

Administrative Procedure 451

Workplace Harassment

1. Purpose

The purpose of this administrative procedure is to prevent workplace harassment and to provide formal complaint procedures to address allegations of workplace harassment. Administrative Procedure 450 deals with prohibited behaviour under the Ontario Human Rights Code [“the *Code*”]. Administrative Procedure 451.1 deals with workplace conflict that neither relates to the enumerated grounds under the *Code* nor meets the definitions of “workplace harassment” as described in this policy.

Renfrew County District School Board is committed to creating and maintaining a work environment that is safe, respectful and free from harassment; and to preventing, identifying and correcting conduct that runs afoul of these commitments.

Everyone in the workplace must uphold the principles and commitments set out in this Workplace Harassment administrative procedure.

This administrative procedure will be reviewed on, at minimum, an annual basis. It will be maintained in consultation with the joint health and safety committee.

2. Definitions

2.1 *Workplace Harassment*

Workplace harassment means a course of vexatious comment or conduct directed at a specific individual that serves no legitimate work purpose and renders the workplace environment intolerable for that individual. Workplace harassment occurs when an individual is repeatedly singled out for serious mistreatment, which may include threats, bullying, cyber bullying, verbal assault, taunting, ostracizing or violent gestures and actions.

For greater clarity, the exercise of management functions, such as supervision, performance appraisal, training, instruction, correction, counselling or discipline, shall be deemed to constitute a legitimate work purpose unless such functions were carried out in a demonstrably abusive manner.

Workplace harassment also includes workplace sexual harassment.

2.2 *Workplace Sexual Harassment*

Workplace sexual harassment means:

- a) 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
- b) 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 sexual harassment may include: unwelcome sexual advances, requests for sexual favors, and/or verbal or physical conduct of a sexual nature including, but not limited to, sexually-related drawings, pictures, jokes, teasing, uninvited touching or other sexually-related comments.

3. **Application**

Administrative Procedure 451 applies to all staff members of the Renfrew County District School Board wherever they are performing work or attending work-related functions, including schools and school-related activities, Board offices and facilities and off-site conferences, training sessions and social activities organized or sanctioned by the Director of Education or designate.

4. **Formal Complaint Process**

4.1 Making a Complaint

A staff member who believes they have been subject to harassment shall file a complaint alleging, using *Form F451-2 Workplace Harassment: Formal Complaint*. The Formal Complaint shall be submitted to the complainant's immediate supervisor. If the supervisor is the respondent, the form shall be submitted to the individual to whom the complainant's supervisor reports.

The complaint must contain sufficient information about the allegations to give the alleged harasser a meaningful opportunity to respond, including the name of the complainant, date(s), time(s) and details of the alleged conduct.

Any supervisory or managerial staff member who observes an incident that, in his or her opinion, meets the definition of workplace harassment has a positive duty to initiate a complaint under this administrative procedure.

The superintendent responsible may determine that the complainant and the respondent should not continue to work together in proximity. In such circumstances, the superintendent responsible may direct that either or both of the staff members be assigned to another work site or to home with pay.

4.2 Multiple Complainants

Where more than one staff member makes allegations of workplace harassment against another staff member, each staff member's allegation(s) must be submitted separately and shall be treated as a separate complaint. In no circumstances shall an investigator conduct interviews with more than one complainant present at a time. The credibility of the complaint may be jeopardized if the investigator determines that any complainant has colluded with another in reporting and/or formulating evidence.

4.3 Preventing Multiple Processes

A staff member involved in a complaint under Administrative Procedure 451 may not make the same allegations under another administrative procedure. The complainant must select one process for the investigation and resolution of the complaint.

Nothing in this administrative procedure shall be construed so as to prevent a complainant from seeking recourse for allegations of discrimination from the Human Rights Tribunal of Ontario or from pursuing any remedies under the *Criminal Code (Canada)*.

4.4 Support and Representation

Both parties to a complaint are entitled to seek support and representation from their union, federation or professional association, if any, at their discretion at any stage of the process. The investigator shall make a reasonable effort to accommodate the schedules of the parties and one representative each in scheduling interviews and meetings.

4.5 Timelines

A complaint of workplace harassment should be made within six (6) months of the most recent incident that gives rise to the allegations.

The Director of Education shall make best efforts to ensure the conclusion of the investigation process, including final disposition of the complaint, within three (3) months of receiving the complaint.

4.6 Confidentiality

The Board will take all reasonable steps to ensure that complaints are investigated and handled in a manner that best ensures confidentiality. All persons involved in the investigation of a complaint are likewise bound by duties of confidentiality, subject to their right to confide in their union, federation, or professional association and/or family members. Further, no statement made in the context of the investigation nor any document generated for the express purpose of the investigation may be used in any other legal proceeding, arbitration or other hearing or civil litigation.

