

REGULATIONS

SUBJECT: Respectful Working and Learning Environment: Preventing and Resolution of Conflict

BACKGROUND

The Lambton Kent District School Board has an obligation to provide respectful, healthy, safe and productive working and learning environments for its employees. It is the responsibility of all employees, and members of the school community, to abide by the Code of Conduct to promote a positive, respectful working and learning environment. Board activities and functions, employment, educational or business dealings taking place on Board premises, and off-property activities that take place under the auspices of the Board are covered by this Regulation.

When conduct in the workplace is non-compliant with the Criminal Code or the Ontario Human Rights Code, it is defined as “harassment” and is subject to resolution through the Board’s Discrimination and Harassment Prevention Regulation, in the courts, or through a Human Rights Commission hearing. When behaviour in the working and learning environment is not “harassment” as defined in the Criminal Code or the Human Rights Code, it can still be unwelcome and objectionable. This “objectionable behaviour” is more prevalent than the more serious Code violations and can be equally disruptive and unsettling in the working and learning environment.

DEFINITIONS

School Community Members

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

Bullying/Personal Harassment

A course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome and which could reasonably be regarded as intending to intimidate, offend, degrade or humiliate an individual that results in a harmful work environment. Generally, a series of actions/behaviours is required to prove bullying/personal harassment; however, a single act of sufficient severity may constitute bullying/personal harassment.

Bullying/personal harassment may occur verbally, in writing or on-line.

Examples of bullying/personal harassment include, but are not limited to, the following:

- Berating/belittling an individual;
- Unwarranted criticism;
- Undermining or deliberately impeding a person’s work;
- Spreading malicious rumours, gossip or innuendo that are not true;
- Yelling or using profanity;
- Taunting and teasing where the intention is to humiliate and embarrass;

- Conduct which creates an intimidating, offensive or hostile environment;
- Insulting language;
- Unwelcome name calling and hurtful pranks;
- Phone calls, letters or emails which are abusive or offensive;
- Abuse of authority;
- Physical gestures intended to intimidate, offend, degrade or humiliate an individual; and,
- Display of offensive material either in hardcopy or electronic form which is intended to intimidate or humiliate an individual.

Violence

The attempted or actual exercise, by a person, of any intentional physical force that causes or may cause injury to a person, and includes any threats which give a person reasonable cause to believe he or she is at risk of physical injury.

Reprisals/Retaliation

Adverse action against an individual for invoking their rights in regards to this Regulation, for participating/cooperating in an investigation, or for associating with someone who has invoked their rights or participated in an investigation.

Vexatious or Bad Faith Complaint

A complaint where a complainant makes allegations, knowing them to be false, or submits a complaint for a purely malicious or vindictive purpose.

What is NOT Bullying/Personal Harassment

Exercising appropriate supervisory, instructional and evaluation responsibilities, including conducting performance appraisals, enforcing standards, and taking corrective/discipline action is not contrary to this Regulation.

PURPOSE

- To provide every school community member with a respectful learning and working environment that demonstrates acceptable interpersonal conduct and is free from personal harassment;
- To provide information to ensure all school community members are aware of their rights and obligations under the Respectful Working and Learning Environment Regulation;
- To communicate that every school community member is expected to contribute to the development of a respectful working environment by behaving in acceptable ways and discouraging offensive behaviour toward others. Every person has the responsibility and right to communicate concerns and cooperate in efforts to resolve concerns; and,
- To establish a process to ensure that complaints are dealt with in a fair and timely manner.

THE PROCESS

In the event that a breach is alleged (bullying/personal harassment or other unacceptable conduct as defined in this Regulation), the Board will respond promptly in accordance with Appendix A and every effort will be made to achieve a fair and timely resolution.

Complaints against Students

Where a student is alleged to have contravened this Regulation, the complaint will be dealt with through the appropriate policy (Safe Schools or Code of Conduct).

Responsibilities

Management and Other Employees

Principals, managers and supervisors have a duty to act immediately on observations or allegations of breaches of this Regulation.

All employees have a duty to act immediately on observations or allegations of disrespectful actions that could lead to a negative working environment.

All employees have a responsibility to be familiar with this Regulation, and to inform staff and students about its existence.

