

<b>Topic:</b>	<b>Respectful Workplace Free of Discrimination and Harassment</b>
<b>Effective:</b>	<b>November 2016</b>
<b>Revision Date:</b>	<b>November 2017, October 2019</b>
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<b>Cross-Reference:</b>	<b>Administrative Procedure – Workplace Violence Policies – Respectful Workplace; Discrimination and Harassment, Employment Equity</b>
<b>Responsibility:</b>	<b>Executive Officer, Human Resources</b>

**INTENDED PURPOSE:**

The Halton District School Board recognizes the need to provide respectful workplaces in which employees can work, students can learn, trustees can govern, and volunteers can participate; workplaces that

- foster respect for the dignity, worth and well-being of all members of the Board’s community;
- provide an opportunity for all individuals to develop their full potential;
- are conducive to the pursuit of excellence; and
- are committed to on-going education and awareness of the issues of discrimination and harassment.

The Halton District School Board will not tolerate disrespectful and objectionable behaviour, discrimination or harassment, including sexual harassment, in any workplace of the Board that is in violation to the *Human Rights Code*.

As defined in the *Occupational Health and Safety Act*, the Halton District School Board also recognizes “Workplace Harassment” to mean engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.

**PROCEDURES:**

The following administrative procedure outlines the process for the reporting and investigation of disrespectful and objectionable behaviour, discrimination and harassment, including sexual harassment, and applies to all workers (including paid, volunteer or Trustee) or student who wishes to address these behaviours in any workplace of the Board.

**1. Statement of Commitment**

The Halton District School Board is committed to providing respectful workplaces in which employees can work, students can learn, trustees can govern and volunteers can participate.

In making this commitment, the Board recognizes the rich diversity of our social fabric and the benefits which diversity brings to all members of the Board’s community. The Board is also committed to encouraging the tolerance and valuing of differences; in particular, those differences which are recognized in the *Ontario Human Rights Code*.

Under the *Ontario Human Rights Code*, discrimination and harassment are illegal practices. It is the policy of the Halton District School Board that it will not tolerate discrimination or harassment on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, same-sex partner status, disability, age, marital status or family status, and, in the case of employment, record of offences, which is contrary to the *Ontario Human Rights Code*.

The Halton District School Board also recognizes that employees have the right to feel safe at work. The *Occupational Health and Safety Act* requires the Board to investigate all allegations of workplace harassment, including sexual harassment, in order to provide a safe working environment for all employees.

## **2. Responsibilities of Staff, Students, Trustees & Volunteers of the HDSB**

It is the Board's expectation that each employee, student, trustee and volunteer will adhere to the Board's policy by:

- promoting a respectful workplace, addressing incidents of disrespectful conduct when they occur, and participating in processes under this administrative procedure;
- modelling respectful conduct in the workplace and being accountable for appropriate intervention when disrespectful conduct is occurring;
- utilizing early intervention and non-adversarial approaches to managing workplace conflict and disrespectful conduct;
- refraining from engaging in discrimination or harassment;
- reporting occurrences of discrimination or harassment;
- being a positive role model;
- supporting victims of disrespectful conduct and discrimination and harassment.

***Discrimination and harassment which are contrary to the Human Rights Code or the Occupational Health and Safety Act, undermines the dignity and mutual respect of individuals in the system, threatens personal well-being and performance, and will not be tolerated.***

In the school setting, it is imperative the principal or vice-principal be informed of all incidents of disrespectful conduct, discrimination or harassment that occur in a school or on school property.

All cases of disrespectful conduct and discrimination or harassment that are reported will be dealt with.

## **3. Purpose**

These guidelines and procedures are intended to:

1. Ensure all trustees, employees, volunteers and any others having an on-going relationship with the Halton District School Board are aware of the Board's policies on respectful workplace and discrimination or harassment.
2. Prevent discrimination or harassment from occurring by raising awareness of the rights and responsibilities under the *Human Rights Code or the Occupational Health and Safety Act*,
3. Provide clear procedures for the resolution of incidents of disrespectful conduct, discrimination and harassment which are contrary to the *Human Rights Code or the Occupational Health and Safety Act* in all settings administered by the Halton District School Board.
4. Underscore the seriousness of disrespectful, harassing or discriminatory behaviour and inform staff, students and any others having on-going relationships with the Board that corrective measures may be adopted in the face of repeated offences or even single occurrences where the behaviour warrants a response.

