



PROCEDURE PR 542 HR

TITLE: Alleged Employee Misconduct Toward a Student

Date Authorized: 30 April 2001

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COMMITMENT TO INDIGENOUS RIGHTS, HUMAN RIGHTS, AND EQUITY

The District recognizes its responsibility to ensure that this procedure and the associated work promote and protect Indigenous rights, human rights, and equity. The District will strive to address and eliminate discrimination and structural and systemic barriers for students, staff, and the community.

1.0 RATIONALE

This Procedure describes the process to follow when the OCDSB is investigating allegations of Misconduct Toward a Student or Harassment of a student as defined by *Policy P.103.HR Alleged Employee Misconduct Toward a Student* policy (the “Policy”). The primary purpose of this Procedure is to ensure workplace investigations are conducted fairly and effectively.

2.0 DEFINITIONS

Please refer to Appendix A for a list of definitions of terms used in this procedure.

3.0 PROCEDURAL FAIRNESS AND PRIVACY

- 3.1 The Employer and Investigator must follow the principles of procedural fairness for all complaints investigated under this Procedure:
- a) **Impartiality:** The Investigator must be impartial and unbiased. The Investigator must not take sides.
 - b) **Opportunity to be Heard:** The Investigator must give the Respondent a meaningful opportunity to express their perspectives, give evidence, and respond to the allegations.

- c) **Notice and Reasons:** When the Respondent is under investigation, the Employer must notify the Respondent about the investigation. The Employer must also give the Respondent enough information and enough time to prepare a meaningful response. When the investigation is complete, the Employer must explain the reasons for the outcome.
- d) **Timeliness:** The investigator must complete the investigation within a reasonable time, but must also make sure the investigation is appropriately thorough. In most cases, a reasonable time is within 90 calendar days.
- e) **Confidentiality:** As best as possible, everyone involved in the investigations keeps the investigation information confidential while still making sure the process and outcome are fair and clear.
- f) **Representation:** Unionized employees under investigation are entitled to be supported and represented by their union representatives.

4.0 PROCEDURE

The main sections in this Procedure are:

- A. Pre-Complaint and Informal Resolution
- B. Formal Complaint
- C. Threshold Assessment
- D. Investigator's Process
- E. Respondent's Involvement
- F. Investigation Conclusion
- G. Corrective Action and Discipline

A. Pre-Complaint and Informal Resolution

Information for the Complainant:

- 4.1 You may informally resolve your concerns directly with the Respondent. If you are unable or unwilling to resolve your concerns directly with the Respondent, the Respondent's Supervisor may be able to help resolve your concerns. You may contact the Respondent's Supervisor to ask for help with an informal resolution.

Information for Supervisors:

- 4.2 If you are uncertain about the interpretation of any aspect of this Procedure or Policy, you should contact the Investigations Advisor in the Labour Relations office for clarification and guidance.

- 4.3 If a Complainant asks for your help with informal resolution, you may help the Complainant and Respondent to resolve the concerns.
- 4.4 If informal resolution is not appropriate, or if attempts at informal resolution are unsuccessful, you must refer the matter to Labour Relations.

B. Formal Complaint

Information for the Complainant:

- 4.5 If you are unable or unwilling to resolve your concerns directly with the Respondent or with the help of the Respondent's supervisor, you may submit a formal complaint.
- 4.6 You submit your formal complaint by contacting one of these people to explain your concerns:
 - a) If the complaint is about a **non-supervisory employee**, you must contact the **Respondent's Supervisor**; but if the circumstances make it inappropriate for you to contact the Respondent's supervisor, you may contact an Investigations Advisor in the Labour Relations office.
 - b) If the complaint is about a **supervisor**, for example, a principal, you must contact the **Investigations Advisor** in the Labour Relations office;
 - c) If the complaint is about an **employee in the Labour Relations office**, you must contact the **General Counsel**;
 - d) If the complaint is about a **member of the Director's Executive Council**, you must contact the **General Counsel**; or
 - e) If the complaint is about the **General Counsel**, you must contact the Director of Education.
- 4.7 If you are a student under age 16, you may submit your own formal complaint, or your parent or guardian may submit a formal complaint on your behalf.
- 4.8 If you are a student aged 16 or over, you may submit your own formal complaint and another person, including your parent or guardian, may help you if you want.
- 4.9 You must include enough detail in your formal complaint to show that the Respondent may have engaged in Misconduct Toward a Student or Harassment of a student.
- 4.10 Except in rare circumstances, you cannot remain anonymous in a formal complaint. The Respondent has the right to know the identities of the Complainant and the other Witnesses.

