



PROCEDURE PR.542.HR

TITLE: ALLEGED EMPLOYEE MISCONDUCT TOWARD A STUDENT

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1.0 OBJECTIVES

In compliance with applicable legislation and acknowledging the need to protect the interests of the Board, the protection and wellbeing of children, and in its corporate capacity as a community institution, the employer will:

- a) exercise due diligence in promoting the best interests, protection and well-being of students while recognizing that where an employee is accused, that person is entitled to:
 - (i) due process;
 - (ii) the right to have representation;
 - (iii) the presumption of innocence, and
 - (iv) confidentiality insofar as it is within the control of the Board;
- b) take disciplinary action where appropriate; and
- c) ensure that allegations are taken seriously and are responded to in a timely fashion.

2.0 DEFINITIONS

2.1 In this procedure,

- a) **physical misconduct** includes grabbing, poking, pushing or pulling with physical contact, other forms of physical contact, within disciplinary sequences, not covered within the guidelines on Preventative Behavioural Intervention Continuum and also includes more serious allegation of physical contact that causes bruising and injury and falls within the definition of child abuse as defined in 2.2 below;
- b) **sexual misconduct**, including advances, requests for sexual favours, actual sexual contact, or other conduct of a sexual nature including personally offensive behaviour, comments and/or gestures which might reasonably be expected to cause insecurity, discomfort, offence or humiliation to another person or group and interferes with a student's safe learning environment.
Sexual misconduct includes, but is not limited to, sexual abuse, as defined in the *Ontario College of Teachers Act*, specifically:

- (i) sexual intercourse or other forms of physical sexual relations between the member and the student;
- (ii) touching of a sexual nature of the student by the member; or
- (iii) behaviour or remarks of a sexual nature by the member towards a student.

Note 1: Reference Attachment 1: Ontario College of Teachers' Professional Advisory re Professional Misconduct Related to Sexual Abuse and Sexual Misconduct Approved 27 September 2002.

- c) **emotional misconduct** is emotional harm or neglect based on power and control. Emotional abuse involves an attack on the child's sense of self and usually co-exists with other types of abuse. Continually insulting, humiliating or rejecting a child or saying a child is "stupid" or "bad", can harm a child's sense of self-worth and confidence. Other forms of emotional abuse include social isolation, intimidation, and exploitation.
- 2.2 Where an employee is a member of the Ontario College of Teachers ("the College"), a finding of **employee misconduct**, under this procedure, may constitute **professional misconduct**, as defined in the *Ontario College of Teachers Act*, or regulations made thereunder.
- 2.3 For purposes of this procedure, **child abuse** means a condition, on the part of a complainant, of physical harm, sexual molestation, exploitation or assault, and/or emotional harm, including but not limited to, verbal or psychological abuse which causes emotional harm. These serious forms of abuse are reportable to the Children's Aid Society of Ottawa in compliance with the mandatory reporting requirements as outlined in Board Procedure PR.605.SCO: Reporting Suspected Child Abuse and Neglect - Student Under 16 Years of Age.

3.0 RESPONSIBILITY

- 3.1 The Superintendent responsible for schools and/or the appropriate supervisory officer, school principal, or central manager/supervisor

Note 2: For example, for cases which involve Custodial, Maintenance and Plant Operations staff, the appropriate supervisory officer is the Superintendent responsible for Facilities. For cases involving Student Services personnel, the appropriate supervisory officer would be the Superintendent responsible for Special Education and Student Services.

- 3.2 It is the responsibility of every employee of the Board to promptly report to the Principal of the school in which he/she works, or to the Superintendent responsible for the school or the Superintendent responsible for Human Resources, any situation of sexual abuse by an employee towards a student.

4.0 PROCEDURES*

Please refer to Attachment 2 - *Flow Chart* for a summary outline of these procedures, and Attachment 3 - *Checklist* for completion to ensure adherence to these procedures.