#### **4. Definitions**

*Disrespectful Conduct*: behaviour by an individual directed against another individual that a reasonable person would consider inappropriate. For the purposes of this procedure, disrespectful conduct is understood to be on a continuum from mild to grievous to illegal, and includes but is not limited to:

- gossiping;
- embarrassing practical jokes;
- swearing and yelling;
- inappropriately interfering in another individual's work;
- ridicule;
- making derogatory comments to or about another individual;
- derogatory gestures;
- shunning;
- bullying;
- physical assault.

*Discrimination*: unequal treatment on the basis of age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status (including single status), gender identity, gender expression, sex (including pregnancy), sexual orientation, and, in the case of employment, record of offences.

Discrimination includes harassment and may also occur where a supervisor or employee accepts, condones or fails to deal with discrimination or harassment by someone for which the supervisor or employee is responsible against another in the school board's community.

*Indirect Discrimination* or systemic discrimination is not blatantly discriminatory, nevertheless has the result, when applied, of excluding, restricting or giving preference to a group that is identified by a protected ground under the *Human Rights Code*.

*Harassment*: vexatious comment or conduct which is known or ought reasonably to be known to be unwelcome. Harassment normally involves persistent comments or conduct, but may include a single act. Supervision, evaluations and corrective actions in the normal course will not usually be found to be harassment.

Workplace harassment is any vexatious comment or conduct against an employee that is known or ought reasonably to be known to be unwelcome. Workplace harassment can be directed at a co-worker, subordinate or manager. A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.

The most common forms of harassment under the *Human Rights Code* are racial harassment and sexual harassment; harassment on any ground protected under the *Code* is prohibited.

For a clearer understanding of harassment, and not to suggest that other forms of harassment are permissible, examples of conduct which would constitute racial or sexual harassment are set out below:

a) *Racial Harassment*:

Racial harassment occurs where a person engages in a course of activity or comment that refers to or emphasizes the race or other race-related characteristics of an individual and where it could be reasonably anticipated that such comment or conduct would be unwelcome.

The offensive activity need not expressly refer to a person's race, place of origin, creed, and so on, but need only be motivated by those considerations in circumstances where an individual is consistently treated in a less favourable manner compared with others in the same position, where the differential treatment is motivated by the person's race.

More direct examples of racial harassment could include, but are not limited to:

- racial epithets;
- demeaning comments made to a person because of race;
- jokes or cartoons making fun of a racial group;
- inappropriate comments about cultural differences (e.g., accents, clothing or dress);
- comments or conduct motivated by consideration of a person's membership in a racial group which may not be intentionally offensive, but may still be unwelcome and constitute a violation of the Code;
- physical assault which is racially motivated.

b) Sexual Harassment:

- i. 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
- ii. 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;

The types of conduct which can be found to constitute sexual harassment could include, but is not limited to:

- the use of sexually profane language;
- rude or suggestive remarks of a sexual nature;
- sexually-based jokes or cartoons, whether communicated in person or electronically;
- photographs of sexually provocative poses;
- unwanted physical contact, including patting, touching or grabbing;
- wolf-whistles or cat-calls which cause embarrassment;
- degrading, sexually-based nick-names;
- conduct or remarks which denigrate an individual's sexuality;
- indicating that a person has limited potential because of their gender;
- bragging about sexual prowess within the hearing of others;
- intimidating behaviour such as blocking a person's way or pinning them to the wall;
- stalking;
- insistent requests for dates.

Sexual harassment also includes any actions taken as a reprisal against a person who has declined a sexual advance or invitation.

Sexual harassment does not include sincere personal compliments, a hug between friends or a mutual flirtation.

Age is defined as over the age of 18 years.

Family status is limited to being in a parent and child relationship only. It does not extend to aunts, uncles, nephews, nieces, cousins.