- 4.11 If you submit a formal complaint more than six months after the alleged incident, the Employer may decide to not investigate your complaint. Typically, the Employer investigates complaints about sexual harm even if you submit a complaint more than six months after the alleged incident.
- 4.12 Once you submit a formal complaint, in order to protect the integrity of the investigation you should try as best as you can to keep the complaint confidential.

Information for Employees who Witness Harm to a Student:

- 4.13 If you have a reason to believe a child under 16 is being abused or neglected, you must report your concern to the Children's Aid Society immediately. This law applies to everyone in Ontario. You can't expect someone else to make the report for you. To learn more about reports to the Children's Aid Society, review OCDSB Procedure PR.605.SCO.
- 4.14 If you believe that an employee has engaged in Misconduct Toward a Student or Harassment of a student, you must immediately submit a formal complaint to the employee's Supervisor or to your own Supervisor.
- 4.15 Once you submit a formal complaint, in order to protect the integrity of the investigation you must not discuss information about the complaint with staff, students, or parents, especially any potential Witnesses. This helps to protect the integrity of the investigation. However, if you have a legal or professional obligation to report your concerns to another person or organization, you are still allowed to do so.

For clarity, the reason you must not discuss information with others is that the Investigator must assess each Witness's independent memory of the allegations. Discussing your information with other people may cause each person's independent memory to be affected by other people's memories. If this happens, the Investigator may be unable to effectively and fairly assess the information.

Information for Supervisors:

- 4.16 When you receive a formal complaint, you must forward the complaint to the Investigations Advisor in the Labour Relations office.
- 4.17 If you have information suggesting that the Respondent has engaged in Misconduct Toward a Student or Harassment of a student, you may initiate a formal complaint on your own and forward the complaint to the Investigations Advisor in the Labour Relations office.

C. Threshold Assessment

Information for the Complainant:

- 4.18 The Employer, typically the Labour Relations office, completes a Threshold Assessment for every formal complaint under this Procedure. The purpose of the Threshold Assessment is to decide if your complaint shows that the Respondent may have engaged in Misconduct Toward a Student or Harassment of a student. The Threshold Assessment is not meant to be hard or complicated. It is there to filter out complaints that don't fit into this Procedure, or complaints that are improper or unnecessary.
- 4.19 To complete the Threshold Assessment, the Employer may collect and consider additional information that is not in your complaint.
- 4.20 If your complaint does not meet the threshold for an investigation, the Employer tells you the outcome of the Threshold Assessment.
- 4.21 There are four possible outcomes of a Threshold Assessment:
- a) Your complaint is **dismissed**. This happens if your complaint does not show that the Respondent may have engaged in Misconduct Toward a Student or Harassment of a student. This also happens if your complaint is improper or unnecessary.
 - b) Your complaint is **transferred** to a different person within the OCDSB. This happens if your complaint does not show that the Respondent may have engaged in Misconduct Toward a Student or Harassment of a student, but the concerns in your complaint could be effectively resolved by someone else at the OCDSB.
 - c) Your complaint is moved into a non-disciplinary **dispute resolution or diversion program**. This happens if the Employer believes that your concerns can be resolved fairly and effectively without further investigation. The Employer may create criteria and protocols to manage these programs. If the program is unsuccessful, the Employer may either dismiss your complaint or assign an Investigator to conduct an investigation.
 - d) The Employer assigns an Investigator to **conduct an investigation**. This happens if your complaint shows that the Respondent may have engaged in Misconduct Toward a Student or Harassment of a student, and a non-disciplinary program is not appropriate.
- 4.22 The Employer may assign any person as an Investigator. This includes the Respondent's Supervisor, an Investigator employed by the OCDSB, an external Investigator, or any other person the Employer believes is appropriate.

- 4.23 The Employer may separate or combine complaints if appropriate. For example, if your complaint engages multiple policies, the Employer may separate your complaint into multiple complaints under each policy. Similarly, if the Employer receives multiple related complaints, the Employer may combine those complaints into a single complaint.