- 4.1 Where an allegation of employee misconduct has been received, the following have the key responsibilities:

Principal/Vice-Principal:

- a) Upon notification that a child alleges employee misconduct, the principal (or the vice-principal in the absence of the principal) will:
- (i) where the child is under 16 and there are reasonable grounds to suspect he/she is or may be suffering or may have suffered abuse as outlined in Board Procedure PR.605.SCO: Reporting Suspected Child Abuse and Neglect - Student Under 16 Years of Age, contact the CAS as required; this action is seen as a mandatory step in the process;
 - (ii) in all circumstances where a child alleges employee misconduct that does not constitute a reportable incident proceed to step 4.1.1 c. below. If the principal/vice principal is uncertain as to whether the case is reportable to CAS then immediate consultation with the Coordinator of Safe Schools and Community Outreach, the Board's designated Administrator for Child Abuse, or the Board's Legal Counsel is required;

Note 3: See Attachment 4, *When You Suspect Child Abuse*, for information about contacting the CAS.

- (iii) notify the appropriate superintendent responsible for schools, who will then notify the superintendent responsible for human resources and file a preliminary OCDSB Form 297 forthwith, or refer the matter to the appropriate line supervisor (e.g. Facilities, Student Services), who will assume the responsibilities normally carried out by the principal/vice-principal with respect to dealing with the employee for the balance of the process. Note the principal/vice-principal must still complete the appropriate OCDSB 297 and contact the parent/guardian;
- (iv) ensure the staff member (teaching or non-teaching) is advised of the specific allegation(s), and is advised of the right to assistance from the appropriate Federation or Union and support services of the Employee Assistance Program (EAP) of the Board. The communication by Principal/Vice Principal (or appropriate line supervisor) with the employee, in a timely fashion, should include the following details:
 - (A) that a complaint has been made about the staff member's conduct with a student as covered in this procedure;
 - (B) that procedure PR.542.HR will be followed;
 - (C) that all information is confidential;
 - (D) that no contact be made with the complainant or the complainant's family or any other individuals who may be involved;
 - (E) the right to contact and receive assistance from the appropriate federation or union;
 - (F) a response by the employee to the complaint is neither requested nor advised at this point;
 - (G) a response by the employee to the complaint is neither requested nor advised at this point;
 - (H) the right to the services of EAP of the Board;
 - (I) whether the circumstances of the complaint are reportable to CAS and/or involves the Ottawa Police Service (if known at the time);

- (v) review with the Superintendent the work location of the employee as it relates to the student(s) involved; and
- (vi) notify the parent or guardian.

Note 4: In the event that a principal is accused, the information is to be reported directly to the appropriate Superintendent responsible for schools for application of due process.

Superintendent responsible for schools (or responsible superintendent, as applicable):

- b) Upon receipt of notification of alleged employee misconduct, the appropriate Superintendent (see Note 2 above) will consult with the Superintendent of Human Resources or designate to determine one of three possible courses of action (see below). The parents/guardians will be contacted by the principal or Superintendent (should the alleged harasser/abuser be the principal) to ensure that they are aware of the process involved and the chosen course of action. Furthermore, until closure is brought to the allegation, the principal will contact the parties involved on an as-needed basis, to keep them informed regarding the status of the investigation.

The three possible courses of action are a), b) or c, as follows:

- (i) the appropriate Superintendent will discuss with the supervisor involved (e.g. principal, manager) the process for resolution at the department or site level and it will be the responsibility of the supervisor to bring closure to the case; a report as to the final outcome of the case will be submitted to the Superintendent.
- (ii) the case will be referred to the Coordinator of Safe Schools and Community Outreach; when this occurs, a social worker will:
 - (A) be assigned, on a high priority basis, to conduct a preliminary inquiry to ascertain the magnitude of the allegations; in most cases, this will involve interviewing the student involved and relevant witnesses; prior to the interviews, consent must be obtained from the parents/guardians of any student who is younger than 18 years of age;
 - (B) report in writing to the Coordinator of Safe Schools and Community Outreach who will then report to the Superintendent involved and the Superintendent of Human Resources, the relevant details of the allegation along with the details of the preliminary inquiry together with all relevant information which may arise.

Note 5: These inquiries and the filing of OCDSB Form 297 are only a preliminary gathering of information.

Note 6: The Superintendent will keep the Principal informed as to the status of the inquiry. The Principal will provide parents/guardians with updates as deemed appropriate.

