

Toronto District School Board

Operational Procedure PR515

Title: **WORKPLACE HARASSMENT PREVENTION AND HUMAN RIGHTS**

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1.0 RATIONALE

The Toronto District School Board (TDSB or the Board), is committed to providing an equitable, safe, nurturing, positive learning and working environment, free of harassment and discrimination, where every individual is treated with dignity and respect.

This operational procedure is designed to support the implementation of the Workplace Harassment Prevention Policy (P034) and Human Rights Policy (P031) and fulfills the Board's requirements under the *Occupational Health and Safety Act (OHSA)* and Ontario *Human Rights Code (the Code)*.

2.0 OBJECTIVE

To provide information and instruction, regarding the process for how to effectively prevent and, where necessary, address harassment and unlawful discrimination. All parties involved in a matter under these procedures (including staff, management, union/federation/association and Human Rights Office) must work together to prevent and address harassment and unlawful discrimination.

3.0 DEFINITIONS

Allegation is 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.

Balance of Probabilities is the standard of proof which is satisfied where a proposition is reasonable, more probable than not and more probable than any other proposition based on all the evidence.

Board is the Toronto District School Board (also referred to as TDSB). The TDSB is an employer, as defined by the OHSA.

Complainant is anyone who makes a complaint under the Board's harassment/discrimination policies, alleging that harassment/unlawful discrimination has occurred.

Discrimination is any practice or behaviour, whether intentional or not, which has a negative effect on an individual or group because of any of the prohibited grounds of the *Code* including race, ancestry, place of origin, ethnic origin, colour, citizenship, creed (religion), sex, gender identity, gender expression, sexual orientation, age, marital status, family status, disability/perceived disability, or receipt of public assistance (applies to the social area of housing only).

Discrimination may arise as a result of direct differential treatment or it may result from the unequal effect of treating individuals and groups in the same way. If the effect of the behaviour on the individual or group is to withhold or limit full, equal and meaningful access to, for example, goods, services, facilities, employment, housing, accommodation, that is available to other members of society, it is discrimination.

Employee and Family Assistance Program (EFAP) is a confidential and voluntary support service that offers assistance to eligible employees of the Board and their families, as set out in the applicable terms and conditions of employment, for any work, life or health concern. This may include immediate and confidential support regarding workplace challenges, addictions, managing relationships/ family and achieving well-being.

Harassment is a course of vexatious comment or conduct known or ought reasonably to be known to be unwelcome.

Human Rights Office (HRO) is an office within the TDSB, that is mandated to be neutral and unbiased and is a resource to all covered under this procedure. The HRO implements the Board's policies and procedure on harassment and discrimination, as well as supports adherence to the associated laws as they relate to harassment and discrimination (e.g., Ontario *Human Rights Code and the Occupational Health & Safety Act*).

Mediation is a confidential voluntary process that parties to a complaint may agree to participate in, whereby a neutral unbiased third party facilitator is in direct communication between the parties to a complaint, to effect an agreed upon resolution. It is an opportunity to resolve disputes in a mutually respectful manner.

Reprisal is any harassment, intimidation, threats, or discipline against a person (e.g., complainant, respondent, witness or investigator) for making a report to the Board regarding an incident/complaint of alleged harassment/discrimination. It can also include retaliation against someone who has participated in or is believed to have participated in a

process to address a matter under the Board's harassment and discrimination policies and associated procedure. Reprisal is prohibited under the Board's harassment/discrimination policies and procedure.

Respondent is anyone who has a complaint made against them under the Board's harassment/discrimination policies.

Student is anyone regardless of age, who is enrolled in any educational program offered by the Board.

Supervisor is a person who has charge of a workplace or authority over workers, in accordance with the OHSa.

Systemic Discrimination is discrimination that arises from policies, procedures, practices, and conduct which may not be discriminatory in their intent but adversely impact individuals or groups protected by the prohibited grounds of the *Code*.

Vexatious is conduct that is inappropriate, unnecessary and that a reasonable person would consider offensive, distressing or demeaning.

Vexatious complaints are complaints that are brought forward without sufficient merit, solely to cause annoyance or distress. Vexatious complaints are prohibited under the Board's harassment/discrimination policies and procedure.

Workplace under the *OHSa* is any land, premises, location or thing at, upon, in or near which a worker works. For the purpose of this procedure it also includes any place where individuals perform work or work-related duties or functions. Schools and school-related activities, such as extra-curricular activities and excursions comprise the workplace, as do Board offices and facilities (including eating, lounge/changing areas and vehicles used for work purposes or on work property). Conferences, workshops, training sessions and staff functions (e.g., staff parties, retirement celebrations), fall within the scope of this procedure.

Workplace Harassment under the *OHSa* is engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or is workplace sexual harassment.

Workplace Sexual Harassment is engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity, or gender expression where the course of comment or conduct is known or ought reasonably to be known to be unwelcome; or making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

4.0 RESPONSIBILITY

Executive Superintendent Equity, Engagement and Well-being

5.0 APPLICATION AND SCOPE

This procedure applies to all employees (including contract, temporary, permanent and occasional employees).

It addresses harassment and unlawful discrimination from all sources including volunteers, students, trustees, as well as members of the public.