D. Investigator's Process

Information for the Investigator:

- 4.24 You must follow any internal protocols or directives the Employer has created to guide your investigation. Internal protocols or directives are intended to facilitate the efficient and appropriate application of this Procedure. Internal protocols or directives must follow the principles of procedural fairness in *Part 3* of this Procedure.
- 4.25 Your investigation should generally involve the following steps:
- a) Interview the Complainant,
 - b) Interview Witnesses,
 - c) Review documents and other evidence provided by the Complainant and Witnesses (see below for more about evidence),
 - d) Share relevant information and evidence with the Respondent,
 - e) Interview the Respondent,
 - f) Interview any additional Witnesses,
 - g) Review any additional documents or other evidence provided by the Respondent or additional Witnesses,
 - h) Decide if the Respondent engaged in Misconduct Toward a Student or Harassment of a student, and
 - i) Prepare an investigation report.
- 4.26 You may change the steps described above to ensure the investigation is appropriate in the circumstances. If you change the steps, you must still follow the principles of procedural fairness in *Part 3* of this Procedure. Some examples of factors that may cause you to change these steps include:
- a) The seriousness of the allegations,
 - b) Any relationships that exist between Witnesses,

- c) The types and scope of anticipated evidence,
 - d) The urgency in reaching an outcome,
 - e) Any ongoing risk of harm,
 - f) The identities of the individuals involved, including declared identity as an Indigenous person, racialized person, or identity in a historically marginalized group,
 - g) The best interests of any children involved, and
 - h) The potential impact on the parties.
- 4.27 You must consider all relevant evidence. Examples of relevant evidence might include:
- a) Interviews with Witnesses, including the Complainant and Respondent,
 - b) Information provided by an employee's Supervisor,
 - c) Written statements,
 - d) Documents,
 - e) Digital or physical files,
 - f) Discipline history,
 - g) Human resource records and information,
 - h) Site visits,
 - i) Expert opinions, and
 - j) Other evidence relevant to the complaint or allegations.
- 4.28 You must give the Respondent an opportunity to submit relevant evidence, and to challenge the evidence that allegedly shows Misconduct Toward a Student or Harassment of a student.
- 4.29 You must keep all evidence connected to the investigation confidential as best as possible. For clarity, confidential does not mean anonymous. Except in rare circumstances, the Respondent has the right to know the identities of the Complainant and the Witnesses.
- 4.30 You must ensure that the Complainant and Respondent are regularly updated about the status and progress of the investigation.

- 4.31 The Employer may direct you to pause or terminate the investigation. For example, this might happen if:
- a) There is a parallel investigation by the police,
 - b) There is a parallel investigation by a Children's Aid Society,
 - c) The Respondent is on a medical leave,
 - d) Schools are closed for a break, or
 - e) The Respondent resigns or retires.

E. Respondent's Involvement

Information for the Respondent about the Notification Meeting:

- 4.32 As soon as practical after an investigation begins, the Employer must notify you about the complaint. The Employer may ask your Supervisor, the Investigator, or another appropriate person to notify you on behalf of the Employer. In many cases, it may not be practical to notify you until the Investigator has enough information to prepare a written summary of the allegations.
- 4.33 When the Employer notifies you of the complaint, the Employer must give you:
- a) A description of the allegations, including which policies you may have breached;
 - b) If you are unionized, clear information that
 - i) you may ask your union for help,
 - ii) the Employer can help you find contact information for your union, and
 - iii) you do not need to say anything about the allegations until you have consulted with your union.
 - c) A directive not to discuss information connected to the investigation with staff, students, or parents, especially the Complainant or any potential Witnesses; and
 - d) Information about the Employer's employee assistance program.

Information for the Respondent about Temporary Actions:

- 4.34 At any point during an investigation, the Employer may take any of the following temporary actions:
- a) Reassign you within your work site or to a new work site,
 - b) Reassign you to work from home (also known as "Home Assignment"),
 - c) Change your work schedule or responsibilities,

- d) Give you additional support or supervision,
- e) Direct your not to communicate or interact with certain people, and
- f) Other temporary actions appropriate in the circumstances.

Information for the Respondent about Investigation Meetings:

- 4.35 The Investigator must give you enough time and sufficient information to meaningfully prepare for meetings during the investigation.
- 4.36 Enough time typically means at least two working days. There is no minimum amount of time if you do not need to answer questions or make a statement during the meeting.
- 4.37 Sufficient information means enough information for you to understand the complaint and to meaningfully respond. The Investigator gives you a written summary of the allegations, typically including the name of each Witness and the information collected from each Witness.
- 4.38 At the meeting, the Investigator invites you to explain your perspectives about the complaint. The Investigator asks you questions to understand your perspectives and to learn more about you. You can give the Investigator evidence or information that is relevant to the investigation.
- 4.39 If the Investigator reasonably believes that giving you time and information to prepare for the meeting will compromise the integrity of the investigation, the Investigator may meet you without allowing you to prepare. For example, this might happen if the Investigator has reliable information suggesting that you may destroy evidence, harm someone, damage property, or talk to other Witnesses. The Investigator must not use this option unless it is necessary to protect the integrity of the investigation.

