must approve the agreement before it is binding. Human Resources will take all appropriate follow-up action to ensure compliance with the terms of the agreement.

6.0 Investigation Process, Procedural Fairness and Results

- 6.1 Subject to any successful informal resolution, the District shall ensure an investigation appropriate in the circumstances is conducted when:
- The employer or a supervisor becomes aware of conduct that may constitute a breach of the Human Rights Policy or the Safe and Respectful Workplace Policy; or
 - A complaint is made, whether in writing or orally, of conduct that may constitute a breach of the Human Rights Policy or the Safe and Respectful Workplace Policy.
- 6.2 Best efforts will be made to complete all investigations within 90 calendar days of the events listed in the preceding paragraph unless there are extenuating circumstances warranting a longer investigation. The parties shall be notified if the investigation will not be completed within 90 days, the reason for the delay and the expected date that the investigation will be completed.
- 6.3 The investigator must not be the respondent and must not be a direct report of the respondent. The investigator must be able to conduct an objective investigation. The investigator conducting the investigation on behalf of the employer must, at a minimum, complete the following steps in an investigation:
- The investigator must ensure the investigation is kept confidential and that identifying information is not disclosed unless necessary to conduct the investigation or as required by law. The investigator must remind the complainant, the respondent and any witnesses of the confidentiality requirements and protection from reprisal under the Human Rights Policy and the Safe and Respectful Workplace Policy.
 - The investigator must make reasonable efforts to thoroughly interview the complainant and the respondent, even if they are no longer employed by the District.
 - The respondent must be given the opportunity to respond to the allegations raised by the complainant. In some circumstances, as may be determined appropriate by the investigator, the complainant may be given a reasonable opportunity to reply.
 - The investigator must make reasonable efforts to interview any relevant witnesses as necessary to conduct a thorough investigation, even if they are not employed by the District. Witnesses shall be interviewed separately.
 - The complainant, respondent and any witnesses employed by the District are entitled to have a union representative or support person in attendance at any interviews/meetings with the investigator.
 - The investigator must collect and review any relevant documents.
 - The investigator must take appropriate notes and statements during interviews.
- 6.4 The employer must ensure that written notice of the results of the investigation and any corrective action are provided to the complainant and the respondent.

- 6.5 The results of the investigation are not the same as the investigation report. The “results of the investigation” is a summary of the findings of the investigation. The results must be communicated in writing, within ten (10) calendar days of the investigation being concluded, unless there are extenuating circumstances requiring an additional ten (10) days to communicate the results.
- 6.6 The employer must also ensure that any corrective action is communicated to the complainant and the respondent. The amount of information provided to the complainant about the corrective action will depend on the circumstances but in all cases where a breach of the Human Rights Policy and/or Safe and Respectful Workplace Policy is found, the information provided must, at a minimum, indicate what steps the employer has taken or will take to best prevent a similar incident from occurring again in the future. The corrective action, if any, must be communicated in writing within ten (10) calendar days of the investigation being concluded, unless there are extenuating circumstances requiring an addition ten (10) days.
- 6.7 In circumstances where the conduct at issue is not a violation of the Human Rights Policy or the Safe and Respectful Workplace Policy, the Superintendent responsible for Human Resources or designate may recommend measures to address any workplace issues between the parties or to address workplace culture or systemic issues.

7.0 Disciplinary Actions

- 7.1 Following an investigation into a complaint under this procedure, the appropriate supervisor or manager, in consultation with the Superintendent responsible for Human Resources, may impose discipline on a respondent as appropriate in the circumstances.
- 7.2 The principles of progressive discipline and proportionality will be applied in dealing with any discipline. Discipline could include, but not limited to:
- verbal warning;
 - written reprimand;
 - suspension without pay; or
 - termination of employment.
- 7.3 The decision as to discipline may include a recommendation for professional learning, counselling or coaching support for the complainant or a recommendation for professional learning or coaching support/counselling for the respondent. A copy of the summary report may be placed in personnel file of the respondent.
- 7.4 For respondents who are not employees of the District, actions will be taken as appropriate for each situation and may include a letter of disapproval and caution or warning, a revoking of permits or contracts, an exclusion from District property, issuing of a trespass notice and/ or any other remedy that may be available at law. The Superintendent responsible for Human Resources will consult with Administrative Council in making a determination on appropriate action under this paragraph.
- 7.5 Any time that the District learns of conduct that may involve a criminal offence, it will be reported to the police and any relevant professional college.

8.0 Review

- 8.1 In the event that either a complainant or a respondent has one or both of the specific concerns listed in the next paragraph, a written request may be made to the Superintendent responsible for Human Resources to convene a review. Any such request shall be delivered within ten (10) working of receipt of the summary report. The reviewer may be internal or external and will be appointed by the Superintendent responsible for Human Resources, with approval of the Administrative Council.
- 8.2 The grounds for review are:
- The investigator(s) did not comply with this procedure; or
 - New evidence has become known after the completion of the investigation (but before the expiry of the ten working days limitation period for requesting a review).
- 8.3 The reviewer will report findings to the Superintendent responsible for Human Resources who will affirm or amend the reviewed decision or require that a new investigation be undertaken.

9.0 Misuse of the Complaint Procedures

- 9.1 If there is a determination on a balance of probabilities that a complaint has been filed in bad faith, including making of a false accusation by a person who knows it to be false, the complaint process may be discontinued and disciplinary action up to and including termination of employment may occur.
- 9.2 Any alleged reprisal shall be investigated as a complaint made under this procedure and, if substantiated, be subject to the same consequences as any complaint under this procedure.

10.0 Confidentiality and Records

- 10.1 All individuals involved in any complaint process, or who become aware of any complaint under this procedure, shall ensure that all information remains confidential. Witnesses will be informed that any statement they provide will be kept in confidence.
- 10.2 Notwithstanding the above, procedural fairness requires that the respondent to a complaint be advised of the nature of the complaint and other relevant information sufficient to provide a meaningful opportunity to respond to the complaint(s).
- 10.3 While an investigation is ongoing, the complainant, the respondent(s) and any witnesses will be instructed not to discuss the complaint, incident or the investigation with other Workers, witnesses, or any other person unless it is to someone not involved in any way in the complaint and is solely for the purpose of obtaining advice about their rights, in which case only the information necessary to obtain the advice is to be shared.
- 10.4 All correspondence and other documents generated under this procedure shall be marked "PRIVATE AND CONFIDENTIAL" and shall be stored in a locked and secure file in the Human Resources Department or the office of the General Counsel.

10.5 Records that will be stored include the following:

- A copy of the complaint and/or details about the incident(s);
- A record of the investigation including notes;
- A copy of witness statements, if any;
- A copy of the investigation report;
- A copy of the results of the investigation provided to the parties, where applicable; and
- A copy of any corrective action taken to address the complaint.

10.6 The documents associated with a complaint, incident and/or investigation will not be disclosed unless necessary to investigate an incident or complaint under this procedure, take corrective action or otherwise as may be required by law.

10.7 Records will be kept for at least five (5) years from the conclusion of an investigation.

Appendix:

Appendix A: Complaint Form

Effective Date

95-05-18

Approved by:

Administrative Council

Amended

2006-08-08

2010-09-20

2018-01-31

2022-05-16