The Board also has policies/procedures in place to deal with other forms of harassment or offensive conduct. See section 9.0 for a complete list of other relevant policies and procedures.

6.0 PROCEDURES

6.1. General

All persons covered under this procedure are responsible for creating, maintaining and contributing to a climate of understanding and mutual respect for the rights and dignity of each person.

Anyone within the scope of these procedures who has a concern regarding potential harassment or discrimination may attempt the following before filing a formal complaint:

- (a) If 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.
If approached in the above manner it is expected 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 offense or an individual is approached and the behaviour does not stop, discuss the concerns with your immediate supervisor or another member of management;
- (b) Seek advice from a union/federation/association representative (where applicable);
- (c) Contact the Human Rights Office (HRO) to consult, even if there is no intent to file a complaint;
- (d) If eligible, utilize the TDSB Employee and Family Assistance Program (EFAP);
- (e) Do not discuss the complaint or intent to file a complaint with colleagues unless they are your support person (see section 6.3), as this could adversely impact the investigative process, if an investigation is required.

6.2. Dual Processes

Nothing in these procedures denies or limits access to other avenues of redress available under the Ontario *Human Rights Code*, *Occupational Health & Safety Act* and/or through filing a grievance.

The TDSB's internal formal complaint resolution process provides for an investigation appropriate in the circumstances, resulting from an incident/complaint of harassment/discrimination. The HRO, in consultation with the Executive Officer, Employee Services, may decide to postpone, suspend, or cancel any process/investigation regarding a complaint if the continuance of the process/investigation would duplicate or prejudice (damage) another proceeding. In coming to a decision these factors will be considered:

- (a) The Board's responsibility to resolve harassment and discrimination complaints;
- (b) The recognition that grievances may be filed simultaneously with complaints in order to comply with timelines. In such cases one matter may be held in abeyance until the other process is complete, as determined in consultation with Employee Services and with agreement from the union as it pertains to grievances; and/or
- (c) Other legal procedures that may be initiated in order to protect statutory rights, e.g., the Human Rights Tribunal of Ontario (HRTO).

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

6.3. Support Person for Complainants, Respondents and Witnesses

- (a) Prior to initiating a complaint and throughout the complaints process complainants, respondents and witnesses have a right to assistance from a support person. A support person may include a:
 - Colleague
 - Family Member
 - Union/Federation/Association/Network Representative (in accordance with the practices/policies of the respective organization)
 - Joint Health & Safety Committee Representative
 - Parent/Guardian or Other Caregiver
 - School Support Staff
 - Student
 - Teacher
 - Translator/Interpreter

- (b) All persons acting as a support person within the scope of these procedures must keep any information regarding the complaint confidential. Some support persons may be required to sign a confidentiality agreement when attending investigation interviews. (TDSB staff or union/federation/association/network representatives are not required to sign an agreement)
- (c) The role of the support person is to be available to a party to an investigation to provide assurance, console and/or general emotional support or advice. Unions/Associations and Federations may have other responsibilities to their members in this capacity; however, all support persons must not answer questions on behalf of the interviewee or obstruct in any way, the investigation process. The investigator reserves the right to discontinue any investigation interview whereby any party to a complaint or the support person is uncooperative.
- (d) Investigation participants (complainants, respondents and witnesses) and support persons who are staff of the Board, are entitled to be permitted time away from work with pay, providing the appropriate arrangements (including supervisory/management approval), are made with their direct Supervisor or next level management, if the Supervisor is the subject of the complaint. These arrangements should be made by staff and may involve the support of their union/association/federation/network representative, as required.

6.4. Complaint Procedures

Employees

- Employee incidents/complaints of alleged harassment or discrimination should be made to an immediate supervisor, or the Human Rights Office. Reports can be made verbally; however, it is preferred that the appropriate Workplace Harassment and Human Rights Incident Reporting Form (see Appendix A) is completed. All incidents/complaints of harassment/discrimination whether verbal or in writing must be investigated in a manner deemed appropriate in the circumstances. Employees may also consult with their union/association/federation/network representative when reporting an incident/complaint.
- If the employee complaint is regarding their supervisor or the employer the complaint should be made directly to the Human Rights Office at HumanRightsOffice@tdsb.on.ca

Students

- Student complaints of alleged harassment/discrimination should be reported to the school administration and will be addressed through the appropriate school policy or procedure (e.g., Caring and Safe Schools Policy, Bullying Prevention and Intervention Procedure, Sexual Misconduct by Students Procedure, Parent Concern Protocol).
- Student complaints against the administration should be forwarded to the Board's Human Rights Office. The complaint will be addressed through the

appropriate school policy or procedure (e.g., Caring and Safe Schools, Parent Concern Protocol) in cases of systemic concerns, the matter may be referred to an external investigator.

Human Rights Office

- Incidents/Complaints of harassment/discrimination regarding the Human Rights Office will be forwarded to the Executive Superintendent, Equity, Engagement and Well-being.

Trustees

- Incidents/complaints against a Trustee, alleging harassment and/or discrimination will be forwarded to the Board's Integrity Commissioner and will be addressed under the Board Member Code of Conduct policy and procedure.