- (C) Upon receipt of the report, the superintendent responsible for schools (or designate) and the superintendent responsible for human resources (or designate) will meet to discuss the relevant facts obtained through the preliminary inquiry. Based upon the input

received at this stage, the superintendents (or designates) will determine:

- (I) whether the case can be managed and appropriately resolved at the school or department level, as in 4.1.2. a) above;
- (II) whether the case requires a referral or a Staff Review Panel as outlined in 4.2 below and the Superintendent involved will ensure that the employee's work location* is reviewed. An appropriate assignment will be determined in light of the preliminary findings;

(*Work location may include a location out of the school, home assignment without loss of wages or benefits or continued placement within the school. Where the employee is a teacher and has been charged with a criminal offence, there may be a legal obligation to remove the teacher from the classroom and contact with pupils pending resolution of the criminal charges.)

Note 7: This action is not disciplinary in nature, but is for the protection of the student and the employee.

Note 8: The above may also be applied to a student, where it is possible or necessary to move that student.

or

- (iii) the case will proceed directly to a Staff Review Panel. A case is normally referred directly to a Staff Review Panel based on the seriousness of the allegation (that is, if the police and/or CAS are involved).

Note 9: The Superintendent involved will ensure that the employee's work location is reviewed. Work location may include a location out of the school, home assignment without loss of wages or benefits or continued placement in the school work site. An appropriate assignment will be determined in light of the preliminary findings.

Staff Review Panel (SRP):

4.2 When the determination is made to hold a Staff Review Panel, the Chair will convene the panel as soon as possible, within a timely fashion. The panel will consist of the following members:

<u>Members</u>
Superintendent of Instruction (Chair) or alternate Superintendent (as applicable)
Superintendent responsible for Human Resources or designate
Coordinator of Safe Schools and Community Outreach
Board's Legal Counsel upon request

4.3 The Superintendent responsible for Schools and/or the Human Resources Department will ensure that the Federation/Union is advised of developments as they occur, subject to the agreement of the employee.

- 4.4 The Chair (normally the Superintendent responsible for Schools, or the Superintendent responsible for the applicable department, e.g. Facilities, Student Services) will:
- a) lead the SRP in such preliminary inquiries, investigations, and information gathering as are appropriate in the circumstances. This may include reviewing, where available, the contents of police reports, Children's Aid Society reports and any other information obtained in the matter. The SRP may also interview any material witnesses, including the complainant, the employee and any other witnesses who may have relevant evidence on a matter in issue. In some instances, this will be done in cooperation with the CAS and/or relevant police force. Normally the child/children involved are not interviewed several times: the police or CAS would conduct the interviews and advise the SRP of their findings. It is important to note that throughout the SRP process the staff member involved (teaching or non teaching) is advised of the right to assistance from the appropriate Federation or Union;
 - b) ensure that the SRP takes necessary precautions to balance the interests in ensuring the confidentiality of the employee and the integrity of the SRP process with the duty to ensure that a fair and thorough investigation is undertaken. Where witnesses are not named as having relevant evidence and do not volunteer information to the SRP, the SRP should not seek out general information about the employee. Where it appears that a witness may have relevant information to add to the process, these witnesses should be interviewed and their evidence should be considered in making a determination;
 - c) ensure the employee is provided with full disclosure of all allegations prior to the meeting of the SRP, including the nature of the circumstances, the findings of any inquiries and the names of students involved. In exceptional circumstances where the safety of students is identified as a factor the names of students involved will not be provided at this point in the process;
 - d) ensure that the SRP also reviews the issue of the employee's work location prior to formulating its recommendation(s);
 - e) in consultation with the members of the SRP, review the outcome of the preliminary findings of the SRP or the police /CAS investigations; at this point, the employee may be:
 - (i) returned to his/her original work location;
 - (ii) continued on "home duty" with pay;
 - (iii) assigned to a work location away from the school;
 - (iv) suspended with pay (*subject to Board approval where applicable*); or
 - (v) suspended without pay (*subject to Board approval where applicable*),
 - (vi) reported to the Ontario College of Teachers and/or Minister of Education and Training.

Note 10: Where an employee who is a member of the College of Teachers has been charged with a criminal offence involving sexual conduct and minors, or of an offence which may put students at risk, the member shall be reassigned such that the member will not have contact with pupils pending the outcome of the criminal charges.

- f) reconvene the SRP and review the police/CAS findings when their investigations have been completed;

Note 11: The results of the above are confidential, save and except for those who are involved directly, i.e., the members of the SRP, the Board solicitor, the Director, the President of the appropriate Federation, Affiliate, Association or Union and the employee. On occasion, information may be received from or shared with the CAS, the police, and/or the Ministry of Education and Training and the Ontario College of Teachers.

