

Procedure Title	Prevention and Resolution of Harassment, Discrimination, Objectionable Behaviour and Human Rights Violations		
Date of Issue	May 20, 2003	Related Policy	BP 7520-D, BP 7523-D
Revision Dates	September 18, 2007; October 19, 2011; June 11, 2014; March 1, 2017; December 19, 2017; November 25, 2020; April 28, 2021; June 22, 2022 (reviewed); March 8, 2023; April 19, 2023	Related Forms	AF 7524
Review Date	Annual	Originator	Administrative Council
References			
Occupational Health and Safety Act; Canadian Charter of Rights and Freedoms; Ontario Human Rights Code; BP 6850-D "Maltreatment of Staff and/or Students"; BP 6820-D "Safe and Accepting Schools"; AP 6820-D "Suspensions and Expulsions"; BP/AP 7530-D "Progressive Discipline – Employees"; Ontario Human Rights Commission policy on preventing discrimination because of gender identity and gender expression (Appendix C-Best Practices Checklist); BP/AP 6303-D "Equity and Inclusive Education"; Municipal Freedom of Information and Protection of Privacy Act; Ministry of Labour's "Workplace Violence and Harassment: Understanding the Law"; Ministry of Labour's Code of Practice to Address "Workplace Harassment Under Ontario's Occupational Health and Safety Act; BP/AP 5450-D "Textbooks and Supplementary Learning Resources"			

1.0 RATIONALE

- 1.1 Bluewater District School Board is committed to the maintenance of a work and school environment that is free from any form of discrimination, harassment, objectionable behaviour, and/or human rights violations, and will implement a progressive discipline approach in response to any forms of this type of behaviour.
- 1.2 Discrimination and harassment, under the Ontario Human Rights Code, is based on legislated prohibited grounds related to race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability, and is considered unacceptable.
- 1.3 This procedure is intended to prevent discrimination and harassment through greater responsiveness to their deleterious effects, and to ensure that human rights complaints are dealt with quickly and effectively through consistently applied procedures.

2.0 APPLICATION

- 2.1 This procedure applies to all Bluewater District School Board students, employees, trustees and other users such as members of committees, clients of the board, parents, volunteers, permit holders, contractors, and employees of organizations not related to the board but who nevertheless work on or are invited onto board premises. This procedure covers human rights complaints, discrimination, harassment, and/or objectionable behaviour by such persons which occur outside the study/workplace, and which are proven to have repercussions that adversely affect the board's learning/working environment.
- 2.2 Threatening, violent, or harassing student misconduct is dealt with by the safe and accepting schools provisions of the Education Act and board policy BP 6820-D "Safe and Accepting Schools". Part III.0.1 and V of the Occupational Health and Safety Act (OHSA) cover harassment and risks of workplace

violence that may arise because of student behaviours. This procedure will apply in appropriate circumstances.

- 2.3 Nothing in this procedure denies or limits access to other avenues of redress available under the law, or through the filing of a grievance, or through progressive discipline.

3.0 DEFINITIONS

NOTE: *Please refer to Appendix A for examples of different forms of harassment and discrimination.
*Staff may utilize **AP 6303-D** Appendix B - Inclusive Language Guidelines, as a guide for the use of respectful language in professional and business communications. These guidelines may also help users recognize and avoid bias and discrimination.

a) Workplace Discrimination

Discrimination is defined as inappropriate treatment of a person or group based on the following, but not limited to, grounds: age, ancestry, appearance, citizenship, colour, creed (faith), disability, ethnic origin, family status, gender, gender identity (please refer to Appendix B: Best Practices Checklist), gender expression (please refer to Appendix B: Best Practices Checklist), marital status, place of origin, race, receipt of public assistance, record of offences, sexual orientation, socio-economic status. Discrimination includes overlooking or accepting discrimination by others, or discrimination carried out through another person.

b) Workplace Harassment

Workplace harassment is defined in OHSA as "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" and includes workplace sexual harassment [subsection 1(1)]. Therefore, harassment is any conduct or comment, which is based on the grounds of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or a conviction for which a pardon has been granted or a record suspended, and might be perceived as placing a condition or restriction on any aspect of employment or learning; or which creates a working or learning environment that is intimidating, humiliating, or uncomfortable.

c) Workplace Objectionable Behaviour

Objectionable behaviour is often but not always, persistent, ongoing, vexatious conduct or communication in any form, of attitudes, beliefs, or actions towards an individual in the workplace which might reasonably be known to be unwelcome. A single serious act or expression can constitute objectionable behaviour.

What is NOT Objectionable Behaviour or Workplace Harassment?