Executives

- Incidents/Complaints against a Board Executive, alleging harassment and/or discrimination will be forwarded to the Director of Education, who will seek advisement from the Board's General Counsel in engaging the services of a third party external investigator, as deemed appropriate.

Director of Education

- Incidents/Complaints against the Director of Education, alleging harassment and/or discrimination will be forwarded to the Chair of the Board, who will seek advisement from the Board's General Counsel in engaging the services of a third party external investigator, as deemed appropriate.

Members of the public

- Incidents/Complaints of alleged harassment/discrimination against a member of the public by Board staff will be forwarded to the immediate supervisor of the affected area the Respondent was working or participating in at the time of the alleged incident, or the Board's Human Rights Office.

All staff responsible for receiving complaints of harassment/discrimination under these procedures must ensure they are aware of the appropriate procedures for responding to a complaint (section 6.5 and 6.6 of these procedures). They may also consult with the Board's Human Rights Office regarding appropriate next steps, if required.

6.5. Managerial Response to an Incident / Complaint of harassment / discrimination

- (a) Supervisory /managerial staff may become aware of incidents of harassment or discrimination in the working or learning environment in different ways. They may observe it directly or receive a report from the individual affected. They may even hear about it from a third party. It is important that supervisory and

managerial staff pay attention to symptoms of possible harassment or discrimination (e.g., decreased productivity, absenteeism), and intervenes.

- (b) Those experiencing harassment or discrimination may be reluctant or embarrassed to come forward. A timely resolution of an incident/complaint of harassment/discrimination can prevent escalation of a matter and further negative consequences while promoting the restoration of a healthy learning or working environment.
- (c) In all cases, supervisory and managerial staff has a duty to respond to and take action to resolve any alleged or suspected incidents/complaints involving harassment/discrimination.
- (d) The OHSA requires that any incident/complaint of workplace harassment requires an investigation deemed appropriate in the circumstances. For the purposes of this procedure that includes (at a minimum), interviewing the complainant and interviewing the respondent and any relevant witnesses, and making a determination if harassment occurred.
- (e) When an incident/complaint of harassment/discrimination comes to the attention of managerial/supervisory staff they should ensure the well-being of the parties involved, document any pertinent information provided and advise that the matter is taken seriously, will be looked into and supervisory staff will get back to them regarding next steps (generally, within 7 days).
- (f) Generally, supervisory/managerial staff will investigate workplace harassment incidents/complaints. Human Rights Code based harassment or discrimination complaints may be investigated by supervisory/managerial staff depending on the complexity of the matter and nature of the allegations. Supervisory/managerial staff should consult with the HRO in order to make that determination.
- (g) **If supervisory/managerial staff conducts an investigation it should be done in accordance with section 6.7 of these procedures.**

6.6. HRO Response to an Incident/Complaint of Harassment/Discrimination

- (a) The HRO is neutral and unbiased and is a resource for all covered under this procedure. The HRO will work to prevent workplace harassment and unlawful discrimination as well as respond to inquiries, incidents and complaints.
- (b) The HRO will respond to complaints by conducting preliminary assessments of incidents/complaints of harassment/discrimination, in order to determine if on the face of the complaint the allegation(s) meet the definition of harassment/discrimination and to determine appropriate next steps to deal with an incident/complaint, in a manner deemed appropriate in the circumstances.

This may include re-directing matters to another department of the Board, as deemed appropriate by the HRO. Actions taken or fact-finding conducted for the purposes of an assessment will be deemed an investigation appropriate in the circumstances for purposes of the OHSA, if the assessment determines that on the face of the complaint no further investigation of the matter is warranted.

- (c) If it is determined that on the face of the complaint it rises to the definition of harassment/discrimination, the HRO will retain carriage of the complaint and assign it to an investigator (HRO investigator, appropriate Supervisory or Managerial staff, or in some cases an external third party investigator). Generally, Workplace Harassment investigations will be completed by Supervisory or Managerial staff, as well as some Human Rights complaints, depending on complexity. Generally, the HRO will investigate Human Rights complaints that are more complex and potentially Workplace Harassment complaints that are more complex, depending on the circumstances. External Third Party investigators may be used for various reasons, including but not limited to the complexity or size of a complaint/investigation; availability of internal resources etc.

In certain circumstances, the HRO may determine that the matter is more appropriately investigated by an investigation team, in which case a lead investigator will be assigned.

- (d) If on the face of the complaint the allegations do not meet the definition of harassment/discrimination, the HRO may forward the complaint to another area of the Board to address (e.g., appropriate supervisory/managerial staff, employee services in cases involving alleged culpable behaviour, Health & Safety in matters relating to workplace violence), or the HRO may recommend Mediation in cases involving workplace conflict or as deemed appropriate in the circumstances. In such cases, supervisory staff in conjunction with the union/association/federation/network representative and the affected employee(s) should give consideration to whether a third party mediator (agreeable to all parties), is appropriate.

In some cases, the HRO may determine that no further action is required.

