



# KAWARTHA PINE RIDGE DISTRICT SCHOOL BOARD

## ADMINISTRATIVE REGULATION

**Regulation Name: Human Rights: Code-Based  
Discrimination and Harassment**  
**Section: Board and Community**

**Regulation Code: B-3.3.1**

**Policy Code Reference: B-3.3**

Established: October 25, 2022

Revised or

Reviewed:

### 1. OBJECTIVE

For members of the Kawartha Pine Ridge District School Board (the Board), this administrative regulation outlines the complaint processes for addressing allegations of discrimination and/or harassment that violate Ontario's Human Rights Code (the Code). It assumes that all members of the Board community (including staff, management, union/federation/association, students, parents, and other community members) who are a party to the human rights complaint involving the Code procedure will, in all instances, endeavor to adhere to forging an anti-discrimination and anti-harassment culture while recognizing a duty to address Code-based discrimination and/or harassment wherever and whenever it occurs and/or adversely impacts a member of the Board community.

### 2. DEFINITIONS

AODA

Accessibility for Ontarians with Disabilities Act

Code

Human Rights Code

COHREA

Commissioner's Office of Human Rights, Equity and Accessibility

EAP

Employee and Family Assistance Program

HREA Commissioner

Human Rights, Equity and Accessibility Commissioner

HRTO

Human Rights Tribunal of Ontario

#### 2.1 Accompanying Person

Any person(s) chosen by a Complainant or Respondent to accompany them to the COHREA consultation. An accompanying person acts solely in a support

capacity and does not act as an advocate, representative and/or agent with an interest in the matter. In the case of a student<sup>1</sup>, it is assumed that a parent or guardian would be an accompanying person. For unionized staff members, an accompanying person would normally be a union or federation executive member from the bargaining unit to which the employee belongs unless a member states otherwise. For non-union staff members, an accompanying person is any person of the staff member's choosing that understands the role and requirement of confidentiality. The following people may also provide support:

- a parent/guardian or caregiver,
- a school or department staff member,
- a union, federation or association representative,
- a colleague, and/or
- a translator/interpreter.

An accompanying person must, and is expected to always maintain, confidentiality and details such as: the accompanying person's name and relationship to the Complainant/Respondent. This information must be supplied to COHREA, at least twenty-four (24) hours prior to any consultation.

## 2.2 Adverse Effect Discrimination<sup>2</sup>

A situation that unintentionally singles out particular people and results in unequal treatment. It exists in a situation where a requirement, qualification or factor exists that is not overt discrimination but results in the exclusion of, restriction of, or preference for a group of persons.

## 2.3 Allegation

An unproven claim or assertion that someone has done something wrong based on one's belief that a violation of the Board's harassment/discrimination policies has occurred.

## 2.4 Balance of Probabilities

The standard of proof where a proposition is determined as reasonable and more probable than not or more likely than not upon review of relevant facts and circumstances that make up all the evidence before a reviewer.

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<sup>1</sup> This does not include students who are over the age of 18, or 16 years old or over and withdrawn from parent consent.

<sup>2</sup> Ontario Human Rights Commission. (n.d.). *Forms of discrimination*. Retrieved January 10, 2018, from <https://www.ohrc.on.ca/en/policy-ableism-and-discrimination-based-disability/6-forms-discrimination>

2.5 Board

A reference specifically pertaining to the Kawartha Pine Ridge District School Board (also referred to as KPRDSB/KPR) as a legal entity.

2.6 Complainant

A person who is a member of the Board community who brings forward a concern and/or makes a formal or informal complaint alleging that discrimination and/or harassment has occurred under a protected ground under the Code.

2.7 Records of Complaints

Records of formal human rights complaints files with the COHREA are retained at its office. Such records are maintained in accordance with Board Policy BA-1.1, Records Management and Board Policy BA-1.8, Privacy and Information Management.

2.8 Respondent

A person against whom a complaint is made who is responding to or in opposition to a complaint made by the Complainant.

2.9 Restorative Practice

A process or processes that focus on mending harm experienced by others with the goal of repairing and rebuilding relationships when reviewing actions, and behaviours and conduct that are the determined to be the sources of conflict. In education, it is used as part of progressive discipline to build, strengthen and help in nurturing and restoring healthy relationships.

