

Policy:	Respectful Workplace/Harassment Prevention and Resolution	HR-LR800
Division:	Human Resources	

ADMINISTRATIVE PROCEDURES/REGULATIONS.

1. Early Problem Resolution

Most workplace conflicts and issues can be resolved through early problem resolution interventions and initiatives.

- 1.1 Employees involved in a dispute or conflict are encouraged to attempt to resolve issues as soon as possible, with open communication and in a cooperative manner. Any employee who feels offended by the actions of another employee is encouraged to make it known as soon as possible to that person in an attempt to resolve the problem.
- 1.2 When the NLESD is made aware of a workplace conflict or receives a complaint from an employee regarding a workplace issue, every effort will be made to resolve the matter informally in a fair and objective manner.

2. Resolution Options

The resolution options outlined in this Policy may not necessarily be used in the order presented below. It is likely that one or more of the options would be used to resolve an issue. Depending on the nature of the case, the NLESD will determine if it is appropriate for a formal investigation to be initiated.

2.1 INFORMAL

- a) **Individual Intervention:** The employee experiencing the harassing or discriminating conduct may choose to approach the other employee, either in person or in writing, to advise that the conduct is offensive and unwelcome and request that the conduct cease. The problem may be resolved at this point and no further action will be required.
- b) **Direct Supervisor Intervention:** The employee experiencing the harassing or discriminating conduct may decide to discuss the conduct with his/her direct supervisor. The direct supervisor must assess and determine the most

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appropriate action. The Human Resources Division may be consulted at this time for assistance.

- i. If the employee's complaint is against his/her direct supervisor or if the employee would prefer to speak with someone else, then s/he may consult with another person of authority, such as a Human Resources Manager.
 - ii. Steps to resolve the matter should be completed in a timely manner. If appropriate, additional information may be sought or a discussion may be held between the employees to resolve the matter.
 - iii. The supervisor should continue to monitor the situation to ensure the issue has been resolved. Intervention may be required in cases such as when there is a real or perceived threat to the health and/or safety of employees, the alleged conduct has impacted other employees or there is evidence that the complainant fears retaliation. This option may also be initiated by a direct supervisor or manager who identifies inappropriate conduct and seeks to resolve such conduct before it escalates to harassment or discrimination.
- c) **Designated Human Resources Manager Intervention:** The employee experiencing the harassing or discriminating conduct may decide to discuss the conduct with a Human Resources Division representative, and may submit a written complaint to the Division. Following discussion with the complainant, a designated Human Resources Manager will determine the appropriate course of action which may include, but is not limited to, mediation, referral to the Employee Assistant Program (EAP), accommodation or the formal complaint resolution process.
- d) The use of problem-solving mechanisms such as coaching, counselling and mediation can, in many instances, resolve an issue and prevent a situation from escalating to the point where filing a formal complaint is necessary. Mediation is encouraged, but is NOT appropriate in the following circumstances:
- i. Not all parties are sincerely committed to the process;
 - ii. One of the parties is in a position to withhold or confer a benefit, since the authority/power imbalance may result in coercion;
 - iii. Alleged actions may be of a criminal nature.

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2.2 FORMAL COMPLAINT RESOLUTION PROCESS

- a) Employees have available to them a formal complaint resolution process. If an employee wishes to make an official complaint about the conduct of another employee, s/he must submit the complaint in writing to the Assistant Director of Education (Human Resources) except when:
 - i. The complaint is against a member of the Executive Staff (e.g. Assistant or Associate Director), in which case the complaint must be submitted to the Director of Education; or,
 - ii. The complaint is against the Director of Education, in which case the complaint must be submitted to the Chair of the Board.
- b) Complaints should be as specific and detailed as possible. An official harassment/discrimination complaint should include the following details:
 - i. Specific information describing the alleged incidents;
 - ii. Where possible, time, dates and locations of the alleged incident(s);
 - iii. Where possible, witnesses to the alleged incident(s);
 - iv. Expectations of the complainant (i.e. what outcomes the complainant would like to see).