- (e) Where it is determined by the HRO that the matter is more appropriately dealt with by another department of the Board, the complainant will be notified prior to forwarding the complaint. In such cases, the alleged Respondent is typically not notified by the HRO.
- (f) The HRO may also determine that the matter complained of has already been dealt with through another forum (i.e., grievance/arbitration, employee services disciplinary process). In such cases, the complainant will be advised of this by the HRO prior to file closure.

- (g) The HRO has discretion to limit the allegations in any complaint due to duplication of information or in order to streamline the complaint, without loss of any substantive information.
- (h) Anonymous complaints against an individual or group will be treated in a manner deemed appropriate in the circumstances by the HRO, including exploring other alternatives to address the matter, including, but not limited to, the use of workplace environmental scans, generalized training for staff, or feedback provided to the individual/group. This will be done in consultation with Employee Services and/or Management of the affected area. No formal summary in writing will be provided to any party to an anonymous complaint.
- (i) Group Complaints are very challenging situations for all involved. The HRO recommends that those who have concerns under these procedures should submit their concerns separately. Approaching someone to participate in a group complaint, whereby an issue had not been identified by them previously can potentially create other issues in the workplace that may not have otherwise been present. This is in no way to limit any staff from coming forward with concerns. In situations involving multiple parties to a complaint, employees are encouraged to confidentially speak with their respective union/association/federation/network representative or contact the HRO and encourage others with concerns to individually do the same.

6.7. Investigation Process

(a) Responsibility

- (i) Supervisory/Managerial staff investigating a matter under this procedure, has responsibility for ensuring they are following this procedure and are appropriately trained to investigate the matter. If in doubt, please contact the HRO for advice.
- (ii) All persons investigating matters under this procedure, including external investigators, will have regard for these procedures. Slight variations in process may be acceptable, as deemed appropriate by the HRO.
- (iii) The person conducting the investigation, whether internal or external to the workplace, must not be directly involved in the alleged incident(s) or complaint(s) of harassment/discrimination, and must not be under the direct control of the alleged harasser, in accordance with the OHSA.

(b) Confidentiality

Any person reporting an incident or complaint of harassment/discrimination or who participates in a process to resolve a matter under this procedure (including investigators), must keep that information confidential and not disclose or release to anyone any information about the incident/complaint except to the extent necessary to

protect an employee (s) (e.g., safety plan or separation of parties through the Administration/Board Health & Safety office), to investigate the incident/complaint (e.g., make arrangements for release time, questioning witnesses etc.), to take corrective action (e.g., consultation with employee services regarding appropriate action based on investigation findings), or as otherwise required by law (e.g., Tribunal or other court proceedings), in accordance with the OHSA. This extends to details of a complaint (including its existence), meetings about an incident/complaint, identifying information about a person including names of witnesses, contact made with an investigator etc. This is a continuous obligation that extends beyond employment with the TDSB.

Seeking advice from an employee's own union/association/federation/network or legal representative in addressing harassment/discrimination is permitted, and may be required by some Collective Agreements and/or Terms and Conditions of Employment. While staff may seek advisement from their own legal representative, at their own cost, the HRO only recognizes an employee's union/association/federation/ representatives as the employee's legal representative. The HRO will not communicate directly, with a staff's lawyer.

Note: The HRO may be required to advise other areas of the Board with regards to the existence of a complaint in order to avoid a duplication of processes. In such cases, only the minimum information required will be provided, as determined by the HRO. For example, upon receipt of a harassment or discrimination grievance Employee Services may inquire with the HRO, as to the existence of a complaint in the HRO regarding the matter and the status of the complaint.

Notwithstanding the above, additional information may be required for legal proceedings with the appropriate formalized request to the HRO (e.g., letter requesting production of documents, HRTD Application response required etc.). HRTD proceedings require disclosure of the complaint and the resolution, if any. The HRO will not provide any complete file to any area of the Board unless required by law.

(c) Written notification of complaint

All parties to a complaint will be notified in writing, as soon as practical and prior to an investigation interview, as to the existence of the complaint, the allegations, who filed the complaint and who it was filed against (if multiple persons, each person will be advised individually without advising of the other parties named in the complaint).

If an incident/complaint of harassment/discrimination is reported to managerial/supervisory staff or the HRO, in the absence of a formal written complaint, the Board is still required to investigate, in which case a general statement of the allegations or some other form of written notification may be provided to parties (complainant/Respondent).

All written notification to parties (complainants, respondents and witnesses) by the investigator, should include cautions regarding maintaining confidentiality and not engaging in reprisal/threats of reprisal. The notification should include copies of the Board's Human Rights and Workplace Harassment Prevention Policies and procedure, regardless to the type of complaint being investigated (workplace harassment, human rights etc.)

(d) Safety and Separation of parties (Interim Measures)

All investigators will explore with parties whether there are any immediate concerns for physical safety or whether separation of parties needs to be arranged as an interim measure during the course of the investigation.

Any decision around separation of parties will be made with the supervisory or next level up managerial staff in consultation with Employee Services. The appropriate union/federation/association/network will be contacted as deemed appropriate. Supervisory staff/Employee Services may also consult the HRO regarding the general nature of the complaint/allegations to assist in their decision-making.

