



## CODE-BASED HUMAN RIGHTS COMPLAINT RESOLUTION PROCESS FOR STAFF

Responsibility:	<i>Human Rights and Equity Advisor; Director of Education</i>
Legal References:	<i>Ontario Human Rights Code 1962, 2013 Ontario Anti-Racism Act, 2017 Canadian Human Rights Act Canadian Charter of Rights and Freedoms Municipal Freedom of Information and Protection of Privacy Act Occupational Health and Safety Act, 1990, 2021</i>
Related References:	<i>Policy 1017 - <a href="#">Human Rights</a> Policy 1008 - <a href="#">Equity and Inclusion</a> Policy 1012 - <a href="#">Creed and Religious Accommodations</a> Policy 1004 - <a href="#">Harassment</a> Policy 1002 - <a href="#">Occupational Health and Safety</a> Policy 1009 - <a href="#">Violence in the Workplace</a> Policy 1010 - <a href="#">Accessibility for Ontarians with Disabilities</a> Policy 1015 - <a href="#">Records Information Management</a> Policy 6000 - <a href="#">Safe Schools</a> Policy 6001 - <a href="#">Code of Conduct</a> Policy G021 - <a href="#">Trustee Code of Conduct</a> Administrative Procedure 1110 - <a href="#">Records Information Management</a> Administrative Procedure 1230 - <a href="#">Creed and Religious Accommodations</a> Administrative Procedure 1235 - <a href="#">Accommodation for Persons who Identify as Transgender</a> Administrative Procedure 3730 - <a href="#">Sexual Harassment Guidelines</a> Administrative Procedure 3740 - <a href="#">Prevention and Resolution of Workplace Harassment</a> Administrative Procedure 3760 - <a href="#">Progressive Discipline</a> Policy on Preventing Discrimination Based on Creed, Ontario Human Rights Commission, 2015 Policy on Competing Human Rights, Ontario Human Rights Commission, **2012</i>
Effective:	August 2022
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### 1. Preamble

- 1.1. The Code-Based Human Rights Complaint Resolution Administrative Procedure for Staff sets out a clear mechanism for submitting and resolving complaints of harassment and/or

discrimination for all Waterloo Region District School Board (WRDSB) staff. Complaints of harassment and/or discrimination on the basis of a protected Ontario Human Rights Code (the Code) ground include: age, creed (religion), sex (including pregnancy and breastfeeding), sexual orientation, ancestry, colour, race, citizenship, ethnic origin, place of origin, disability, family status, marital status (including single status), gender identity, gender expression, receipt of public assistance (in housing only), and record of offences (in employment only)

- 1.2. Non-Code workplace related harassment and/or discrimination against an employee of the Board is based on the Occupational Health and Safety Act. Personal (non-Code) harassment allegations by WRDSB employees will be dealt with under Board Policy 1009 - Violence in the Workplace and Administrative Procedure 3740 - Prevention and Resolution of Workplace Harassment.
- 1.3. This procedure outlines the process for addressing allegations of harassment and/or discrimination which might violate the Code and Board Policy 1017 - Human Rights.
- 1.4. This procedure should be read as a companion to Board Policy 1017 - Human Rights.

## **2. Belief Statements**

- 2.1. The WRDSB is dedicated to providing welcoming, inclusive, caring, and safe schools and workplaces and will promote and enforce appropriate standards of conduct at all times.
  - 2.1.1. In addition to the right to be free from harassment and/or discrimination on Code-based grounds, all staff of the WRDSB have enhanced responsibilities to contribute to the creation of welcoming, inclusive, caring, and safe schools for students in ways that uphold their rights as service users under Board Policy 1017 - Human Rights and Ontario Human Rights Code.
  - 2.1.2. Managers and supervisors hold responsibility to provide welcoming, inclusive, caring, and safe workplaces for employees that are free from harassment and/or discrimination on Code-based grounds.
- 2.2. The WRDSB is committed to creating an environment that encourages individuals to voice concerns should they feel they have been harassed or discriminated against.
  - 2.2.1. In particular, this requires anyone who has regular contact with students and their caregiver(s) to familiarize themselves with the process for receiving and responding to concerns that implicate Board Policy 1017 - Human Rights and the Code when forwarded.
- 2.3. The WRDSB is committed to meeting its obligations under the Code in addressing human rights complaints in a procedurally fair, equitable, confidential, and timely manner.
- 2.4. The WRDSB is committed to honouring the remedial nature of the Ontario Human Rights Code and will view complaints as an opportunity for learning, improvement, responsibility-taking, and healing.
- 2.5. The WRDSB believes that this procedure is but one component of the creation and maintenance of equitable and just learning environments. In addition to responding to incidents of Code-based harassment and/or discrimination, the Board will build capacity to recognize and respond to systemic discrimination and oppression. Further, the WRDSB affirms its ongoing commitment to equity in education for all and the prevention of harassment and discrimination throughout the WRDSB.

