

Toronto District School Board

Operational Procedure PR743

Title: **EMPLOYEE INTERIM MEASURES PENDING INVESTIGATION**

Adopted: February 27, 2024

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Revised: N/A

Reviewed: N/A

Authorization: Executive Council

1. RATIONALE

The Employee Interim Measures Pending Investigation Procedure (PR743) (the “Procedure”) was developed to identify the interim measures that may be applied to employees involved in an internal (TDSB) investigation, external investigation, or other complaint resolution process.

2. OBJECTIVE

To outline the criteria and process for implementing interim measures pending an investigation or other complaint resolution process.

3. DEFINITIONS

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

Complainant is anyone who makes a complaint under the Board’s policies, alleging that harassment, discrimination, or other wrongdoing has occurred or who otherwise initiates an investigation into alleged wrongdoing.

TDSB Directed Leave is a temporary period where an employee is directed not to attend work during a period of investigation.

Information Technology (IT) Resources include but are not limited to computers, phones, tablets, cellular/mobile technology, computer applications, email, servers, networks, internet services, internet access including access to external websites, data and any other electronic or communication technology provided by the TDSB

that exist today or may be developed in the future regardless of whether it may be used as a stand-alone device.

Interim Measures are temporary limitations or modifications that are imposed on an employee to ensure the safety of the Board community, the integrity of an investigation, and/or preserve the property and the operations of the Board. Interim Measures are non-disciplinary and are not to be construed as indicative of guilt.

Respondent is anyone who has a complaint made against them under the Board's harassment, discrimination, and/or other wrongdoing prevention policies, or who is otherwise the subject of an investigation regarding allegations of wrongdoing.

Manager/Supervisor means a manager, supervisor, or designate. If the manager/supervisor of an employee is involved as a party or key witness to the matter subject of investigation and/or complaint resolution process, an alternate manager/supervisor contact will be provided.

System Block means a temporary restriction for casual/temporary/occasional employees from receiving job assignments during a period of investigation.

Wrongdoing includes:

- contravention of a federal or provincial act or regulation by an employee (for example: *Criminal Code of Canada, Occupational Health and Safety Act, Education Act, Ontario Human Rights Code*);
- an act or omission that creates danger to life, physical and mental health, safety of persons, or to the environment;
- mismanagement or other acts/omissions inconsistent with laws, regulations, and Board policies, including but not limited to waste of financial resources, abuse of managerial authority, mismanagement, or loss/theft of public assets;
- financial fraud (e.g., an act of deception, manipulation, or trickery) in respect to the finances of the Board or a school/department operated by the Board;
- time theft (i.e., a fraudulent act where employee collects pay for time not actually worked);
- deliberate non-compliance with Board policies and procedures; and
- directing, counseling, or assisting a person to commit any of the above.

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

4. RESPONSIBILITY

Associate Director, Organizational Transformation, Accountability, and Legal and Executive Officer, People and Culture.

5. APPLICATION AND SCOPE

This Procedure applies to employees of the Board who are subject to an internal or external investigation and/or complaint resolution process (e.g., employment, workplace harassment, whistleblower, Human Rights, regulatory) as well as to staff overseeing and managing employees in an investigation process.

6. PROCEDURE

6.1. General Principles

- 6.1.1. Employees facing a complaint or allegation that will be investigated may be subject to Interim Measures pending the completion of an investigation and/or other complaint resolution process
- 6.1.2. No employee will have Interim Measures applied without the knowledge and involvement of the Executive Officer and/or appropriate Senior Manager of People and Culture, or their designate.
- 6.1.3. Interim Measures will be determined on a case-by-case basis after gathering and assessing information to make an informed decision on whether they are warranted under the circumstances, and to what extent. Assessments will adopt a culturally safe and trauma-informed approach and will align with established or required accommodations pursuant to the *Human Rights Code*.
- 6.1.4. Interim Measures implemented will be reviewed and modified as necessary to account for updated information or changes to circumstances during the investigation and/or complaint resolution process.
- 6.1.5. Interim Measures are temporary administrative steps taken to facilitate an investigation and are not disciplinary in nature.
- 6.1.6. Employees involved in an investigation, including complainants, respondents, and witnesses, are expected to cooperate with the investigation. This includes providing timely responses to inquiries and requests for information or meetings, timely notice to representation as outlined in section 6.3.3, and providing necessary information to ensure continuity in coverage of their duties, as applicable.
- 6.1.7.
 - (a) Permanent full-time or permanent part-time employees (including permanent contract teachers) will continue to receive their regular pay and benefits while subject to Interim Measures during an

investigation, however the Board retains the discretion to discontinue payment at any time if the circumstances so warrant (e.g., non-cooperation or interference with investigation, loss/suspension of qualifications, misconduct).