2.10 Senior Administrator

Anyone employed in a leadership role at the Board that has sufficient authority to assume or ensure the taking of remedial action (e.g., Director of Education, Associate Director, Superintendent, HREA Commissioner, Executive Officer)

2.11 Witness

A person who may have relevant information about a matter where the Board conducts an investigation under the Human Rights: Code Based Discrimination and Harassment Policy.

### **3. APPLICATION**

#### **3.1 Relationship to Other Board Policies**

There are specific Board policies for addressing complaints pertaining to issues and concerns that involve non-Code matters. When reviewing a complaint under this policy, a key consideration is to determine if this policy applies or if the facts and circumstances suggest that matter would fall under a different Board policy. In considering the application of a different Board policy for addressing a complaint, community members are directed to one of the following processes that may be applicable:

3.1.1 Complaints against a trustee will be addressed under Board Policy B-1.2, Code of Conduct.

3.1.2 Incidents of workplace harassment and/or behaviour including physical and/or sexual assault must be formally reported and investigated in accordance with response measures outlined in Board Policy HR-4.2, Workplace Harassment and its associated administrative regulation.

#### **3.2 Early Resolution Encouraged at Point of Occurrence**

Notwithstanding encouraging individuals to resolve their concerns through dialogue, it is important at first instance, for all issues to be initially addressed and resolved at the point and place of occurrence (i.e., school or staffing department). While parties to a complaint are always encouraged to opt for early resolution, this does not disallow matters to be brought to the COHREA at a later date.

#### **3.3 No Bar to Filing Application with the Human Rights Tribunal of Ontario**

The procedures outlined in this administrative regulation should not be assumed and/or interpreted as a prohibition to prevent or discourage a person from filing an application with the HRTO within the deadlines set out in Ontario's Human Rights Code or a person's right to pursue any other external legal options that may be available.

### **4. RESPONSIBILITY**

Responsibilities have been outlined in the procedures below.

**5. PROCEDURE**

**5.1. Complaint Process**

**5.1.1 Guiding Principles**

The procedures in this administrative regulation provide the mechanisms for addressing Code-based discrimination and/or harassment complaints applicable and related to all members of the Board community. The first step, if possible, is to always inform an individual when their behaviour is inappropriate and to cease immediately. While many complaints are resolved quickly and effectively using this approach, there will be circumstances where individuals do not feel safe, comfortable or confident in approaching the offending individual; or the concern may be systemic and normalized. In such, circumstances the individual may feel it is the best course of action to bring forward a complaint to their manager or another senior administrator.

**5.1.2 Collective Agreements**

Nothing in these procedures should be interpreted and/or construed as a prohibition on the principal role of unions when addressing any and all issues that it deems to be within governing collective agreement(s). Subject to considering the applicability of any collective agreement, Code-based complaints will be handled, without interference in accordance with these regulations.

**5.1.3 Complaint Reporting**

Complaints of Code-based discrimination and/or harassment should normally be reported at first instance to the appropriate principal and/or superintendent, supervisor or manager for the purpose of review, assessment, and determination. Members of the Board community who believe they have been discriminated against or subjected to harassment involving one or more of the protected grounds under the Code may opt to:

5.1.3.1 unilaterally resolve the concern in a collaborative and respectful process through direct engagement,

5.1.3.2 directly report the issue/concern through the Board's confidential online reporting tool (Report IT!),

5.1.3.3 request an official referral to the COHREA following a prior review by a superintendent, manager or supervisor,

- 5.1.3.4 consult with the COHREA directly regarding possible actions,
- 5.1.3.5 initiate an informal complaint with a request for early resolution to their appropriate principal, manager and or supervisor by submitting a request for early resolution, and/or
- 5.1.3.6 file a formal complaint using the COHREA Complaint Form (subsequent to a determination following COHREA review and Preliminary Assessment).

## **5.2 Complaint Procedures**

### **5.2.1 General**

All persons covered under this administrative regulation are responsible for contributing and maintaining a climate of understanding and mutual respect for the rights and dignity of each person. However, any member of the Board community who believes they have been subjected to Code-based discrimination and/or harassment may choose to engage in the following before filing a formal complaint:

- 5.2.1.1 wherever possible and practical, make it known to the person who is causing the offense, that the behaviour is unwelcome and ask that all offensive behaviour stop. The goal is that the individual will work with the person raising the concern to make all reasonable efforts to resolve the matter. If an individual is not comfortable approaching the person causing the offense or an individual is approached and the behaviour does not stop, discuss the concerns with the immediate supervisor or another member of management;
- 5.2.1.2 in the case of a student/parent/guardian/caregiver's concern, bring it forward to the principal or vice-principal of the school or another adult in the school that the student and/or parent/guardian/caregiver feels comfortable with bringing the concern forward;
- 5.2.1.3 in the case of volunteers, third-party contractors, and community members concerns should be reported to the key contact named on their contracts or lead volunteers in the school where they volunteer;