Any witnesses interviewed for the purposes of the investigation shall be advised of their obligation to maintain confidentiality regarding the investigation.

Complainants are reminded that they cannot expect absolute confidentiality as investigations, by nature, involve communication with the respondent and any witnesses to the behavior complained of. The sharing of this information is part of the investigation process.

All notes and records generated by the complaint and its investigation shall be kept by the Board in compliance with the *Municipal Freedom of Information and Protection of Privacy Act*.

Any breach of confidentiality under this procedure may give rise to disciplinary consequences.

4.7 The Investigator

Once a complaint of workplace harassment or sexual harassment is made, the Director of Education (or designate) shall appoint an investigator. The investigator shall have training and experience in investigating workplace issues.

4.8 The Investigation

The investigator shall review this administrative procedure, and be provided with a completed copy of *Form F451-2 Workplace Harassment: Formal Complaint*. The investigator's mandate shall be limited to investigating and reporting on whether the allegations of workplace harassment have been proven on the balance of probabilities. In the course of the investigation, the investigator shall:

- (a) provide the respondent with a written copy of the complaint and a copy of this administrative procedure;
- (b) enable the respondent and/or the respondent's representative to provide a written response to the complaint, if the respondent so chooses;
- (c) interview the complainant and receive a list of the complainant's suggested witnesses;
- (d) interview the respondent and receive a list of the respondent's suggested witnesses;
- (e) interview those witnesses suggested by both parties that the investigator believes will be able to provide information relevant to the complaint;
- (f) consider the evidence of the parties and the witnesses and re-interview the complainant and/or the respondent if it is necessary to enable one or both of them to respond to the evidence provided by others;
- (g) take and maintain detailed notes of all interviews;
- (h) summarize the evidence in a written report, which shall contain conclusions as to whether the allegations have been proven on a balance of probabilities;

5. **Discipline and Other Outcomes**

Where a finding of workplace harassment has been made, the superintendent responsible may impose discipline as appropriate in the circumstances, up to and including termination of the respondent's employment with the Board.

In addition to or instead of imposing discipline, the superintendent responsible may direct any of the following:

- (a) appropriate counselling or training;
- (b) strategies for restoring a positive work environment;
- (c) mediation;
- (d) transfer or separation of the parties to the complaint; and/or
- (e) other restorative measures deemed appropriate by the superintendent responsible, with input from the parties.

The superintendent will inform the complainant and the respondent in writing of the results of the investigation and the corrective action that has or will be taken as a result of the investigation.

6. **Complaints Made in Bad Faith**

Where it has been found that the complainant's allegations have been made in bad faith and/or constitute an abuse of this administrative procedure, the superintendent responsible may impose discipline on the complainant as appropriate in the circumstances, up to and including termination of the complainant's employment.

7. **Reprisals**

No one shall engage in reprisals against a complainant for having made a complaint under this administrative procedure or a witness for having participated in an investigation. Alleged reprisals shall be investigated under this administrative procedure and, where proven, may result in discipline as appropriate in the circumstances, up to and including termination of the respondent's employment.

8. **Record Keeping**

Where the investigation results in a finding that there has been a violation of this administrative procedure, the outcome of the investigation, and any disciplinary response, will be recorded in the personnel file of any respondent(s) found responsible for the violation.

Where the investigation results in a finding that there has been no violation of this administrative procedure by some or all of the respondents, no record of the complaint shall be retained in the personnel file of any respondent(s) found not to have violated this administrative procedure.

The Board shall keep a copy of the following records in a confidential file:

- 1) a copy of the complaint or details of the incident;
- 2) a record of the investigation including notes;
- 3) copy(ies) of witness statements;
- 4) a copy of the investigation report;
- 5) a copy of the results of the investigation that were provided to the complainant or employee who reported the workplace harassment and the respondent; and
- 6) a copy of any corrective action taken to address the complaint or incident of workplace harassment.

Such records shall not be disclosed unless necessary to investigate an incident or complaint of workplace harassment, take corrective action or otherwise as required by law. These will be kept for a minimum of one year following the conclusion of the investigation.

9. Training

All staff members will be provided with information and instruction on the application of this administrative procedure.

Legal References:

Criminal Code (Canada)

Ontario Human Rights Code

Ontario Labour Relations Act

Municipal Freedom of Information and Protection of Privacy Act

Ontario Regulation 437/97 - Professional Misconduct

Regulation Made Under the Teaching Profession Act

PPM No. 128 - The Provincial Code of Conduct and School Board Codes of Conduct

Renfrew County District School Board References:

AP 140 - Code of Conduct

AP 450 - Human Rights

Form F451-1 Workplace Conflict: Informal Resolution

Form F451-2 Workplace Harassment: Formal Complaint