

Policy:	Respectful Workplace/Harassment Prevention and Resolution	HR-LR800
Division:	Human Resources	Updated December 1, 2021

ADMINISTRATIVE PROCEDURES/REGULATIONS.

1. Duty to Report

Every worker is entitled to employment free from workplace harassment. The Newfoundland and Labrador English School District is committed to eliminating, where possible, or otherwise, minimizing the hazard of workplace harassment. As part of the District's commitment to a respectful and harassment free workplace, employees are obligated to report inappropriate conduct in the workplace. Workplace harassment will not be tolerated as per the Provincial Government's Occupational Health and Safety Regulations (Section 22-24.2). Employees are obligated to take reasonable care and not engage in bullying or workplace harassment. Employees are required to report observations or experiences of bullying, inappropriate conduct and/or workplace harassment. The Respectful Workplace/Harassment Prevention and Resolution Policy and Regulations comprise the District's Harassment Prevention Plan. All employers are required to take reasonable care to comply with the District's Harassment Prevention Plan.

- 1.1 Responsibilities: 1.1 Supervisors are obligated to ensure the health and safety of workers, and are obligated to apply and comply with the District's Harassment Prevention Plan. When a supervisor/manager/school administrator is aware of situations where harassment or discrimination is present, they are obligated to intervene even in the absence of a complaint.
- 1.2 Employees are obligated to report observed instances of harassment or discrimination to their manager.
- 1.3 NLESD will provide support to staff when workplace harassment occurs and when reported.

- 1.4 Employees will use the District Harassment Report Form (Appendix E) to report harassment.
- 1.5 In the absence of a completed Harassment Report Form, the District has an obligation to investigate reports of harassment, and require the complainant to review and acknowledge acceptance of the statement taken as part of the report.
- 1.6 **Third Party Harassment in the Workplace**

When an employee feels they have been subject to harassment by a third party, such as a student, parent/guardian, or outside contractor, they should bring the issue to their immediate supervisor or school administrator. Immediate steps will be taken to bring the complaint to the attention of the third party and sufficient steps will be taken to stop the harassment. Depending upon the circumstances, these steps may include:

- Warning the third party that further harassment will (where possible) result in their expulsion from the workplace;
- Expelling the third party from the workplace. If it is not possible to ban the third party from the workplace, make other arrangements (where possible) to prevent or limit contact between the employee and the third party;
- Requesting the third party remove harassing materials or posts from social media sites, where the harassment is in the form of posting on social media sites;
- Seeking a legal remedy against the third party; for example, issuing a notice to a third party under the Petty Trespass Act and/or Schools Act, 1997; and
- Applying other applicable policies of the Board, District and/or Department of Education and Early Childhood Development, including the Student Suspension Policy and Safe and Caring Schools Policy.

2. Early Problem Resolution

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

- 2.1 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.
- 2.2 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.

3. 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.

Please note, the District Harassment Prevention Plan is not intended to discourage a worker from exercising his or her rights under the **Human Rights Act, 2010**, the **Criminal Code** (Canada) or any other law of the province or of Canada.

3.1 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 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. The employer shall protect workers from retaliation and provide support to workers when workplace harassment occurs.

- 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.

3.2 **Formal Complaint Resolution Process**

- e) 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.
- f) 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).
 - v. Please complete the Harassment Report Form (Appendix E) and submit to your Regional Human Resource Manager.

3.3 **Investigation Procedures**

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.

- g) A formal investigation must be approved by the Assistant Director of Education (Human Resources).
- h) 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
 - Step 5: Validating the facts
 - Step 6: Analysis and conclusions
 - Step 7: Report – Human resources will contact the appropriate parties to provide notification of the results of the investigation and, where applicable, communicate any actions to be taken as a result of the investigation.
 - Step 8: Administrative closure
- i) 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.

4. 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. Any information obtained relating to workplace harassment, including personal information, will not be disclosed unless it is necessary for the purpose of an investigation, corrective

action relating to the complaint or where required by law. 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. 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.

5. Rights and Obligations of Complainants and Respondents

5.1 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; and
- e) Be informed of the outcome of any investigation and be provided with any reports resulting from the investigation.

5.2 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; and
- d) Express the complaint honestly and accurately.

5.3 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, and
- f) Be informed of the outcome of any investigation and be provided with any reports resulting from the investigation.

5.4 Obligations of Respondents

Respondents are expected to:

- a) Keep their involvement and the complaint confidential, except as necessary for investigation of the complaint;
- b) Seek assistance or advice from a supervisor or union representative on an appropriate course of action; and
- c) Not impede the investigation.

6. Information Management

- 6.1 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.
- 6.2 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**.

7. Recourse and Resolution

- 7.1 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.
- 7.2 Nothing in this policy is intended to modify the NLESD's right to impose disciplinary action where appropriate.

- 7.3 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).
- 7.4 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.

8. Annual Review

The Harassment Prevention Plan will be reviewed as necessary, but at least annually

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