Reasonable action or conduct by a manager/supervisor that is part of his or her normal work function will not be considered objectionable behaviour or workplace harassment. This is the case even if there are sometimes unpleasant consequences for a worker. Examples may include changes in work assignments, scheduling, job assessment and evaluation, workplace inspections, relationships between consenting adults which are voluntary and are based on mutual attraction, and disciplinary action. Differences of opinion or minor disagreements between co-workers will also not be considered objectionable behaviour or workplace harassment. In addition, any behaviour that would meet the definition of workplace violence is addressed in policy BP 7523-D "Workplace Violence".

d) Workplace Sexual Harassment

Sexual harassment is defined as:

- (1) 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
- (2) 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.

e) Working and Learning Environment

The working and learning environment is any place where employees, students and other users perform work or work-related duties or functions (including social functions). Schools and school-related activities, such as extracurricular activities and excursions, comprise this environment, as do board offices and facilities. Conferences and training sessions fall within the scope of this policy, as does the board's courier system, fax, email, phones, mailboxes, and all forms of electronic communications.

f) Social Media

Employees must be aware that their conduct on social media websites, even off-duty, may rise to a breach of this procedure. Guidelines for the appropriate use of social media can be found in AP 2313-D "Social Media and Web Publishing".

g) Employee

Employee includes all persons employed by Bluewater District School Board.

h) Other Users

The words other users include all persons, who are neither students nor employees while on board premises or attending board or school programs/functions at other premises or in a business/social community relationship with the board. Consequently, this procedure applies to, and covers all members of consultative committees, clients of the board, parents, volunteers, permit holders, contractors, and employees of organizations not related to the board but who nevertheless work on, or are invited onto, board premises.

i) Balance of Probabilities

The balance of probabilities is a standard of proof, based upon the weighing of evidence to determine the most appropriate judgement. It is often distinguished from another standard of proof, "beyond a reasonable doubt", used in the criminal justice system.

j) Standard of Proof

A standard of proof is used to make judgements in legal proceedings. For the purpose of this procedure, a civil standard of proof will be utilized; that is, proof on a balance of probabilities.

k) Threshold Assessment

A threshold assessment is an initial evaluation conducted by the superintendent of education responsible for human resources services, or designate, which is used to determine whether an incident is covered by this procedure and governing policies and, if so, whether it is sufficient to warrant formal investigation.

l) Complainant

Complainant refers to any employee who believes that they are being harassed or discriminated against.

m) Respondent

Respondent refers to any employee who is accused of the harassing or discriminatory behaviour.

n) Reprisals

May include threats, intimidation, denial of opportunity or undue negative focus on the rights of individuals or groups who claim and enforce their rights under this procedure.

o) Negative or "Poisoned" Environment

Is an environment created and fostered by acts or omissions that maintain offensive or intimidating climates for study or work? Poisoned learning environments include inappropriate or non-inclusive curriculum and pedagogy, bias or discriminatory barriers in existing policies, programs, or assessment procedures, and discriminatory comments made by teachers and other employees. Poisoned working environments thrive where there is managerial or supervisory condoning of discriminatory or harassing behaviour. Poisoned environments can also be created where there is inattention to fair and equitable recruitment and employment policies, practices, and procedures.

4.0 PROCEDURAL OVERVIEW AND INFORMAL RESOLUTION
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4.1 OVERVIEW

4.1.1 GENERAL INFORMATION

- a) This procedure provides a mechanism for dealing with complaints of human rights violations, discrimination, harassment, and/or objectionable behaviour occurring in the working and learning environment.
- b) All those who are covered by this procedure are entitled and encouraged to report human rights violations, discrimination, harassment, and/or objectionable behaviour, and are entitled to have access to the complaint procedures. In addition, nothing in the procedures precludes individuals who believe they are targets of (or have witnessed) such violations/behaviour, from directly expressing that the behaviour is inappropriate, and must be stopped immediately. Many complaints can be resolved quickly and effectively using this approach. It is imperative that persons in supervisory and managerial positions address, and attempt to resolve, any complaint made under this procedure as expeditiously as possible.
- c) Third party disclosures will only go forward (to the formal stage) with the affected individual's consent.
- d) Those responsible for the resolution of complaints have the right to seek advice from the Ontario Human Rights Commission, without the Commission taking over the process, until such a request is made by the complainant.
- e) If the allegations of human rights violations, workplace harassment, discrimination and/or objectionable behaviour involve Senior Administration, the employer will refer the investigation to an external investigator to conduct an impartial investigation.