- (b) Pay arrangements for casual, temporary and/or occasional employees, as applicable, shall be determined with reference to the applicable terms and conditions and/or practice applicable to the employee's bargaining unit/employee group.

6.2. Purpose of Interim Measures

- 6.2.1. Interim Measures will be applied to protect the integrity of an investigation, to protect the safety or wellbeing of staff or students, to enable an effective and efficient investigation, and/or to prevent or mitigate harm to TDSB or its staff and students.

6.3. Application of Interim Measures

- 6.3.1. Considerations for the determination of appropriate Interim Measures will include, but are not limited to the following:
 - Whether the continued presence of the employee who is the subject of an investigation will impair another individual's ability to function at school or work;
 - Whether the employee poses a risk to another staff member, student, witness, or others;
 - Whether there has been a reprisal or a real threat of reprisal exists;
 - Whether the allegations on their face, if substantiated, support a potential finding of serious misconduct, Wrongdoing, and/or breach of policies/procedures;
 - Whether action is necessary to protect the integrity, effectiveness, and efficiency of an investigation; and
 - Whether action is necessary to prevent or mitigate harm (e.g., physical, mental, reputational) to TDSB or its staff and students.
- 6.3.2. Interim Measures are temporary in nature and may be lifted and/or modified by the Manager/Supervisor, with approval from the Executive Officer, People and Culture, or designate.
- 6.3.3. Employees involved in an investigation will be offered the option for representation and/or support by their union/association/federation/employee network in accordance with

the terms and conditions set out by their collective agreement or terms and conditions of employment, as applicable.

6.3.4. To the extent practicable, parties involved in an investigation will be required not to have direct or indirect contact with each other until the investigation has been concluded and the outcomes determined.

6.3.5 Following the conclusion and communication of outcomes of an investigation and/or dispute resolution process, appropriate steps will be taken to facilitate an employee's transition back to the workplace should the employee return to their original workplace, work assignment(s), and/or reporting structure following a period of Interim Measure(s) where there have been modifications.

6.4. Separation of Parties

6.4.1. Separation of parties means any modification(s) to the workplace, responsibilities, reporting structure and/or work location of employee(s) involved in an investigation and can be engaged in investigations involving one (1) or more parties. Separation of parties may be used as an Interim Measure during the investigation and/or complaint resolution process to promote the safety and wellbeing of staff or students, and/or to mitigate risk of harm to TDSB or its staff and students.

6.4.2. Managers/Supervisors and/or the assigned investigator will consult with parties as appropriate as to whether there are any immediate concerns for safety or other circumstances that may give rise to a need for separation of parties.

6.4.3. Any decision around a separation of parties will be made by the Manager/Supervisor in consultation with People and Culture and/or Human Rights Office, as appropriate.

6.4.4. Where the Manager/Supervisor determines that a separation of parties is appropriate, the party(ies) shall be separated pending the final disposition and outcome of the investigation and/or complaint resolution process. Separation of parties may include, but is not limited to:

- Working in the same physical location with strict parameters such as no contact with the other party and/or other witnesses.
- Temporarily relocating one party to an alternate location(s), including work from home/remotely, or assignments based on the Board's needs.
- Changes to work hours/workdays and/or duties and responsibilities.
- Changes to reporting or communication structures.

- Restriction on access to work by location (in the case of an occasional/temporary/casual employee).
 - Only after consideration of other less restrictive options, a Respondent may be placed on TDSB Directed Leave or System Block in accordance with section 6.5 below if appropriate in the circumstances. A Respondent may be placed on TDSB Directed Leave or System Block if required under policy or by law.
- 6.4.5. The Respondent will presumptively be the relocated party should a separation of parties be applied; however, this presumption may be rebutted in consideration of a request from a Complainant to be moved and/or in exceptional circumstances. In any event, the placement of a party moved shall take into account the confidentiality of the investigation and consideration will be given to measures which may minimize reputational impacts on the parties, as appropriate.

6.5. TDSB Directed Leave/System Block

- 6.5.1. Eligible employees will continue to have access to the Employee and Family Assistance Plan (EFAP) and should contact their union/federation/association/employee network representative for assistance during a period of TDSB Directed Leave or System Block. Employees may also contact their Manager/Supervisor (unless the Manager/Supervisor is involved as a party to the investigation, in which case an alternate managerial contact will be provided) with any questions or to seek updates on the investigation.
- 6.5.2. Employees are expected to remain available for communication with TDSB during working hours in a timely manner when on TDSB Directed Leave or System Block. Wherever possible, employees will be assigned work by TDSB (e.g., teachers may be required provide lesson plans and/or consult or assist with lesson plans as appropriate) as directed by People and Culture in consultation with the Superintendent/Principal, or Manager/Supervisor.