## **3. Definitions**

- 3.1. Complainant/Reporter: A person who is a member of the WRDSB community who brings forward a concern and/or makes a complaint (an allegation, whether oral or written, of harassment and/or discrimination) under Board Policy 1017 - Human Rights.
- 3.2. Respondent: A person against whom a complaint has been made.
- 3.3. Accompanying Person: WRDSB staff who are a part of a union or association will be accompanied by their union/association representative (see Section 15.5.1).
  - 3.3.1. For staff members who are not a part of a union or association, they may choose an accompanying person to attend meetings related to the formal or alternative/informal complaint resolution process. An accompanying person, who is not a union or association representative, acts solely as a support and does not act as an advocate, representative, or agent with an interest in the matter. An accompanying person must maintain confidentiality and should not be someone who could be considered a witness (see Section 3.4).
- 3.4. Witness: A person who may have information about a matter into which the WRDSB is conducting an investigation under Board Policy 1017 - Human Rights and this Administrative Procedure 1210.
- 3.5. Supervisory/Managerial Personnel: This includes vice-principals, principals, superintendents, managers, and supervisors or designates who have been delegated authority in the matter.
- 3.6. Confidentiality: refers to the commitment of all involved in the complaint resolution process (complainant/reporter, witnesses, respondent, investigator, or accompanying person) to treat information that is disclosed in the investigation process in ways that maintain the privacy of all involved. Confidentiality is a continuous obligation with no end point (see Section 23 for more details).
- 3.7. WRDSB Community: Includes all WRDSB students, employees, trustees and others such as members of consultative committees, clients of the Board, parents/caregivers, volunteers, permit holders, contractors, and employees of organizations not related to the Board but work on or are invited onto Board premises.
- 3.8. Condonation: refers to the practice – particularly on the part of those in supervisory, leadership or management positions – of overlooking, downplaying, accepting, and/or failing to respond to discriminatory behaviour.
- 3.9. Interim Measures: Interim measures are precautionary and non-disciplinary restrictions or conditions that may be implemented at the on-set of the complaint resolution process (see Section 11 for additional details).

#### **4. Access to Policy Information**

- 4.1. People who believe they may have witnessed or been subjected to harassment and/or discrimination, as well as people who are the subject of a complaint of harassment and/or discrimination, may benefit from having access to information about the policy and procedure, as well as on harassment and/or discrimination in general in order to resolve their concern.
- 4.2. The Human Rights Branch (hereinafter referred to as HRB) or designate will provide information about human rights, Board Policy 1017 - Human Rights and this procedure to any person who is concerned about possible harassment and/or discrimination within the organization. The HRB or designate will not act as an advocate for any person and will

not provide legal advice, and will maintain the confidentiality of communications with them, unless legally required to disclose that information.

## 5. **Other Avenues to Address Concerns**

5.1. There may be other Board policies and procedures under which concerns may be raised. Based on the circumstances surrounding a concern, WRDSB staff members may be directed to one of the following processes:

5.1.1. Non Code-based incidents involving staff will be addressed under Administrative Procedure 3740 - Prevention and Resolution of Workplace Harassment.

5.1.2. Incidents of harassment and/or behaviour of a violent nature including physical and/or sexual assault must be formally reported and investigated in accordance with the emergency response measures outlined in the Board Policy 1004 - Harassment, Board Policy 1009 - Violence in the Workplace, Administrative Procedure 3730 - Sexual Harassment Guidelines, and Administrative Procedure 3740 - Prevention and Resolution of Workplace Harassment.

## 6. **Application of the Complaint Resolution Process**

6.1. Any WRDSB staff member who believes they have experienced Code-based harassment and/or discrimination by another member of the WRDSB community is able to access the complaint resolution process (see Appendix A - Human Rights Complaints Reporting Flow Chart).

6.2. Complainants/Reporters: Staff Members

6.2.1. Staff members who believe they have been discriminated against or harassed (complainants/reporters), should contact their immediate supervisory/managerial personnel for assistance.

6.2.2. The supervisory/managerial personnel should report to the appropriate Senior Manager Human Resource Services or designate or the HRB if the person responsible for the harassment and/or discrimination is a WRDSB employee. Both Human Resource Services and the HRB may receive Code-based complaints of harassment and/or discrimination.

6.2.3. If the immediate supervisor/managerial personnel is the party alleged to be responsible for the harassment and/or discrimination or alleged to condone (see Section 3.8 Definitions for "condonation") the behavior, the incident/complaint should be reported to the supervisory/managerial personnel's manager, Human Resource Services, or the HRB for assistance and resolution.

6.3. Special Situations

6.3.1. If the Director of Education is the party alleged to be responsible for the harassment and/or discrimination or alleged to condone the behavior, the complainant/reporter should direct their incident/complaint to to the Chair of the Board (or designate).

6.3.2. If a Trustee is the party alleged to be responsible for the harassment and/or discrimination or alleged to condone the behavior, the complainant/reporter should direct their incident/complaint to to the Chair of the Board (or designate) for investigation under Board Policy G201 - Trustee Code of Conduct Policy.

6.3.3. In the case of highly sensitive concerns, concerns involving senior team members, or when, in the sole and absolute discretion of the Board, an impartial

internal investigation cannot be completed, the Board reserves the right to utilize a qualified third party investigator to conduct the investigation.

- 6.4. Efforts to resolve concerns through dialogue independently (see Section 13.1) do not prevent complainants/reporters from accessing support through the HRB or Human Resource Services at a later date, as long as the complaint is not currently involved in another proceeding or complaint resolution process.
- 6.5. Where a person feels that the operation of a WRDSB policy, procedure, process, or practice is discriminatory under the Code, the incident/complaint should be submitted to the HRB.

## **7. Collective Agreements**

- 7.1. For unionized employees, if there is a relevant collective agreement clause, the complaint may be dealt with under the relevant provisions of that collective agreement; and where there is no applicable collective agreement clause or no relevant provisions within a collective agreement, the complaint will be handled in accordance with this procedure.
- 7.2. Following a preliminary assessment, it may be determined that a matter first brought to the HRB falls outside the scope of Board Policy 1017 - Human Rights and this Administrative Procedure 1210 and is best dealt with under another policy and/or procedure, and as such will be referred accordingly.

