



# REGULATIONS

**SUBJECT:        Discrimination and Harassment Prevention**

## **BACKGROUND**

The Lambton Kent District School Board is committed to providing a working and learning environment in which all individuals are treated with respect and dignity in accordance with the provisions of the *Ontario Human Rights Code*. In this regard, every student, employee, trustee, parent and community member has the right to equal treatment and to learn and work in an environment free of discrimination and harassment. The Lambton Kent District School Board will:

- provide every school community member with a working and learning environment that is free from discrimination and harassment in accordance with Ontario's Human Rights Code (the "Code");
- provide a positive school climate for all staff, students, parents, volunteers, contractors, and guests of the schools or board offices;
- provide information to ensure all school community members are aware of their rights and obligations under the Code; and,
- establish procedures to ensure that complaints are dealt with in a fair and timely manner.

The Board is committed to fulfilling its obligations under the *Code* to provide all its school community members with an environment that is free from discrimination and harassment on the prohibited grounds enumerated in the *Code*. The Board will not tolerate discrimination and/or harassment by its community members. In the event that harassment and/or discrimination are alleged, every effort will be made to achieve a fair and timely resolution.

## **DEFINITIONS**

The following definitions provide a context within which to examine discrimination and harassment:

### **School Community Members**

School community members include employees, students, trustees, volunteers, contractors and guests of the schools or board offices.

### **Discrimination**

Any action or behaviour that results in unfavorable or adverse treatment based on one or more of the prohibited grounds.

**Harassment**

Harassment is defined as a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. It includes comment or conduct linked to one or more of the prohibited grounds initiated by one school community member toward another school community member that are offensive, intimidating, humiliating, hostile, embarrassing or inappropriate. Single acts of sufficient severity may constitute harassment.

Examples of Harassment:

- inappropriate insulting remarks, gestures, jokes, innuendoes or taunting about a person's racial or ethnic background, colour, place of origin, citizenship, ancestry, creed, or disability;
- inappropriate questions or comments related to one or more of the prohibited grounds; and
- posting or display (electronically or otherwise) of materials, articles, or graffiti, etc. related to one or more of the prohibited grounds, which may cause humiliation, offense, or embarrassment.

**Poisoned Environment**

Any action or behaviour relating to one or more of the prohibited grounds, which although not necessarily directed at anyone in particular, has the effect of creating or maintaining an offensive, humiliating or intimidating climate of work or study. Examples include insulting jokes or posting/displaying of offensive cartoons or signs, or distribution of such materials via the internet.

**Prohibited Grounds**

Every school community member has the right to freedom from discrimination and harassment on the basis of a prohibited ground in the areas of: services, goods and facilities, accommodation, contracts, employment and membership in vocational associations in accordance with the *Code*.

Prohibited grounds are: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed (religion), sex, sexual orientation, same-sex partnership status, disability, age, marital status, family status (parent-child relationship), the receipt of public assistance (in accommodation only), and record of offences (provincial offences, pardoned federal offences in employment only).

**Reprisal/Retaliation**

Reprisal/retaliation is discrimination/harassment of an individual for invoking this Regulation or for participating/cooperating in an investigation under this Regulation or for associating with someone who has invoked this Regulation or participation in the Regulation's procedures. Reprisal/retaliation is contrary to this Regulation and will result in disciplinary action.

**Sexual Harassment**

A course of comments or conduct of a gender-related or sexual nature that is known or ought reasonably be known to be unwelcome/unwanted, offensive, intimidating, hostile or inappropriate. Single acts of sufficient severity may constitute sexual harassment.

School community members have the right to be free from

- (a) sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement; and,
- (b) reprisal or threat of reprisal for the rejection of sexual solicitation or advance where the reprisal is made by a person in a position to grant, confer, or deny a benefit or advancement.

Examples of Sexual Harassment:

- unwelcome remarks, jokes, slurs, innuendos or taunting about a person's body, attire or sex;
- unwelcome sexual advances (verbal, written, physical);
- practical jokes of a sexual nature which cause awkwardness or embarrassment;
- leering, whistling, or other suggestive or insulting sounds;
- attainment and/or distribution of improper information of a sexual nature including, but not limited to, electronic material;
- unwanted or inappropriate physical contact such as touching, kissing, patting, hugging or pinching;
- sexual/physical assault (also an offence under the Criminal Code);
- inappropriate and unwanted comments about a person's body, dress or appearance;
- unwelcome enquiries or comments about a person's sex life or sexual preference;
- written or verbal abuse or threats of gender or sexual nature;
- nasty or derogatory remarks or conduct directed toward members of one sex; or,
- request or demand for sexual favours which include, or strongly imply, promises of regards for complying (e.g., job advancement opportunities, improved academic grades) and/or threats of punishment for refusal (e.g., denial of job advancement or opportunities, diminished academic grades).