- g) consult with the members of the SRP with respect to any disciplinary recommendations. Prior to formulating such recommendations, the report may be reviewed by the board's solicitor; and
- h) consult with the members of the SRP with respect to any other possible recommendations for other indicated follow-up, be it on behalf of a student or students, or of others involved in the alleged employee misconduct situation.

- 4.5 Procedural fairness requirements must always be met -- that is, the employee has the right to have proper notice of meetings, and to appear, with or without representation, to state his/her case.
- 4.6 Discipline responses will be based on the principles of progressive discipline, up to and including a recommendation for termination for cause, effective immediately.
- 4.7 Where the employee is a member of the College, the board is required to report to the College within 30 days where:
 - a) the employee's employment is terminated, or restrictions are imposed on the member's duties, for reasons of professional misconduct;
 - b) the employee resigns in the course of an investigation into allegations which, if proven, would have caused the SRP to recommend termination or the imposition of restrictions, for reasons of professional misconduct; o
 - c) the SRP has recommended, or would have recommended, that the employee's employment be terminated, or restrictions be imposed on the employee's duty, but the employee resigns prior to these actions being taken.
- 4.8 In making a determination as to whether the allegations are founded, the civil standard of proof is to be applied. The SRP should be satisfied on a balance of probabilities that the employee misconduct did, in fact, occur.
- 4.9 If charges are brought, the SRP and Human Resources staff may recommend that the Board await the results of any criminal proceedings, then consider recommending disciplinary action, depending upon the nature of each case, and the evidence available to the Board.
- 4.10 The employer is required to report promptly to the Ontario College of Teachers on becoming aware that a member who is a current or former employee has:
 - a) been charged with or convicted of an offence under the Criminal Code involving sexual conduct and minors;

- b) been charged with or convicted of any offence under the Criminal Code that, in the employer's opinion, indicates that students may be at risk of harm or injury; or
 - c) engaged in conduct or taken action that, in the employer's opinion, should be reviewed by a committee of the College.
- 4.11 In general, whatever disciplinary action may be recommended to the Board is not dependent on the outcome of criminal proceedings; that is, the employer's disciplinary measures are separate from any findings of a court, and reflect the application of the *Education Act* and Regulations and Board policies and procedures, rather than the *Criminal Code*.
- 4.12 If charges are not brought, Human Resources staff will make the determination as to the appropriate outcome for the employee.
- 4.13 Where the SRP concludes that the evidence does not support the allegations presented to it the following actions are required:
- a) the employee will be verbally advised of the SRP's decision;
 - b) at the request of the employee a letter will be sent to the employee by the Chair of the SRP confirming the SRP's decision; and
 - c) provisions will be made on an as-needed basis for appropriate counseling and for re-entry strategies to the work place for the employee.
- 4.14 Where the allegation of employee misconduct is substantiated by the fact(s), provision will be made for counseling to be offered to the student(s) involved to ensure that his/her/their best interests and well-being is/are supported.
- 4.15 The Staff Review Panel may, where it deems appropriate, recommend that the Chair communicate the results of the investigation to the complainant(s), the parents of the complainant(s), the CAS and/or the police. Where the investigation has resulted in a recommendation of disciplinary action, any communication from the Chair should be limited in scope to advising that the matter has been investigated and that appropriate action has been taken by the Board.

5.0 APPENDICES

Attachment 1: Ontario College of Teachers' Professional Advisory re Professional Misconduct

Related to Sexual Abuse and Sexual Misconduct (approved by Council 27 September 2002)

Attachment 2: Flow Chart: Alleged Employee Misconduct Toward a Student

Attachment 3: Checklist

Attachment 4: *When You Suspect Child Abuse*

6.0 REFERENCE DOCUMENTS

The Education Act, 2003, Section 171 and Ontario Regulation 298

Child and Family Services Act

OCDSB Preventive Behavioural Intervention Continuum

Board Policy P.032.SCO: Safe Schools

Board Policy P.103.HR: Alleged Employee Misconduct Toward a Student

Board Procedure PR.533.SCO: Police Involvement in Schools

Board Procedure PR.528.SCO: Critical Incident Review Process

Board Procedure PR.605.SCO: Reporting Suspected Child Abuse and Neglect of a Student under 16 Years of Age