4.1.2 OTHER AVENUES FOR RESOLVING COMPLAINTS

Nothing in this procedure denies or limits access to other avenues of redress available under the law, through the filing of a grievance, or through the progressive discipline process. In such a case, this process shall not cease until the parties and their respective representatives have met with the superintendent of education responsible for human resources services to determine which dispute resolution process will proceed, and which one(s) will be held in abeyance pending completion of the chosen process.

4.1.3 TIMELINES FOR INITIATING A COMPLAINT (INFORMAL OR FORMAL)

- a) It is encouraged that all complaints be filed within six months (6) of the most recent instance of alleged human rights violation/discrimination/harassment.
- b) An informal complaint outside this timeframe may be considered by consulting the principal, or appropriate supervisor.
- c) Formal complaints filed outside this time frame may be considered by consulting the superintendent of education responsible for human resources services when reasonable explanation for the delay is provided, and the delay was incurred in good faith with no substantial prejudice will result to any person affected by the delay.

4.1.4 INVESTIGATION OF COMPLAINTS

- a) The board shall ensure that, in appropriate circumstances, an investigation is conducted when:
 - i. the employer/supervisor becomes aware of an incident of objectionable behaviour, workplace harassment discrimination and/or a human rights violation by the worker who allegedly experienced it, or from another worker; or

- ii. a complaint, whether in writing or verbal, is made to the employer/ supervisor/ designate.
- b) An investigation must be completed in a timely manner, taking into consideration any extenuating circumstances that may warrant a longer investigation (e.g., more than five witness, key witness unavailable due to illness).
- c) The investigator must not be the respondent and must not be under the direct control of the respondent. The investigator must be able to conduct an objective investigation.

4.1.5 CONFIDENTIALITY

- a) It is the duty of the supervisory and managerial personnel to maintain confidentiality in the complaint process. All complainants, respondents and other persons involved with the complaint processes under this procedure will ensure that all matters remain confidential. Witnesses should be informed that supervisory and managerial personnel, in obtaining a statement, will maintain said statement in confidence, subject to their ability to conduct a full and thorough investigation.
- b) Notwithstanding the above, procedural fairness requires that the respondent to a complaint be apprised of the nature of the complaint and by whom it has been made so that they have an opportunity to speak to the allegations. This may require the disclosure of witness names and statements to the parties (see 4.1.6).
- c) The board may be required to provide information obtained during an investigation to an outside agency that has the right to require information otherwise protected by the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA).

4.1.6 RECORDS

- a) All correspondence and other documents related to the complaint must, subject to the Municipal Freedom of Information and Protection of Privacy Act, be marked "PRIVATE AND CONFIDENTIAL" and be stored in a locked and secure file in the Human Resources Services department and retained according to the Bluewater District School Board Classification and Retention Schedule.
- b) Complainants are encouraged to keep a detailed record of the incident(s) leading to their complaint (dates, times, locations, witnesses, etc.). Failure to keep such a record will not invalidate a complaint, but such information will be of assistance.

4.1.7 RESPONDENTS

Individuals who are named as respondents in a complaint have a right to know in a timely manner that they are the subject of a complaint, who the complainant is, what the allegations are and what approach to a resolution is being considered. In particular, a respondent has a right to know the specifics of an allegation, including times, dates and alleged conduct. Respondents will be given a copy of the complaint (where applicable) and given time to prepare a full and complete response to the allegations.

4.1.8 ASSISTANCE FOR COMPLAINANTS, RESPONDENTS AND WITNESSES

- a) Prior to initiating any complaint (informal or formal), and/or throughout the complaint process, complainants, respondents, and witnesses have a right to assistance and support. The following people may provide support:
 - i. parent/guardian/other caregiver
 - ii. trained resource person
 - iii. professional support staff
 - iv. union/federation/association representative
 - v. employee or colleague

- vi. translator/interpreter (if necessary).

Either party to the complaint may be accompanied during any proceedings by another person of their choosing.

4.1.9 MISUSE OF THE COMPLAINT PROCEDURES

At any time during the process, if there is a determination by the superintendent of education responsible for human resources services (on a balance of probabilities) that a complaint has been filed in bad faith, the complaint process may discontinue, and disciplinary action may occur.

4.1.10 REPRISALS

Reprisals for filing a complaint under this procedure are prohibited. Alleged reprisals shall be investigated as formal complaints and, if substantiated, are subject to the same consequences as complaints of workplace harassment, discrimination, or objectionable behaviour.