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 Respectful Working and Learning Environment Policy and Regulation. In the event that the Coordinator has direct involvement with a complaint (as a complainant, respondent or witness), the Manager of Human Resources shall appoint a suitable alternate for the purpose of dealing with the complaint. In the event that a member of the Human Resources Department has a direct involvement with a complaint (as a complainant, respondent or witness), the Superintendent of Human Resources or their designate will appoint a suitable alternate for the purpose of dealing with the complaint.

School Community Members

School community members are responsible for ensuring that their working and/or learning environment is free from bullying/personal harassment by refraining from any comment/conduct that is in contravention of this Regulation. In addition, school community members are responsible for reporting incidents of apparent violations to the Conflict Resolution Coordinator and, when necessary, for co-operating in the investigation and/or resolution of complaints.

Human Resources

Human Resources will:

- facilitate a review of this Regulation from time to time to enhance its effectiveness;
- facilitate 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;
- be responsible for the costs associated with administering this Procedure and complaint process, as well as for the cost of mediators and investigators; and,
- provide an annual report to Executive Council, in which the frequency and types of complaints under this Regulation are summarized. The report will include comparative trend information where possible. Information provided will take into account the need to ensure confidentiality where appropriate.

Multiple Proceedings

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

Where the circumstances which have given rise to a complaint are also the subject matter of another Regulation, the Coordinator will work with the Administrator responsible for the application of the other Regulation to determine the order in which the matter will be handled.

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

Reprisal or Retaliation

Substantiated incidents of reprisal or retaliation are contrary to this Regulation, and will result in disciplinary actions or sanctions.

Vexatious or Bad Faith Complaints

Vexatious or bad faith complaints are contrary to this Regulation and will result in disciplinary action or sanctions.

Redress and Sanctions

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 not be limited to: an apology, counseling, education/training, warning, suspension without pay, leave without pay, demotion, transfer, termination of employment.

Nothing in this Regulation is intended to prevent a complainant from using the grievance procedure available in the collective agreement, if applicable.

APPENDICES

Appendix A: Complaint Procedure

Appendix B: Complaint Form

Implementation Date: June 10, 2008

Reference: Freedom of Information and Protection of Privacy Act
Occupational Health and Safety Act
Code of Conduct

APPENDIX A

LAMBTON KENT DISTRICT SCHOOL BOARD RESPECTFUL WORKING AND LEARNING ENVIRONMENT

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 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 limit may be considered. All other time limits prescribed in this procedure may be extended by written agreement of the parties, or by the Coordinator where reasonable circumstances exist for the extension. 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 their choice (e.g., a union representative or a 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 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 them 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, or a staff member becomes aware of allegations of "objectionable behaviour", they 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 Regulation. 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 this 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) to stop 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 by the complainant.

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 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 the Respectful Working and Learning Environment Policy and Regulation, and will provide the Coordinator with the following information:

- the name of the respondent(s);
- the nature of the complaint, setting out the alleged conduct;
- 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 to 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, the Coordinator shall 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 the Coordinator advising the complainant that the complaint will be pursued under this Regulation, the Coordinator shall inform the respondent in writing of the complaint, provide a copy of the complaint and this Regulation and procedure, 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 the Coordinator receiving the respondent's written response, the Coordinator shall meet with the respondent to clarify the details of the response, where required.

- (e) Within ten (10) Board business days of the Coordinator having received all submissions and clarifications, the Coordinator will 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; and,
 - Submit, within forty-five (45) Board business days from their appointment, a written report to the Coordinator, which contains 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 report to the Superintendent of Human Resources and the Manager of Human Resources, and arrange a meeting with these parties and anyone else 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 what action, if any, the Board will be taking to bring closure to the complaint as it relates directly to the party involved.

Redress and Sanctions

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
RESPECTFUL WORKING AND LEARNING ENVIRONMENT
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
RESPECTFUL COMMUNITY
COMPLAINT FORM
-Part II-**

In your own words, please record the details of your complaint below. 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 mediators appointed to assist with the resolution of this complaint, as outlined in the Regulation's procedures. Your signature confirms that you have been made aware and given permission for the above use of this information.