Considerations will include, but are not limited to the following:

- Whether the continued presence of the respondent will impair the complainant's ability to function at school or work
- Whether the Respondent poses a risk to the complainant or others
- Whether there has been a reprisal or a real threat of reprisal exists

Where supervisory staff determines, (in consultation with Employee Services), that separation of parties is appropriate and required the parties shall be separated, pending the final disposition of the complaint. Separation of parties may include:

- Working in the same physical location with strict parameters around having no contact with each other (this must be put in writing)
- Temporarily relocating one party to the complaint, by moving to an alternate location (generally, the respondent will be the party moved; however, given certain circumstances it may be appropriate for the complainant to be moved, as determined by supervisory staff and Employee Services. (Consideration should also be given to the complainant's preference.)
- In rare occasions, a party may be placed on home assignment without loss of wages or benefits. Students may be excluded from their school(s) in accordance with Board procedure governing student behaviour, and the Education Act.
- To the extent practicable, complainants and respondents using Board premises or premises where Board programs take place shall be required to have no contact either direct or indirect with each other until the investigation has been concluded and recommendations acted upon.
- Parties to a complaint who have been moved or on home assignment as per above, may be moved back or resume their previous position as soon as Supervisory staff/ Management determines (in consultation with the

complainant and respondent and Employee Services), that separation is no longer necessary.

- A separation of parties pursuant to these procedures does not constitute “discipline” or a “transfer” within the meaning of any Collective Agreement or Terms and Conditions of Employment and is not considered to be Reprisal in the meaning of this procedure.

(e) Timelines

- (i) Complaints made under these procedures must be made within one year of the date of the alleged incident(s) or the last incident of harassment/discrimination in a series of incidents. Permission to proceed with a complaint outside of this timeline may be obtained in consultation with the Human Rights Office. The HRO must be satisfied that the delay was incurred in good faith and no substantial prejudice or unfairness will result to any person affected by the delay. Complaints regarding sexual harassment/assault will also be assessed on a case by case basis.
- (ii) Incidents/complaints brought to the attention of Supervisory staff or the HRO will be acknowledged in writing within seven (7) business days of receipt or knowledge of the incident/complaint.
- (iii) The complainant will be advised by supervisory staff or the HRO of the next steps regarding their complaint within ten (10) business days of acknowledging the incident/complaint.
- (iv) Generally, matters assigned for investigation will be investigated within 90 (and up to 150) days of being assigned, depending on the availability of parties to the complaint, complexity of the matter – number of parties, nature of allegations, time of year the complaint is received (e.g., summer for school-based complaints) etc. Any delays in timelines will be communicated to complainants and respondents including the reasons for the delay.
- (v) While the process may begin for complaints received in May/June or throughout the summer for school-based complaints, ultimately the complaint may be held in abeyance until the following September due to the lack of availability of school based staff, representatives etc. during that time. In such cases, the HRO/Supervisory staff will advise the parties as soon as practical.
- (vi) If an investigation is initiated, the investigator will prepare a written draft summary of the findings of the investigation and forward to the complainant and respondent (if multiple parties, each will receive individual summaries). Parties will have seven (7) business days to respond.
- (vii) The investigator will take any responses to the draft summary into consideration and issue a final summary to the parties within seven (7) business days of the draft response due date.

- (viii) Final summaries will also be forwarded to the next level manager for the complainant and respondent at the time the final summary is provided to them, along with any recommendations to follow-up with Employee Services if findings are made or other specific follow-up is otherwise required.
- (ix) Any actions that will be taken as a result of the findings of the investigation must be communicated in writing to the Complainant and Respondent within ten (10) business days of supervisory/managerial staff receiving the summary of findings.
- (x) Any action (disciplinary or remedial etc.), that will be taken by supervisory/managerial staff as a result of the findings of an investigation must be outlined on the Action Plan Template sent by the HRO, signed and sent back to the HRO within ten (10) business days of receiving the summary of findings.
- (xi) The HRO will monitor the Action Plans to ensure the agreed upon action is taken by supervisory/managerial staff.
- (xii) Supervisory staff, the HRO and any investigator conducting an investigation under this procedure, will have regard for these timelines. From time to time there may be delays; however, it is incumbent upon the responsible party (supervisory staff, HRO or other investigator) to advise the parties of the delay and any reasons why.

(f) Investigation Fact-finding Process

- (i) Parties to a complaint should be invited to an investigation interview within a reasonable time, if possible. They should be advised that they may bring a representative/support person. Complainants should be advised that they should check to see if their association/federation/network offers representation for complainants, as some do not. Conversely, as a Respondent some Collective Agreements require that a Respondent must have representation.

Investigators should confirm with the interviewee in advance of the interview, who their support person will be (if any), to ensure there is no conflict of interest with their choice. It is up to the investigator to determine if there is a conflict of interest with the choice of support person/representative.

- (ii) Generally, in most circumstances it is appropriate to interview the complainant first, followed by the respondent. Parties should be asked for witnesses who may have relevant information and any relevant witnesses should then be interviewed (separately), as determined by the investigator.
- (iii) Investigators should prepare questions in advance of the interview and take detailed notes in the interview and allow the interviewee to review the notes and sign/initial to confirm accuracy.

