

<b>Topic:</b>	<b>Workplace Investigation Process</b>
<b>Effective:</b>	<b>September 2020</b>
<b>Cross-Reference:</b>	<b>Administrative Procedure – Violence Prevention in the Workplace; Respectful Workplace Free of Discrimination and Harassment; Child Abuse Reporting; Progressive Discipline; Fraud Prevention and Management; Code of Ethics; Policies – Respectful Workplace; Discrimination and Harassment, Employment Equity; Fraud Prevention; Code of Ethics; Occupational Health and Safety Act</b>
<b>Revision Date:</b>	
<b>Review Date:</b>	<b>September 2022</b>
<b>Responsibility:</b>	<b>Executive Officer of Human Resources</b>

**INTENDED PURPOSE:**

As part of a commitment to fostering and maintaining a healthy, safe and positive workplace environment, the Halton District School Board recognizes the need to provide staff, students, parents, volunteers and trustees a fair and transparent mechanism with which complaints of misconduct are investigated and addressed, thoroughly in an unbiased and professional manner.

**PROCEDURES:**

The following administrative procedure outlines the process by which the Human Resources Department undertakes a formal workplace investigation into complaints of misconduct, including discrimination and harassment.

This procedure applies to all employees (including paid, volunteer or Trustee), parents or students who wish to address these behaviours, which may have occurred in any workplace of the Board.

The process outlined in this procedure is invoked following a preliminary gathering of information regarding the initial complaint wherein the investigator makes the determination that, given the nature of the allegations brought forward by the complainant, it is appropriate and necessary in the circumstances to initiate a formal workplace investigation.

**1. Definitions**

- **Complainant:** The individual(s) alleging they were subject or witness to misconduct.
- **Evidence:** Information gathered by the investigator as part of an investigation. This includes but is not limited to:
  - Interviews
  - Text messages
  - Emails
  - Notes
  - Photographs
  - Recordings
  - Documents
  - Diagrams and pictures
  - Other written, non-written, hard-copy and electronic materials
- **Reprisal:** Action taken in retaliation against an individual for making a report or complaint, or participating in the investigation process that deters, or was intended to deter, the individual from speaking out against misconduct and from participating in the investigation process.
- **Respondent:** The individual(s) against whom the complaint is filed.  
When a complaint has been brought against an individual, it means that someone has made a formal request of the Human Resources Department to investigate or has brought to the Department's attention an incident that involves that individual's actions. Being named in a complaint does not solely establish that misconduct or an employment violation has occurred.

- **Standard of Proof:** A standard applied when deciding whether an incident involving the respondent has occurred and is therefore substantiated. The standard used in a workplace investigation is the “*balance of probabilities*” standard, which means the alleged misconduct is more probable than not to have occurred.
- **Vexatious Complaint:** A report that is made in bad faith and is intended to harass or annoy the respondent or is made maliciously without reasonable grounds.
- **Whistleblower:** A person who discloses wrongdoing that is suspected to be illegal, unethical, or inappropriate and wishes to remain anonymous to the extent that is possible.
- **Witness:** Any individual who has knowledge of or information relevant to the misconduct being reported.

2. **The Complaint:** Complaints can be made through many avenues:
  - a. Employees may witness events and bring their concerns in relation to these events to their immediate supervisor. The concerns are subsequently forwarded to Human Resources.
  - b. Complaints made against employees to the Children’s Aid Society (CAS) often result in employment investigations, whether the allegations are verified by CAS or not.
  - c. Anonymous or whistleblower complaints may come to Human Resources by way of a supervisor or senior administration, or may be sent directly to Human Resources.
  - d. Formal complaints using the Respectful Workplace Free of Discrimination and Harassment Administrative Procedure may also result in a workplace investigation.
  - e. Allegations requiring a workplace investigation include, but are not limited to: workplace harassment, harassment under the Human Rights Code including sexual harassment, discrimination, disrespectful conduct, fraud and theft. Not all complaints, however, result in a workplace investigation. Informal steps may be used to resolve some complaints, such as mediation or collaborative problem solving.
3. **Notification:** Following the preliminary gathering of information regarding the initial complaint, and prior to interviewing the respondent, the complainant and respondent will be informed in writing of the general nature of the allegations being investigated, and their required participation in the investigation process by the investigator.
4. **Information Gathering:** Once a determination has been made by the Human Resources Department to investigate a complaint, the investigator begins the process of gathering information and collecting evidence in relation to the alleged incident or action. Typically, the information that is gathered as part of an investigation includes, but is not limited to, interviews with the complainant, respondent and relevant witnesses, and relevant evidence such as:
  - a. Text messages
  - b. Emails
  - c. Notes
  - d. Photographs
  - e. Recordings
  - f. Documents
  - g. Diagrams and pictures
  - h. Other written, non-written, hard-copy and electronic materials
5. **Timelines:** The Human Resources Department works to investigate complaints as thoroughly and expeditiously as possible, completing the necessary due diligence to resolve complaints. The exact timeline is case specific. Participants in an investigation will receive updates from the investigator regarding the timeline for resolution.
6. **Role of Investigator:** The investigator is a trained individual assigned to investigate the complaint who is neutral and does not have an interest in the outcome of the investigation. The role of the investigator is to gather relevant evidence, determine whether the alleged incident(s), behaviour or event occurred and if that conduct violated Board policies or governing statutes.