2.3 INVESTIGATION

An effective, fair, timely and impartial investigation of a formal complaint by an employee is fundamental to a timely and successful resolution of the situation. In situations where a formal complaint of harassment or discrimination has been submitted, the NLESD will conduct a preliminary review to determine the seriousness of the allegations and the most appropriate method to address and resolve the issues. The NLESD may initiate a formal investigation process to determine whether the allegations are founded or not.

- a) A formal investigation must be approved by the Assistant Director of Education (Human Resources).
- b) The NLESD will determine the objectives of the investigation and whether the investigation will be conducted in-house by staff, or if an external investigator will be engaged. Investigations should be completed in a timely manner. The Designated Human Resources Manager will explain the formal investigation process to all of the involved parties, including the sharing of information gathered. The following steps would generally be involved in the formal complaint resolution process:
 - Step 1: Referral for investigation
 - Step 2: Selecting and mandating an investigator
 - Step 3: Developing an investigation plan
 - Step 4: Conducting the investigation

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- Step 5: Validating the facts
- Step 6: Analysis and conclusions
- Step 7: Report
- Step 8: Administrative closure

- c) A contract/memorandum of understanding will be signed with all external investigators, outlining the terms and conditions agreed to, and the objectives of the investigation.

3. Confidentiality

Respect for privacy is an important aspect of a respectful workplace. Issues related to harassment and discrimination should be treated confidentially; however, there are limitations to confidentiality. When a supervisor or manager becomes aware of a situation involving harassment or discrimination, they may be obligated to intervene. Such incidences could include concerns for the health and safety of employees or the public or a requirement in law to report the matter.

Complaints of harassment and discrimination will be received and managed in a confidential manner. Information will be used for its intended purpose only. People involved in the process, including the complainant, respondent, witnesses and others involved in resolving the complaint, will have access to information they need to receive. During the complaint process, parties (complainant, respondent) can generally expect to access their own personal information, which includes comments made about them by other individuals, as well as any other information (personal or otherwise) which is relevant to the investigation, the disclosure of which is consistent with resolving the complaint and ensuring a fair process. For example, parties to an investigation may expect to receive information related to the allegations in writing and be informed in writing of the outcome of the investigation and to receive a copy of the final report.

People involved in the process are required to maintain confidentiality throughout the investigation process.

Absolute confidentiality during a workplace investigation cannot be guaranteed as the resolution process must involve others. Information collected and recorded is subject to the *Access to Information and Protection of Privacy Act* and in the event that a request for information is received, information would be released in accordance with ATIPPA. Information could also be released as a result of judicial or quasi-judicial proceedings.

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Documentation of any discipline relating to a complaint under this policy will be treated in accordance with relevant collective agreements and NLESD administrative procedures/regulations.

4. Rights and Obligations of Complainants and Respondents

4.1 RIGHTS OF COMPLAINANTS

Complainants have a right to:

- a) Have their complaint treated seriously and investigated thoroughly.
- b) Have their complaint held in confidence except as necessary for the investigation.
- c) Be accompanied by another person, including a union representative, for support during all interviews related to the complaint.
- d) Expect that reasonable steps will be taken to ensure that they are protected from any repercussions resulting from the filing of a complaint.
- e) Be informed of the outcome of any investigation and be provided with any reports resulting from the investigation.

4.2 OBLIGATIONS OF COMPLAINANTS

Complainants are expected to:

- a) Make a complaint/seek assistance within a reasonable period of time.
- b) Cooperate with those responsible for reviewing the complaint.
- c) Keep their involvement and complaint confidential.
- d) Express the complaint honestly and accurately.

4.3 RIGHTS OF RESPONDENTS

Respondents have the right to:

- a) Be informed that a complaint has been filed.
- b) Be fully informed of all of the allegations.
- c) Be accompanied by another person, including a union representative, for support during all interviews related to the complaint.
- d) Respond to the allegations, or
- e) Decline to respond to the complaint or allegations.
- f) Be informed of the outcome of any investigation and be provided with any reports resulting from the investigation.

4.4 OBLIGATIONS OF RESPONDENTS

Respondents are expected to:

- a) Keep their involvement and the complaint confidential, except as necessary for investigation of the complaint.

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- b) Seek assistance or advice from a supervisor or union representative on an appropriate course of action.
- c) Not impede the investigation.

