



# KAWARTHA PINE RIDGE DISTRICT SCHOOL BOARD

## ADMINISTRATIVE REGULATIONS

**Section:** Human Resources

**Regulation Code:** HR-4.2.1

• Employee Relations

**Policy Code Reference:** HR-4.2

**Regulation:** WORKPLACE HARASSMENT

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This administrative regulation is written in accordance with the guiding principles in Board Policy No. HR-4.2, Workplace Harassment.

### 1. Objective

To provide procedures for dealing with allegations of an employee that s/he was harassed by a member of the Board community (including other employees, students, trustees, parents/guardians, volunteers, visitors, suppliers, service providers, and representatives of corporate partners or community agencies) in circumstances where the alleged harassment occurred in or impacts the workplace.

### 2. Definitions

Workplace harassment is “a course of vexatious comment or conduct against an employee in a workplace that is known, or ought reasonably to be known, to be unwelcome” by the person or persons who are subjected to the comments or conduct, whether the comment or conduct is based on prohibited Human Rights Code grounds or not. While harassment generally involves a pattern of conduct over time, one incident of a serious nature can constitute harassment.

Harassment can poison the work environment. A poisoned work environment is one which has, for a particular employee or group of employees, become hostile or negative as a result of harassment or discrimination. In such a case, the impact of the harassment or discrimination has had a psychological impact on the individual or group such that they are no longer able to function normally in the workplace because of the harassment or discrimination that has become associated with the workplace or because of the presence of the harasser in the workplace.

Harassment does not include the reasonable exercise of management functions including, but not limited to, giving reasonable instructions or direction, enforcing workplace rules and standards, providing counselling, constructive feedback or performance appraisals, and taking disciplinary or corrective action.

2.1 Examples of harassment include (but are not limited to):

- written or verbal insults, abuse or threats;
- slurs, epithets, including derogatory nicknames;

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- unwelcome remarks, jokes, invitations, requests, innuendos or taunting, whether overt, covert, implied or explicit;
- practical jokes which cause awkwardness or embarrassment, endanger an employee's safety or negatively affect work performance;
- persistent leering (suggestive staring) or other obscene/offensive gestures;
- unwanted and inappropriate physical contact such as touching, kissing, patting, pinching, or brushing up against a person;
- inquiries or comments about a person's personal life including but not limited to their sex life, sexual orientation or preferences;
- physical assault (including sexual assault);
- displaying/sending materials or graffiti or electronic communications which are sexually explicit or degrading, racist, or reflects a particular religion or ethnic group in a degrading or derogatory manner; and/or
- patronizing behaviour, language or terminology which reinforces stereotypes and undermines self-respect, or adversely affects work performance or working conditions.

### 2.2 Harassment Based on Human Rights Code Protected Grounds

The grounds protected by the Human Rights Code are: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex/gender, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status and disability. Examples of harassment prohibited by the Code include the following:

Sexual and/or gender-based harassment includes advances, requests for sexual favours, sexual contact, or other conduct of a sexual nature such as personally offensive behaviour, comments and/or gestures which might reasonably be expected to cause insecurity, discomfort, offence or humiliation to another person or group based on sex/gender, gender identity, gender expression, sexual orientation, marital or family status including situations where submission to such conduct is made either implicitly or explicitly a condition of employment or as a basis for any employment decision, benefit or advancement.

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- Racial and/or ethnocultural, including overtly or covertly ridiculing, comments, cartoons or jokes that are degrading or express hatred, whether verbally, in writing or physically, based on race, ancestry, ethnic origin, place of origin, skin colour, language, dress, citizenship or creed.
- Homophobic, including discrimination on the basis of sexual orientation, gender identification or gender expression, or the marital or family status of a person on the basis of their actual or assumed sexual orientation, gender identification or gender expression, including any comments that would demean, ridicule or denigrate a person based on their sexual orientation, gender identification or gender expression.
- Disability, including offensive, embarrassing, demeaning or harmful comments or jokes that reference directly or indirectly an individual's intellectual or physical capacities, or disability.