Record of offences is a protected ground only in employment. It is defined to include any criminal conviction for which a pardon has not been granted. Criminal convictions are convictions for offences under the *Criminal Code* or Federal Drug legislation. Record of offences also includes offences under provincial statutes, such as the *Highway Traffic Act* and the *Liquor Licence Act*.

Complainant under these guidelines, refers to any person who feels they have been subjected to disrespectful conduct or is being harassed or discriminated against.

Contractor includes any person or company which enters into a contract with the Board or a school to provide services or goods to the Board or a school, or any employee or agent who acts on behalf of such person or company.

Employee under these guidelines, refers to any employee of the Halton District School Board. The complaint processes available to employees are also available to volunteers and, for that purpose, the word "employee" should be read to include volunteer.

Trustee under these guidelines, refers to a member of the Board of Trustees of the Halton District School Board.

Respondent under these guidelines, refers to any person who is accused of the disrespectful, harassing or discriminatory behaviour.

Student includes all persons, regardless of age, who are enrolled in any program offered by the Halton District School Board.

Volunteer includes any parent or other community member who provides assistance in classrooms or around the school, or who belongs to any school or board committee and who is not remunerated for his/her activities.

## **5. Resolution Procedures**

### **5.1 *Who can use these Procedures?***

Any employee, student, trustee or volunteer has the right to file a complaint about situations which they believe to be disrespectful, discriminatory or harassing behaviour, whether they are directly involved as the victim of the behaviour or have observed the behaviour exercised against another or others.

The procedures set out below should also be used by any complainant who believes they have been the subject of any act of reprisal for bringing an instance of disrespectful, discriminatory or harassing conduct to the attention of the Board through these procedures or otherwise.

Disrespectful conduct, harassment or discrimination involving a student of the Board will be addressed under the Safe Schools Act and should be reported to the school or Board administration.

### **5.2 *Locations Affected by these Procedures***

These Procedures are intended for all locations where business or social activities of the Halton District School Board are conducted. Disrespectful conduct, discrimination or

harassment can include incidents that happen away from Board property outside of normal business hours that are linked to the workplace and employment or have a detrimental impact on the workplace.

### 5.3 *Timelines*

A complaint should be brought to the attention of the Board within six (6) months of the occurrence of the events which gave rise to the complaint. However, where a reasonable circumstance exists for failing to bring the complaint within six (6) months and the delay would not result in any prejudice to the respondent, a complaint may be accepted beyond the six (6) month limit.

### 5.4 *Mediation*

At any time throughout the process, either the complainant or respondent or the official responsible for conducting the investigation may request mediation of the complaint. If all other parties (including the Board) are in agreement, the process will be adjourned in order that mediation may be conducted. Mediation will be facilitated on a without prejudice and “off the record” basis by a mediator who has had training in mediation. Without prejudice and “off the record” mediation means nothing that is said by any party in the course of the mediation may be used against them should the mediation not be successful and the investigation be resumed. A representative of the Board will be a party in the mediation. Should the mediation be successful, the agreement reached between the parties will be confirmed in writing and signed by all parties.

***Mediation may not be appropriate in all cases. For example, mediation may not be appropriate between a student and a teacher because of the imbalance in authority and power. Mediation is voluntarily entered into by both parties, signals that neither party wants the concern(s) to escalate, and that all parties hope to attain a mutually agreeable resolution***

### 5.5 *Written Records*

Any person who believes that they are the victim of disrespectful conduct, harassment or discrimination should keep a diary or record of the incident. Such record should include the day, time and location of the incident, together with details of what occurred and any witnesses who may have observed the conduct.

### 5.6 *Confidentiality*

The complainant and respondent and any witnesses interviewed in the investigation of a complaint, together with the Board official(s) involved in dealing with the complaint, will be expected to maintain strict confidentiality about the complaint. However, it must be understood that, because of the Board’s obligations under the *Human Rights Code*, the Board cannot promise any person absolute confidentiality.

The names of the complainant, respondent or witnesses will not be disclosed except as may be necessary for the purposes of carrying out the resolution procedures provided for in these guidelines or where a legal process has been taken against the Board.

### 5.7 *Alternative Routes for Dealing with Complaints*

Notwithstanding anything else provided for in these resolution procedures, where, in unusual or extenuating circumstances, the Board determines that a complaint should be dealt with outside these resolution procedures, then any other procedure which the Board determines to be appropriate in the particular circumstances will be followed.