## **8. Access to Code Mechanisms**

- 8.1. The provisions of this procedure in no way affect the right of any person to exercise their rights under the Code, within the time limits specified by that legislation. Employees may also have rights under collective agreements that will give them other options for addressing a concern.
- 8.2. Where a complainant/reporter is dissatisfied with the outcome of the complaint, they will be advised of their rights under the Ontario Human Rights Code. Parties do not give up their right to launch further legal proceedings or to take additional steps.

## **9. Site Based Review**

- 9.1. Under some circumstances, the HRB will recommend that a site-based review be conducted.
- 9.2. A site based review is a process that the HRB may recommend in order to better understand the culture, practices, and/or behaviours at a specific site (school or department) due to identified patterns in the complaints and concerns that have been brought forward that suggest that the individual issues are symptoms of a deeper problem and to respond to allegations of potential systemic discrimination.
- 9.3. The purpose of the site based review is to identify the root cause(s) of any conflicts or issues so as to identify possible areas of improvement in order to prevent harassment and/or discrimination based on Code-grounds.
- 9.4. The site based review is not a process that is focused on responding to individual complaints or attribute individual responsibility. Any disclosures made throughout the review process that require further action as per relevant Board Policy and Procedure, will be addressed as appropriate as per that policy and procedure.

## **10. Complaints**

- 10.1. Subject to any collective agreement, Code-Based complaints will be handled according to Board Policy 1017 - Human Rights and this procedure.
- 10.2. Complaints of Code-Based harassment and/or discrimination should be reported to the principal and/or superintendent, supervisor or manager according to the process outlined in this procedure.
- 10.3. WRDSB staff who believe they have been discriminated against or subjected to Code-Based harassment are encouraged to pursue any of the following:
  - 10.3.1. independently resolve the concern, in a collaborative and respectful manner;
  - 10.3.2. request the support of the appropriate supervisor or manager to respond to the concern through early resolution as outlined in this procedure or by another appropriate resolution mechanism;
  - 10.3.3. consult with the HRB regarding possible pathways to resolution as outlined in this procedure;
  - 10.3.4. notify the HRB by submitting a Human Rights Incident Reporting Form;
  - 10.3.5. engage their respective Union/Association executive for assistance;
  - 10.3.6. make a complaint through Administrative Procedure 3740 - Prevention and Resolution of Workplace Harassment.

## 11. **Interim Measures**

- 11.1. At the sole discretion of the Board, there may be situations where it is appropriate to separate the complainant/reporter and respondent or to provide clear expectations in order to stabilize the situation. These arrangements may be made in consultation with Human Resource & Equity Services for an interim period pending the outcome of the complaint resolution process.
- 11.2. If necessary and as determined solely by the Board, the complainant/reporter or the respondent may be assigned to home, moved to a different location within the organization, or provided with alternative reporting relationships. The decision will be made in consultation with Human Resource & Equity Services on a case-by-case basis, and will uphold the principle that the complainant/reporter will not be penalized for making a complaint in good faith.

## 12. **Complaint Resolution Process** (See Appendix B- Human Rights Complaints Resolution Process Flow Chart)

- 12.1. Human rights concerns can be addressed and resolved at all levels within the Board. WRDSB employees are encouraged to bring the matter to the attention of their supervisor/managerial personnel, Senior Manager of Human Resource and Equity Services or designate, or HRB, as appropriate.
- 12.2. The person receiving the complaint must establish "prima facie" discrimination (discrimination on its face) which means that a complainant/reporter would need to identify that they have a characteristic protected from discrimination (see Section 1.1 of this procedure), they have experienced an adverse impact through their engagement with the Board, and that the protected characteristic was a factor in the adverse impact.
- 12.3. Respondents have a right to know the allegations, the details of the complaint resolution process and will have an opportunity to respond to the allegations.

12.4. There are a variety of pathways at the WRDSB available to resolve a human rights complaint: early resolution, alternative resolution, and formal resolution. Regardless of the pathway to resolution, complaints will be taken seriously.

13. **Early Resolution Processes:** This includes Informal Dialogue and Site-Based Resolution

13.1. Informal Dialogue: Complainants/reporters are encouraged to explain to the person who is harassing or discriminating against them that the conduct is unwelcome, but are not obliged to do so. If addressing the person responsible could lead to an escalation of the harassment and/or discrimination, or to safety risks, complainants/reporters are not expected to have to communicate directly with the respondent. If a complainant/reporter feels they can safely make it known to the person responsible that the behaviour is unwelcome, this may resolve the matter. The supervisor/manager can be engaged to help facilitate this informal dialogue.

13.2. Site-Based Resolution: If informal dialogue did not resolve the concern or was not possible, the complainant/reporter may bring the matter to the appropriate supervisor/manager to facilitate a resolution.

13.2.1. A Site-Based Resolution process may include dialogue led by a supervisor/manager.

13.2.2. A Site-Based Resolution process may include an investigation. If the investigation involves employees, the administrator or supervisory//managerial personnel is required to notify their Human Resource and Equity Services contact of their intention to conduct an investigation involving an employee/employees. Human Resource and Equity Services will work together with HRB, as appropriate, to support site-based resolution of Code-based complaints.

13.2.3. A site-based investigation may include:

- notification in a timely manner to the parties that:
  - a matter is being investigated;
  - they may be contacted to provide a statement;
  - they may seek support and assistance from their accompanying person (union/association representative for unionized employees or other person, as appropriate);
- an interview with the complainant(s)/reporter(s);
- an opportunity for the respondent(s) to provide a response;
- interview(s) of witnesses;
- determination of findings;
- implementation of appropriate action(s) to resolve the situation in consultation with HRES and/or HRB as appropriate; and
- monitoring of the situation to ensure the resolution is maintained and the concern is not repeated.

