

REGULATIONS

SUBJECT: Workplace Discrimination, Workplace Harassment, Workplace Sexual Harassment, and Workplace Violence Prevention

Background

The Lambton Kent District School Board (LKDSB) is committed to:

- Creating and maintaining a working and learning environment that is safe, respectful and free from discrimination, harassment, workplace violence and workplace sexual harassment;
- Preventing, identifying and correcting behaviour or conduct that, left unchecked, would result in discrimination, harassment, workplace violence or workplace sexual harassment or allow it to occur;
- Ensuring an investigation is conducted into incidents and complaints that are appropriate in the circumstances; and
- Communicating the results of the investigation, including any corrective action, in writing to the person that has allegedly experienced workplace harassment

Application

This Regulation governs the conduct of all individuals in the school community. This includes trustees, employees, contractors, volunteers, students, parents, visitors and others in the LKDSB school community.

For purposes of this Regulation, the workplace includes all locations or situations in which activities related to LKDSB business are carried out, including but not limited to:

- Activities in the schools, Board offices, and shops;
- Work assignments outside of the Board premises;
- Work-related social functions;
- Work-related conferences and training; and
- Work-related travel.

Nothing in this Regulation affects an individual's right to pursue any external avenues of redress which may be available with respect to the subject matter of this Regulation, including (where applicable) a grievance pursuant to the applicable collective agreement with the LKDSB, an application to the Human Rights Tribunal of Ontario, and/or a complaint to the Ministry of Labour.

Definitions

Discrimination

"Discrimination" includes, but is not limited to, differential treatment based on a prohibited ground set out in the *Human Rights Code* ("the Code"). It includes:

- Not individually assessing the unique merits, capacities and circumstances of a person;
- Making stereotypical assumptions based on a person's presumed traits;
- Having the impact of excluding persons, denying benefits or imposing burdens.
- Discrimination does not include differential treatment which is permitted under the *Code* for special programs, special interest organizations, and special programs.
- Discrimination can be intentional or unintentional, and direct or indirect.

Definitions (cont'd)

Harassment

“Harassment” means a course of vexatious comments or conduct that is known or ought reasonably to be known to be unwelcome, whether or not it is based on a prohibited ground set out in the *Code*. Harassment not based on the *Code* is defined as workplace harassment under the *Occupational Health and Safety Act* (OHSA).

Harassment typically involves a pattern of comment or conduct that occurs over time. However, a single incident of a serious nature may be sufficient to constitute harassment.

Harassment includes comment or conduct targeted towards a particular individual, as well as comment or conduct directed toward a group of individuals that creates a poisoned working environment for members of that group. Examples include but are not limited to:

- Offensive or intimidating comments or jokes;
- Bullying or aggressive behaviour;
- Displaying or circulating offensive pictures and materials;
- Inappropriate staring;
- Workplace sexual harassment; or
- Isolating or making fun of a worker because of gender identity.

The reasonable exercise of management functions is not considered harassment for the purpose of this Regulation. The reasonable exercise of management functions includes, but is not limited to, giving reasonable instruction or supervisory direction to an employee, providing constructive criticism or counselling, enforcing workplace standards, taking corrective or disciplinary action, or conducting performance appraisals.

Prohibited Grounds

The prohibited grounds set out in the *Code* are as follows:

- Race,
- Ancestry,
- Place of origin,
- Colour,
- Ethnic origin,
- Citizenship,
- Creed,
- Sex (including pregnancy),
- Sexual orientation,
- Gender identity,
- Gender expression,
- Age,
- Record of offences,
- Marital status,
- Family status,
- Same-sex partnership status, and
- Disability.

Definitions (cont'd)

Sexual Harassment

“Sexual harassment” includes any harassment based on sex or gender, including but not limited to the following:

- Any sexual advance or other conduct of a sexual nature which is known or ought reasonably to be known to be unwelcome,
- Any reprisal or threat of reprisal (such as loss of job, or denial of advancement, a pay increase or any other employment benefit) for rejecting a sexual advance or other conduct of a sexual nature from a person in a position of authority who knows or ought reasonably to know that it is unwelcome.

Workplace sexual harassment is defined by the *Occupational Health and Safety Act* and this Regulation as:

- 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.

Workplace Violence

“Workplace violence” is defined in the *Occupational Health and Safety Act* (“OHS”) and this Regulation as:

- The exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,
- An attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,
- A statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

Immediate Reporting of Workplace Violence

IF YOU ARE THE VICTIM OF OR A WITNESS TO AN INCIDENT OF WORKPLACE VIOLENCE, YOU SHOULD IMMEDIATELY CONTACT YOUR ADMINISTRATOR OR CONTACT 911.