Nothing in these procedures should be interpreted as denying or limiting access to other avenues of redress open under the law.

***NOTE: At any stage in, before or after this process, a complainant may choose to refer the complaint to the Police, the Human Rights Tribunal of Ontario, or their Professional Organization or Association. The Executive Officer of Human Resources may choose to involve the Police.***

#### 5.8 *Complaint Procedure* (follow checklist below)

In some circumstances, STEP 1 may be bypassed and procedures may be started at STEP 2 by the complainant, respondent, immediate supervisor or Executive Officer, Human Resources OR STEP 3 may be initiated at the outset. In many cases a difference in actual or perceived authority or power will make the strategies outlined in STEP 1 inadvisable. In any event, these suggestions are not preconditions to filing a formal complaint.

***NOTE: WHEN A STUDENT IS INVOLVED, START AT STEP 2.***

***Complainants and respondents may seek guidance or counselling through the Board's Employee Relations and Workplace Investigations Officer (Human Resources), Employee and Family Assistance Program, from a supervisor, a union or association representative, support services, or Superintendent of Education, or where appropriate (e.g. student complainant) through the Principal.***

#### **STEP 1**

##### **(THE MAJORITY OF CASES ARE RESOLVED AT THIS STEP.)**

Where possible, the complainant should advise the respondent that they consider the conduct in question to be offensive and request the respondent to stop. If the respondent fails to stop, or if the complainant does not feel comfortable in confronting the respondent in the first place, then the complainant should move to STEP 2.

In many instances the respondent does not realize that their behaviour is unwelcome and offensive, and often this will stop the offensive behaviour.

#### **STEP 2**

The complainant or witness will contact the immediate supervisor and establish an agreed to plan of action for addressing the concern(s). The immediate supervisor is required to contact the Executive Officer of Human Resources, or designate(s) for a consultation within 24 hours. *(If the immediate supervisor is the complainant or respondent then contact the Executive Officer of Human Resources), or designate.*

This plan of action may include:

- 1) the arrangement of a meeting between the immediate supervisor, complainant and the respondent to discuss and reach a resolution,
- 2) the arrangement of a meeting between the immediate supervisor and the respondent to discuss the concern(s),

- 3) referral of the concern(s) to STEP 3,
- 4) referral to other procedures as the Board considers appropriate.

Any agreement reached between the parties will be confirmed in writing. Each party receives a copy and a copy is also forwarded to the Human Resources department. If no agreement is reached, move to STEP 3.

### **STEP 3**

STEP 3 can be entered into at any point, including failure to reach resolution at STEP 1 and/or STEP 2, or, if the source of the complaint is the complainant's supervisor.

To enter into STEP 3 contact the Executive Officer of Human Resources, or designate(s), who will co-ordinate the process from this point forward.

A meeting will be set up between the complainant and the Executive Officer of Human Resources, or designate(s) to discuss the complaint.

If it appears to the Executive Officer of Human Resources, or designate(s), after meeting with the complainant, that the complaint may be resolved informally, an effort to do so will be made by the Executive Officer of Human Resources, or designate(s). This may involve meeting with the respondent separately and/or convening a meeting between the complainant and the respondent; alternatively, the matter may be referred to mediation or some other resolution satisfactory to the complainant and the Board may be entered into.

Where the matter is not conducive to informal resolution, or where the informal efforts to resolve the complaint have failed or have not been completed within one (1) week (or such longer period as the complainant may agree to), the complaint will, if it raises a breach of the *Human Rights Code*, be referred to the next stage of the resolution process.

Note: If it appears to the Executive Officer of Human Resources, or designate(s), at the point the complaint is received that the complaint would not likely be settled informally, then the complaint will be processed to STEP 4.

### **STEP 4: Filing of Formal Complaint and Investigation**

The complaint must be put in writing on the Disrespectful Conduct, Discrimination & Harassment Formal Complaint Form (available on [myhdsb.ca](http://myhdsb.ca)), and forwarded within five (5) working days to the Executive Officer of Human Resources, or designate(s) (hereafter referred to as "the investigator"). The investigator will meet with the complainant to ensure that they fully understands the particulars of the complaint and to obtain the names of any witnesses or other persons who the complainant feels may be helpful to the investigation. (Should the complainant require a longer period to complete their written complaint for a justified reason, a longer period will be provided.)

