

Toronto District School Board

Operational Procedure PR740

Title: **WORKPLACE HARASSMENT INVESTIGATION (NON-CODE)**

Adopted: April 18, 2023
Effectuated: April 18, 2023
Revised: N/A
Reviewed: N/A
Authorization: Executive Council

1. RATIONALE

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

The Workplace Harassment Investigation (Non-Code) Procedure (the “Procedure”) supports the implementation of the Workplace Harassment Prevention for Non-Human-Rights-Code Harassment Policy (P034).

This Procedure is consistent with the *Occupational Health and Safety Act (OHSA)*.

2. OBJECTIVE

To provide information and instruction regarding the process to address complaints of workplace harassment that are not based on a *Human Rights Code* ground.

3. DEFINITIONS

Board is the Toronto District School Board, which is also referred to as the “TDSB.”

Complainant is anyone who makes a complaint under the Board’s harassment and discrimination prevention policies, alleging that harassment or unlawful discrimination has occurred.

Non-Human Rights Code Workplace Harassment is 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 and is not based on a protected ground under the Human Rights Policy (P031) or the *Human Rights Code*.

Reprisal is adverse action or threat of adverse action against an individual that is in retaliation: (a) For, in good faith raising concerns, or claiming or enforcing a right under this Procedure, or supporting or assisting someone else to do so; (b) For participating in a process to address a matter under this Procedure; or (c) On the basis of a belief that the individual has engaged in (a) or (b).

Adverse action in the above definition could include, for example:

- Suspending, disciplining, or dismissing a worker;
- Intimidating or coercing a worker not to report a situation;
- Changing a worker's position, shift, work location, work assignments, or the nature of their work;
- Reducing or changing a worker's hours;
- Denying a promotion; or
- Harassing a worker.

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

TDSB is the Toronto District School Board, which is also referred to as the "Board".

Workplace under the *Occupational Health and Safety Act*, is any land, premises, location or thing at, upon, in or near which an employee works, but does not include a private residence and its related lands.

4. RESPONSIBILITY

Associate Director, Organizational Transformation and Accountability
Executive Superintendent, Employee Services

5. APPLICATION AND SCOPE

This Procedure applies to all employees of TDSB.

The Procedure pertains to the process for addressing non-Human Rights Code workplace harassment in accordance with the Workplace Harassment Prevention for Non-Human-Rights-Code Harassment Policy (P034).

The Procedure does not apply to investigation of harassment based on a protected ground under the *Human Rights Code* that is implemented through the Human Rights Policy (P031) and Workplace Harassment Prevention and Human Rights Procedure (PR515).

6. PROCEDURE

6.1. Voluntary Early Resolution Process before Filing Complaint

Any employee who experiences or is aware of an employee who has experienced non-Human-Rights-Code harassment in the workplace may consider trying to resolve the issue themselves or with support of their direct Supervisor/Manager/Principal. If the person who is engaging in workplace harassment is their direct Supervisor/Manager, the employee can go to any Supervisor/Manager.

This step is entirely optional as employees may not feel comfortable or safe in attempting early resolution. Employees may wish to consult with their union/association representative for support.

Bringing concerns forward immediately will normally address the matter quickly and is one of the best mechanisms to bring insight to the individual causing the concern that their behaviour is not acceptable. Often a person may not be aware that their behaviour is offensive, and most will change the behaviour once they are aware of the concern.

6.2. Investigation

- a) If for any reason an employee is unable to resolve matters using the other options or chooses to bypass them, an investigation can be requested through submission of the Workplace Harassment (Non-Code) Complaint Reporting Form (see Appendix A - Form 740A) (“Complaint Reporting Form”). Employees are encouraged to complete the Complaint Reporting Form to request an investigation.
- b) The Complaint Reporting Form is to be forwarded to Employee Services Investigations department who will conduct an initial review of the contents of the Complaint Reporting Form and determine if an investigation is appropriate. Specifically, a determination will be made as to whether the matters set out in the Complaint Reporting Form, if true, would violate the Workplace Harassment Prevention for Non-Human-Rights-Code Harassment Policy (P034). If so, then an investigation will proceed. If not, then Employee Services will communicate back to the employee who submitted the Complaint Reporting Form that the matter will not be proceeding with investigation along with the corresponding reason.
- c) The matter may be referred to alternative investigative processes, if applicable, including those governed by the Human Rights Policy (P031), the Reporting of Suspected Wrongdoing (Whistleblowing) Policy (P066), or the Workplace Violence Prevention Policy (P072).
- d) If an investigation is appropriate, Employee Services will notify the complainant and the respondent of the decision to proceed and will assign an individual to conduct the investigation. Investigations may be conducted by a manager who has no involvement in the matters being investigated either as a party to the complaint or a witness, an internal investigator, or an external investigator.

