

ADMINISTRATIVE PROCEDURES

SUBJECT: Workplace Complaint and Investigation

This Workplace Complaint and Investigation Administrative Procedure shall govern the filing and investigation of complaints under the Lambton Kent District School Board (LKDSB) Workplace Discrimination, Workplace Harassment, Workplace Sexual Harassment, and Workplace Violence Prevention Regulation (“the Regulation”).

This Procedure will be reviewed on an annual basis.

A LKDSB Human Resources Officer will serve as the LKDSB Conflict Resolution Coordinator (assigned by the Human Resources Manager).

The Conflict Resolution Coordinator will be responsible for initiating the annual review of this Administrative Procedure, 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.

Informal Complaint Procedure

If a trustee or employee feels that they have been subject to behaviour or conduct inconsistent with the Regulation, they are encouraged to follow the informal complaint procedure set out below.

The trustee or employee (referred to as “the complainant”) should make their objections to the behaviour or conduct clearly known to the alleged wrongdoer (referred to as “the respondent”) at the time the behaviour or conduct occurs, or as soon as reasonably possible thereafter, and should ask the respondent to stop the objectionable behaviour or conduct. This request can be made either verbally or in writing. If the complainant does not wish to approach the respondent directly, the complainant may approach the respondent’s administrator, manager, or supervisor and the applicable administrator, manager, or supervisor then will be responsible for discussing the issue with the respondent.

The complainant (or the administrator, manager, or supervisor if applicable) must document the date and time of the communication with the respondent for possible future reference. A written record of the dates, times, nature of the alleged behaviour, and witnesses (if any) should also be prepared and maintained.

If the objectionable behaviour or conduct does not stop following the communication with the respondent, then the complainant should report the incident(s) in writing to their administrator, manager or supervisor and to the Human Resources Manager. The Human Resources Manager will subsequently assign the complaint to a Human Resources Officer who will act as the Conflict Resolution Coordinator.

If the respondent to the complaint is the complainant’s direct administrator, manager or supervisor, the written complaint should be submitted directly to the Human Resources Manager. If the respondent to the complaint is the Human Resources Manager, the written complaint should be submitted directly to the Superintendent of Human Resources.

If either party so requests, or both parties agree to participate, the administrator, manager or supervisor to whom the complainant reported the incident (i.e., complainant's administrator, manager, or supervisor) or the Conflict Resolution Coordinator will attempt to mediate a solution between the complainant and the respondent.

If mediation does not occur, or occurs but no satisfactory resolution is reached, and no complaint is filed within a reasonable time under the formal complaint procedure set out below, the manager to whom the complainant reported the incident (i.e., the complainant's administrator, manager, or supervisor) will report this in writing to the Conflict Resolution Coordinator.

No sanction will be imposed on a complainant for initiating a complaint under the informal complaint procedure, provided the complaint was made in good faith and was not malicious. However, if a complainant initiates a bad faith or malicious complaint under the informal complaint procedure, the complainant may be subject to corrective action. The corrective action to be taken, if any, will be determined by the Manager of Human Resources.

No reprisal will be undertaken by any person against the complainant for initiating a complaint under the informal complaint procedure. Corrective action imposed in response to a bad faith or malicious complaint is not considered a reprisal for the purpose of the Regulation or this Administrative Procedure.

All information obtained during the informal complaint procedure will, to the extent possible, be kept in confidence to maintain the privacy of the persons involved in the complaint. However, in order to ensure a fair process, the information will be shared with those persons who need the information either in order to protect workers or do their job, including investigating the complaint, to take corrective action, or to respond to an allegation. In addition, the information may be subject to disclosure pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* or as otherwise required by law.

Formal Complaint Procedure

Any trustee or employee who feels that they have been the subject of behaviour or conduct inconsistent with the Regulation may initiate a formal complaint. In most instances, a trustee or employee should initiate a formal complaint only after the informal complaint procedure set out above has been exhausted without reaching a satisfactory resolution. However, it is recognized that the nature or magnitude of the conduct or behaviour giving rise to the complaint may warrant immediate and direct recourse to the formal complaint procedure. Therefore, a formal complaint may be initiated directly without first exhausting the informal complaint procedure.

A trustee or employee who wishes to initiate a formal complaint shall do so as soon as reasonably possible following the events on which the complaint is based.

If a manager has reasonable grounds to believe that an employee has been subject to conduct or behaviour inconsistent with the Regulation, and the employee does not file a formal complaint within a reasonable time, the manager shall initiate a formal complaint.

A formal complaint shall be made in writing, and shall include the following information:

- The names of and contact information of people involved, if they are known;
- The nature of the complaint;
- Where discrimination or harassment based on one or more prohibited grounds is alleged, the prohibited ground(s) relied upon;
- Details of the behaviour or conduct that forms the basis of the complaint, including any supporting documentations in their possession relevant to the complaint or any documents a witness or other person may have that are relevant to the complaint;
- The date(s), frequency, and locations on which the behaviour or conduct occurred;
- The names of any witnesses to the behaviour or conduct that forms the basis the complaint; and
- The signature of complainant.