- 5.2.1.4 seek advice/guidance/support from the relevant union/federation/association (where applicable);
- 5.2.1.5 seek advice/guidance/support from the relevant manager/supervisor (where applicable);
- 5.2.1.6 seek advice/guidance/support from the school principal and/or vice-principal (where applicable);
- 5.2.1.7 seek advice/guidance/support from a trusted teacher in the school (where applicable);
- 5.2.1.8 contact the COHREA (via the confidential online Report IT! form) detailing the issues/concerns, even if there may not be an immediate interest in filing a complaint;
- 5.2.1.9 if eligible, utilize the Employee and Family Assistance Program (EAP) where concerns of mental health and wellbeing arise.

5.2.2 Parallel or Dual Processes

Nothing in these administrative regulations prohibits or limits access to any other avenues of redress available under the Code, the Occupational Health and Safety Act and/or through filing of a grievance. The Board's internal complaint resolution process provides for an investigation that is appropriate specific to circumstances, resulting from an incident/complaint of Code-based discrimination/harassment. The superintendent responsible for the area, in consultation with the HREA Commissioner, may decide to postpone, suspend, or cancel any process/investigation regarding a complaint if the continuance of the process/investigation would duplicate and/or prejudice (damage) another process already underway in addressing the matter. In coming to such a decision, factors considered include:

- 5.2.2.1 the Board's overarching responsibility to employ every effort to positively resolve harassment and discrimination complaints,
- 5.2.2.2 recognition that grievances may have been filed simultaneously with a human rights complaint. In such cases one matter may be held in abeyance until the other process is complete and/or,
- 5.2.2.3 other legal processes may have already been initiated and there is a need to protect the integrity of that process (i.e., Application file with the HRTO).

In all such instances, the Complainant will be advised of the decision to postpone, suspend, or hold in abeyance their complaint and the reasons why.

**5.2.3 Accompanying Person for Complainants, Respondents and Witnesses**

Prior to initiating a complaint and throughout the complaints process Complainants, Respondents and witnesses have a right to assistance from an accompanying person who:

5.2.3.1 for an employee may include a:

- colleague
- family member
- union/federation/association representative
- translator/interpreter

5.2.3.2 for a student may include a:

- parent/guardian/caregiver
- teacher
- principal/vice-principal
- family member
- translator/interpreter

5.2.3.3 for all other complainant, respondents or witnesses may include a:

- colleague
- family member
- union/federation/association representative
- translator/interpreter

**5.2.4 Role of Accompanying Person**

All persons acting in the role of an accompanying person must adhere to confidentiality regarding all aspects of a complaint. Accompanying persons who are external to the Board are required to sign a confidentiality agreement when attending investigation interviews. However, Board staff and/or union/federation/association representatives are not required to sign an agreement. The role of the accompanying person is to accompany a party to a consultation or for the purpose of providing assurance and general emotional support. Unions/associations and federations may have other responsibilities to their members in this capacity. However accompanying persons do not have an active role and must not answer questions on behalf of the interviewee or obstruct the investigation process. The person(s) leading the investigation reserves the

right to discontinue any investigation interview if any party being interviewed is uncooperative or their accompanying person is answering questions, engages in confrontational behaviours and is disrupting the interview.

### **5.3 Complainant and Respondent Procedures**

Depending on the relationship between the Complainant and the Board or the Respondent and the Board, the specific Board policy for addressing a matter or concern may vary, including who or where responsibility resides.

#### **5.3.1 Complainant Category**

##### **5.3.1.1 Employees**

Employee incidents/complaints of alleged Code-based discrimination or harassment should be made to an immediate supervisor. If the supervisor is the Respondent, the complaint should be made to the supervisors' manager. Reports can be made verbally; however, it is preferred that the complaint be made in writing. All incidents/complaints of Code-based discrimination/harassment whether verbal or in writing must be investigated in a manner deemed appropriate in the circumstances. Employees may also consult with union/association/federation representatives when reporting an incident/complaint.