2.3 Harassment is not:

- relationships that are voluntary between mutually consenting adults;
- a one-time remark or compliment (unless very serious);
- the normal and appropriate exercise of supervisory, evaluation or operational authority and responsibilities, including assignment of work, training, performance appraisal, and discipline.

### 3. Guiding Practices

The procedures in this administrative regulation provide a mechanism for dealing with workplace harassment complaints of an employee by another employee, a student, or a member of the community. However, nothing in this administrative regulation precludes a complainant from exercising his/her rights to access other avenues available to them under the Ontario Human Rights Code or a collective agreement. The Senior Manager, Human Resource Services, may decide to suspend, postpone or cancel any investigation into a complaint under the policy if it is believed that the investigation would duplicate or prejudice such a proceeding.

Any employee who is covered by the Workplace Harassment Policy has a right to complain about discrimination and/or harassment and is entitled to have access to the complaint procedures regardless of whether or not the harassing comment or conduct was directed at them. Where possible, an effort should be made to resolve complaints through informal resolution. Normally, the first step will be to inform the individual

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that his/her behaviour is inappropriate and must stop immediately. Many complaints can be resolved quickly and effectively using this approach. However, there will be circumstances where the employee does not feel comfortable approaching the harasser and in this circumstance the employee will not be required to do so.

Accommodation of needs related to the prohibited grounds of discrimination described in the Ontario Human Rights Code will be provided as required to ensure that parties can fully participate in the resolution process.

### 3.1 Confidentiality and Privacy

All persons involved in the complaints process will, to the extent possible, protect the confidentiality and privacy of persons involved in a complaint, subject to the requirements of a fair investigation and resolution process. All documents related to the complaint process will be securely maintained by the Human Resource Services Department, separate from personnel files.

It should be understood, however, that disclosure may occur where required by law or where necessary in order that the Board may comply with its obligations under the Ontario Human Rights Code and/or Ontario's Occupational Health and Safety Act.

### 3.2 Documentation by Complainant

While it is not necessary to have a record of events to file a complaint, keeping notes can help in remembering details over time, and assist with the investigation. Complainants should attempt to keep detailed records of incident(s). This would include the following:

- the name and employment position of the employee or other person(s) alleged to be harassing;
- frequency of conduct (has it happened before?), date(s), time(s), location(s);
- possible witnesses;
- what happened;
- your reaction;
- whether you told anyone about the situation and if so who and when; and

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- any knowledge you have of the same or similar situation happening to others, in as much detail as possible.

### 3.3 Human Resource Services Information and Advice

A Human Resource Services position is designated to be available to consult with all persons to whom the Workplace Harassment Policy and Administrative Regulation apply. The position will provide information about human rights, generally, and workplace harassment in particular regarding the policy and administrative regulation. The position will neither advocate for any person nor provide legal advice. The incumbent will maintain confidentiality with respect to all inquiries and communications, except as necessary to carry out the requirements of the policy and this administrative regulation, or unless required by law to disclose information to ensure that the requirements of the Ontario Human Rights Code and Ontario's Occupational Health and Safety Act are followed, or to obtain legal counsel or advice from another Human Resource Services representative or more senior employee in the Board where necessary in order to effectively deal with any inquiry or issue relating to a complaint under this procedure. Any other Board employee so consulted is equally bound by the obligation of confidentiality.

### 3.4 Representation

Where a party is a member of a bargaining unit, that party may be accompanied by his/her union steward, provided that no conflict arises in doing so and the union steward does not interfere in the process.

### 3.5 No Reprisal

All employees have a right to be free from reprisals, or threat of reprisals, as a result of filing a complaint or being party to the investigation of a complaint. Any employee found to have engaged in a reprisal may be subject to formal disciplinary action.

### 3.6 Mediation

As appropriate, all parties to a complaint will be offered the option to mediate the complaint. Mediation will be conducted by an individual who: has no involvement in the complaint; has a thorough understanding of harassment issues and relevant legislation; and is able to conduct a proper mediation session. Mediation may take place at any stage during the complaint process.

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### 3.7 Anonymous Complaints

Investigations will not be undertaken on the basis of anonymous complaints, whether written or left by voice mail. However, superintendents, principals, vice- principals, managers and supervisors should review/look into situations where it comes to their attention that harassment may be occurring, should remain vigilant, and report them to Human Resource Services.