F. Investigation Conclusion

Information for the Investigator:

- 4.40 At the end of the investigation, you must decide if the Respondent engaged in Misconduct Toward a Student or Harassment of a student. To do this, you must use the legal standard of a balance of probabilities. “Balance of probabilities” means that something is more likely to be true than not.
- 4.41 You must explain to the Employer the reasons for your conclusions.
- 4.42 You must prepare a written report about the investigation unless the Employer directs you otherwise.

Information for the Respondent:

- 4.43 The Employer must tell you the conclusions of the investigation, and the reasons for those conclusions. The Employer gives you this information in writing.

Information for the Complainant:

- 4.44 The Employer must tell you the conclusions of the investigation, including any non-disciplinary corrective action. The Employer gives you this information in writing. To protect the privacy of the Respondent, the Employer does not tell you the details of any discipline.

G. Corrective Action and Discipline

Information for the Respondent:

- 4.45 If you engage in Misconduct Toward a Student or Harassment of a student, the Employer may discipline you or take other corrective action. The Employer follows the principles of progressive discipline. To determine the appropriate level of discipline, the Employer considers
- a) your level of blame for the conduct ,
 - b) the seriousness and impact of your conduct,
 - c) other mitigating factors, if any, that tend to suggest a lower level of discipline is appropriate, and
 - d) other aggravating factors, if any, that tend to suggest a higher level of discipline is appropriate.
- 4.46 To support the discipline process, the Employer may share the outcome of the investigation with your Supervisor or the appropriate supervisory officer.
- 4.47 If you are a member of a regulated profession, for example, a Teacher or an Early Childhood Educator, the Employer may report the matter to your profession's governing body. In some situations, the Employer may have a legal obligation to report the matter.

5.0 REVIEW:

- 5.1 The Employer reviews this Procedure at least once per year.

6.0 APPENDICES

Appendix A: Policy Definitions

Appendix B: Simplified Guide to Workplace Investigations

7.0 REFERENCE DOCUMENTS

Education Act

Child, Youth and Family Services Act

OCDSB Policy [P 103 HR - Alleged Employee Misconduct Toward a Student](#)

OCDSB Policy [P 032 SCO - Safe Schools \(Managing Student Behaviour\)](#)

OCDSB Procedure [PR 605 SCO - Reporting Suspected Child Abuse and Neglect of a Student under 16 Years of Age](#)

OCDSB Policy [P 125 SCO - School District Code of Conduct](#)

APPENDIX A: PROCEDURE DEFINITIONS

In this procedure,

Complainant means the person who was harmed by the alleged Misconduct Toward a Student or Harassment of a student, or a person acting on their behalf, such as a parent of a young student.

District means the Ottawa-Carleton District School Board.

Employer means the Director's Executive Council (DEC) or any employee who is acting on behalf of the DEC.

Harassment means a pattern of Disrespectful Behaviour. In some circumstances, a singular incident may be recognized as Harassment, depending on the nature of the comment or conduct. Code-based Harassment is Harassment based on a Protected Ground. If a person does not explicitly object to harassing behaviour or appears to be going along with it, this does not mean that the behaviour is okay. The behaviour could still be considered Harassment. Examples of Harassment include:

- a) epithets, remarks, jokes, or innuendos related to a person who identified with a Protected Ground;
- b) posting or circulating offensive pictures, graffiti, or materials, whether in print form or via e-mail or other electronic means related to a Protected Ground;
- c) singling out a person for humiliating, demeaning, "teasing", or jokes because of a Protected Ground; and
- d) comments ridiculing a person because of characteristics that are related to a Protected Ground. For example, this could include comments about a person's dress, speech, or other practices that may be related to their sex, race, gender identity, or creed.

Investigator means the person who figures out if the Respondent engaged in Misconduct Toward a Student or Harassment of a student.

Respondent means the employee who allegedly engaged in Misconduct Toward a Student or Harassment of a student.