##### **5.3.1.2 Students**

Student complaints of alleged Code-based discrimination/harassment should be reported to the school administration at first instance so that it is addressed as soon as possible. Student complaints against the school administration should be made through the Board's Report IT! confidential online reporting tool so that it is tracked and referred to the appropriate Board area for review. Alternatively, the student may reach out to the COHREA directly for assistance in directing the complaint to the appropriate Board area for review. All complaint matters involving students that are received via Report IT! are reviewed and assessed prior to being referred to the relevant superintendent.

5.3.1.3 Community Members

Community members which include parents/guardians/third-party contractors wishing to file a complaint of alleged Code-based discrimination and/or harassment should always report through the Board's Report IT! confidential online reporting tool so that the matter is tracked, assessed and a determination is made on where it is to be addressed.

5.3.2 Respondent Category

If a complaint is against one of the following KPR members, the below procedure should be followed:

5.3.2.1 Trustees

Incidents/complaints against a trustee, alleging Code-based discrimination and/or harassment should always be reported through the Board's Report IT! confidential online reporting tool so that it is tracked and forwarded to the Board's Code of Conduct Committee through the Chairperson of the Board and will be addressed under Board Policy B-1.2, Code of Conduct pertaining to Board trustees.

5.3.2.2 Director of Education

Incidents/complaints against the Director of Education, alleging Code-based discrimination and/or harassment should always be reported through the Board's Report IT! confidential online reporting tool for tracking and forwarding to the Chairperson of the Board for assessing the merit of the complaint and whether to engage the services of a third-party external investigator.

5.3.2.3 Supervisory Officer

Incidents/complaints against a superintendent, alleging Code-based discrimination and/or harassment should always be reported through the Board's Report IT! confidential online reporting tool and will be forwarded to the Director of Education, who may counsel from the HREA Commissioner on next steps.

5.3.2.4 Members of the Public

Incidents/complaints of alleged Code-based discrimination and/or harassment against a member of the public by Board staff

should always be reported through the Board’s Report IT! confidential online reporting tool for tracking, assessing and forwarding to the appropriate Board area.

**5.3.3 Responsibility for Receiving Complaints**

All staff responsible for receiving and reviewing complaints of Code-based discrimination and/or harassment must ensure they are aware of the appropriate procedures for responding to the complaint. They may also consult with the COHREA regarding appropriate next steps, if required. The table below directs individuals to what policy applies and who is responsible.

<b>Complainant</b>	<b>Respondent</b>	<b>Policy</b>	<b>Responsibility</b>
Student Parent/Guardian Community Member Employee Third-party contractor	Employee	B-3.3, Human Rights: Code-Based Discrimination and Harassment	Superintendent responsible for Human Resource Services; Human Rights, Equity and Accessibility Commissioner
Student	Student	ES-1.1 Safe, Caring, and Restorative Schools	Superintendent responsible for Safe and Caring Schools; family of schools superintendent
Student Parent/Guardian/ Caregiver Community Member Employee	Third-party contractor	B-3.3, Human Rights: Code-Based Discrimination and Harassment	Superintendent responsible for the operational area in which the third-party contractor is performing work; Human Rights, Equity and Accessibility Commissioner
Parent/Guardian/ Caregiver Community Member Employee Third-party contractor	Student	B-3.3, Human Rights: Code-Based Discrimination and Harassment	Family of schools superintendent; Human Rights, Equity and Accessibility Commissioner
Student Parent/Guardian/ Caregiver Community Member Employee Third-party contractor	Parent/Guardian/ Caregiver  Community Member	B-3.3, Human Rights: Code-Based Discrimination and Harassment	The family of schools superintendent; Human Rights, Equity and Accessibility Commissioner

#### **5.4. Informal Resolution Process**

The following options are available to students, employees, volunteers, and community members who allege Code-based discrimination and/or harassment:

##### **5.4.1 Options in Informal Resolution Process**

The following options are available to students, employees, volunteers, and community members who believe that they are being harassed.

5.4.1.1 Advise the person who is engaging in the prohibited treatment or conduct that they need to stop. The individual(s) may not always be aware or realize the impact of discriminatory treatment or conduct that is unwelcome and offensive. In instances where this may not be possible, the support of a supervisor and/or Human Resource Services representative should be sought.<sup>3</sup>

5.4.1.2 If the discrimination and/or 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 Complainant should promptly contact one or more of the following people:

- principal/vice-principal (if applicable),
- manager/immediate supervisor (if applicable),
- union/federation representative (if applicable),
- a person(s) designated by the Senior Manager, Human Resource Services; and/or
- the HREA Commissioner.