4.2 INFORMAL COMPLAINT (OPTIONAL)

- a) Informal resolution is a procedure that provides an opportunity for parties to resolve a dispute mutually in a respectful manner. The board encourages supervisory and managerial personnel, as well as union/federation representatives, to first attempt informal resolution as a means of resolving issues.
- b) The complainant may attempt to advise the person who is the source of the behaviour that their conduct is unwelcome, and that it is viewed by the complainant as a human rights violation, harassment, discrimination and/or objectionable behaviour. Such an approach may end the problem at this level. Supervisory or managerial personnel, as well as union/federation representatives may support/facilitate an informal resolution by informing the individual of the complainant's concern regarding the alleged behaviour and the board's expectation for appropriate behaviour, by:
 - i. providing a copy of this procedure, and/or other relevant board policies/procedures; and
 - ii. obtaining a commitment that the behaviour will stop.
- c) If either the behaviour continues, or the complainant is unable to approach the individual who is the source of the problem, the complainant will contact their immediate supervisor or the principal (If the complaint involves the immediate supervisor the complainant will contact the superintendent of education responsible for human resources services). The supervisor will then contact the superintendent of education responsible for human resources services. In the case of students involved in human rights/ harassment/ discrimination/ objectionable behaviour incidents, the principal will contact the superintendent of education responsible for human resources services, and also the appropriate area superintendent of education.
- d) Supervisors/Managers are to be proactive in investigating complaints of human rights violations, harassment, discrimination and/or objectionable behaviour, and must submit a report in circumstances where they are aware of possible behaviour, from whatever source, or ought to be aware of possible behaviour, including when employers employees exhibit signs of being subjected to human rights violations, harassment, discrimination and/or objectionable behaviour, such as change in behaviour, unexplained absenteeism and unexplained requests for transfers. Supervisors/Managers should be cognizant that many individuals may be reluctant to report such behaviour for a variety of reasons and should take proactive action.
- e) The superintendent of education responsible for human resources services will notify the director of education of the alleged incident(s). The superintendent of education responsible for human resources services will meet with respondent to discuss the complaint made against them.

Depending on the outcome of this discussion the superintendent of education responsible for human resources services may meet with both parties to bring about an informal resolution.

- f) In cases where an informal plan of action is implemented, supervisory and managerial personnel shall follow up by monitoring the situation, holding, if necessary, subsequent meetings with the parties and taking further steps to ensure that the harassing behaviour has stopped.
- g) Where disputes are resolved informally, there will be no formal reports about such disputes. Every effort will be made to protect the privacy of individuals.
- h) For informal complaints, where the parties are members of a union, federation, association or the school community, a resolution facilitated by the appropriate representative(s) is recommended, if acceptable to the parties.
- i) The process detailed in sections 6.9 Hate Prejudice and/or Bias-Motivated Violence or 6.10.2 Refractory Conduct of AP 6820-D "Suspensions and Expulsions" will be followed for students involved in harassment/discrimination incidents.
- j) The process defined in BP/AP 7530-D "Progressive Discipline - Employees" will be followed for harassment/discrimination incidents involving employees, where appropriate.
- k) At any time during the Informal Resolution process, the complainant and respondent may mutually agree to drop the complaint.

5.0 DISCRIMINATION/HARASSMENT/OBJECTIONABLE BEHAVIOUR - RESOLUTION OF FORMAL COMPLAINT (REQUIRED STAGE IF NOT RESOLVED PREVIOUSLY)

The rights of students to a respectful working and learning environment, free from discrimination, harassment and objectionable behaviour, are dealt with under other appropriate policies, legislation or regulations including, but not limited to, Codes of Behaviour, Section XIII of the *Education Act*, board policy BP 6820-D "Safe and Accepting Schools" and board and school Codes of Conduct. Students should contact their vice-principal, principal, or, where appropriate, their area superintendent of education, for clarification on the process to be followed. The process detailed in sections 6.9 Hate, Prejudice and/or Bias-Motivated Violence or 6.10.2 Refractory Conduct of AP 6820-D "Suspensions and Expulsions" will be followed for students involved in human rights violations, harassment, discrimination, and/or objectionable behaviour incidents.

5.1 INITIATING A FORMAL COMPLAINT

- a) In cases when the matter is not resolved in the informal complaint process, the complainant will provide a written statement documenting the nature of the complaint, using the formal complaint form (AF 7524 "Workplace Harassment/Discrimination/Objectionable Behaviour/Human Rights Violations - Formal Complaint").
- b) Employee complainants should contact their appropriate supervisor, a colleague, union, federation, or association representative, where appropriate. If an employee requires assistance in completing the formal complaint form (AF 7524), another individual such as a colleague, union, federation, or association representative can make the complaint on the employee's behalf. If the supervisor is the party alleged to be responsible for the harassment or alleged to condone the behaviour, the complaint should be reported to the appropriate manager above the supervisor.
- c) Employee respondents may wish to contact the appropriate supervisor, a colleague, union, federation, professional association, or manager. For assistance and representation throughout the complaint process, both complainants and respondents are referred to the list provided in Section 4.1.7.