In order to ensure procedural fairness, a copy of the formal complaint will be provided to the respondent by the Conflict Resolution Coordinator or designate prior to the formal investigation interview. The respondent will be given a reasonable opportunity to reply.

Where a formal complaint is initiated by a manager, the manager shall provide the information set out above based on their knowledge, information and belief and shall indicate the source of their knowledge, information and belief in the formal complaint.

The formal complaint shall be filed with the Conflict Resolution Coordinator. If the complaint relates to conduct or behaviour by the Director of Education, a superintendent or a trustee, the complaint shall be filed with the Conflict Resolution Coordinator, who shall advise the Chair of the Board. If the complaint relates to conduct or behaviour by the Conflict Resolution Coordinator, the complaint shall be filed with the Manager of Human Resources.

The Conflict Resolution Coordinator shall investigate the complaint or determine the appropriate person to investigate the complaint, including appointing a third party consultant to conduct the investigation if warranted.

If the complaint relates to conduct or behaviour by the Conflict Resolution Coordinator, the Manager of Human Resources will conduct the investigation or appoint an external investigator.

Where a complaint includes allegations of workplace violence, the investigation will be conducted immediately. In all other cases, the investigation into the complaint will commence as soon as reasonably practicable. In the absence of extenuating circumstances, the investigation will be completed and the final report submitted within sixty (60) working days from receipt of the complaint. Where an external investigator has been appointed and there are extenuating circumstances, those circumstances will be explained to the Conflict Resolution Coordinator (or, if the Manager of Human Resources appointed the investigator, the Manager of Human Resources), and an extension of the timeframe for completing the investigation and providing the final report will be requested. The complainant and the respondent will be notified of the request for an extension and reasonable efforts will be made to obtain their consent. If consent cannot be obtained, the Conflict Resolution Coordinator (or, if the Manager of Human Resources appointed the investigator, the Manager of Human Resources) will decide whether the extension request will be granted.

The respondent may be temporarily reassigned or placed on leave of absence with pay while the investigation is being conducted. Additional measures, such as access to the Employee Assistance Program, may be implemented to support the complainant and/or protect the complainant's health and safety while the investigation is being conducted where these measures appear to be warranted in the circumstances.

At any stage of the investigation procedure, the complainant and the respondent have the right to be accompanied by a fellow employee of their choice or, in the case of bargaining unit employees, by a federation/union representative. Bargaining unit employees will be notified by the Conflict Resolution Coordinator or their designate at the outset of the investigation that they have a right to be represented by a federation/union representative during the investigation procedure if they wish.

The investigator will interview the complainant and the respondent separately regarding the allegations in the complaint. The investigator will also interview any person who, in the opinion of the investigator, may have information relevant to the complaint, and consider any documents or other information which, in the opinion of the investigator, may be relevant to the complaint. If the complainant and/or the respondent believe there are persons who may have information relevant to the complaint, or documents or information which may be relevant to the complaint, it is their responsibility to advise the investigator when interviewed, so that the investigator can determine in a timely manner whether to interview the individuals or consider the documents or information in question. In addition, while the investigation is on-going, the parties involved including complainant, respondent, and any witnesses will be instructed by the investigator not to discuss the complaint, incident or investigation with other workers or witnesses unless it is necessary to obtain advice regarding their rights.

The complainant, the respondent, and any employee or trustee involved in the investigation as a witness or otherwise has a duty to cooperate in and refrain from interfering with an investigation under this Administrative Procedure. Failure to cooperate in or interference with an investigation may result in corrective action. The corrective action to be taken, if any, will be determined by the Manager of Human Resources.

The Conflict Resolution Officer may recommend to the complainant and the respondent that an attempt be made to mediate a resolution to the complaint before the final investigation report is released. However, mediation may only proceed if both parties agree to participate and further agree that, if the mediation is not successful, the investigator may proceed to complete the investigation and release their final investigation report.

If mediation proceeds and is successful, the Conflict Resolution Officer or mediator will prepare a report that sets out the agreement that was reached in mediation. The report will be given to the complainant, the respondent, the respondent's next level of management (i.e., the respondent's administrator, manager or supervisor, or in the case of a trustee, the Chair of the Board) and the Conflict Resolution Coordinator (or, if the Manager of Human Resources appointed the investigator, the Manager of Human Resources).