- (iv) The investigator is responsible for determining the appropriateness of the questions being asked. Information outside of the initial written notification of the complaint may come to the attention of the investigator during the course of the investigation, or the investigator may learn new information from witnesses. Relevant parties to the complaint are entitled to know of this new information and have a full opportunity to respond.
- (v) All interview notes maintained by the investigator are the property of TDSB. External investigators must provide their notes and documentation to the HRO upon conclusion of the investigation (unless legally privileged).
- (vi) An investigator conducting an investigation under this procedure has authority to access documents or materials (i.e., video footage) relevant to the complaint. This does not include legally privileged documents or documents otherwise protected (e.g., information regarding juvenile criminal records).
- (vii) The investigator will consider all of the evidence gathered and determine whether or not an incident(s) of alleged harassment/discrimination took place and whether it amounts to a breach of the human rights or workplace harassment prevention policy, using the standard of proof called the “balance of probabilities.”
- (viii) The investigator will prepare a written summary of the matter and send to the complainant and respondent respectively. If the parties are represented by a union/association/federation/network a copy of the summary should be provided to them as well. A PDF document watermarked “draft” is recommended and the complainant (s)/ respondent (s) will have 7 business days to respond to the draft summary.
- (ix) The investigator will consider any responses to the draft summaries and determine if edits to the summary are warranted or further investigation required in order to close any perceived gaps. The summaries will then be finalized and sent to the respective parties and their representatives (if represented by a union/association/federation/network). Only one (1) draft written summary will be issued and one (1) final written summary (watermark removed). The final summary will indicate who will follow-up with the respective parties regarding the actions taken/to be taken as a result of the investigation findings.
- (x) Final written summaries or a report of an investigation will be sent to the next level manager of the parties or supervisory staff responsible for determining/implementing any actions required.
- (xi) Upon receipt of a written summary or report of findings of an investigation, supervisory/managerial staff must make a determination (in consultation with Employee Services), as to whether any disciplinary or remedial action is required.

Having regard for the Board's commitment to Equity and Inclusion, **to the extent possible**, any disciplinary or remedial action taken with a student/employee as a result of the findings of an investigation under these procedures, should be done with an equity lens, utilizing the TDSB Equity Framework.

(xii) In accordance with the OHSA, any actions that will be taken as a result of the findings of the investigation must be communicated to the complainant and respondent in writing. This should be done within ten (10) business days of the responsible supervisor/manager receiving the investigation summary letter. Information shared with complainants regarding actions taken with a respondent should not specify the exact discipline; however, should note if formal corrective action has been or will be taken, as well as measures put in place to prevent the matter from taking place again.

(xiii) Investigation Action Plan templates must be completed and signed by the supervisory/managerial staff responsible for taking action and forwarded to the HRO within ten (10) days of receiving the investigation summary (in consultation with Employee Services).

(xiv) The HRO will monitor the Action Plans to ensure the agreed upon action is taken.

(g) Medical/Other leaves during an investigation

If a complainant or respondent is on medical/other leave at any point during the complaints process (including during an investigation), it is incumbent upon them or their representative (if applicable) to advise the investigator and indicate whether the party is able to participate in the complaint/investigative process while on leave.

For medical leaves, if the party is still able to participate in the complaint/investigative process they must provide the Human Rights Office or appropriate supervisory/managerial staff with medical documentation advising the employee is medically fit to participate in the complaint/investigative process while on leave.

If the party to the complaint is not able to participate or otherwise advise the investigator of the leave, the matter may be held in abeyance or the process may be otherwise delayed, as determined by the investigator, until the return from leave.

Any medical documentation forwarded to the HRO will be kept securely in a locked file cabinet.

(h) Addressing incidents/complaints of harassment/discrimination in the absence of a formal written complaint:

It may come to the Board's attention that there is alleged harassment/discrimination where the alleged victim(s) do not wish to/have not come forward. Or, a complainant may determine that they do not wish to proceed with a complaint or may withdraw a

complaint. In those circumstances, the Board may request a reason for withdrawing a complaint or may determine an investigation deemed appropriate in the circumstances is required in the absence of a formal written complaint, or may initiate an investigation with the intent of determining if harassment/discrimination is occurring and stopping it, in order to fulfil the Board's legislated requirement in providing a workplace free of harassment/discrimination.

(i) Potential Investigation Outcomes

- (i) An investigation may determine that, on a balance of probabilities, an alleged incident (s) took place; however, upon investigation did not amount to harassment/discrimination;
- (ii) An investigation may determine that, on a balance of probabilities, an incident(s) took place and amounts to harassment/discrimination;
- (iii) An investigation may determine that, on a balance of probabilities, there is insufficient evidence to conclude whether an incident(s) took place, and consequently whether or not harassment/discrimination occurred;
- (iv) An investigation may determine that, on a balance of probabilities, the incident(s) did not take place and there is no finding of harassment/discrimination;
- (v) An investigation may determine that the complaint is vexatious/frivolous.

(j) Request for Review of A Final Investigation

A complainant or respondent may request to the Executive Superintendent Equity, Engagement and Well-being, that a Review of the Investigation be undertaken. The intent to submit a formal "Request for Review" must be made to the Human Rights Office in writing within seven (7) business days of the issuance of the final written summary of investigation findings. The actual document to be submitted for consideration of a review, outlining the ground(s) for the review (see below), and all relevant details must be submitted to the Human Rights Office within 15 business days of notifying the HRO of the intent to request a review.