- d) The superintendent of education responsible for human resources services, or designate, shall have the discretion to refuse to investigate a formal complaint, where, in their opinion, the complaint has not been made in good faith, or where the complaint does not fall under this procedure.
- e) Supervisory and managerial personnel who are contacted shall follow the procedures set out in Section 5.4—Procedures for Resolving a Formal Complaint.

5.2 RESPONDENTS TO A COMPLAINT

Individuals who are named as respondents in a formal complaint have the right to a written copy of the formal complaint form (AF 7524). As noted in section 4.1.6, the respondent has the right to know the specifics of an allegation, including times, dates, and alleged conduct. Respondents who choose to respond to the allegations must complete and return their response within five (5) working days of receipt of the AF 7524 copy to the superintendent of education responsible for human resources services.

5.3 THRESHOLD ASSESSMENT

- a) All formal complaints filed under this procedure shall be subject to an immediate threshold assessment by the superintendent of education responsible for human resources services following the receipt of the formal complaint form (AF 7524) to determine whether the alleged conduct would, if proven, meet the definition of workplace harassment/discrimination.
- b) If the superintendent of education responsible for human resources services, following this threshold assessment, determines that the report filed:
 - i. would not, if true, meet the definition of harassment, objectionable behaviour, workplace harassment as defined in BP 7520-D “Human Rights”;
 - ii. does not provide sufficient details of the alleged behaviour (provided the complainant is given notice that insufficient details have been provided and given reasonable time to provide sufficient details); or,
 - iii. is vexatious, frivolous, or trivial, has not been made in good faith or would, if investigated, constitute an abuse of the procedure; then
- c) The complainant shall be so advised, and no further action shall be taken under this procedure.
- d) The complainant or respondent may still pursue other avenues for resolution. Nothing in this procedure shall prevent a complainant from making a complaint to the Ontario Human Rights Commission.

5.4 PROCEDURES FOR RESOLVING A FORMAL COMPLAINT

In all cases, supervisory and managerial personnel have a duty to respond to and take action to resolve any alleged or suspected situations involving human rights violations, discrimination, harassment and/or objectionable behaviour.

5.4.1 FORMAL INVESTIGATION AND RESOLUTION PROCESS

- a) The Standard of Proof to be applied is the balance of probabilities.
- b) Formal complaints require an investigation of the complaint allegations. Investigators will most often be the supervisory staff of the complainant and/or respondent. Where the complainant and the respondent have different reporting structures, supervisory and managerial personnel involved will determine who the appropriate person is to take responsibility for the investigation. If the alleged respondent is the employer or supervisor of the complainant, the person chosen to perform the investigation should not be directly involved with the incident or complaint and not be directly under the control of the alleged respondent.

- c) If the respondent declines to participate in the process, the investigation shall proceed – the respondent should be encouraged to participate in the interest of a balanced and fair process.
- d) In a formal investigation, the superintendent of education responsible for human resources services shall ensure that the following steps are taken as soon as possible:
 - i. take the appropriate measures to ensure the safety of the complainant;
 - ii. notify the complainant, the respondent and witness(es) that they are entitled to support and assistance throughout the process;
 - iii. notify the director of education of the alleged incident(s);
 - iv. complete a threshold assessment;
 - v. ensure that the respondent has a copy of the complaint;
 - vi. provide an opportunity for the respondent to complete and return their response within five (5) working days of receipt to the superintendent of education responsible for human resources services (or designate);
 - vii. act as an investigator for the case, or assign a designate where appropriate;
- e) In a formal investigation, the investigator shall:
 - i. ensure that the investigation is kept confidential, and identifying information is not disclosed unless necessary to conduct the investigation;
 - ii. separately meet with the complainant and the respondent (separately) in a timely manner following of the receipt of the complaint. The purpose of this initial meeting is to ensure both parties understand the particulars of the complaint and the process of the investigation. The investigator will obtain the names of witnesses and other persons that the complainant and the respondent believe may be relevant;
 - iii. interview the complainant(s) and/or the third party reporting the complaint;
 - iv. interview the respondent so that the respondent can reply fully to allegations made against them, including dates, times, locations;
 - v. interview the named witnesses/other persons named, separately;
 - vi. collect and review any relevant documents;
 - vii. come to a conclusion whether a specific incident did or did not occur based on a balance of probabilities;
 - viii. provide a written summary of the findings, conclusions, and corrective actions to the complainant and to the respondent, providing them with an opportunity to respond to same; and
 - ix. take appropriate actions to resolve the situation (if investigator is not the superintendent of education responsible for human resources services, then the investigator should consult with the superintendent of education responsible for human resources services regarding appropriate actions).
- f) At any time during the investigation, if the complainant and respondent can reach mutually agreed upon resolution supported by the investigator, the formal investigation shall cease, and the matter declared resolved.

