

Date of Issue	May 2017
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Subject	DISPUTE RESOLUTION PROCEDURE ARISING FROM WORKPLACE HARASSMENT OR OBJECTIONABLE BEHAVIOUR
References	Human Rights Code Employment Equity Act Occupational Health and Safety Act Municipal Freedom of Information and Protection of Privacy Act Policy 3120 - Employment Equity Policy 3031 - Workplace Harassment Policy 3035 - Workplace Conflict Resolution Policy 3130 - Equity and Inclusive Education
Contact	Human Resource Services

1. General

These procedures provide a mechanism for dealing with workplace harassment or objectionable behaviour complaints. Nothing in these procedures denies or limits access to other avenues of redress available under the law or the filing of a grievance or progressive discipline. If another avenue of redress is selected, the superintendent of Human Resources Services will determine whether or not to suspend this process while the other process proceeds.

Informal resolution must first be attempted and any actions taken documented, prior to a formal complaint being filed.

2. Definitions

2.1 Harassment

The Simcoe County District School Board (SCDSB) will take steps to prevent harassment and will respond to all identified harassment.

Harassment is defined by the *Human Rights Code*, R.S.O. 1990, c. H.19, as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome” (Section 10(1)). The *Occupational Health and Safety Act*, R.S.O. 1990, c.7, as amended, defines workplace harassment as “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome”.

The board interprets this to include any behaviour which is known or ought reasonably to be known to the perpetrator to be offensive, embarrassing or humiliating to other individuals. Such conduct may include written, verbal and/or physical conduct and may relate to any of the grounds of discrimination prohibited in employment by the *Human*

Rights Code (Ontario). These grounds include the following: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance and other grounds as amended in the legislation or identified in case law or by policy of the Human Rights Commission from time to time.

2.2 Objectionable Behaviour

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

Objectionable behaviour can take the form of intimidation or behaviour that humiliates, insults, threatens or degrades. It includes behaviour that would be described as unwanted attention or other inappropriate behaviour that could reasonably be expected to cause physical, emotional or psychological distress. Objectionable behaviour is not the normal exercise of supervisory responsibilities, including training, direction, instruction, counselling and discipline.

Improper use of authority or position to undermine, sabotage or otherwise interfere with the career of an employee or academic success of a student constitutes objectionable behaviour.

2.3 Poisoned Work Environment

A reasonable work environment is changed to a poisoned one when conduct and/or comments related to the prohibited grounds of discrimination unreasonably interfere with an employee's work performance and create an intimidating, hostile or offensive work environment.

2.4 Racial/Ethnocultural Harassment

Racial/Ethnocultural harassment may be experienced by women or men. Such harassment generally involves written, verbal and/or physical actions which express negative attitudes, derogation, and/or hate for a person or group of persons based on their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed or religion. Racial/Ethnocultural harassment is defined in the *Human Rights Code* (Ontario).

2.5 Sexual Harassment

Sexual harassment may be experienced by anyone. Sexual harassment is defined in the *Human Rights Code* (Ontario) amended by Bill 132 which now includes workplace sexual harassment in the definition of workplace harassment. Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression.

Making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant, or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome is deemed workplace sexual harassment.

Relationships between consenting adult employees which are/were voluntary and based on mutual attraction do not constitute sexual harassment. Any harassment towards a former partner may constitute sexual harassment if one party is offended or feeling harassed by the other partner post relationship.

2.6 Student, Employee, other Users

Under these procedures, the word *student* includes all persons, regardless of age, who are enrolled in any program offered by the board. The word *employee* includes all persons employed by the board. The words *other users* include all persons, who are neither students nor employees, while on board premises or attending board or school programs/functions at other premises or in a business/social/community relationship with the board.

This procedure applies to and covers all members of consultative committees, clients of the board, parents/guardians, volunteers, permit holders, contractors, and employees of organizations not related to the board but who nevertheless work on or are invited onto board premises.

2.7 Supervisor

Supervisor is defined as a person who has charge of a workplace or authority over a worker, and may include supervisor, manager, vice-principal, principal, superintendent or director.

2.8 Threshold Assessment

A threshold assessment is an assessment of whether or not a complaint, if proven, meets the definition of workplace harassment or objectionable behaviour as defined in this procedure.

2.9 Workplace

The *Occupational Health and Safety Act* defines a workplace as “*any land, premises, location or thing at, upon, in or near which a worker works*”.

The workplace includes any place where employees perform duties or functions on behalf of the board. Schools and school-related activities, such as extracurricular activities and excursions, comprise the workplace, as do board offices, vehicles, facilities and lands. Conferences and training sessions fall within the ambit of this procedure.