The grounds for review are:

- The investigators did not comply with these procedures
- New evidence has become known to the complainant or respondent after the final decision but before the expiry of the seven (7) days limitation period for requesting a review.

No review of the final decision will be undertaken with regard to the claim that the conclusions drawn by the investigator(s) based on findings of fact were incorrect.

The Executive Superintendent Equity, Engagement and Well-being shall convene a reviewer(s) and the reviewer will report its findings to the Executive Superintendent Equity, Engagement and Well Being who will affirm or amend a final decision or require that a new investigation be undertaken. The decision of the Executive Superintendent, Equity, Engagement and Well Being is final.

A response from the Executive Superintendent Equity, Engagement and Well Being regarding the Request for Review, shall be forwarded to the requester within 30 days of convening a reviewer.

Wherever possible and appropriate, where a party to a complaint is facing disciplinary action as a result of investigation findings and has requested a review of the investigation, the disciplinary action shall be postponed until the outcome of the review.

(k) Potential Disciplinary Action

Student Respondents

The Principal will follow the appropriate procedures for addressing student misconduct, as outlined in the Education Act and other specific Board policies and procedures.

Employee Respondents

The appropriate supervisory/managerial staff shall impose formal discipline (in consultation with Employee Services), as deemed appropriate based on the findings of the investigation (e.g., written warning, suspension, up to and including termination of employment with the Board).

In all cases where a complaint is substantiated and a determination is made to proceed with formal discipline, the appropriate supervisory/managerial staff shall ensure that a record (i.e., letter) of the disciplinary action is placed in the employee respondent's official personnel file. The supervisor/manager should keep their written notes of any non-disciplinary responses locked in their own files. Coaching letters or letters of counsel are not deemed formal discipline and are not included in an employee's personnel file.

No other information or documentation regarding a harassment/discrimination complaint (other than disciplinary action), should be included in an employee's official personnel file.

Members of the Public Respondents

Dependent upon the circumstances, parents, contractors etc. may be issued letters of disapproval/warning, revoking of permits/contracts, or an issuing of a no trespass warning.

(l) Potential Remedial Action

- Education or Training

- Counselling for the parties
- Customized workshops for staff/students
- Application of strategies to restore a positive working/learning environment
- Mediation
- Permanent separation of parties

(m) Actions related to Systemic Discrimination

Where systemic discrimination is found or suspected, proactive steps will be taken to ameliorate such conditions by:

- Conducting employment systems reviews
- Departmental re-organization
- Applying Employment Equity goals and timetables in specific areas
- Replacing learning/working materials
- In-service training for appropriate staff
- Reconsidering the assessment and placement procedures for students

(n) Informal Resolutions

(i) Informal Resolutions are an important element in addressing alleged harassment/discrimination. Informal resolution is a potential alternative only after an initial fact-finding investigation, (at minimum speak to complainant and speak to respondent), has taken place and the investigator determines informal resolution is appropriate in the circumstances (in accordance with the OHSA).

Any form of informal resolution (e.g., apology, mediation) should be agreed to and signed off on by the parties to the complaint (complainant (s), respondent(s)).

In certain circumstances parties to a complaint or their representatives may request an informal resolution; however, that decision remains with supervisory/managerial staff or the Board's Human Rights Office, bearing in mind that all parties are expected to work together to prevent and address matters under these procedures.

(ii) Member to Member concerns: In cases where members of the same union/association/federation/network are involved in a matter related to these procedures, the respective union/association/federation/network may wish to work with the parties involved to resolve the matter prior to it becoming a formal complaint. Those efforts are encouraged; however, if they are not successful or the matter is deemed to be too complex, the respective union, association, federation, network representative may wish to counsel/assist the member in bringing the report forward to their Principal, manager, supervisor or the HRO. It is understood that in some cases this may not be possible due to legal or internal policy/procedural requirements of the respective union, association, federation or network.

(iii) Mediation

Mediation involves an unbiased third party acting as a facilitator to resolve disputes. Mediation is typically more appropriate when a matter is deemed to be workplace conflict. In cases where an investigation has commenced in regards to harassment/discrimination, mediation may be attempted during the course of the investigation only after an initial fact-finding process takes place (in accordance with the OHSA), and the investigator determines it is an appropriate form of resolution. All mediation and mediated resolutions should involve the parties respective union/association/federation/network representative and must be provided to parties to a complaint in writing and signed off by the parties. The mediator should be mutually agreeable to both parties.

If mediation is attempted during the course of an investigation and is unsuccessful, the investigation will resume and the parties will be advised by supervisory/managerial staff or the mediator, that information obtained during mediation, or any attempted settlement arising from mediation cannot be introduced as evidence in any subsequent formal proceeding.

Mediation may not appropriate in the following circumstances; however, may be evaluated on a case by case basis:

- All parties are not committed to the process;
- One of the parties is in a position to confer, grant or deny a benefit;
- Students involved in disputes with employees or members of the public, including parents and community covered by this procedure.