6.6. Expectations of Employees Subject of Interim Measures

- 6.6.1. Network and hardware access may be modified during a period of Interim Measures, but employees will be provided access to the necessary hardware, software, and programs to complete any work assigned by the Board. IT Resources must continue to be used in accordance with the Acceptable Use of Information Technology Resources Policy (P066).

- 6.6.2. Employees subject to Interim Measures are expected to avoid communication with students (current, former, or graduated), parents/guardians/caregivers of students, employees of the Board, community members, or the media for the purposes of discussing the matter subject to investigation, the ongoing investigation, or their current status. This expectation does not limit an employee from discussing the matter with their union/association/federation/employee network representative, professional advisors and immediate family, provided they explain the nature of the expectations surrounding communication under this Procedure.
- 6.6.3. Job-related contact with students may be modified and/or suspended while an employee is subject to Interim Measures under this procedure. This may include, but is not limited to: Google classroom, Google hangout, email with students, parent/guardian/caregiver night(s), school events, extracurriculars, field trips, coaching, volunteering, and virtual learning. Employees subject to modified or suspended contact with students may consult with their Supervisor/Manager to discuss and obtain support for situations or communications that arise during the period of Interim Measures, which may involve communications received from parents, other employees, or students.
- 6.6.4. If a teacher is subject to Interim Measures removing them from the classroom when report cards are due, they will be expected to provide and/or enter assessment data, unless otherwise directed by the applicable Senior Manager or Executive Officer, People and Culture, or designate.
- 6.6.5. Interim Measures may include a prohibition from attendance on school and/or all Board property for the duration of the Interim Measures. Requests for access to Board property during any such prohibition shall be subject to the approval of People and Culture and/or the Manager/Supervisor. Any prohibition regarding attendance on Board property may be waived or modified, upon request, for staff who are parents/guardians/caregivers of TDSB students or working for third-party services providers on school property (e.g., childcare, daycare).
- 6.6.6. Employees subject to Interim Measures who are prohibited from accessing a school and/or other Board property may arrange with their Manager/Supervisor to attend at their work location(s), at a time and under conditions agreed to by the Board to obtain personal belongings and/or evidence required to respond to the investigation and/or complaint, or to obtain necessary information to be able to complete work assignments during the applicable period.

- 6.6.7. Depending on the circumstances and the nature of the investigation, People and Culture may suspend building access and any other access privileges as required. Should this occur, and in appropriate circumstances, the employee will be notified of the changes once appropriate to do so, with consideration given to ensuring the integrity of the investigation process.

6.7. Periodic Updates and Communication

- 6.7.1. The Manager/Supervisor, employee, and union/federation/association/employee network representative may discuss and set expectations for a check-in process for an employee subject to Interim Measures, including the frequency of check-ins, and the primary method of communication to be used (e.g., email, telephone call). The Manager/Supervisor will make necessary inquiries in response to queries for status updates from the employee and/or the union/federation/association/employee network, as necessary.
- 6.7.2. The employee will be provided information regarding the nature of the investigation, the process, and the investigator assigned, as available.
- 6.7.3. If the employee is unable to participate in the investigation and/or complaint process due to illness, the employee will provide all relevant information/support in accordance with the terms and conditions applicable to their employment.
- 6.7.4. Nothing in this procedure limits the Manager/Supervisor from contacting the employee as necessary, nor from the staff/investigator involved with addressing the investigation and/or complaint, from contacting an employee subject to Interim Measures and it is the expectation that the employee will fully cooperate the investigation and/or complaint process during any such period.

7. EVALUATION

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

8. APPENDICES

- Not Applicable

9. REFERENCE DOCUMENTS

Legislation

- *Education Act*
- *Child and Family Services Act*
- *Criminal Code*
- *Human Rights Code*
- *Occupational Health and Safety Act*
- *Municipal Freedom of Information and Protection of Privacy Act*

Policies

- Acceptable Use of Information Technology Resources (P088)
- Caring and Safe Schools (P051)
- Dealing with Abuse and Neglect of Students (P045)
- Human Rights (P031)
- Occupational Health and Safety (P048)
- Workplace Harassment Prevention for Non-Human-Rights-Code Harassment (P034)

Procedures

- Board Code of Conduct (PR575)
- Bullying Prevention and Intervention (PR703)
- Dealing with Abuse and Neglect of Students (PR560)
- Police-School Board Protocol (PR698)
- Workplace Harassment Prevention and Human Rights (PR515)