5.4.2 OUTCOMES IN FORMAL INVESTIGATIONS

Note: The results are not considered to be an occupational health and safety report that must be shared with the joint health and safety committee

In the event a complaint is not substantiated, no further action will be taken. However, if there is a need to restore a positive learning or working environment or if the complainant and/or respondent require counselling, appropriate steps shall be taken to meet such needs.

a) Remedial Outcomes

- i) Possible remedial outcomes are, but not limited to:
 1. counselling for the parties;

2. application of strategies to restore a positive learning/working environment;
3. mediation;
4. specific training for the complainant or respondent;
5. workshops for the staff and/or others) in the school/workplace regarding their rights and responsibilities;
6. permanent separation of respondent and complainant from each other;
7. restorative measures.

b) Disciplinary Outcomes

i) Employee Respondents

1. The appropriate supervisor or manager shall impose discipline as appropriate and consistent with the circumstances.
2. The principles of progressive discipline, as defined in BP and AP 7530-D "Progressive Discipline - Employees", will be applied in dealing with disciplinary actions under this procedure.

ii) Other User Respondents

Actions must be determined as appropriate for the individual situation and may include such responses as a letter of disapproval and warning, a revoking of permits or contracts, an issuing of a trespass warning, or other remedies as provided by the common law and/or the appropriate legislation. The involvement of the appropriate superintendent is recommended in these cases.

5.4.3 MEDIATED RESOLUTION

- a) Mediation involves an unbiased third party acting as a facilitator in direct communication between the parties who voluntarily agree to enter into this process. It is an opportunity to resolve disputes in a respectful manner. It provides the opportunity to generate a variety of options for resolution and contributes to restoring the working relationship between the parties.
- b) Where there is already a formal complaint being investigated under these procedures, at any time during the investigation, the parties may agree to hold the investigation in abeyance and attempt to achieve a mediated resolution. Mediation will occur only if the employer agrees to use it as an option in resolving a particular dispute.
- c) Mediation is appropriate when all parties agree that a mutually agreeable solution is achievable and desirable. The investigator will request approval to mediate or attain a trained mediator from the board's list of approved mediators when the parties have expressed an interest in a mediated resolution (In cases where mediation is sought, the Human Resources Services department shall provide trained mediators who are acceptable to both parties).
- d) Meetings required for mediation sessions shall be scheduled as soon as possible and, where practical, in a time and place convenient for the complainant, the respondent and the mediator.
- e) When matters are resolved through mediation, the complainant and the respondent will sign a memorandum of agreement outlining the terms to which they have agreed. Supervisory and managerial personnel shall ensure that the terms that the parties have agreed to have been met.
- f) Mediation is voluntary, and the complainant or the respondent may choose to withdraw at any time.

5.5 REVIEW OF DECISION

- a) In the event a complainant or respondent to a formal complaint has one or both of the specific concerns listed below, a request may be made to the director of education to convene a review within ten (10) business days of receiving the final decision. A reviewer will be appointed by the director.
- b) The grounds for review are:
 - i. the investigator failed to comply with these procedures;
 - ii. new evidence becomes known after the final decision, but before the expiry of the ten (10) working days limitation period for requesting a review.
- c) The reviewer will report their findings to their director, who will affirm or amend the final decision, or require that a new investigation be undertaken.

6.0 PROCEDURE REVIEW

- 6.1 Administrative Council shall review this procedure, and related board policy BP 7520-D “Human Rights”, as often as necessary, but at least annually, in accordance with subsection 32.0.1(1) of OHSA.

APPENDIX A
EXAMPLES OF DIFFERENT FORMS OF DISCRIMINATION AND HARASSMENT

The following is not an exhaustive list, but it can help one identify discrimination and/or harassment.

A. FORMS OF HARASSMENT

i. Racial/Ethnic Harassment

Racial/ethnic harassment is defined as written or verbal or physical conduct which express negative attitudes, derogation and/or hate for a person or persons based on their race, ancestry, colour, ethnic background, place of origin, language, or religion. Racial/ethnic harassment includes, but is not limited to:

- a) remarks, references, jokes or stories about a person's racial or ethnic background, colour, place of origin, citizenship, ancestry or religion which are known or reasonably ought to be known to be unwelcome;
- b) the display of racist, derogatory or offensive pictures or material;
- c) denial of promotion, benefit or opportunity on racial or ethnic grounds;
- d) denial on racial or ethnic grounds of normal co-operation, and
- e) actions that suggest or imply the inherent superiority of a particular race.

ii. Harassment on the Basis of Age

Age harassment is defined as the denial of equal treatment based on age (within the limits of other legislation), including conduct that suggests or implies the inherent superiority of a particular age.