- e) The investigation will be completed in an expeditious and thorough manner.
- f) It may be necessary to institute interim measures for the length of the investigation, such as changing reporting relationships or work assignments in accordance with Board procedure.
- g) The investigator will meet separately with each party to receive their version of events related to the matters under investigation. Before their meeting, the respondent will be provided with a summary of the allegations against them. Each party will also have an opportunity to provide the investigator with relevant documents and identify relevant witnesses. The investigator will make best efforts to review all relevant information and meet with those individuals with relevant information. The investigator will seek to make factual findings related to all allegations investigated.
- h) All employees of the Board are expected to fully participate in any investigations conducted under this Procedure and provide the investigator with all relevant information.
- i) Board employees have the right to be represented by their union or association in any matters covered by this Procedure. All employees have the right to attend investigation interviews with a support person, provided that the support person agrees to adhere to the confidentiality requirements and is not also a witness in the investigation.
- j) Based on the findings made, the investigator will determine whether a breach of the Workplace Harassment Prevention for Non-Human-Rights-Code Harassment Policy (P034) has occurred. Upon completion of the investigation, a written report will be prepared by the investigator.
- k) Investigations should be completed as soon as possible, and no longer than ninety (90) days from the first reporting of the instance, other than in exceptional circumstances. If there is any unusual delay in the investigation, the investigator will notify the complainant and respondent.
- l) Where a breach of the Workplace Harassment Prevention for Non-Human-Rights-Code Harassment Policy (P034) has been determined, a decision on disciplinary and/or other actions will be made.
- m) The complainant and respondent will be advised of the outcome of the investigation and any corrective action to be taken as a result of the investigation.
- n) The Board reserves the right to proceed with an investigation under this Procedure where information about a potential breach of the Workplace Harassment Prevention for Non-Human-Rights-Code Harassment Policy (P034) comes to its attention, even if no Complaint

Reporting Form has been submitted and/or a complainant has not come forward to report their concerns.

6.3. Timing of Complaints

In order to conduct a proper investigation, it is critical that complaints under this Procedure be reported as soon as possible. The Board reserves the right to decide not to investigate matters that are reported more than one (1) year after the incidents that are the subject of the complaint of has taken place.

6.4. Confidentiality and Protection of Privacy

Any personal information obtained through the reporting and/or investigation process will be kept in accordance with TDSB's privacy obligations set out in *Municipal Freedom of Information and Protection of Privacy Act* and the Freedom of Information and Protection of Privacy Policy (P094).

TDSB will take steps to secure and protect personal information from unauthorized access, use, disclosure and inadvertent destruction by adhering to established safeguards, TDSB's records retention schedule, and the Records and Information Management Policy (P097).

To protect the interests and privacy of the complainant, the respondent, witnesses and any others who may be involved in matter addressed under this Procedure, confidentiality will be required and maintained throughout the process to the fullest extent practicable and appropriate under the circumstances.

Within the work environment of both parties, it is important that all involved ensure that individual privacy and confidentiality are respected. This means that any employee who is advised of or participates in any resolution process described in this Procedure is expected to keep details confidential (i.e., the option being pursued and the subject-matter) and not to discuss this with anyone, other than for the purpose of obtaining professional advice and/or to obtain necessary support.

The processing of any complaint by Board representatives will be limited to only those individuals needed to fulfill the responsibility to mediate, investigate, provide a respectful workplace, and resolve the situation. Any personal information obtained relating to an investigation or a potential violation of the Workplace Harassment Prevention for Non-Human-Rights-Code Harassment Policy (P034) will not be disclosed unless necessary for an investigation, corrective action relating to the complaint or where required by law.

Any breach of confidentiality is subject to appropriate disciplinary action.

6.5. Reprisal

All employees have the right to report, in good faith, pursuant to this Procedure without fear of reprisal. Reprisal by any person against anyone involved in the resolution or investigation processes described above will not be tolerated and will be subject to discipline, up to and including dismissal.

6.6. Bad Faith Complaints

Complaints brought in good faith but which are unsubstantiated are not bad faith complaints.

Where it is determined that malicious, false, frivolous or willfully damaging accusations have been made against an employee, disciplinary action may be taken against the complainant.

6.7. Organizational Support

Any eligible Board employee is entitled to utilize the TDSB Employee and Family Assistance Program (EFAP) in connection with any matters covered by this Procedure.

6.8. Other Proceedings

Nothing in this Procedure should prevent or discourage a Board employee from taking advantage of any other form of proceeding to address their concerns, such as filing an application with the applicable human rights authority or a grievance where eligible or accessing any other legal avenues available to them.