14. **Alternative Resolution Processes:** Alternative resolution processes, also called informal resolution processes, seek to bring resolution to human rights concerns without investigating or assessing the merits of the allegations (for example, by facilitating communication between the people involved). Using alternative resolution does not diminish the seriousness of a complaint - all complaints made in good faith are taken seriously by the HRB.

14.1. Alternative resolution, including - but not limited to - mediation, dialogue, or restorative justice, requires the voluntary participation of the parties and may be used at any time in the complaint resolution process. Alternative resolution involves a mutually agreed upon

skilled facilitator who will communicate directly with the parties. It is an opportunity to resolve concerns in a mutually respectful manner.

- 14.1.1. The alternative resolution process is kept separate from any investigation process. Alternative resolution will not be appropriate in all cases. Where appropriate, the person receiving the complaint will offer the parties an opportunity to resolve the complaint through alternative resolution. Alternative resolution may be conducted by an objective internal or third-party qualified facilitator, as determined by the Board.
- 14.1.2. Information collected by the HRB during an alternative resolution process cannot be introduced as evidence in any future investigation unless required to do so by law.
- 14.1.3. In situations where the alternative complaint resolution process does not resolve the concern, the complaint will be resolved through the formal complaint resolution process (investigation) outlined in Section 15.

15. **Formal Complaint Resolution Process:** The formal complaint resolution process includes a full investigation of the allegations by the HRB or a third party independent investigator as determined solely by the Board. If early resolution or alternative resolution does not resolve the concern, is not deemed appropriate, or if any party refuses or declines to participate in an alternative complaint resolution process, the matter may be referred to the HRB to facilitate a formal complaint resolution process within a timely manner. A formal investigation includes:

- Appointing an investigator (HRB staff or third party) (see Section 15.6 for additional detail);
- Notifying the parties involved;
- Agreement to uphold confidentiality;
- Interviewing the parties involved;
- Gathering information and evidence;
- Analysis of information and evidence collected through the investigation to make findings;
- Determination of complaint as substantiated or unsubstantiated;
- Communicating the outcomes of the investigation to the parties;
- Analysis of whether the findings of the investigation process represent a violation of Board Policy 1017 - Human Rights; and
- Recommendations to appropriate decision makers about outcomes.

15.1. The formal complaint resolution process would be applied under the following circumstances:

- 15.1.1. where the early resolution or alternative resolution process failed;
- 15.1.2. where the serious nature of the complaint is such that it is not suitable for early resolution or alternative resolution;
- 15.1.3. where a party has reason to believe that the fact finding or investigation process, undertaken at the supervisory/managerial level through a site-based investigation, was conducted in an unfair and/or biased manner, that party may choose to file a complaint to the HRB;
- 15.1.4. where the Board is obligated (as per legislation) to engage in a formal investigation, the matter will be forwarded to the HRB for arranging an investigation;



- 15.1.5. where the HRB determines there is a systemic issue that needs to be addressed; or
  - 15.1.6. when there is perceived bias or fear of reprisal, the complainant/reporter may elect to file the complaint directly with the HRB.
- 15.2. The formal complaint resolution process would not be applied in the following circumstances for employees when:
- 15.2.1. A matter is being addressed through the complaint/grievance/arbitration process of a Union/employee association;
  - 15.2.2. A matter pertains to an active/closed Workers Safety and Insurance Act (WSIB) claim and/or process;
  - 15.2.3. A matter pertains to an active/closed disability management claim administered through the Board or a 3rd party;
  - 15.2.4. A matter pertains to an active/closed non-occupational illness claim administered through the Board or a 3rd party;
  - 15.2.5. A matter is being addressed through an active/closed provincial Board or tribunal;
  - 15.2.6. A matter is being addressed through the judicial/criminal justice system;
  - 15.2.7. A matter, in the view of the Board, is vexatious and/or has been filed in bad faith.
- 15.3. Formal complaints can be submitted using a Formal Complaint Form. If support is required in completing the form, accommodations will be provided. The Formal Complaint Form will:
- 15.3.1. specify the name(s) of the person(s) alleged to have demonstrated behaviour(s) of a discriminating and/or harassing nature;
  - 15.3.2. specify the particulars of the behaviour(s) believed to be discriminating and/or harassing in nature, including the time, date and description and context of the alleged behavior(s);
  - 15.3.3. specify the name(s) of person(s) who may have been witness to the alleged conduct; and
  - 15.3.4. where appropriate, indicate the steps taken by the complainant/reporter to attempt to resolve the matter;
  - 15.3.5. indicate if the complaint refers to a request that is part of:
    - A matter engaging the complaint/grievance/arbitration process of a Union/employee association;
    - A matter pertaining to an active/closed Workers Safety and Insurance Act (WSIB) claim and/or process;
    - A matter engaging an active/closed Human Rights Tribunal Application;
    - A matter engaging an active/closed provincial Board or tribunal (including the Human Rights Tribunal of Ontario);
    - A matter engaging the judicial/criminal justice system.