Prohibited Conduct

Discrimination, harassment, workplace sexual harassment and workplace violence and are strictly prohibited and will not be tolerated or condoned in any form or under any circumstances.

Without limiting the generality, the following are examples of discrimination and harassment prohibited under this Regulation:

- Discrimination based on a prohibited ground in any aspect of employment, such as recruitment, hiring, promotion, training, layoff, pay and benefits, termination, job assignments, or leaves of absence;
- Harassment in any aspect of employment, such as recruitment, hiring, promotion, training, layoff, pay and benefits, termination, job assignments, or leaves of absence, whether based on a prohibited ground or not;

Prohibited Conduct (cont'd)

- Sexual harassment and workplace sexual harassment;
- Discrimination or harassment because of an individual's relationship, association or dealings with another person identified by a prohibited ground or because the individual is believed to be a member of a group identified by a prohibited ground;
- Failure to provide appropriate employment accommodation as required by the *Code* and applicable LKDSB policies;
- Creating, contributing to or condoning discrimination, harassment or sexual harassment in the workplace.

In addition to the categories of conduct prohibited, the following categories of conduct are also prohibited under this Regulation:

- Failure by a manager to respond promptly or appropriately to any incidents of discrimination, harassment or workplace violence that come to their attention;
- A bad faith or malicious allegation, complaint or accusation that another person has engaged in behaviour or conduct inconsistent with this Regulation;
- Providing evidence in bad faith or maliciously in the course of an investigation into a complaint under this Regulation;
- Failure by any person to cooperate in an investigation into a complaint under this Regulation;
- Interference with an investigation, including but not limited to intimidation of a complainant (the person making a complaint), a respondent (the person against whom a complaint is made) or a witness, and/or influencing a person to provide false or misleading information in the course of an investigation into a complaint under this Regulation;
- A reprisal or threat of reprisal, against an individual for exercising a right under this Regulation, or against any other person who is performing a legitimate role under this Regulation.
Corrective action imposed to any individual in response to a violation of this Regulation is not considered a reprisal.

Complaint and Investigation Procedure

Any employee or trustee who believes that they have been subject to behaviour or conduct inconsistent with this Regulation has the right and is encouraged to file a complaint.

Where a manager has reasonable grounds to believe that an employee has been subject to behaviour or conduct inconsistent with this Regulation, but no complaint is filed within a reasonable time following the events in question, the manager shall file a complaint under this Regulation.

The Workplace Complaint and Investigation Administrative Procedure will apply to the filing, investigation, and resolution of all complaints under this Regulation.

The criminal law may apply in addition to this Regulation and the police may be called in to investigate reported incidents of discrimination, harassment, workplace violence or workplace sexual harassment.

Penalties and Remedies

Any trustee or employee, including any manager, who engages in any behaviour or conduct inconsistent with this Regulation, may be subject to corrective action up to and including termination.

Any other person (whether or not the person is a trustee or employee) who engages in behaviour or conduct inconsistent with this Regulation may be removed from the workplace and/or subject to other sanctions appropriate in the circumstances.

An employee who has been subject to behaviour or conduct inconsistent with this Regulation may be provided with additional remedies in cases where such remedies are warranted in the circumstances.

Prevention, Communication and Education

The LKDSB recognizes the need to undertake a range of preventive measures to prevent discrimination, harassment, workplace violence and workplace sexual harassment. This includes the need to communicate with trustees and employees about the importance of education and prevention of discrimination, harassment, workplace violence and workplace sexual harassment.

Trustees and employees, including administrators, will be informed of and educated about their rights and responsibilities under this Regulation and under the Workplace Complaint and Investigation Administrative Procedure.

Annual Review

This Regulation will be reviewed on an annual basis. The Conflict Resolution Coordinator will be responsible for initiating the annual review of this Regulation, and any changes proposed as a result of the review will be directed to the Joint Health and Safety Committees for consultation purposes. This will be followed by a referral to the Superintendent of Education/Human Resources to facilitate review and approval of changes by the Board of Trustees.