### 3.8 Malicious Intent

Where, as a result of an investigation, it is determined that a complaint was made maliciously (with a specific and direct intent to harm), or in bad faith (with reasonable knowledge of and intent to harm), the complainant may be subject to formal disciplinary action.

### 3.9 Reassignment

If it is necessary for reasons of safety or well-being, the complainant or the respondent may be moved to a different location within the organization, provided with alternative reporting relationships, or placed on home assignment with full pay and benefits pending the resolution of the complaint. Decisions regarding reassignment will be made on a case-by-case basis with due regard for the principle that the complainant will not be penalized for making the complaint.

## 4. Procedural Steps

There are two avenues for addressing workplace harassment concerns under this administrative regulation. Individuals may choose to pursue their complaints as part of an informal resolution process and/or through a formal complaint process. Although the informal approach and resolution is encouraged, an employee may choose to submit a formal complaint initially, or after informal resolution procedures have proven unsuccessful.

Note: Although the singular form of complainant and respondent is used below, it is recognized that there may be more than one complainant or respondent in each case.

### 4.1 Informal Resolution Process

The key point of an informal resolution process is that it does not involve a formal investigation procedure. The objective of the informal resolution process is to deal quickly and effectively with complaints of harassment.

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The following options are available to an employee who believes that she/he is being harassed by another employee:

4.1.1 Advise the person who is doing the harassing that his/her behaviour or actions are unwelcome and ask the person to stop. The alleged harasser(s) may not realize that the behaviour is unwelcome and offensive.

Note: It is recognized that this may not be possible or advisable in some instances. In such situations the support of a supervisor and/or Human Resource Services should be sought.

4.1.2 If the harassment does not end immediately, or is of such a nature that it causes the individual severe or ongoing discomfort, or if there are exceptional circumstances (such as concerns of retaliation or personal safety), the employee should promptly contact one or more of the following people

- a principal/manager/immediate supervisor;
- his/her union representative (if any); and/or
- a person(s) designated by the Senior Manager, Human Resource Services.

4.1.3 The person contacted may help by providing information and confidential advice to the complainant. This person will not investigate or pass judgement, but should advise the complainant of available options for resolution which may include:

- strategizing with the complainant about ways to communicate in person with the harasser;
- communicating with the harasser, whether verbally or in writing, per 4.1.1 above;
- helping the complainant to seek counselling elsewhere (through the Employee Assistance Program or a community support group);
- helping the complainant to initiate a formal complaint.

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### 4.2 Formal Complaint Procedure

The participants involved in the Formal Complaint Procedure include the complainant, the respondent (i.e. the alleged harasser), an investigator and the Senior Manager, Human Resource Services, or designate. The Senior Manager is responsible for ensuring that the matter is investigated and this may entail the appointment of an internal or external investigator.

### 4.3 Complaint to be Submitted in Writing

4.3.1 The complainant will submit a written complaint to the Senior Manager, Human Resource Services, identifying the nature of the harassment and other particulars. Upon receipt of the written complaint, the Senior Manager, Human Resource Services, or designate, will inform the respondent of the allegation(s) and will provide the respondent with information about the nature of the written complaint.

4.3.2 Immediately after the complaint is filed, the Senior Manager, Human Resource Services, will appoint an investigator to conduct an investigation into the complaint. An investigator may be a third party from outside the Board or agency, or may be a staff member with administrative responsibilities, such as a Human Resource Services manager, a principal or superintendent. The investigator will have a thorough understanding of harassment issues, relevant legislation, and will be able to conduct a proper investigation.

4.3.3 The investigator will initiate an investigation into the complaint, using the general standards of fairness and proper procedures for conducting an investigation. Both the respondent and the complainant and any witnesses may have a supporter present when interviewed so long as the supporter acts in an observer capacity only and does not interfere with the investigation process. A supporter may be a supervisor, an association or union representative, or a fellow employee who is not associated with the complaint as a witness or who has an obvious conflict of interest with the other party.