- 15.4. Complaints may also be filed by persons who witnessed the discriminatory and/or harassing conduct or behaviour. This process applies to individual and/or group complainants/reporters and respondents.
- 15.5. The person receiving the complaint will notify the person(s) complained against - the respondent(s) - of the complaint and provide the respondent(s) with a summary of the written complaint.
  - 15.5.1. A respondent, who is a member of a union or association, will be provided with an opportunity to obtain union representation in this process. The member may notify their union or request that the HRB notify their union.
- 15.6. **Appointing an Investigator:** The investigator is responsible for ensuring a thorough, procedurally fair, and impartial investigation of the allegations in the complaint. The investigator will interview the complainant(s)/reporter(s), the respondent(s), and relevant witnesses, as well as gather documents relevant to the matters in the complaint. When necessary, interviews involving staff will be conducted in collaboration with Human Resource and Equity Services.
  - 15.6.1. The investigator, in a formal complaint resolution process, is prohibited from being in a position of direct supervisory authority over any of the people involved in a complaint. Whether an investigation is to be conducted by a member of the HRB or by someone external is the sole and absolute decision of the Board.
  - 15.6.2. All WRDSB staff and non-staff members are encouraged to cooperate with the investigator. As needed, without compromising confidentiality, the HRB may reach out to the supervisory/managerial personnel of any party involved in an investigation in order to coordinate a suitable time and place to conduct an interview.
  - 15.6.3. The investigator will, wherever possible, complete the investigation within ninety (90) calendar days of receiving the assignment.
  - 15.6.4. At the conclusion of the investigation, the investigator will prepare a written report summarizing the allegations and the investigation results. When an external investigator has been involved, they will forward the report to the HRB.

## **16. Culturally Responsive Resolution - for Indigenous People**

- 16.1. Recognizing that a human rights framework may not be meaningful for Indigenous members of the WRDSB community (any member of the WRDSB who self-identifies as Indigenous) who experience harassment and/or discrimination at the WRDSB, the Human Rights Branch will support Indigenous complainants/reporters in finding resolution through culturally relevant and responsive means, if so desired.
  - 16.1.1. Culturally relevant resolution may be incorporated into any of the other resolution pathways (i.e. formal investigation or alternative resolution) as described in this administrative procedure as long as it is appropriate to do so.
- 16.2. WRDSB members who are Indigenous and are navigating a human rights complaint resolution process - as complainant/reporter, respondent, or witness - are entitled to seek culturally relevant support - this support may be provided by Board personnel (i.e. the Indigenous School Social Worker for students, the Equity and Inclusion Officer - Indigenous Focus), unless there is a conflict of interest, or by someone external to the Board, such as an Elder, family member, or advocate.

## **17. Filing Complaints Directly with the Human Rights Branch**

- 17.1. The process for filing a human rights complaint with the HRB is primarily through a referral by a manager or supervisor. However, there are certain instances in which someone may contact the HRB without a referral, using the online Human Rights Incident Reporting Form. Following submission of a referral or an online reporting form, in most cases, the complainant/reporter will be offered a confidential consultation within five (5) business days, via phone, online, or in person, in order to determine next steps.
- 17.2. Following the consultation with the complainant/reporter, the HRB will determine if the complaint falls under Board Policy 1017 - Human Rights and this procedure or if the matter should be referred under another Board policy or Human Resources and Equity Services.
  - 17.2.1. The HRB will initiate a preliminary threshold assessment to determine if the complaint is based on any of the protected grounds under Board Policy 1017 - Human Rights.
  - 17.2.2. The threshold assessment determines if the complaint involves a social area and shows that a protected ground is a factor in adverse effect harassment and/or discrimination.
- 17.3. If the outcome of the threshold assessment determines the complaint will be addressed under another process, the role of the HRB will end and the complainant/reporter will be advised.
- 17.4. A complaint may be referred to the HRB in instances where the matter has not been resolved through any other active process and/or legislative obligation, where there are power imbalances that cannot be appropriately mitigated, fear of reprisal, a perception of bias, or it has been determined to be a Code-based complaint.
- 17.5. Where an HRB staff member is involved in the alternative resolution process, they may declare a conflict of interest. If a conflict of interest is declared, the matter will be addressed by another staff member of the HRB or a third party.
- 17.6. Upon receiving a complaint, the HRB will:
  - 17.6.1. Listen to the concerns of any staff member of the WRDSB seeking information regarding human rights matters;
  - 17.6.2. Answer questions or provide information about Board Policy 1017 - Human Rights;
  - 17.6.3. If appropriate, direct the complainant/reporter to the relevant administrator, manager/supervisor (as per Appendix A);
  - 17.6.4. Inform the complainant/reporter of other relevant WRDSB policies and procedures;
  - 17.6.5. Provide information on the alternative resolution and formal resolution processes;
  - 17.6.6. If necessary, make a referral to support services;
  - 17.6.7. Facilitate or initiate alternative or formal resolution processes as agreed to by the complainant/reporter and respondent;
  - 17.6.8. Refer non-Code complaints to the appropriate policy or procedure.
- 17.7. The HRB will not manage a complaint under the following circumstances:

- 17.7.1. It is determined that the matter is clearly not a Code-based complaint;
- 17.7.2. A parallel process is underway i.e. active grievance/arbitration, active HRT0 complaint, civil action, active OLRB, WSIB, etc.
- 17.7.3. A previous and/or parallel process has been completed and the applicant is not pleased with the outcome i.e. active grievance/arbitration, active HRT0 complaint, civil action, active OLRB, WSIB, etc.;

**18. Malicious and Bad Faith Complaints**

- 18.1. If it is determined by the Board that a complaint is malicious or filed in bad faith, an investigation into the human rights complaint may not take place or may be discontinued. The matter will be referred to Human Resource & Equity Services and disciplinary action may be taken against the person(s) responsible for making the malicious and/or bad faith complaint.

**19. Standard of Proof**

- 19.1. The standard of proof to be applied in a human rights investigation is the civil standard which is a balance of probabilities. This means that based on the evidence and information provided, the occurrence of the event was more likely than not.