5.4.1.3 The person contacted may help by providing information and confidential advice to the Complainant. This person will not investigate but will advise on available options for resolution which may include:

- strategizing with the Complainant about ways to communicate in-person with the Respondent;
- communicating with the Respondent, whether verbally or in writing;
- helping the Complainant to seek counselling elsewhere (through the EAP or a community support group);

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<sup>3</sup> **Note:** It is understood that this may not be possible or advisable in some instances. In such situations the support of the Human Rights, Equity and Accessibility Commissioner may be required.

- assist the Complainant on process for initiating a formal complaint.

## **5.5 Formal Complaint Process**

### **5.5.1 Participants under Formal Complaint Process**

5.5.1.1 The participants involved in the Formal Complaint Process include the Complainant, the Respondent (i.e., the alleged harasser), an investigator who can be the superintendent responsible for the area in which the incident is alleged to have occurred, and an assigned staff from Human Resource Services when the respondent is an employee and/or an assigned staff from the COHREA.

5.5.1.2 In matters related to employees, the Superintendent of Human Resource Services is responsible for ensuring that the matter is investigated, and this may entail the appointment of an internal, or in exceptional circumstances, an external investigator.

5.5.1.3 In all other matters, the COHREA is responsible for ensuring that the matter is investigated; if appropriate, this may entail the appointment of an internal or external investigator.

### **5.5.2 Initiating a Formal Complaint**

The Complainant will submit a written complaint to the principal/vice-principal, manager, supervisor, Human Resource Services or the COHREA, identifying the nature of the Code-based harassment and other particulars.

### **5.5.3 Timelines**

Code-based complaints must be reported within one year after the last alleged contravention. In the event a complaint is reported after one year, the Complainant must identify in writing the reasons for the delay in filing the complaint, for consideration. Further details on timelines are noted in Section 10.1 of this administrative regulation.

### **5.5.4 Preliminary Assessment**

Following receipt of the complaint under the COHREA's process, a consultation would be arranged with Complainant to determine if the complaint falls under this policy or if the matter should be referred under another Board policy or collective agreement. If the outcome of the

assessment is that the matter should be addressed under another Board policy, the Complainant will be notified in writing on being referred to the appropriate department within the Board.

**5.5.5 Formal Investigations Under Board Policy B-3.3, Human Rights: Code-Based Discrimination and Harassment**

Following the assessment, if the complaint falls within Board Policy B-3.3, Human Rights: Code-Based Discrimination and Harassment, the HREA Commissioner will determine process for proceeding with an investigation into the complaint.

**5.5.6 Appointment an Investigator**

An investigator, in certain instances, may be a third-party from outside the Board, or may be a staff member with administrative responsibilities, such as a Human Resource Services manager, a principal, superintendent or the HREA Commissioner or designate. The assigned investigator must have a thorough understanding of the Code and its application to the matter in order to conduct a fair and proper investigation.

**5.5.7 Fair Process and Procedural Fairness**

The investigator will initiate an investigation into the complaint, using the general standards of procedural fairness and proper procedures for investigating. Both the respondent and the complainant and any witnesses may have an accompanying person present when interviewed so long as the support person acts in an observer capacity only and does not interfere with the investigation process.

**5.5.8 Formal Investigation Process**

During the investigation process, the Board-appointed investigator will:

- 5.5.8.1 receive the formal complaint,
- 5.5.8.2 confirm receipt of the formal complaint in writing. Provide the Complainant with a copy of Board Policy B-3.3, Human Rights: Code-Based Discrimination and Harassment and Administrative Regulation,
- 5.5.8.3 where appropriate, consult with Human Resource Services and supervisory staff, to determine if the Complainant(s) and Respondent(s) should be separated in their current learning or working environment,