3. Who May Initiate a Complaint

All board students, employees, trustees and other users, such as members of consultative committees, clients of the board, parents/guardians, volunteers, permit holders, contractors, and employees of other organizations not related to the board but who nevertheless work on or are invited onto board premises have access to the complaint procedures. Individuals who believe that they have been subject to harassment or objectionable behaviour may report the behaviour. In addition, those who have witnessed harassment or objectionable behaviour directly, or have reasonable grounds to suspect that harassment or objectionable behaviour is occurring, may initiate a complaint. Anonymous reports will not be entertained under these procedures. Third party disclosures shall only go forward to the formal stage with the victim's consent. Informal resolution must first be attempted prior to a formal complaint being filed.

4. Timelines

All complaints must be filed within six (6) months of the most recent alleged harassment or objectionable behaviour. A report outside this time frame may be accepted at the discretion of the superintendent of Human Resource Services, or designate.

5. Confidentiality

It is the duty of the supervisor to maintain confidentiality in the complaint process. All complainants, respondents and other persons involved with the complaint process under these procedures will ensure that all matters remain confidential.

Witnesses should be informed that supervisors, in obtaining a statement, will maintain such statement in confidence, subject to their ability to conduct a full and thorough investigation. Every effort possible will be taken to protect the anonymity of witnesses throughout the process. However, the board may be required to provide information obtained during an investigation to an outside agency that has the right to require information otherwise protected by the *Municipal Freedom of Information and Protection of Privacy Act*.

6. Records

All correspondence and other documents generated under these procedures must, subject to the *Municipal Freedom of Information and Protection of Privacy Act*, be marked "PRIVATE AND CONFIDENTIAL" and be stored in a locked and secure file in the human resource services department. All software versions will be erased upon completion and filing of the final report.

7. Misuse of the Complaint Procedure

If there is a determination on a balance of probabilities that a complaint has been filed in bad faith, the complaint process may be discontinued and disciplinary action may occur.

8. Reprisals

It is strictly forbidden to engage in reprisals against individuals because they have reported a complaint. Allegations of reprisals shall be investigated as formal complaints and, if substantiated, are subject to disciplinary consequences.

9. Dispute Resolution Procedure

9.1 Informal Resolution

9.1.1 Supervisors may become aware of harassment or objectionable behaviour in the workplace or learning environment in different ways:

9.1.1.1 direct observation;

9.1.1.2 receive a report from the individual affected;

9.1.1.3 receive a report from a third party.

9.2 Supervisors have a duty to respond to and take action to resolve any situations involving harassment or objectionable behaviour.

Informal Resolution is a *mandatory* first step in this procedure.

Informal resolution is a mandatory procedure that provides an opportunity for parties to resolve a dispute in a mutually respectful manner and must be followed prior to filing a formal complaint. This can prevent escalation of the situation and further negative consequences while promoting the restoration of a healthy learning or workplace environment.

9.3 Supervisors as well as union/federation representatives may facilitate an informal resolution by:

9.3.1 suggesting that the complainant confront the alleged harasser; state that the behaviour is not acceptable and obtain a commitment that the behaviour will stop; or,

9.3.2 informing the alleged harasser of the concern regarding the behaviour and the board's expectation for appropriate behaviour, by referring the complainant to this APM (*A4075 Dispute Resolution Procedure Arising From Workplace Harassment or Objectionable Behaviour*) on the board website and/or relevant board policies.

9.4 Supervisors shall follow up to ensure that the behaviour has stopped by monitoring the situation. If necessary, they shall convene subsequent meetings with the parties and take further steps to ensure that the harassment or objectionable behaviour has stopped.

There will be no formal reports of conflicts resolved informally. Every effort will be made to protect the privacy of individuals.

10. Formal Complaint Procedure

10.1 Initiating a Complaint - Student

When initiating a complaint, student complainants should contact their teacher, principal or vice-principal directly. If the student needs advice or support in reporting the complaint, contact with the school administration may be made on the student's behalf by another individual such as a parent/guardian, teacher, other supportive adult in the school, or other student. If the principal is the party alleged to be responsible for the harassment or objectionable behaviour or is alleged to condone the behaviour, the complaint shall be reported to the appropriate superintendent of education.

10.2 Initiating a Complaint - Employee

Employee complainants should contact their supervisor, union, or federation, or association representative (as applicable) for advice or support in making a complaint. If the supervisor is the party alleged to be responsible for the harassment or objectionable behaviour or is alleged to condone the harassment or objectionable behaviour, the complaint should be reported to the manager of the supervisor. For further clarity, if your supervisor is the person for whom the complaint is being alleged, then all references to supervisor would become the supervisor's supervisor and this may include: supervisor, manager, vice-principal, principal, superintendent or director.

10.3 Initiating a Complaint – Other

Other user complainants should report the complaint to the appropriate supervisors at the board.

Supervisors who receive a formal complaint shall proceed in accordance with the procedures set out in section 10.5 Procedures for Dealing with a Complaint.