**20. Reprisal**

- 20.1. Every person has a right to a workplace free of harassment and discrimination. No staff member will be negatively treated for bringing forward a complaint filed in good-faith, participating in an investigation, providing information related to a complaint, or helping to resolve a complaint.
- 20.2. It is a violation of Board Policy 1017 - Human Rights to engage in reprisal, which includes disciplining or punishing a person because they have brought forward a complaint, provided information related to a complaint, or otherwise been involved in the complaint resolution process. Allegations of reprisal may be the subject of a complaint under this procedure, and staff persons engaging in reprisal are subject to corrective action in accordance with Administrative Procedure 3760 - Progressive Discipline. All complaints of retaliation or reprisal must be immediately reported to a vice-principal, principal, superintendent, or the HRB.
  - 20.2.1. When a direct supervisor/manager is alleged to be the person responsible for reprisal/retaliation, a staff person should report to the next level supervisor/manager or the HRB as applicable.
- 20.3. Complaints of reprisal will be addressed separately from the initial complaint.

**21. Representation**

- 21.1. Complainants/reporters and respondents are entitled to have an accompanying person (see Section 3.3). Representatives present at an investigation meeting are present to support the party, but will not be permitted to argue, cross-examine the investigator, confront, interfere, or respond for the respondent except through substantiated accommodation needs (i.e. translator etc.).

**22. Documentation and Records**

- 22.1. For everyone involved in the process, it is important to make and keep written notes about the events leading to the complaint. These details should include:

- What happened – a description of the events or incidents;
- When it happened – dates and times of the events or incidents;
- Where it happened – the location(s) the event occurred;
- Who witnessed it happen – the names of witness(es), if any.

- 22.2. Gather any other documents or materials that may have something to do with the complaint, such as letters, notes, offensive pictures, etc. Documentation related to the investigation will be collected and preserved by those carrying out the complaint resolution process. Any documentation will be retained by the Board as per the appropriate record retention schedule.
- 22.3. Every person who believes they have experienced harassment and/or discrimination, as well as every person who has been notified of a complaint against them, is advised to create and keep written notes about the events at issue, and to maintain any relevant written documentation.
- 22.4. Records will be maintained in accordance with Board Policy 1015 - Records Information Management, Administrative Procedure 1100 - Records Information Management and in alignment with the Board's retention schedule.
- 22.5. Any correspondence and other documents submitted to, or created by the HRB under this procedure must be marked "PRIVATE AND CONFIDENTIAL", managed in accordance with the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and be stored securely by the HRB. Access to the files is limited to the HRB.
- 22.6. Where an investigation is completed and the determination made that Code-based harassment and/or discrimination did occur, the materials collected will be maintained by the HRB and a summarized report of outcome will be forwarded to Human Resource and Equity Services if an employee is involved.

### 23. **Confidentiality and Privacy**

- 23.1. Any individual making a complaint should not discuss the matter with anyone other than the appropriate parties. Appropriate parties include: a designated accompanying person (as defined in Section 3.3) and the person to whom the complaint is disclosed for resolution (manager/supervisor or HRB). Those involved in the resolution of the complaint will make every effort to maintain confidentiality of information and will disclose only where absolutely necessary.
- 23.2. Information about the complaint is provided only to those who need to know in order to investigate and/or resolve the complaint. Where appropriate, the person will be advised before any disclosure of information is made.
- 23.3. It is the responsibility of the investigator and all parties to maintain confidentiality in the complaint resolution process. Witnesses should be informed that investigators or those carrying out site-based investigations, in obtaining statements, will maintain such statements in confidence.
- 23.4. **Confidentiality does not mean anonymity.** When acting on a complaint, a fundamental principle of fair process is that the respondent(s) must be informed of who has made the allegations and the specific nature of the allegations at the earliest possible point in the process. This may require the disclosure of witness names and statements to the parties involved in order to enable a good-faith opportunity for the individual(s) to respond.

- 23.4.1. In certain circumstances, the HRB may receive anonymous complaints, however there are limits of what process may be undertaken or outcomes that may result due to the anonymity of the complainant/reporter.
- 23.5. The WRDSB may be required to provide information obtained during an investigation to an outside agency, as required by law.
- 23.6. All documents related to a complaint, including the written complaint, witness statements, investigation notes and reports, and documents related to the complaint, will be securely maintained by the HRB as per Section 22 of this procedure.

## 24. **Potential Outcomes**

- 24.1. In determining the appropriate recommended outcomes, the HRB will take into account the nature of the violation of the Policy, its severity, and whether the individual has previously violated the Policy.
- 24.2. The HRB does not conduct disciplinary action for members of the WRDSB community. Based on the findings in the investigator's report, the HRB will decide whether Board Policy 1017 - Human Rights has been violated. If the Policy has been violated, the HRB will provide a recommendation to the appropriate decision-maker (see below) based on the substantiated evidence.
  - 24.2.1. All employee disciplinary action will be administered, reviewed, and authorized by Human Resources and Equity Services.
  - 24.2.2. All student disciplinary action will be administered, reviewed, and authorized by the administrator or superintendent as appropriate.
  - 24.2.3. Complaints of harassment and/or discrimination against a Trustee will be addressed under the Trustee Code of Conduct (G201).
  - 24.2.4. For those who are not staff, students, nor trustees (including members of consultative committees, clients of the Board, parents, volunteers, permit holders, contractors, and employees of organizations not related to the Board but work on or are invited onto Board premises), possible outcomes include, but are not limited to: letters of disapproval/warning, revoking of permits/contracts, or issuing a no trespass warning.
- 24.3. Where a violation of the Policy is found, the HRB will also take the necessary steps to repair the effects of the harassment and/or discrimination on the complainant/reporter, and to prevent any further recurrences of harassment and/or discrimination within the organization.
- 24.4. Possible outcomes of an alternative resolution process, may include non-disciplinary recommendations (eg. voluntary professional learning) as appropriate.