The investigator makes such determinations based upon a “*balance of probabilities*” standard of proof, which means, based on the information available, what more likely than not occurred.

7. **Representation:** Where applicable, participants will be advised of their right to Union or Employee Association representation during the course of the investigation.
8. **Investigation Report:** Once the investigator has completed interviewing the complainant, respondent, and any relevant witnesses, and gathering information, the investigator reviews the information and determines which information is relevant and will be used as part of the decision-making process.

The investigator will write a final investigation report that documents the process and the findings of the investigation. The report will then be submitted to the Executive Officer of Human Resources for review.

9. **Administrative Closure:** Following a review of the report by the Executive Officer of Human Resources, or designate, a summary of findings will be provided to the complainant and respondent.

### **EXTERNAL INVESTIGATIONS:**

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. A complaint against a member of the Human Resources Department will be made directly to the Executive Officer of Human Resources. 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.

Where there are allegations of harassment or discrimination against a principal or vice-principal, and it is appropriate and necessary in the circumstances to initiate a formal workplace investigation, the Executive Officer of Human Resources will engage the services of an outside consultant to conduct an independent investigation.

At the discretion of the Executive Officer of Human Resources, the Board may retain the services of an external investigator outside of the parameters set out above.

### **MATERIAL FRAUD:**

In cases where the preliminary investigation indicates material fraud may be involved, the Executive Officer of Human Resources, in consultation with the Superintendent of Business Services and the Director of Education, may retain the expertise of a forensic auditor to conduct that aspect of the investigation. If a finding of material fraud is made, the Audit Committee will be informed by the Superintendent of Business Services. The Audit Committee will then inform the Board as part of their statutory reporting responsibilities. The Director, in consultation with Board legal counsel, may inform the Halton Regional Police Services.

### **OUTCOMES:**

Where the complaint is upheld, corrective action may be imposed. More specifically, the respondent may be required to undergo training; may be counselled about their inappropriate conduct; may be subject to discipline or to such other consequence deemed appropriate.

### **CONFIDENTIALITY:**

The complainant, respondent and any witnesses interviewed in the investigation of a complaint, together with the Board official(s) involved in dealing with the complaint, are required to sign a confidentiality statement, and will be expected to maintain strict confidentiality about the complaint. However, it must be understood that, because of the Board’s obligations under the law, 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, where legally required or where a legal process has been taken against the Board.

**PARTICIPATION AND INTERFERENCE:**

Any participant (complainant, respondent, witness) in this process has an obligation to cooperate and refrain from interference in the investigation. Interference in the investigation may result in corrective action. Non-participation by the respondent or witness will not prevent the investigation from being completed; the investigator will make a finding based on the information available to them or that the investigator was reasonably able to obtain.

**REPRISAL:**

The Board prohibits retaliation against anyone who raises a concern or makes a report of misconduct. The Board also prohibits retaliation against anyone who cooperates with or participates in a Board investigation or process to resolve a complaint or report of misconduct.

When an individual makes a report of misconduct they become part of the Board investigation process. Should an individual believe that they are the subject of an act of retaliation as a result of making a report, they should contact the Human Resources Department, or the investigator assigned to the investigation, immediately for assistance.

**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.

Information and documentation regarding corrective action will be kept in the employee personnel file and maintained by Human Resources.