### **Vexatious or Bad Faith Complaint**

A complaint will be found to be vexatious or made in bad faith where a complainant makes allegations of harassment or discrimination knowing them to be false, or submits a complaint for a purely malicious or vindictive purpose. Such complaints are contrary to this Regulation and will result in disciplinary action.

### **What is NOT Discrimination or Harassment**

Exercising appropriate supervisory, instructional and evaluation responsibilities, including conducting performance appraisals, enforcing standards, and taking corrective/discipline action do not constitute discrimination or harassment and are not contrary to this Regulation.

### **Conflict Resolution Coordinator (the "Coordinator")**

The Board shall designate a Conflict Resolution Coordinator. The Coordinator, reporting to the Manager of Human Resources, will be responsible for administering the Harassment and Discrimination Complaint Regulation. In the event that the Coordinator has a direct involvement with a complaint that is made under this Regulation (as a complainant, respondent or witness), the Manager of Human Resources or her/his designate shall appoint a suitable alternate for the purpose of dealing with the complaint.

### **Scope of Regulation**

This Regulation applies to all Board school community members, as well as all Board activities and functions. Employment, educational, or business dealings taking place on Board premises as well as off-campus activities such as field placements, field trips, socials events or meetings that take place under the auspices of the Board are covered by this Regulation.

### **Responsibilities**

#### **School Community Members**

- School community members are responsible for ensuring that their working and/or learning environment is free from discrimination and harassment by refraining from any comment/conduct that is in contravention of this Regulation. In addition, community members are responsible for reporting Human Rights incidents of apparent harassment and/or discrimination to the Coordinator and, when necessary, cooperating in the investigation and/or resolution of complaints pursuant to this Regulation.
- Employees, principals, managers and supervisors are expected to adhere to this Regulation and have a duty to act immediately on observations or allegations of discrimination and/or harassment. A principal, manager or supervisor may be found culpable if he or she is aware of an incident involving discrimination and/or harassment but fails to take any steps to resolve or address it.
- All employees are expected to adhere to this Regulation and have a duty to act immediately on observations or allegations of discrimination and/or harassment. An individual may be found culpable if they were aware of an incident involving discrimination and/or harassment but fail to take any steps to resolve or address it.
- All employees have a responsibility to be familiar with this Regulation and to inform staff and students about its existence.

### **Multiple Proceedings**

Where the subject matter of a complaint is more appropriately dealt with under another Board Policy or Regulation (e.g., Code of Conduct or the Collective Agreement), the Coordinator may exercise their discretion not to deal with the complaint and suggest that it be dealt with and decided under another Policy.

Where criminal proceedings are initiated against a respondent based on the allegations in a complaint of harassment or discrimination that fall within the domain of this Regulation, the Board will conduct its own independent investigation, if possible, into the allegations and make its own determination in accordance with this Regulation.

### **Human Resources**

Human Resources will:

- facilitate a review of this Regulation from time to time to enhance its effectiveness and to ensure that it is consistent with collective agreements, terms and conditions of employment and legislative requirements;
- facilitate awareness and training for all employees with respect to this Regulation;
- ensure that this Regulation is posted electronically and that it is visible and accessible at all Board sites; and,
- be responsible for the costs associated with administering this Regulation and complaint process, as well as for the cost of mediators and investigators.

Implementation Date: March 30, 2004

Revised: June 10, 2008

Reference: Ontario Human Rights Code  
Freedom of Information and Protection of Privacy Act

## **Appendix A: Harassment and Discrimination Complaint Procedure**

### **The Parties**

The parties to a complaint are:

- the complainant: an individual who makes a complaint pursuant to this Regulation; and,
- the respondent: an individual who is named in a complaint made pursuant to this Regulation as a person responsible for the alleged comment or conduct that is contrary to this Regulation.

### **Time Limits**

Complaints must be filed within six months of the last incident giving rise to the complaint. In extenuating circumstances, a complaint filed beyond the six-month limitation may be considered. All other time limits prescribed in this procedure may be extended with the agreement in writing of the parties or by the Coordinator, where reasonable circumstances exist for extending the time limits. In these circumstances, the parties will be advised of the reasons and notified of the duration of the extension.

### **Assistance for the Parties**

- Individuals involved in the complaint process at any stage may seek assistance and/or be accompanied by another person of his/her choice (for example, a union representative or trusted friend).
- When a personal advisor attends with a party to a complaint, the party must advise the Coordinator in advance, in writing, of the advisor taking that role. All parties retaining legal or any other assistance shall be solely responsible for the cost incurred.
- Where appropriate, the Coordinator will provide complainants, respondents and others affected by the investigation with information regarding counseling services available through the Board or outside agencies.