The investigator will undertake to investigate the complaint within five (5) working days of the receipt of a complaint form. In exceptional situations, upon approval of the Executive Officer of Human Resources, an outside investigator may be retained and timelines extended.

Prior to interviewing the respondent, the investigator will provide the respondent with a summary of the allegations to allow the respondent to prepare for the interview.

The investigator will interview the respondent(s) and all persons named as witnesses in the complaint. If it appears to the investigator that other persons, not named, may be able to contribute relevant information to the investigation, every effort will be made to interview these potential witnesses. The investigation shall be completed as expeditiously as possible.



(In most circumstances, the complainant will be interviewed first and the respondent will be interviewed second, given that the respondent has the right to reply fully to allegations made against them, including dates, times, locations and name their witnesses.)

All participants in the investigation process will be required to sign a confidentiality agreement.

The investigator shall complete a final report and, should it appear that disciplinary action may be required as a consequence of the investigation, the investigator shall confer with the Executive Officer of Human Resources, or designate(s) if necessary, to determine the appropriate discipline.

The investigator shall, together with any other necessary Board official, meet individually with the complainant and the respondent to provide each of them, orally, with a summary of the conclusions reached by the investigator and the actions, if any, that the Board will take. The information provided in this meeting will be confirmed in writing to the complainant and to the respondent.

*In the case of students under the age of 16, documents required to be sent under this Section will be copied to the respective parent/guardian.*

### **RESOLUTION PROCEDURES INVOLVING STUDENTS**

Each school will include in its Student Code of Behaviour a definition of discrimination and harassment as outlined in these guidelines, as well as the possible courses of action and consequences deemed appropriate where a student commits an offence under the terms of these guidelines.

#### **Student Complaints against Students**

Where a complaint of disrespectful conduct, discrimination or harassment by a student against a student, or where circumstances occur which suggest that disrespect, discrimination or harassment of a student might have occurred come to the attention of a teacher, or other staff member, such complaint must immediately be brought to the attention of the Principal or Vice-Principal. The procedure followed to deal with the complaint or the circumstances will be those provided for under the Student Code of Behaviour, or as determined appropriate by the Principal in the circumstances.

#### **Complaints by Staff, Volunteers or Contractors against Students**

Where a staff member, volunteer or contractor complains that a student has disrespected, discriminated against or harassed them, the individual shall bring the complaint to the attention of the Principal and the matter will be dealt with under the Student Code of Behaviour. The Principal may bring the matter to the attention of the Executive Officer of Human Resources, or designate(s), who may direct that a member of the Human Resources department become involved in dealing with the complaint.

#### **Student Complaints against Staff, Volunteers or Contractors**

A complaint by a student who believes that they are being disrespected or harassed shall start at STEP 2, Section 5 of these procedures as soon as possible. A parent, member of the school staff or volunteer who receives a complaint of disrespectful conduct or discrimination or harassment from a student, or who is aware of circumstances which suggest the occurrence of discrimination or harassment against a student, shall bring the matter to the attention of the Principal immediately, or Superintendent of Education, as appropriate.

In the event the complaint involves circumstances which raise a suspicion on reasonable grounds that the child may be in need of protection, steps will be taken immediately to contact the Children's Aid Society (see the Board's Procedure on Child Abuse). However, the Board's obligation to deal with the matter is not necessarily satisfied by this action. In each case where a report is made to the Children's Aid Society, a determination will be made by the Executive Officer of Human Resources whether further action under this or any other procedure should be taken.

The Principal or designate will meet with the student complainant at the earliest opportunity. The Principal should be accompanied at this meeting, and at any other meetings with the student, the respondent or student witnesses, by a Vice-Principal, other teacher or the Executive Officer of Human Resources, or designate. Note: If the respondent is an employee of the Board or a contractor with the Board, a representative from the Human Resources department may accompany the Principal or may act in place of the Principal.