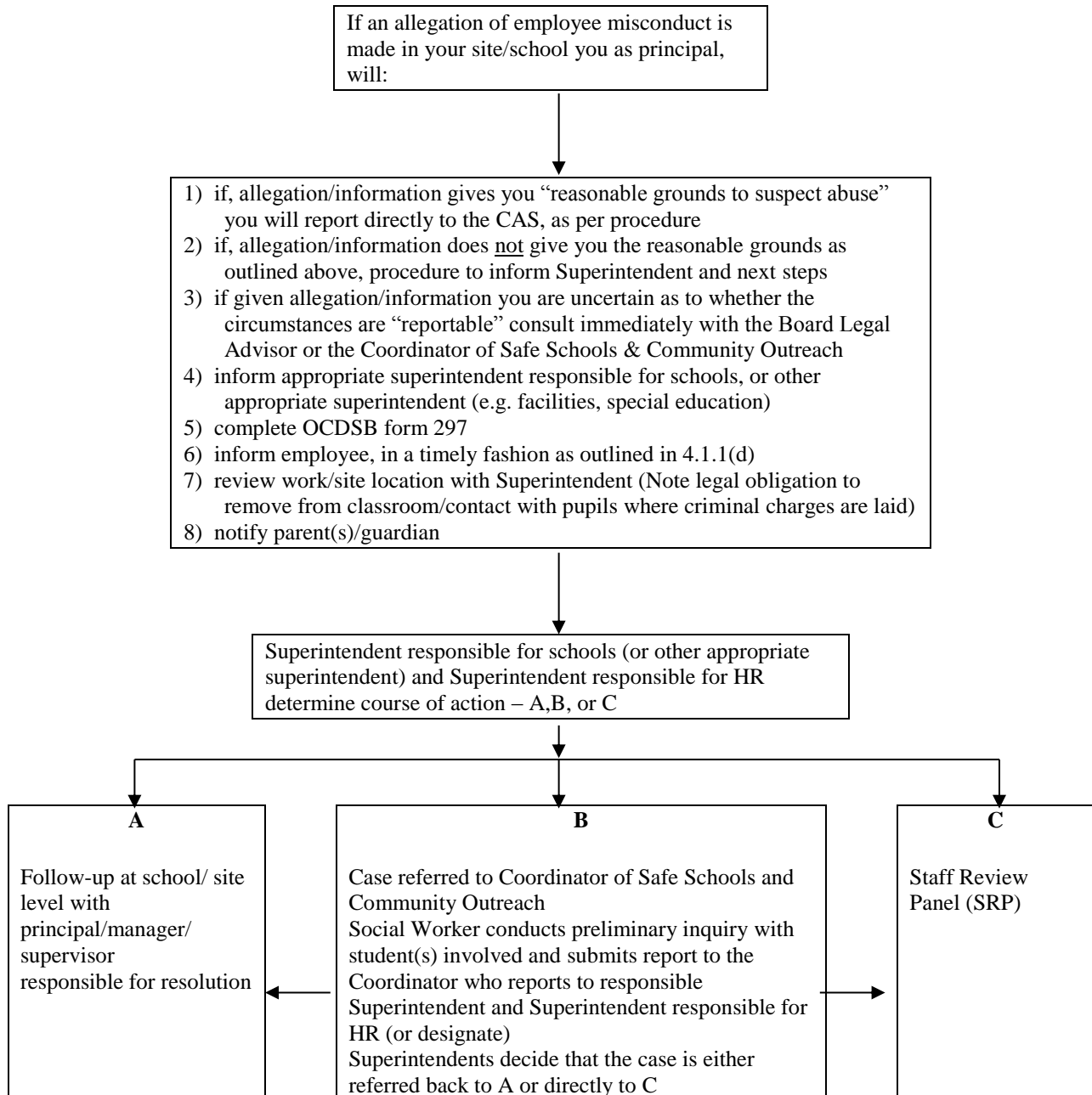
FORM:

OCDSB 297 Preliminary Summary of Information - Alleged Employee Misconduct

Located in Forms on OCDSB Website: <https://weblink.ocdsb.ca/weblink/Browse.aspx?startid=2011932&cr=1>