7. EVALUATION

This Procedure will be reviewed as required, but at a minimum every five (5) years after the effective date.

8. APPENDICES

- Appendix A: Form 740A – Non-Code Based Workplace Harassment Compliant Reporting Form

9. REFERENCE DOCUMENTS

Legislation

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

Policies

- Human Rights Policy (P031)
- Freedom of Information and Protection of Privacy Policy (P094)
- Reporting of Suspected Wrongdoing (Whistleblowing) Policy (P066)
- Workplace Harassment Prevention for Non-Human-Rights-Code Harassment Policy (P034)
- Workplace Violence Prevention Policy (P072)

Procedures

- Workplace Harassment Prevention and Human Rights Procedure (PR515)

PRIVATE & CONFIDENTIAL

COMPLAINT REPORTING FORM

Non-Code Based Workplace Harassment

(THIS FORM IS TO BE USED FOR COMPLAINTS THAT ARE NOT RELATED TO A PROTECTED GROUND)

Please consult the Board's *Workplace Harassment Prevention for Non-Human-Rights-Code Harassment* policy (P034) prior to completing this form.

Complaints should be submitted within one (1) calendar year. If this matter is older than one (1) calendar year, please indicate the reason(s) for the delay in reporting.

COMPLAINANT (Your Details):

First Name:	<input type="text"/>	Surname:	<input type="text"/>
Employee Number:	<input type="text"/>	School/Department/Worksite:	<input type="text"/>
Job Title:	<input type="text"/>	Contact Number (Home/Cell):	<input type="text"/>
Preferred Email Address:	<input type="text"/>		
Unionized: Yes <input type="checkbox"/>	No <input type="checkbox"/>	If yes, please specify union:	<input type="text"/>
Union Representative and Phone Number (if applicable):	<input type="text"/>		

RESPONDENT 1: (i.e., the person(s) being accused)

First Name:	<input type="text"/>	Surname:	<input type="text"/>
School/Department/Worksite:	<input type="text"/>	Job Title:	<input type="text"/>

RESPONDENT 2:

First Name:	<input type="text"/>	Surname:	<input type="text"/>
School/Department/Worksite:	<input type="text"/>	Job Title:	<input type="text"/>

Additional Respondent(s) Attached: Yes No

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Definitions:

- 1. Non-Code Workplace Harassment: As described in TDSB Policy P034 – Workplace Harassment Prevention for Non-Human-Rights-Code Harassment:** 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 and is not based on a protected ground under the Human Rights Policy (P031) or the Human Rights Code.

Important: Please note that if you are submitting a workplace harassment complaint based on a protected ground under the Human Rights Code, you must submit your complaint to the Human Rights Office at HumanRightsOffice@tdsb.on.ca using form 515A - Human Rights Incident Reporting Form.

Do not submit your complaint to both HumanRightsOffice@tdsb.on.ca and WorkplaceHarassmentComplaints@tdsb.on.ca.

If you have already submitted a complaint to the Human Rights Office, please indicate as such on this form (below question on Page 3).

SUMMARY OF COMPLAINTS:

Please provide a summary of the complaint. When describing the incidents please include the following:

- **When:** What date(s) and time(s) did the incidents take place?
- **Where:** Where did the incidents occur?
- **Witnesses:** Was anyone else present? Did anyone else hear or see the incidents?
- **Who:** Who is the person that your complaint is about?
- **What:** Please describe what occurred.

Complaint Incident 1:

Date and Time:

Location:

Witness(es):

Details of Incident:

Complaint Incident 2:

Date and Time:

Location:

Witness(es):

Details of Incident:

Please attach additional pages to summarize additional complaints

Additional Pages Attached: Yes No

Have the matters been previously reported? Yes No

If yes, to whom were they reported and what actions were taken? If no, please indicate why not?

Resolution Options: Would you consider alternative resolution or mediation for this matter? Yes No

If yes, what is your desired resolution?

Have you filed any other complaints regarding the incidents (e.g., police report, grievance, Human Rights Tribunal, etc.)? Yes No

If yes, please provide details:

Have you previously filed this complaint using a Form 515A - Human Rights Incident Reporting Form:

Yes No

Accommodation(s) (Please advise of any accommodation or accessibility needs):

Declaration: I certify that the information provided on this form is accurate

Complainant's Signature: _____ Date: _____

The information contained on this form is of a highly confidential nature and will be protected in accordance with the provisions of the ***Municipal Freedom of Information and Protection of Privacy Act***.

INSTRUCTIONS FOR HANDLING THIS FORM: Once complete and signed, please email the form to:
Workplaceharassmentcomplaints@TDSB.ON.CA