The HRO may be consulted when considering a trained mediator, acceptable to both parties. In no circumstance shall a mediator be used who is involved in any capacity in the same learning or working environment/site as the parties with the exception of student peer mediators.

Student-led mediation using trained “peer mediators” may be used to facilitate an informal resolution between students, if acceptable to the parties. Principals shall ensure that any terms agreed to are met.

In all cases of mediated or informal resolution, supervisory/managerial staff is responsible for monitoring the situation to ensure the effectiveness of the resolution.

6.8. Hate-Motivated Activity

- (a) All persons covered under this Procedure who witness or otherwise become aware of any hate-motivated violence or any incitement to hate-motivated violence shall immediately report it to the administration, supervisory or managerial staff. Supervisory or managerial staff that witness or otherwise become aware of any hate-motivated violence or any incitement to hate-motivated violence shall immediately

involve the Police and, subject to Police agreement, conduct a site-based investigation in accordance with these procedures.

- (b) If there are any symbols displayed or other representations clearly identified with groups which promote hate and violence, supervisory or managerial staff shall report the matter to the police and in **all cases** shall investigate the matter in accordance with these procedures.
- (c) Physical evidence of hate activity shall not be destroyed or disturbed prior to investigation by supervisory or managerial staff or police. Materials and incidents related to hate activity should be preserved and duly recorded. An investigation shall commence as soon as possible such that any offensive materials or symbols can be subsequently removed in order to minimize the impact of the offensive materials, symbols etc. on others.
- (d) The Hate Activity Interim Report Form must be completed in all cases above (see Appendix B), and a copy forwarded to their immediate supervisor and a copy forwarded to the HRO. This information will be combined with a report form to be generated by the Board's school safety committee.

In all cases where it is determined that the above activities have taken place by students, employees or members of the public, action shall be taken in accordance with section 6.7 (k-m) of these procedures.

- (e) Support and Assistance should be provided to groups or individuals targeted by hate activity. The appropriate supervisory or managerial staff shall consider one or more of the following:
 - Inform the parent, community and employees, and advise it will not be tolerated
 - Design proactive programs with students and staff
 - Promote the human rights policy and procedures and encourage staff and students to report all hate-motivated activity
 - For eligible employees they can also make use of the Board's Employee and Family Assistance Program (EFAP).
 - Students may also seek support from a member of the Board's Equity team.

6.9. Records

All correspondence and other documents generated under these procedures and related policies must, subject to the Municipal Freedom and Information and Protection of Privacy Act, be marked, "PRIVATE AND CONFIDENTIAL" and must be stored in a locked and secure file in the office of management/supervisory staff or in a locked and secure file cabinet in the Human Rights Office. This includes, but is not limited to, copies of the complaint, details regarding the incident/complaint, investigation notes, statements, summaries or reports.

No information regarding incidents/complaints of alleged harassment/discrimination shall be placed in an employee's personnel file unless they have been found to have breached the harassment/discrimination policies/procedure and discipline is issued. The discipline will be the only documentation that remains on the employee's file for the duration applicable as per the relevant Collective Agreement or Terms and Conditions of Employment.

These records shall be kept for a period of 15 years from file closure, and if at that time there is no litigation, investigation or further activity under these procedures or other related policies involving a party to the original complaint, all records of the complaint (paper and electronic will be shredded or erased). A record of the type of document destroyed, by whom and when should be kept in accordance with Privacy legislation.

Please note that it is unlawful for an employer to destroy any evidence or potential evidence that may be required in a matter that is currently, or that you may be aware may result in litigation. Contact TDSB legal services or the HRO, if in doubt.

Statistics may be derived from information collected under these procedures and related policies; however, in all cases it will be presented in aggregate form without the use of names or other personal identifiable information.

7.0 EVALUATION

In order to ensure the effectiveness of these procedures they will be reviewed as required, and at least annually, in accordance with the OHSA.

8.0 APPENDICES

- Appendix A: Workplace Harassment and Human Rights Incident Reporting Form (Form 515A)
- Appendix B: Hate Activity Interim Report Form (Form 515B)

9.0 REFERENCE DOCUMENTS

Policies:

- Acceptable Use of Information Technology Resources (P088)
- Board Member Code of Conduct (P075)
- Caring and Safe Schools (P051)
- Gender-Based Violence (P071)
- Human Rights (P031)
- Occupational Health and Safety (P048)
- Reporting of Suspected Wrongdoing (Whistleblowing) (P066)

- Respectful Learning and Working Environment (P073)
- Workplace Violence Prevention (P072)

Operational Procedures:

- Board Code of Conduct (PR585)
- Bullying Prevention and Intervention (PR703)
- Code of On-line Conduct (PR571)
- Complaint Protocol for the Board Member Code of Conduct (PR708)
- E-mail Usage (PR572)
- Parent Concern Protocol (PR505)
- Promoting a Positive School Climate (PR697)
- Sexual Misconduct by Students (PR608)

Legislative Acts and Regulations:

- *Municipal Freedom of Information and Protection of Privacy Act*
- *Occupational Health and Safety Act*
- *Ontario Human Rights Code*

Collective Agreements