### **Interim Measures**

In certain situations, such as where the safety of an individual or the school community may be at risk, it may be necessary to take immediate measures to address the circumstances. Such interim measures may include involving the police, relocating the respondent or placing him/her on a non-disciplinary suspension with pay pending the outcome of the investigation. The implementation of interim measures may mean that the certain aspects of this procedure, including confidentiality, will be set aside.

### **Confidentiality**

- Confidentiality with respect to complaints will be maintained to the greatest extent possible, having regard for the circumstances giving rise to the complaint and subject to the Board's obligation to conduct a thorough investigation.
- A complainant is not entitled to complete confidentiality or anonymity. In accordance with their responsibilities under this Regulation, where a principal, manager, supervisor and/or a staff member becomes aware of allegations of harassment or discrimination, he/she must take immediate action. The respondent will be informed of the identity of the complainant.

- Parties and witnesses are expected to keep information discussed confidential (aside from discussing the information with her/his personal advisor and close family members). Unwarranted breaches of confidentiality will result in disciplinary action.
- Confidentiality with respect to the findings of an investigation will be maintained, except to the extent necessary to implement and/or defend the corrective and/or disciplinary action taken, or as required by law.
- Where corrective or disciplinary action is taken against either the complainant or the respondent, the other party will be advised that action has been taken, but will not be provided with the particulars of that action.
- Documentation regarding corrective or disciplinary action taken will be maintained in the employee's Human Resources file.
- Subject to the provisions of the *Freedom of Information and Protection of Privacy Act*, documentation and records pertaining to a complaint will be held in strict confidence in files maintained by the Coordinator.

### **Stages of the Complaint Process**

The following process will apply to complaints made pursuant to this procedure. Where the complainant so desires, a complaint may be withdrawn at any time during the process described below. Depending on the circumstances, in order to comply with its legal obligations to provide an environment that is free from discrimination and harassment, the Board may continue to act on an issue arising from a complaint, even when it has been formally withdrawn.

#### **Stage One – Individual Action – OPTIONAL**

As an initial step, the complainant may advise the respondent(s) that their actions are unwelcome and ask the respondent to stop. Confronting the respondent(s) is not required under the Regulation. If the complainant chooses to raise the matter with the respondent(s), they should describe the behaviour that is unwelcome clearly and directly as well as its impact, and should ask the respondent(s) to stop. The complainant may also consider writing a letter to ask the respondent(s) regarding the unwelcome behaviour or conduct or have a trusted friend communicate with the respondent(s). A detailed record of any discussions with the respondent(s) or copy of any correspondence provided to the individual should be retained.

#### **Stage Two – Informal Resolution**

If the complainant does not wish to approach the respondent(s), or if after speaking with the respondent(s), the offensive behaviour continues, the complainant should contact the Coordinator, their immediate principal, supervisor, or union representative, who will direct the complaint to the Coordinator. Once contact is made, the complainant will be provided with a copy of this Regulation and will provide the Coordinator with the following information:

- the name of the respondent(s);
- the nature of the complaint (including the prohibited ground);
- the time and date of the incident(s) giving rise to complaint;
- the names of any witnesses to the incident (s) given rise to the complaint; and,
- the resolution the complainant is seeking.

The Coordinator will advise the complainant whether, based on the information provided, the complaint falls within the jurisdiction of the Regulation.

Where, based on the information provided, an informal resolution is appropriate, the Coordinator may recommend an appropriate informal dispute resolution mechanism which, if successful, will effectively resolve the complaint in a timely and fair manner. This dispute resolution mechanism may take the form of the Coordinator meeting with the parties to act as an informal mediator, arranging for another individual to assist in the resolution of the complaint or suggesting other such actions as may be appropriate in the circumstances. If the complainant and respondent are agreeable, such a mechanism will be pursued.

### **Stage Three – Formal Written Complaint/Investigation**

Failing informal resolution of the complaint, the complainant may submit a written and signed formal complaint to the Coordinator.