## 25. **Communication**

- 25.1. At the sole discretion of the HRB, upon conclusion of an investigation, the outcome will be shared with the parties in a way that ensures all confidentiality and privacy concerns are accounted for. This may include a letter of outcome, a written or verbal summary of the report.

## 26. **Timeline**

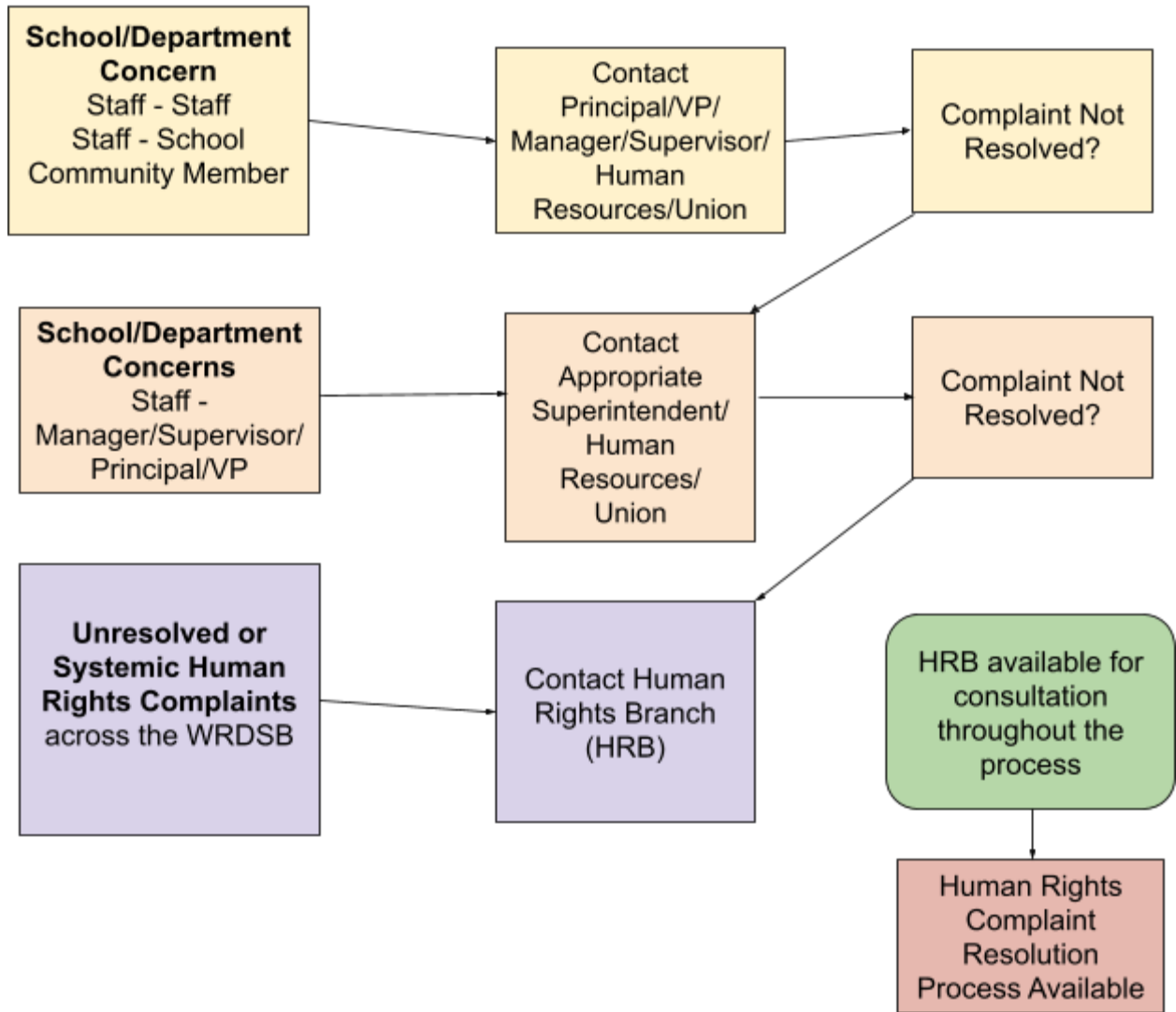
- 26.1. In order to ensure complainants/reporters have the opportunity to file an application with the Human Rights Tribunal of Ontario, which has a one (1) year limitation, complaints to the HRB must be reported within six (6) months after the last alleged contravention. In

exceptional circumstances, at the sole and absolute discretion of the HRB or designate, the timelines may be extended.

- 26.2. The timelines outlined in this procedure are meant to ensure that a complaint is addressed in a timely fashion. Parties will be notified as required, if an extension is needed.
  - 26.2.1. The HRB will respond to inquiries within five (5) business days of receiving a complaint and formal investigations will be completed within ninety (90) days, except where an extension is merited, as per Section 26.3.
- 26.3. There may be, in exceptional and compelling circumstances, reasons to extend a timeline. In this case, the HRB may authorize an extension where the delay is incurred in good faith and the extension does not prejudice or harm those involved in the complaint.
- 26.4. It may not always be possible to accurately determine appropriate timelines for the resolution, investigation or final decision with respect to a particular complaint. Therefore, where no timelines are mentioned, the intention is to use a reasonable time period, and to act as expeditiously as possible in light of the nature and complexity of the circumstances of the complaint and of other circumstances that may arise during the complaint process that are beyond a party's reasonable control.