If mediation does not proceed or is unsuccessful, the Conflict Resolution Officer or the external investigator will issue their final investigation report. The final report will set out the findings in relation to each allegation in the complaint. In making their findings regarding the allegations in the complaint, the investigator will consider whether the evidence establishes, on the balance of probabilities that the respondent engaged in conduct or behaviour inconsistent with this Regulation. In each case, the

Conflict Resolution Officer or external investigator will also consider whether the evidence establishes, on the balance of probabilities, that the complaint was made in bad faith or maliciously, that any witness provided evidence in bad faith or maliciously in the course of the investigation, or that any person failed to cooperate in or interfered with the investigation. If the Conflict Resolution Officer or external investigator finds that the evidence establishes, on the balance of probabilities, that the complainant or a witness acted in bad faith or maliciously or that any person failed to cooperate in or interfered with the investigation, the Conflict Resolution Coordinator or external investigator shall include that finding in their final report.

A written summary of final investigation report will be provided to the complainant, the respondent, the respondent's next level of management (i.e., the respondent's administrator, manager or supervisor, or in the case of a Trustee, the Chair of the Board), and the Conflict Resolution Coordinator (or, if the Manager of Human Resources appointed the investigator, the Manager of Human Resources) within 10 calendar days of the final completion of the investigation, including receipt of the report. The summary report will contain the results of the investigation and any steps the employer has taken or will take to prevent a similar incident if workplace harassment has been found. Where the final investigation report includes a finding that a witness provided evidence in bad faith or maliciously or any other person failed to cooperate in or interfered with the investigation, a summary of this finding will also be provided to the witness or person in question and his/her next level of management.

If the investigation finds that the respondent engaged in conduct or behaviour inconsistent with the Regulation, appropriate corrective action will be taken and, where warranted in the circumstances, additional sanctions or remedies may also be implemented. Corrective action will be determined on a case-by-case basis, will be commensurate with the severity of the misconduct, and will take into account any relevant aggravating or mitigating factors. The following options may be considered:

- Requiring the respondent to apologize for their behaviour or conduct;
- Counselling;
- Training;
- A verbal reprimand;
- A written reprimand;
- A suspension without pay; or
- Dismissal.

The decision concerning appropriate corrective action and other sanction or remedies will be made by the Manager of Human Resources. If the respondent is the Manager of Human Resources, the decision will be made by the Superintendent of Education/Human Resources. If the respondent is not an employee, the decision will be made by the Superintendent of Education.

No sanction will be imposed on the complainant, a witness or any other person involved in the investigation of a complaint under the formal complaint procedure, provided the complaint was made in good faith, the witness' evidence was provided in good faith, and the complainant, witness or other person cooperated in and did not interfere with the investigation. However, if the investigator finds that the complaint was made in bad faith or maliciously, evidence was provided in bad faith or maliciously, or that any person failed to cooperate in or interfered with the investigation, the complainant, witness or other person in question may be subject to corrective action. The disciplinary action to be taken, if any, will be determined by the Manager of Human Resources.

No reprisal will be undertaken by any person against the complainant for initiating a complaint under the formal complaint procedure or against a witness or any other person involved in a complaint under the formal complaint procedure. Corrective action imposed in response to a bad faith or malicious complaint or evidence, or failure to cooperate in or interference with the investigation is not considered a reprisal for the purpose of the Regulation or this Administrative Procedure.

In cases where the investigator finds that the respondent engaged in conduct or behaviour inconsistent with the Regulation, a written record of the incident (e.g., the complaint, the investigator's final report, and a description of the disciplinary action taken, if any) will be maintained in the respondent's official Human Resource file. Where the investigator finds that the complaint was made in bad faith or malicious, that evidence was provided in bad faith or maliciously, or that any person failed to cooperate in or interfered with the investigation, a written record of the finding (e.g., the investigator's final report in the case of a complainant or a summary of the investigator's finding in other cases, as well as a description of the disciplinary action taken, if any) will be maintained in the official Human Resource file of the complainant, witness or person in question, as the case may be. Where the investigator does not make a finding that the complaint was made in bad faith or was malicious or that the complainant failed to cooperate in or interfered with the investigation, and finds that the respondent has not engaged in any conduct or behaviour inconsistent with the Regulation, no record of the incident will be maintained in the official Human Resource file of either the complainant or the respondent. The Conflict Resolution Coordinator will keep a copy of every complaint filed, the final investigation report pertaining to the complaint, and any corrective action or other disposition, regardless of the outcome of the investigation.

All information obtained during the formal complaint procedure will, to the extent possible, be kept in confidence to maintain the privacy of the persons involved in the complaint. However, in order to ensure a fair process, the information will be shared with those persons who need the information either in order to do their job or in order to respond to an allegation. In addition, the information may be subject to disclosure pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* or as otherwise required by law. Any person who accompanies a complainant or respondent at any stage of the investigation procedure will be required to agree to comply with this provision as a condition of participation in the investigation procedure.

Implementation September, 2014

Revised: October 23, 2017

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