Upon receipt of a written complaint, the Coordinator shall:

- (a) within ten (10) Board business days of receipt of the complaint, meet the complainant to clarify the details of their complaint, where required;
- (b) within ten (10) Board business days of that meeting, advise the complainant if the complaint will be pursued under this Regulation, and if not, the reasons for not pursuing the complaint, or suggesting a more appropriate forum;
- (c) within ten (10) Board business days of advising the complainant that the complaint will be pursued under this Regulation, inform the respondent in writing of the complaint, provide a copy of the complaint and this Regulation, and advise the respondent to provide a written response to the allegations within ten (10) Board business days;
- (d) within ten (10) Board business days of receiving the respondent's response, meet with the respondent to clarify the details of her/his response, where required; and,
- (e) within ten (10) Board business days of having received all submissions and clarifications, identify the steps to be taken to resolve the matter.
- (f) If the Coordinator deems formal mediation appropriate, it will be offered to the complainant and the respondent. If the complainant and respondent both consent, the Board will arrange for a mediator. If a mediated settlement is reached, the terms of the settlement shall be reduced to writing and be signed by the complainant, respondent and the mediator. If the settlement requires an action on the part of Board, the settlement will require the agreement of the Superintendent of Human Resources or the Manager of Human Resources. Discussions between the parties at mediation will be treated as discussions carried out with a view to affecting a settlement and will be treated as privileged to the full extent permitted by law.
- (g) If mediation is not pursued or is unsuccessful, the Coordinator shall appoint an investigator and shall notify the parties of the identity of the investigator.
- (h) The investigation shall commence with ten (10) Board business days of the date of the appointment. Any objections to the appointed investigator may be made by the

parties within two (2) Board business days of notification of appointment. Only objections based on substantive issues such as conflict of interest or bias against a party will be considered.

- (i) The investigator shall commence their investigation within ten (10) Board business days of the date of the appointment. The investigator will:
- interview the complainant and the respondent and obtain signed statements;
  - interview the witnesses suggested by the parties and obtain signed statements;
  - interview other witnesses who may provide relevant information for the investigation and obtain signed statements;
  - gather written, electronic or other evidence;
  - submit, within forty-five (45) Board business days from their appointment, a written report to the Coordinator containing a concise summary of the findings of the investigation.
  - If required, the investigator may request an extension of this time frame. The Coordinator will advise the parties if additional time to complete the investigation and the report has been granted.

#### **Stage Four – Investigation Report/Summary of Findings/Disposition**

##### **Disposition Meeting**

Within ten (10) Board business days of receiving the investigator's report, the Coordinator will forward a copy of the investigation report to the Superintendent of Human Resources and the Manager of Human Resources, and will arrange a meeting with these parties and anyone else who the Coordinator determines will add value to the process. The purpose of the meeting will be to determine what action, if any, the Board will take to bring closure to the Complaint.

##### **Written Notification**

Within ten (10) Board business days following the meeting, the Superintendent of Human Resources, or Manager of Human Resources or designate will provide the complainant and the respondent with a written summary of the investigator's finding. Each party will be advised of what action the Board will be taking, if any, to bring closure to the complaint, as it relates directly to them.

##### **Redress and Sanction**

Where a complaint has been substantiated or where it has been determined that the complainant filed a complaint that was vexatious or made in bad faith, appropriate corrective or disciplinary action will be taken by the Board. Such action may include but is not limited to: an apology, counseling, education/training, suspension, leave without pay, demotion, transfer, termination of employment or expulsion.

##### **Recourse to Human Rights Commission or Grievance Procedure**

Nothing in this Regulation is intended to prevent a complainant from referring her/his complaint to the Human Rights Commission or from using the grievance procedure available in the Collective Agreement, if applicable.

**APPENDIX B**

**LAMBTON KENT DISTRICT SCHOOL BOARD  
HARASSEMENT AND DISCRIMINATION PREVENTION  
COMPLAINT FORM**

-Part I-

Complainant's Name: \_\_\_\_\_

School/ Department: \_\_\_\_\_

Job Title: \_\_\_\_\_

Respondent's Name: \_\_\_\_\_

School/Department: \_\_\_\_\_

Job Title: \_\_\_\_\_

Date of Incidents or Time Frame: \_\_\_\_\_

**LAMBTON KENT DISTRICT SCHOOL BOARD  
HARASSMENT AND DISCRIMINATION PREVENTION  
COMPLAINT FORM**

-Part II-

In your own words, please indicate the details of your complaint. If you would like to provide a more detailed description, please attach to this form.

Please describe what actions, if any, that you have taken to try to resolve this problem.

What resolution are you seeking?

Signature of complainant:

Date:

\_\_\_\_\_

\_\_\_\_\_

Please note that this document and any attachments to it that you provide in the course of filing a complaint will be held in confidence by the Coordinator. The complaint form and its attachments will be disclosed to the respondent named in the complaint and to the investigator and mediator appointed to assist with the resolution of the complaint, as outlined in the Regulation. Your signature confirms that you have been made aware and given permission for the above use of this information.