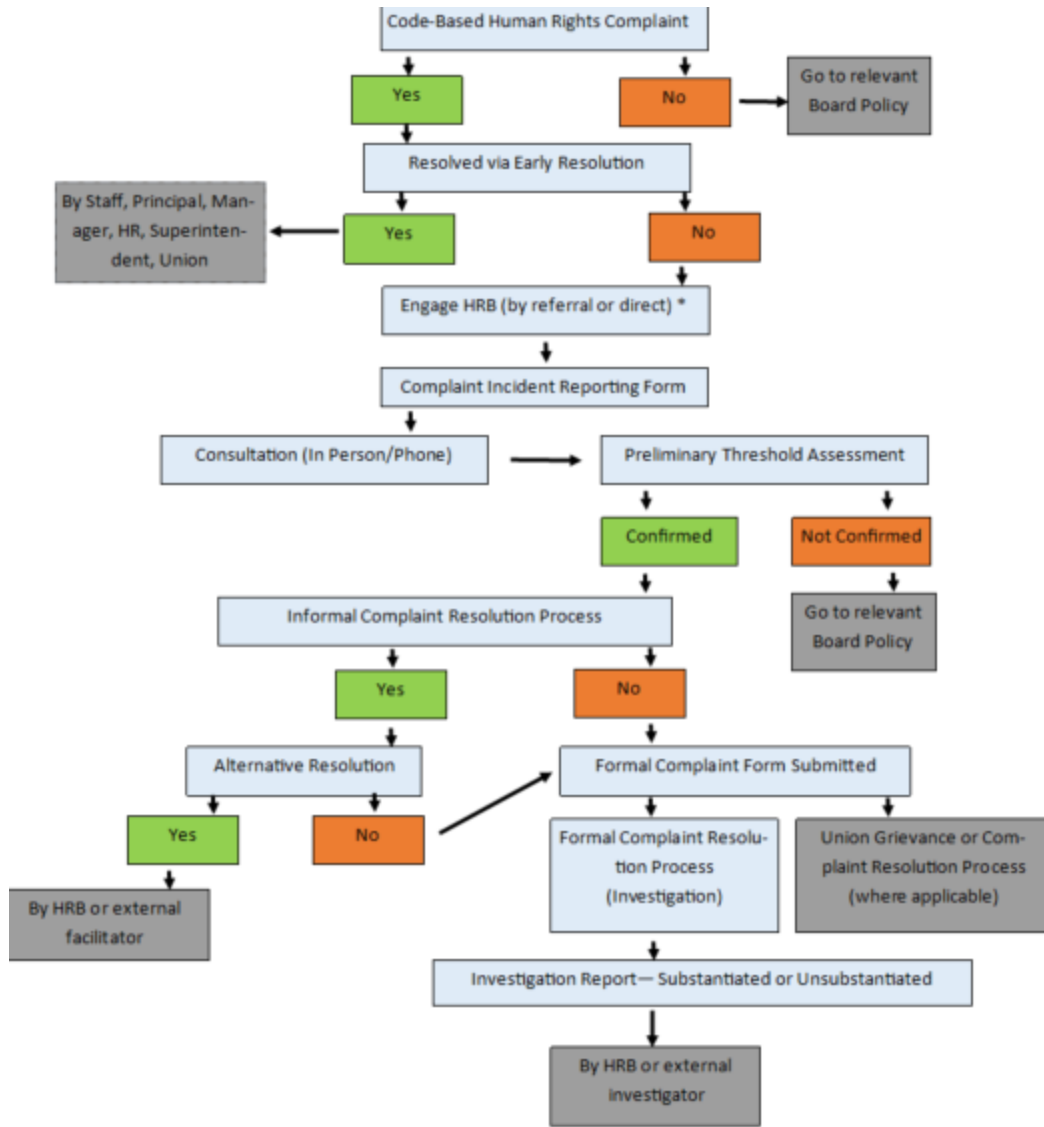
# Appendix A - Human Rights Complaints Reporting Flow Chart for Staff

## Human Rights Complaints Reporting Flow Chart





## Appendix B - Human Rights Complaint Resolution Process Flow Chart for Staff



## Appendix C - Human Rights Complaint Resolution Roadmap

1. Does the situation concern a Code-based human rights complaint?
  - a. **Yes** - go to 2.
  - b. **No** - Go to relevant Board policy

2. Resolved through early resolution?
  - a. **Yes** - complaint is resolved by staff, principal, manager, HR, superintendent or union
  - b. **No** - Go to 3.

3. Engage Human Rights Branch (HRB) - by referral or direct

4. Complete complaint incident reporting form

5. Consultation with HRB - In person/phone/video call

6. Preliminary threshold assessment -
  - a. **Confirmed** - go to 7.
  - b. **Not Confirmed** - Go to relevant Board policy

7. Alternative complaint resolution process
  - a. **Yes** - go to 8.
  - b. **No** - go to 9.

8. Alternative resolution process
  - a. **Yes** - resolution conducted by HRB or external facilitator
  - b. **No** - go to 9.

**9.** Formal complaint form submitted

- a. **Yes** - go to **10**.
- b. **No** - Resolved via Union grievance or complaint resolution process (where applicable)

**10.** Formal complaint resolution process (investigation)

**11.** Investigation report - substantiated or unsubstantiated; by HRB or external investigator