- 5.5.8.4 notify the Respondent(s) of the complaint as soon as practicable. Provide the Respondent with a copy of Board Policy B-3.3, Human Rights: Code-Based Discrimination and Harassment and Administrative Regulation,
- 5.5.8.5 notify the Complainant and the Respondent(s) of their right to be accompanied by a support person during meetings,
- 5.5.8.6 notify all participants of confidentiality requirements,
- 5.5.8.7 determine who is to be interviewed as part of the investigation,
- 5.5.8.8 collect and review any relevant documents related to the complaint,
- 5.5.8.9 arrange separate meetings with the Complainant(s) and the Respondent(s). Every effort will be made to schedule these meetings as soon as practicable,
- 5.5.8.10 make a determination on a balance of probabilities whether it is more likely than not that the alleged conduct has occurred,
- 5.5.8.11 determine whether the substantiated allegations are a breach of Board policy,
- 5.5.8.12 communicate the outcome of the investigation to the Complainant(s) and Respondent(s) in writing. However, disciplinary consequences and/or corrective actions are not included in this communication,
- 5.5.8.13 the final investigation report will be maintained in a confidential file in the COHREA,
- 5.5.8.14 Human Resource Services will be supplied appropriate documentation to support any disciplinary measures for staff members, if required,
- 5.5.8.15 the appropriate superintendent will retain appropriate documentation to support any disciplinary measures for students, if required.

5.5.9 Standard of Proof

The standard of proof to be applied in a human rights investigation is the civil standard which is a balance of probabilities. This means that based

on the evidence and information provided, the event was more likely than not to have occurred.

#### 5.5.10 Formal Investigation – Potential Outcomes

The following actions may be taken subsequent to an investigation and findings:

- counseling for one or both parties,
- strategies to restore a positive working and learning environment, including, but not limited to, a joint meeting of Complainant(s) and Respondent(s) to determine future operating norms,
- training for one or both parties,
- workshops,
- restorative approaches,
- disciplinary action in accordance with applicable Board policies and administrative regulations; and/or any other appropriate action.

### **5.6. Appealing a Formal Investigation**

#### 5.6.1 Appeal Process

The complainant(s) or respondent(s) may make an appeal to the HREA Commissioner.

An appeal must be submitted in writing within fifteen (15) regular business days from the date that the final investigation report is sent out.

#### 5.6.2 Purpose of Appeal

An appeal is not meant to duplicate the investigation process that was undertaken. A Complainant or Respondent may appeal to the HREA Commissioner on the following grounds only:

- that the investigation was conducted in an unfair or biased manner contrary to the rules of natural justice, or
- that the findings of fact contained in the investigation report are insufficient to support a determination that discrimination and/or harassment has been established.

#### 5.6.3 Determination of Human Rights, Equity and Accessibility Commissioner

In the event of a reconsideration, the Complainant and/or Respondent shall be entitled to put forward information for consideration. The HREA

Commissioner or designate, will review the original decision and within fifteen (15) regular business days will:

- affirm the original decision,
- vary slightly but affirm the decision overall; or
- amend the decision.

The appeal determination by the HREA Commissioner is final.

## **5.7 Other Procedural Issues**

### **5.7.1 Limitation Period for Filing a Complaint**

5.7.1.1 Complaints must be reported within one year after the last alleged contravention. In the event a complaint is reported after one year, the Complainant must identify in writing the reasons for the delay in filing the complaint, for consideration.

5.7.1.2 It is within the discretion of the superintendent whose area the complaints fall within, to consult with the HREA Commissioner to determine whether or not a complaint can be filed beyond the one-year anniversary of the last alleged contravention.

5.7.1.3 The timelines outlined in this administrative regulation for the filing of a response, reply, and sending of a report, are meant to ensure that a complaint is dealt with in a timely manner. Parties will be notified as required if an extension is needed. Timelines may be extended in good faith throughout the process.

### **5.7.2 No Reprisal**

Every individual has 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 community member found to have engaged in a reprisal may be subject to formal disciplinary action.

### **5.7.3 Mediation**

As appropriate, all parties to a complaint will be offered the option to mediate the complaint. Mediation may take place at any stage during the complaint process. Mediation will be conducted by an individual who has:

- no involvement and/or interest in the complaint,
- a thorough understanding and professional training on Code-based

- harassment and/or discrimination issues, relevant legislation, and,
- the ability to conduct a proper impartial mediation session absent of bias.

#### 5.7.4 Anonymous Complaints

Generally, anonymous complaints will not be investigated. However, superintendents, principals, vice-principals, managers, and supervisors have the discretion to make reasonable enquiries and/or fact-find situations where it comes to their attention that Code-based discrimination and/or harassment may be occurring and should report them to the Board's HREA Commissioner for guidance.

#### 5.7.5 Malicious and/or Bad Faith Complaints

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 and/or sanctions for utilizing Board resources for having to review a false complaint.