- a) remarks, references, jokes, or the display of offensive or derogatory material about a person's age which are known or reasonably ought to be known to be unwelcome;
- b) denial of normal cooperation on the grounds of age;
- c) denial of promotion, benefit, or opportunity on the grounds of age.

iii. Harassment on the Basis of Disability

Harassment on the basis of disability is defined as offensive, humiliating or embarrassing conduct aimed at discriminating against people because of their disability, and includes, but is not limited to:

- a) remarks, references, jokes, or the display of offensive or derogatory material about a person's disability which are known or reasonably ought to be known to be unwelcome;
- b) denial of normal cooperation on the grounds of disability;
- c) denial of promotion, benefit, or opportunity on the grounds of disability, and
- d) actions that suggest or imply the inherent superiority of those who are not disabled.

iv. Harassment on the Basis of Sexual Orientation

Harassment based on sexual orientation is defined as written or verbal or physical conduct which expresses negative attitudes, derogation and/or hate for a person or persons based on their sexual orientation, gender expression or gender identity and includes, but is not limited to:

- a) remarks, references, jokes, or stories about a person's sexual orientation which are known or reasonably ought to be known to be unwelcome;
- b) intentional sharing of information related to sexual orientation, gender expression or gender identity without the consent of the individual
- c) display of derogatory or offensive material;
- d) denial of promotion;
- e) denial of normal co-operation;
- f) actions that assume a family has one male and one female as parenting partners;
- g) actions that suggest or imply the inherent superiority of a particular sexual orientation.

B. FORMS OF DISCRIMINATION

- i. **Direct Discrimination:** Any action from individuals, groups, or organizations, whether intended or unintended, which differentiates between persons based on their membership in a protected group as set out in this procedure other than special programs designed to address the conditions of individuals or groups. For example, an employer refusing a job to a qualified applicant because of the person's race is direct discrimination.
- ii. **Adverse Impact Discrimination:** Arises from policies, procedures, practices or conduct which may not be discriminatory in their intent but adversely impact individuals or groups protected by this procedure where the adverse impact arises from one of the prohibited grounds of discrimination. It includes practices that are discriminatory in their effect. For example, an employer who has a policy that requires employees to be clean shaven would discriminate against certain religious groups.
- iii. **Discrimination because of Association:** Discrimination against individuals because of their relationship or association with a person or persons identified by a prohibited ground of discrimination under this procedure. For example, the denial of equal treatment because of an association with a member of a particular race is a form of discrimination because of association.
- iv. **Harassment:** A form of discrimination defined as any conduct or comment, which is based on the grounds of sex, sexual orientation, race, ancestry, colour, ethnic background, place of origin, language or religion, age or disability and might be perceived as placing a condition or restriction on any aspect of employment or learning; or which creates a working or learning environment that is intimidating, humiliating or uncomfortable. It includes behaviour that the persons know, or reasonably ought to know, is offensive.
- v. **Accommodation:** There is a requirement to accommodate the needs of a person (short of undue hardship) on any of the grounds covered by this procedure and failure to do so is discrimination.
- i. **Hate Group Activities:** Hate group activities represent some of the most destructive forms of human rights-based discrimination by promoting hatred of identifiable groups of people. Hate groups generally label and disparage people who may include immigrants, people with disabilities, members of particular racial, religious or cultural groups, people who belong to the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community.

APPENDIX B:
BEST PRACTICES CHECKLIST- ONTARIO HUMAN RIGHTS COMMISSION (OHRC)
(Ontario Human Rights Commission policy on preventing discrimination because of gender identity and gender expression- appendix c)

Privacy and confidentiality

- Maximize privacy and confidentiality of any information related to a trans person's gender identity, or to the extent the trans persons wishes. This includes information that directly or indirectly identifies that a person's sex is different from their gender identity.
- Keep a person's transgender history and medical information private and confidential, and limited to only relevant information and people directly involved in helping to meet the person's needs.
- All information should remain exclusively with designated personnel (such as the human resources person) in a secure filing system to protect the person's confidentiality.

Identification documentation and records

- Recognize a trans person's preferred name and gender in all administrative systems and documents (including hard copies and electronic).
- Show how any requirement for a person's "legal" name and gender is legitimate (reasonable and *bona fide*) in the circumstances.
- Undertake system reviews to identify how electronic databases, IT systems and other relevant information processes can be modified to recognize a person's chosen name and gender when it does not match legal documents.