Flow Chart

**Alleged Employee Misconduct Toward a Student
Procedure PR.542.HR**



CHECKLIST

Alleged Misconduct Toward a Student by an Employee

		Completed By	Date
<input type="checkbox"/>	1. Are there reasonable grounds to suspect that a child at your school/site has been abused by an employee?		
	<input type="checkbox"/> YES <input type="checkbox"/> NO		
<input type="checkbox"/>	2. If yes, then contact CAS at 747-7800	_____	_____
<input type="checkbox"/>	3. Contact your school superintendent (or refer matter to appropriate line supervisor, who will contact the appropriate superintendent, e.g. facilities, student services).	_____	_____
<input type="checkbox"/>	4. Complete OCDSB Form 297.	_____	_____
<input type="checkbox"/>	5. Inform employee of allegation and of the right to federation/union assistance when appropriate.	_____	_____
<input type="checkbox"/>	6. Review employee's work location with appropriate superintendent.	_____	_____
<input type="checkbox"/>	7. If employee's work location/situation has been altered, please note changes.		

<input type="checkbox"/>	8. Notify parent/guardian.		
	Time: _____		
	Date: _____		
	Please note any concerns/queries parents/guardians have:		

Completed By

Date

9. Send completed OCDSB Form 297 to Superintendent responsible for schools (or other appropriate superintendent)

10. Until closure is brought to the allegation, contact is to be made with all parties involved on an as needed basis to keep them informed regarding the status of the investigation.

Person Contacted: _____

Nature of _____

Discussion: _____

Person Contacted: _____

Nature of _____

Discussion: _____

Person Contacted: _____

Nature of _____

Discussion: _____

(Please note - attach extra notes if additional contacts are made)

11. Course of action which was chosen after review by Superintendent and Superintendent of Human Resources/designate.

a) resolution at site level

b) case referred to Chief of Social Services

c) Staff Review Panel

Date

if a) send report as to final outcome of the case to Superintendent

if b)

Name of Social Worker Contacted: _____

Outcome:

Completed By

Date

Name of Social Worker Conducting Preliminary Inquiry:

Date of Completion of Preliminary Inquiry:

Date report submitted to Principal:

Outcome of Superintendent's review of report:

a) Resolution at site level OR c) Staff Review
Panel

Alleged Employee Misconduct Toward a Student

When You Suspect Child Abuse

If you, as principal, have reasonable grounds to suspect that a child in your care/school has been abused by an employee of the board, you have a legal obligation under the *Child and Family Services Act* (CFSA) to report that suspicion immediately and directly to the Children's Aid Society (CAS). It is essential that you also complete Form OCDSB 297 HR. (Please consult Policy P.103.HR: Alleged Employee Misconduct Toward a Student, and Procedure PR 542:HR: Alleged Employee Misconduct Toward a Student, for more information.)

If abuse is reported to you "in confidence", you must advise the child that you are unable under law to retain such information as confidential. Report the matter to the CAS and to your superintendent immediately.

Consultation

If you are unsure as to whether a matter is reportable, you may consult with a CAS Intake Worker by calling 747-7800 and asking for a consultation. Describe the situation as you know it without disclosing the child's name. You may also choose not to disclose your own name. Ask whether the Intake Worker considers the situation "reportable" or "non-reportable". Please note that if the Intake Worker determines that it is reportable, you should supply information in keeping with the process outlined in the section below on Reporting. If the CAS considers the incident to be non-reportable, document your call as indicated on Form OCDSB 297 and retain it for your personal records along with submitting a copy of the completed form to your Superintendent as a means of ensuring that you are able to demonstrate that a report was considered. If you are convinced that the matter is reportable but the CAS worker disagrees, it is essential that your Superintendent is informed and that the "refusal" to report is forwarded to the appropriate CAS Director/Designate.

Reporting

The intake receptionist will ask you basic identifying information. Then you will be referred to a social worker and you will be expected to provide information including but not limited to: the name, age and grade of the child, parents'/guardians' names, name of your school, your name and the name of the alleged abuser (if known). From this point on, the CAS has the legal responsibility to determine how the case will be handled. Ask for information as to whether you can expect the CAS to arrive at the school and, if so, when. If you are concerned or disagree with the Intake Worker's response, you can have the matter reviewed by calling the Intake Worker's supervisor. You must notify your Superintendent about this situation who then may contact the appropriate CAS Director/Designate. Please document these conversations for future reference.