### **COMPLAINTS AGAINST SENIOR MANAGEMENT or MEMBERS of the BOARD of TRUSTEES**

A complaint against a Supervisory Officer, other than the Director of Education, or a member of the Board of Trustees will be made directly to the Director of Education. A complaint against the Director of Education will be made directly to the Chair of the Board of Trustees.

Where such a complaint is received, the Executive Officer of Human Resources will assist the Director of Education or Chair of the Board to engage the services of an outside consultant to conduct an independent investigation. The consultant will meet with the complainant and the respondent prior to submitting a final report in order to share the preliminary conclusions and to obtain any further information which either may have to provide to the consultant. The consultant's report will be limited to findings of fact.

Where the report finds that inappropriate conduct has been engaged in by the respondent, the Director of Education in the case of a Supervisory Officer or the Board of Trustees in the case of the Director of Education or member of the Board of Trustees will determine the correct action to be taken.

A meeting will be held between the Director of Education or Chair of the Board, or designate and the complainant and respondent, individually, to advise them, orally, of the findings of the consultant and to advise of the actions, if any, which the Board proposes to take. The results of this meeting will be confirmed in writing. The Executive Officer of Human Resources may provide advice or consultation during this process.

### **OUTCOMES**

Where the complaint is upheld, one of the following consequences may be imposed for a respondent:

- a) *Where the respondent is an employee* – the respondent may be required to undergo sensitivity training; may be counselled about their inappropriate conduct; may be subject to discipline from a warning letter up to, and including, dismissal; or may be subject to such other consequence deemed appropriate.
- b) *Where the respondent is a member of the Board of Trustees* – the respondent may be subject to penalty or censure as directed by the Chair of the Board and/or Director of Education.
- c) *Where the respondent is a contractor* – the respondent may receive a letter counselling them not to undertake such conduct in the future; if the contractor is a company, the company may be asked to refrain from sending the employee who has been guilty of

disrespectful conduct, harassment or discrimination (if necessary, a trespass notice may be issued against the individual); may have their contract cancelled; may be denied access to the school, classroom, or Board offices (as permitted under s. 265(1)(m) of the *Education Act*); or may be subject to such other consequence deemed appropriate.

- d) *Where the respondent is a volunteer* – the respondent may receive a letter counselling them; may receive a letter of warning; may be advised that they are no longer permitted to act as a volunteer; may be denied access to the school, classroom, or Board offices (as permitted under s. 265(1)(m) of the *Education Act*; or may be subject to such other consequence deemed appropriate.
- e) *Where the respondent is a student* – they will be dealt with under the Board’s student discipline policies and procedures.

Where the complaint is not upheld, no consequences will be imposed for the respondent unless it is determined that, while the respondent did not breach the *Human Rights Code*, neither did they act appropriately. In that event, one of the consequences set out above may ensue. Where the complaint is not upheld, there shall be no consequences for the complainant unless it is determined that the complaint was made vexatiously or otherwise in bad faith against the respondent. In this event, the complainant may be subject to any one of the consequences outlined above.

### **DOCUMENTATION**

Documentation, including the resolution agreement, all reports, the complaint form, all material provided to the investigator(s) by any of the parties, as well as letters sent to the parties, will be kept in a secure area which will be maintained by the Human Resources Department. This information may be stored electronically.

Such documentation will be kept for at least seven years. At the end of that period, the Executive Officer of Human Resources will determine whether the documentation should be retained for a longer period or disposed of. Any file which is retained will be reviewed, and a decision regarding retention or disposal made, at least every two years after its initial retention.

Documentation relating to students will also be maintained by the Principal based on the school’s normal policies in respect of student records. Documentation pertaining to a complaint will only be placed in the student’s OSR where the Principal deems such action to be necessary or where it is required by law

### **OTHER OVERLAPPING PROCEDURES**

The initiation of other proceedings by a complainant which may duplicate the processes under these guidelines will not result in the termination of any processes commenced under these guidelines except where carrying on the process may result in prejudice to the Board. The Executive Officer of Human Resources will be responsible for making the decision to terminate or, if a decision to terminate has been made, to reinstitute a process which has been commenced under these guidelines.