Collecting data on sex and gender

- Consider whether there is a legitimate need to ask for and collect information about sex/gender. If yes, provide options beyond the binary of male/female or man/woman.[184]
- To the greatest extent possible, allow people to self-identify their sex or gender identity.[185] The option of a blank box, for example, is the most inclusive.
- Protect any information indicating transgender status as confidential.

Dress code policy

- Do not base it on gender stereotypes, and apply it consistently to all people, regardless of their gender identity or expression.
- Make it inclusive of trans people and identify that everyone may dress in accordance with their lived gender identity or gender expression.

Washrooms and change facilities policy

- Recognize the right of trans people to access facilities based on their lived gender identity.
- Communicate that a trans person will not be required to use a separate facility because of the preferences or negative attitudes of others.
- Make clear that accommodation options will be provided on an individualized basis, if a trans person requests.
- Provide privacy options that anyone in a change room may choose to use.
- Provide information on where people can find accessible, all-gender washrooms.

Organization gender transition guideline [186]

- Guidelines should be in place before a transitioning employee comes forward. They provide clear direction for managers on how to generally help transitioning employees, while still recognizing the obligation to take the individual's needs into account. This sends a signal to everyone that transitioning employees will be supported.
- Guidelines should address:
 - A lead contact person to assist the transitioning employee
 - What a transitioning employee can expect from management
 - Expectations of management and other staff, transitioning employees in facilitating a successful workplace transition
 - Related policies and practices for assisting with the transition process, such as: washroom policies, dress code policies, confidentiality, and privacy, recognizing the person's new name in

documentation and records, anti-harassment policies, dealing with any individual accommodation needs as well as training for management, staff and clients.

Individualized gender transition accommodation plan

- Working together, the employee, employer, and union representatives (where the employee has asked for their involvement) may wish to create a transition plan to address what, if any, accommodations may be needed in the workplace related to the steps the employee is taking in the transition process.
- Each trans person's situation will vary, and an individualized transition plan will make clear what steps will be taken given the needs of the particular employee.
- It can be useful to discuss timelines and dates when the employee would like to:
 - Be addressed by their new name and new pronoun
 - Begin expressing their gender identity through clothing, in keeping with the workplace dress code
 - Use washroom and other facilities in their lived gender identity
 - Able to take time off work for any medical treatments related to their transition, if needed.
- The plan should also address:
 - When and how any related employment records, documents and databases will be updated to reflect the person's new name and gender (e.g. human resources and administrative records, email and phone directories, business cards, etc.)
 - If, when and how other employees and clients will be informed of the person's new name and gender identity
 - Anti-harassment planning – a simplified process to deal quickly and effectively with any harassment the transitioning employee may experience
 - When and how training for other employees, clients or managers will be provided to help them understand the transition process, if appropriate
 - How management and the union will show support for the transitioning employee.

[184] See ACT Law Reform Advisory Council, *Beyond the Binary: legal recognition of sex and gender diversity in the ACT*, Report 2 (2012) online: ACT Law Reform Advisory Council www.justice.act.gov.au/resources/attachments/LRAC_Report_7_June.pdf, at 48. See also Human Rights Campaign Foundation, *Transgender Inclusion in the Workplace*, 2nd ed.(2008), online: Human Rights Campaign Foundation www.fs.fed.us/cr/HRC_Foundation_-_Transgender_Inclusion_in_the_Workplace...

[185] Human Rights Campaign Foundation, *ibid.* For more detailed information on data collection methods that are inclusive and respectful of diverse gender identities, see also Rainbow Health Ontario, *RHO Fact Sheet: Designing Surveys and Questionnaires*, online: Rainbow Health Ontario www.rainbowhealthontario.ca/resources/searchResults.cfm?mode=3&resourceID=9901094e-d737-dde8-0d8c-8166b3780517.

[186] For more information on best practices for employers see Canadian Labour Congress, *Workers in Transition: A Practical Guide About Gender Transition for Union Representatives*, online: Canadian Labour Congress www.canadianlabour.ca/news-room/publications/workers-transition-practical-guide-union-representatives; Canadian Autoworkers Union, *Workers in Transition: A Practical Guide for Union Representatives* online: Canadian Autoworkers Union <http://www.caw.ca/en/9201.htm>. See also the international sources: Human Rights Campaign Foundation, *supra* note 197; Government of New Zealand, Department of Labour, *Transgender People at Work*, online: Human Rights Commission www.hrc.co.nz/human-rights-environment/action-on-the-transgender-inquiry/discrimination-and-marginalisation.

- See more at: <http://www.ohrc.on.ca/en/book/export/html/11203#sthash.dXA2S5Ns.dpuf>