5. Information Management

- 5.1 All information and records resulting from the complaint, investigation and resolution shall be maintained in an appropriate location under secure measures and separate from employee files.
- 5.2 Collection, use, disclosure and disposal of the information and records shall be done in accordance with records management policies developed by the NLESD, relevant collective agreements and the *Access to Information and Protection of Privacy Act*.

6. Recourse and Resolution

- 6.1 Intervention in the aftermath of a complaint may be required to restore a positive and respectful work environment. This may involve activities such as conflict resolution and debriefing sessions. The Assistant Director of Education (Human Resources) or designate is responsible for determining appropriate restorative actions and monitoring their implementation.
- 6.2 Nothing in this policy is intended to modify the NLESD's right to impose disciplinary action where appropriate.
- 6.3 Depending upon the nature of a complaint, other recourse may be appropriate, including a report to the police (e.g. in the event of a threat, assault or sexual assault).
- 6.4 Allegations of procedural errors may be referred to the Office of the Director of Education for review. Such allegations must be presented to the Director's office within 20 days of the complainant or respondent receiving a decision of an investigation under this policy.

RESOURCES/REFERENCES

Human Resources Secretariat, Government of Newfoundland and Labrador;
Harassment and Discrimination-Free Workplace Policy
Treasury Board of Canada Secretariat: Policy on Harassment Prevention and Resolution

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APPENDIX A: GUIDELINES FOR DETERMINING WHAT MAY CONSTITUTE HARASSMENT

The following questions may help to assess whether the conduct (act, comment or display) constitutes harassment:

- Would a reasonable person view the conduct as unwelcome or offensive?
- Did it demean, belittle or cause personal humiliation or embarrassment?
- Is it a single incident or is it a series of incidents over time?
-

What generally constitutes harassment includes, but is not limited to:	What <u>may</u> be harassment includes, but is not limited to:	What is <u>not</u> generally considered harassment includes, but is not limited to:
Rude or offensive remarks, put-downs or insults to a person	Personality conflicts - conflicts do not usually constitute harassment; however if managed poorly or left unresolved, they can escalate to harassment	The legitimate and proper exercise of management's authority or responsibility
Displaying sexist, racist or other offensive pictures, posters or sending offensive or degrading emails	Criticizing an employee in public (this includes commentary on online blogs and social networking sites such as Facebook and MySpace)	Legitimate and constructive feedback regarding work performance
Spreading rumours about someone or statements damaging to a person's reputation (this includes commentary on online blogs and social networking sites such as Facebook and MySpace)	Exclusion from group activities or assignments	The manager's required day to day management of absenteeism, tardiness and leave entitlements.
Actual or threatened physical assault (this may be a Criminal Code offence)	A single or isolated incident such as an inappropriate remark or abrupt conduct	Organizational changes that are justifiable from an economic viewpoint and they are made in a non-discriminatory manner
Stalking (this may be a Criminal Code offence)	Repeatedly singling out an employee for meaningless or "dirty" jobs that are not part of their normal duties	Disciplining staff in accordance with the employer's right to manage
		Manager's right to assign tasks

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What generally constitutes sexual harassment includes, but is not limited to:	What <u>may</u> be sexual harassment includes, but is not limited to:	What is <u>not</u> generally considered sexual harassment includes, but is not limited to:
Display of sexual materials (including emails, posters, calendars)		Good natured flirting, teasing or jesting which BOTH parties find acceptable
Sexual coercion (“quid pro quo” (“this for that”) harassment) – involves subtle hints or overt promises or threats to solicit sexual favours.		An office romance to which BOTH parties willingly consent.
Unwelcome conduct of a sexual nature, including suggestive remarks or gestures, compromising invitations or requests		
Implied or expressed reward for complying with a request for sexual favours		
Sexual advances that may be perceived as placing a condition on a person’s employment status		
Implied or expressed reward for complying with a request for sexual favours		
Sexual advances that may be perceived as placing a condition on a person’s employment status		
Unwelcome remarks about a person’s physical attributes or appearance		
Touching, patting, pinching, hugging or other unwelcome physical contact		
Outright demands for sexual favours		
Leering or staring		
Unwelcome enquiries about a person’s sex life		