## 5. Harassment Complaints by an Individual Not The Direct Subject of the Harassment

5.1 In keeping with the Board's policy obligations, an investigation may occur, where an informal resolution is sought or a formal complaint is received from an employee who is directly and personally affected by the incident(s) or from



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an individual who observed the incident but was not the object of the harassment.

Note: Investigations will not be undertaken based on rumour, conjecture, hearsay or indirect information not capable of objective verification.

- 5.2 Upon receipt of a complaint from an individual who observed the harassment or discrimination, the Senior Manager, Human Resource Services, the Director of Education, or designate, will determine the procedures to be followed for assessment which may include investigation described in 4.2 and 4.3 above.

### **6. Investigation Processes**

- 6.1 The investigator is responsible for ensuring a thorough, fair and impartial investigation of the allegations in the complaint. The investigator will interview the complainant, the respondent(s), and relevant witnesses suggested by the complainant or respondent(s), as well as gather documents relevant to the matters in the complaint.
- 6.2 All staff of the organization are required to co-operate with the investigator. The investigator will, wherever possible, complete the investigation within 90 days of receiving the assignment.
- 6.3 At the conclusion of the investigation, the investigator will prepare a written report summarizing the allegations and the investigation results, and will forward the report to the Senior Manager, Human Resource Services.

### **7. Potential Outcomes**

- 7.1 Based on the findings in the investigator's report, the Senior Manager, Human Resource Services, will make a decision as to whether the policy and administrative regulation have been violated.
- 7.2 If it is determined that the policy and administrative regulation have been violated, the Senior Manager, Human Resource Services, will determine the appropriate consequences for person(s) who have been found to have violated the policy. These may include any or some of the following:
- an apology,
  - counselling,

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- education and training,
- mediation,
- verbal or written reprimand,
- suspension with pay,
- suspension without pay,
- transfer,
- termination of employment for cause.

7.3 In determining the appropriate consequences, the Senior Manager, Human Resource Services, will take into account considerations which may include the nature of the violation of the policy, its severity, any mitigating circumstances, disciplinary record, and whether the individual has previously violated the policy.

7.4 Where a violation of the policy is determined, the Senior Manager, Human Resource Services, will also take any steps necessary to repair the effects of the harassment/discrimination on the complainant, on the workplace environment, and to prevent any further recurrences of harassment and/or discrimination within the organization.

7.5 Any and all documentation, including records of meetings, interviews, and results of investigations which pertain to the complaint, will be maintained in a separate and confidential file and retained in accordance with legislation and the Board's retention guidelines.

7.6 Where an investigation results in disciplinary action, the information will be placed in the respondent's personnel file. Where the complaint has not been substantiated, no reference will be placed in the personnel file of the respondent.

7.7 The Senior Manager, Human Resource Services, or designate, will be responsible for monitoring the outcome of the complaint.

### **8. Communication**

Both the complainant(s) and the respondent(s) will be provided with a copy of the investigator's report, and with the decision of the Senior Manager, Human Resource Services, regarding outcomes. All parties will be reminded of their rights under the Ontario Human Rights Code and Ontario's Occupational Health and Safety Act at the time that the investigator's report and all decisions regarding outcomes are communicated.

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**9. Complaint Unsupported**

- 9.1 Where the results of the investigation do not support the allegations of harassment made by the complainant, she/he will be so advised by the Senior Manager, Human Resource Services, or designate, and there will be no further proceedings under the Board policy and administrative regulation.
  
- 9.2 If the Senior Manager, Human Resource Services, determines that no blame is attached to the respondent, the investigator's report will be retained in a sealed envelope in the confidential files of the Senior Manager, Human Resource Services, or designate.

**Related Board Policies**

HR-5.3, Code of Conduct for Employees  
B-3.2, Equity, Diversity and Inclusion  
ES-1.1, Safe, Caring and Restorative Schools  
HR-4.2, Workplace Harassment

**Legal References**

Canadian Charter of Rights and Freedoms Criminal Code of Canada  
Ontario Human Rights Code  
Ontario Occupational Health and Safety Act  
Education Act S. 286 (3) Duties of Supervisory Officers as Assigned by Board  
Ministry of Education Policy/Program Memorandum No. 119, Developing and Implementing Equity and Inclusive Education Policies in Ontario Schools

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