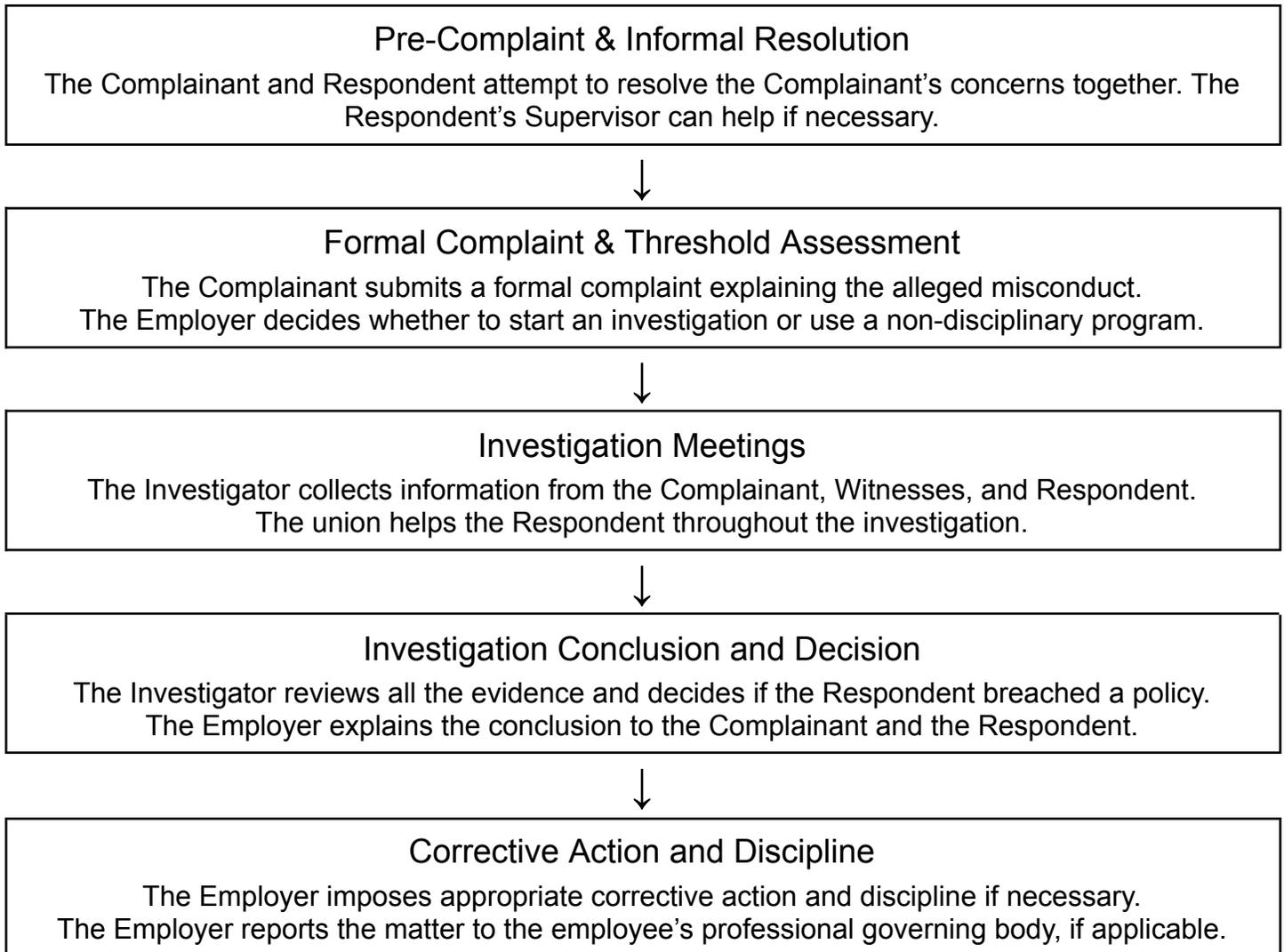
Supervisor means an OCDSB employee who oversees or manages another OCDSB employee's work.

Witness means a person who has information about the alleged Misconduct Toward a Student or Harassment of a student. A witness may have seen or heard the incident, or they may have information that helps the Investigator understand what happened. For example, a Witness may be a student, another employee, or a parent. The Complainant and Respondent are both Witnesses.

You can find additional definitions in the [Alleged Misconduct Toward a Student policy](#) (P.103.HR).

APPENDIX B: SIMPLIFIED GUIDE TO WORKPLACE INVESTIGATIONS

The following is a simplified summary of the main steps in a workplace investigation.



The “**Complainant**” is the person who was harmed by the alleged Misconduct Toward a Student.

The “**Respondent**” is the employee who allegedly engaged in Misconduct Toward a Student.

The “**Investigator**” is the person who figures out if the Respondent engaged in Misconduct Toward a Student.

A “**Witness**” is a person who has information about the alleged Misconduct Toward a Student.