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What generally constitutes discrimination includes, but is not limited to:	What <u>may</u> be discrimination includes, but is not limited to:	What is <u>not</u> generally considered discrimination includes, but is not limited to:
A person is not hired based solely because of one or more of the prohibited grounds under the <i>Human Rights Act, 2010</i> . These may include his/her race, religion, religious creed, political opinion, colour or ethnicity, national or social origin, sex, sexual orientation, marital status, family status, physical disability, mental disability, criminal conviction or age.	Exclusion from group activities or assignments based solely on one or more of the prohibited grounds under <i>Human Rights Act, 2010</i> .	Hiring someone with a disability under an employment equity program.
A person is terminated solely because of one or more of the prohibited grounds under the <i>Human Rights Act, 2010</i> .		Not hiring someone who cannot perform the essential duties and/or a bona fide occupational requirement of the position, and cannot be accommodated without undue hardship to the employer.
Denying an opportunity to a person solely based on one or more of the prohibited grounds under the <i>Human Rights Act, 2010</i> .		
Not promoting someone solely based on one or more of the prohibited grounds under the <i>Human Rights Act, 2010</i> .		

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APPENDIX B: COMPETENCIES PROFILE – INVESTIGATORS

When it is determined that a formal workplace investigation is warranted, the NLESD will determine the objectives of the investigation and whether the investigation will be conducted in-house by NLESD staff or if an external investigator will be engaged.

When appointing a NLESD staff person or an external individual or agency to conduct a workplace investigation, the NLESD will consider those who have the following competencies:

- Knowledge of the principles of procedural fairness and workplace investigation techniques. Experience in carrying out quality investigative services, either as an investigator or co-investigator.
- Completed training that is acceptable to the NLESD, in conducting harassment and discrimination investigations.
- Familiarity with the organizational structure, policies and practices of the NLESD.
- Familiarity with the NLESD Respectful Workplace/Harassment Prevention and Resolution Policy.
- Knowledge of the *Access to Information and Protection of Privacy Act (ATIPPA)* and other relevant legislation.
- High level of communication skills (e.g. listening, interviewing and writing). Able to collect and synthesize information obtained through research which includes a review of the pertinent documentation and interviews with parties and witnesses; identify key issues and facts relating to allegations; conduct a thorough analysis of the facts; and, develop logical and substantiated conclusions (make findings if needed).
- Thoroughness in the collection, synthesis and review of physical evidence.
- Conflict management skills.
- Respect for the highly confidential nature of the issues.
- Demonstrates professionalism, tact and judgement, and can appropriately manage difficult situations and sensitive matters.
- Demonstrates fairness and impartiality and must not have a reporting line or personal relationship or connection with a complainant or respondent.

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APPENDIX C: GUIDELINES FOR PREPARING AN INVESTIGATION REPORT

OVERVIEW

An investigation report sets out the allegations, a logical description of the facts, an analysis of each incident, and a conclusion. The final report should contain the following elements:

- ✓ A description of the allegations;
- ✓ A description of the investigation process followed;
- ✓ A description of the background information and evidence that supports or refutes each allegation;
- ✓ An analysis of the evidence in respect to each allegation; and,
- ✓ A statement as to whether or not the conduct described in each allegation constitutes a breach of the NLESD Respectful Workplace/Harassment Prevention and Resolution Policy.

CHARACTERISTICS OF A GOOD REPORT:

- ✓ The report must achieve its objective – to respond to the requirements of the mandate and answer the questions raised (i.e. are the allegations of harassment founded or not?)
- ✓ The report must be logical, sufficiently detailed and accurate. It should not include extraneous or irrelevant information or unsubstantiated opinions. The person responsible for managing the harassment complaint process must be able to rely on the facts set out in the report and render a decision accordingly.

The investigator should ensure that the structure of the report is clear for the reader so that s/he can easily access and reference the information. The pages should be clearly numbered, dates, and witnesses should be accurate and there should not be any spelling or grammar mistakes. To the greatest extent possible, the investigator should rely on simply and direct language to describe the facts and to develop the analysis. As a general rule, the investigator should avoid using:

- Ambiguous language;
- Abbreviations or acronyms;
- Overly long or complex sentences;
- Characterizations or descriptions which could denote bias; and,
- Medical, legal or overly technical terminology.