#### 5.7.6 Reassignment of Employees during Investigation

5.7.6.1 During the course of a Code-based investigation, for reasons of safety or wellbeing, it may be appropriate to separate and/or move the Complainant or Respondent to a different location within the Board, provided with alternative reporting relationships, or placed on home assignment with full pay and benefits pending the resolution of the complaint.

5.7.6.2 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.

#### 5.7.7 Confidentiality and Privacy

5.7.7.1 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 and remain separate from student and personnel files.

5.7.7.2 In limited circumstances, disclosure may occur where required by law or where necessary for the Board to meet its obligations

under the Ontario Human Rights Code, and/or the Education Act or any other relevant legislation and/or legal process.

- 5.7.7.3 In accordance with the Municipal Freedom of Information and Protection of Privacy Act or other applicable legislation, every attempt will be made throughout the complaint resolution process to respect the confidentiality and personal rights of all parties to the complaint.
- 5.7.7.4 Information about the complaint is provided only to those who need to know to investigate and/or resolve the complaint. Where appropriate, the person will be consulted before any disclosure of information is made.
- 5.7.7.5 Parties involved in a complaint must, and are expected to, maintain confidentiality, as breaches of confidentiality may jeopardize the proper functioning of the processes outlined in this procedure. If breaches of confidentiality should occur, this would be reviewed and depending on the circumstances, could lead to consequences for the person(s) responsible for the breach.
- 5.7.7.6 Any person conducting a mediation of a complaint may not be called to testify in a subsequent proceeding in relation to information disclosed during mediation, unless ordered or compelled by a court, tribunal, or arbitrator.
- 5.7.7.7 Specific details of any investigation involving individuals including, but not limited to, the outcome, will only be disclosed to those who require the information to execute their duties. Where applicable or as required by law, investigators may be required to disclose information about the investigation.

5.7.8 Advisory Role of Human Rights, Equity and Accessibility Commissioner

The HREA Commissioner provides expertise on the Code to all persons conducting investigations in instances where the Human Rights Policy and Administrative Regulation is applied.

5.7.9 Conflict of Interest by Accompanying Person

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

5.7.9.2 Where a party is not a member of a bargaining unit, that party may be accompanied by a support person, provided that no conflict arises in doing so and the support person agrees to sign a confidentiality agreement and to be bound by the confidentiality of the process and does not interfere in the process.

## **5.8 Records Retention**

### **5.8.1 Informal Processes/Interventions**

All records related to informal processes/interventions under Board Policy B-3.3, Human Rights: Code-Based Discrimination and Harassment will be maintained by the supervisory officer whose area addresses the concern. If the supervisory officer leaves the Board all documents will be forwarded to Human Resource Services. All informal resolutions under this policy and will be retained for the year it occurs plus two additional years.

### **5.8.2 Formal Processes/Interventions**

All investigation records related to formal investigations conducted under Board Policy B-3.3, Human Rights: Code-Based Discrimination and Harassment will be maintained in accordance with Board Policy BA-1.1, Records Management and Board Policy BA-1.8, Privacy and Information Management.

## **6. RELATED POLICIES, ADMINISTRATIVE REGULATIONS OR PROCEDURAL DOCUMENTS**

Board Policies:

[B-1.1, Board Operation and Policy Development and Management](#)

[B-1.2, Code of Conduct](#)

[B-3.2, Equity, Diversity and Inclusion](#)

[B-3.3, Human Rights: Code-Based Discrimination and Harassment](#)

[BA-1.1, Records Management](#)

[BA-1.8, Privacy and Information Management](#)

[ES-1.1, Safe and Caring Schools](#)

[ES-3.8, Special Education](#)

[HR-4.1, Occupational Health and Safety](#)

[HR-4.2, Workplace Harassment](#)

[HR-4.6, Disconnecting from Work](#)

[HR-5.1, Code of Ethics for Employees](#)

[HR-5.3, Code of Conduct for Employees](#)

Administrative Regulations:

[HR-4.6.1, Disconnecting from Work](#)

[HR-5.1.1, Code of Ethics for Employees](#)

**7. REFERENCE DOCUMENTS**

Legislation:

[Accessibility for Ontarians with Disabilities Act](#)

[Canadian Charter of Rights and Freedoms](#)

[Education Act](#)

[Human Rights Code](#)

[Occupational Health and Safety Act](#)

[Municipal Freedom of Information and Protection of Privacy Act](#)

[Teaching Profession Act](#)