Roles and Responsibilities

Conflict Resolution Coordinator

The Conflict Resolution Coordinator is responsible for:

- Interpreting this Regulation and providing advice, procedures, guidelines, educational materials, and information about resources;
- Developing education and communication strategies;
- Facilitating the filing, processing and investigation of complaints under this Regulation;
- Receiving informal complaints, participating as appropriate in efforts to mediate informal complaints, and notifying the applicable administrator, manager or supervisor if mediation efforts are not successful;
- Receiving formal complaints;
- Declaring a potential conflict of interest in relation to any informal or formal complaint that includes an allegation that the Conflict Resolution Coordinator has engaged in conduct or behaviour inconsistent with this Regulation, and allowing the Manager of Human Resources to assume responsibility for dealing with the complaint in such cases;
- Where appropriate, facilitating mediation to resolve informal and formal complaints;
- Investigating formal complaints within the timeframes set out in the Workplace Complaint and Investigation Administrative Procedure and, where appropriate, retaining third party consultants to conduct investigations;

- Considering any requests for extension of the timeframe to complete the investigation and provide the final investigation report;
- Where applicable, notifying bargaining unit employees of their right to federation/union representation during the investigation procedure;
- Receiving investigation reports and, where the investigator concludes that a violation of this Regulation has occurred, consulting with the Superintendent of Education/Human Resources, the Manager of Human Resources, the applicable administrator, manager or supervisor and/or legal counsel as necessary regarding appropriate corrective action and other sanctions or remedies for violations of this Regulation;
- Keeping appropriate records of formal complaints filed under this Regulation and the outcome of those complaints including:
 - A copy of the complaint or details about the incident;
 - A record of the internal investigation, including notes;
 - Copy of witness statements, if taken;
 - A copy of the investigation report, if any;
 - A copy of the results of the formal investigation that were provided to the person who reported the complaint and the alleged harasser; and
 - A copy of any corrective action taken to address the complaint or incident of workplace harassment; and
- Making recommendations concerning appropriate measures to prevent discrimination, harassment, workplace sexual harassment, and workplace violence, including education regarding this Regulation and the Workplace Complaint and Investigation Administrative Procedure.

Administrators, Managers and Supervisors

Administrators, Managers and Supervisors are responsible for:

- Ensuring they are familiar with this Regulation and the Workplace Complaint and Investigation Administrative Procedure, as amended from time to time;
- Providing leadership in creating and maintaining a workplace free of discrimination, harassment, workplace violence and workplace sexual harassment;
- Acting as role models for staff by refraining at all times from behaviour or conduct inconsistent with this Regulation;
- Ensuring their staff are aware that discrimination, harassment, workplace sexual harassment and workplace violence will not be tolerated or condoned in any form or under any circumstances;
- Providing clarification to their staff regarding the standards of workplace behaviour expected under this Regulation;
- Ensuring that their staff are aware of their rights and responsibilities under this Regulation and the Workplace Complaint and Investigation Administrative Procedure;
- Notifying the Conflict Resolution Coordinator of any incidents of discrimination or harassment that come to their attention, and responding promptly and appropriately to any such incidents;
- Initiating an informal complaint, where there are reasonable grounds to believe that a violation of this Regulation has occurred and the individual involved does not file a formal complaint within a reasonable time following the events in question;
- Referring informal and formal complaints to the Conflict Resolution Coordinator;
- Advising staff that they are prohibited from retaliating or threatening to retaliate against any complainant, respondent, witness or other person involved in an informal or formal complaint;
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- Advising staff of their duty to cooperate in and refrain from interfering with the investigation of formal complaints;
- Cooperating with the investigation, such as by participating in the investigation as appropriate, making their staff available at the earliest opportunity to participate in the investigation and any other resolution processes, and safeguarding the confidentiality of information pertaining to the complaint;
- Effectively managing workplaces in which alleged violations of this Regulation are being investigated;
- Participating as appropriate in decisions concerning any necessary corrective action or other sanctions and remedies for violations of this Regulation;
- Ensuring mediated agreements, corrective action, and any other sanctions or remedies are implemented effectively;
- Restoring or improving workplace relationships when violations of this Regulation or the resolution of those violations have disrupted these relationships; and
- Participating and making their staff available to participate in any initiatives undertaken to prevent discrimination, harassment, workplace violence and workplace sexual harassment, including education regarding this Regulation and the Workplace Complaint and Investigation Administrative Procedure.

Trustees and Employees

Trustees and employees are responsible for:

- Refraining from conduct and behaviour inconsistent with this Regulation; and
- Complying with this Regulation and the Workplace Complaint and Investigation Administrative Procedure.

Implementation September, 2014

Revised: November 14, 2017

Reference: LKDSB Policy *Workplace Discrimination, Workplace Harassment, Workplace Sexual Harassment and Workplace Violence Prevention*
LKDSB Administrative Procedures *Workplace Complaint and Investigation*
Ontario Human Rights Code
Occupational Health and Safety Act