Investigators should expressly advise parties and witness that, while every effort will be made to protect their confidentiality and privacy, the report will be disclosed in whole or in part to

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the employer, complainant and respondent, and to others under specific conditions (e.g. under a court order or ATIPPA request).

VALIDATING THE FACTS

Once the investigator has gathered the relevant facts, s/he must validate this information with the parties. In order to do so, the investigator will:

1. Prepare a preliminary summary of facts.
2. Submit the preliminary summary of facts to the person responsible for managing the harassment complaint process for the NLESD (e.g. Assistant Director of Education – Human Resources).
3. Ensure the parties have the opportunity to provide written comments.
4. Consider any additional information provided by the parties and incorporate it into the report if it is deemed appropriate to do so.

INVESTIGATION REPORT TEMPLATE

I. Cover Page

II. Executive Summary

- a. Complainant: *(Person who has made the written complaint of harassment or discrimination)*
- b. Respondent: *(Person against whom a written complaint of harassment or discrimination has been made)*
- c. Nature of the Allegations: *(Brief description of the type of allegation being made)*
- d. Mandate, including any subsequent amendments: *(Brief description of the authorization and extent of the investigation)*
- e. The Complainant was sent the preliminary summary of facts on:
- f. Comments on the preliminary summary of facts received on:
- g. The Respondent was sent the preliminary summary of facts on:
- h. Comments on the preliminary summary of facts received on:

III. Investigation Report

a. **Allegations:**

_____ alleges that _____ harassed him or her in the workplace. The allegations that form the subject of this investigation are as follows....

b. **Mandate:**

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The role and responsibility of the Investigator, the authorization and outline of the terms of reference for the investigation

c. Investigation Procedure:

The following interviews were conducted (date/time/location); complainant/respondent accompanied by (Name, Title and Organization of the person accompanying him/her); the following documents were considered.....

d. Facts:

In addition to the facts that appear in the preliminary summary of facts, the comments received following disclosure of the summary may also be included in the investigation report. It is the investigator's responsibility to determine which elements should be included. However, the comments of the parties should be included in the report if, following the responses from the parties to the preliminary summary of facts, the investigator had to reopen the investigation.

e. Analysis:

The analysis section is found only in the final investigation report. The analysis brings together all of the salient evidence. The analysis should start with the description of the criteria to be met in order to conclude that there has been a breach of the Policy. The analysis is a critical component of the report; it requires sophisticated analysis on the part of the investigator who analyzes the evidence adduced and the arguments made by the parties, as well as any other relevant information gathered in the course of the investigation. The analysis must explain how the information gathered was assessed, and why the investigator reached a particular conclusion. Each allegation should be identified and analyzed separately and as a whole if there is an attempt to demonstrate a pattern of repetitive conduct.

f. Conclusions:

- In determining whether the alleged conduct constitutes harassment, the investigator must determine whether the conduct meets the criteria set out in the Policy. In the Conclusions section, the investigator summarizes his or her findings and draws conclusions with supporting rationale for each individual allegation. Investigation reports should include a section with conclusions to summarize the main points and highlight the essential information of the report.*
- With respect to the allegations, the findings should never be inconclusive. If the investigator determines that there is not sufficient evidence to conclude that the allegations are founded or partially founded, the investigator must find that the evidence does not support the allegations, consistent with the required burden and standard of proof. The*

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conclusions on each allegation must give the reader a clear understanding that:

- *On the balance of probabilities, the evidence does/does not support the allegation(s);*
- *And if supported, the conduct does/does not satisfy the criteria for harassment as per the Policy.*
- *The conclusions must not contain any surprises. In other words, they must all relate to the allegations and evidence contained in the report. The conclusions must be coherent, clear, concise and appropriate to the facts stated.*

- *The investigator's report does not contain recommendations on what administrative, corrective/restorative, and/or disciplinary action should be taken.*

g. Investigator's Closing Declaration

"I declare that, in conducting this investigation, the rules of procedural fairness were observed. I ensured that the parties were reminded of their rights and obligations with respect to the investigation process and gave all those involved, including witnesses, the opportunity to verify their statements. I also declare that I took into account all of the comments made by the parties in regard to the preliminary summary of facts in my assessment of this case and in the conclusions presented above."

h. Signature and Date

i. Appendices

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