10.4 Respondents to a Complaint

Individuals who are named as respondents in a complaint that has been determined would meet the threshold assessment, if proven, have a right to know in a timely manner that they are the subject of a complaint, who the complainant is, what the allegations are and what approach to a resolution is being considered. In particular, a respondent has a right to know the specifics of an allegation, including times, dates and alleged conduct. Initially, respondents will be given a copy of the complaint form (FORM A4075-1) and given reasonable time to prepare a full and complete written response. Throughout the investigation it may be necessary to share further details of the complaint and provide the respondent with time to prepare a full and complete written response.

Employee respondents should contact their supervisor, union, federation, or association representative or other representative for assistance and representation throughout the complaint process.

Other user respondents may also want to contact other appropriate personnel; for example, an employee of another organization may want to seek assistance and support from within that organization.

10.5 Procedures For Dealing With A Formal Complaint

Supervisors have a duty to respond to formal complaints and take action to resolve any situations involving harassment or objectionable behaviour. The following steps provide a framework for the initial response:

10.5.1 Filing a Formal Complaint

10.5.1.1 The complainant fills out the Harassment or Objectionable Behaviour Formal Complaint Form (FORM A4075-1) (with the assistance of the supervisor and/or union, federation or association representative, if necessary).

10.5.1.2 The complainant submits the form to the superintendent of Human Resource Services, or designate. Within five (5) working days of receipt of the complaint, an acknowledgment indicating receipt of the complaint shall be sent to the complainant.

10.5.1.3 The superintendent of Human Resource Services, and/or designate has an additional five (5) working days:

10.5.1.3.1 to consider if there has been an adequate attempt at an informal resolution facilitated by the supervisor. If there has not been an adequate attempt at an informal resolution, a letter will be sent to the complainant indicating that the complaint must first be fully investigated informally and their supervisor will follow up with them.

10.5.1.3.2 to complete the threshold assessment to determine whether or not the complaint, if proven, meets the definition of workplace harassment or objectionable behaviour as defined in this procedure.

10.5.1.4 If the complaint does not meet the threshold assessment, a letter is sent to the complainant indicating why the complaint would not meet the threshold, if proven, and that there will be no further investigation. The complainant will be advised that they may contact their superintendent to discuss further.

10.5.1.5 Investigation of a Formal Complaint

If the complaint, if proven, would meet the threshold assessment, a letter is sent to both the complainant and the respondent, indicating that the threshold would be met, if the complaint is proven through investigation, and that an investigation will be undertaken. The superintendent of Human Resource Services or designate will select and engage a trained investigator, inform the parties of the formal complaint and provide a letter of introduction of the investigator. In most cases, the investigator will be the supervisor, when the supervisor is not the respondent.

In a formal investigation, the investigator shall take the following steps:

- 10.5.1.5.1 take appropriate steps to ensure the safety of the complainant;
- 10.5.1.5.2 notify the complainant, the respondent and witness(es) that they are entitled to support and assistance throughout the process;
- 10.5.1.5.3 ensure that the respondent has a copy of the complaint form;
- 10.5.1.5.4 interview the complainant;
- 10.5.1.5.5 inform the respondent of the allegations and provide an opportunity for response;
- 10.5.1.5.6 interview the respondent;
- 10.5.1.5.7 interview witness(es);
- 10.5.1.5.8 come to conclusions about whether a specific incident did or did not occur based on a balance of probabilities (the question of whether the behaviour is “harassment” or “objectionable behaviour” will be determined using objective standards);
- 10.5.1.5.9 provide an opportunity for the complainant affected and the respondent to respond to the findings and to the conclusions;
- 10.5.1.5.10 take appropriate action to resolve the situation and report to those who are responsible for resolving the dispute.

If the respondent declines to participate in the formal investigative process, the investigation shall proceed. The respondent should be encouraged to participate in the interest of a balanced and fair process.

Both parties will be provided with monthly updates with respect to the on-going investigation. Throughout the course of the investigation, the respondent may receive further details regarding the complaint.

10.5.1.6 If the superintendent of Human Resource Services or designate, determines that the investigative report filed:

- 10.5.1.6.1 demonstrates that the complaint is substantiated and, meets the definition of harassment or objectionable behaviour, letters are sent to both the complainant and the respondent indicating that the investigation is complete and the complaint was substantiated. Further communications will be necessary, depending on the actions taken, to address the complaint. The complainant and/or respondent may contact their superintendent with regards to the appropriate steps that could be taken to restore a positive working environment.

- 10.5.1.6.2 Demonstrates that the complaint is not substantiated because it:
 - 10.5.1.6.2.1 does not provide sufficient details of the alleged harassment or objectionable behaviour, and the complainant has been given notice of this deficiency and reasonable time to remedy it; or,
 - 10.5.1.6.2.2 is vexatious, frivolous or trivial, has not been made in good faith or would, if investigated, constitute an abuse of the policy;
 - 10.5.1.6.2.3 is the normal exercise of supervisory responsibilities, including training, direction, instruction, counseling and discipline.

Letters are sent to both the complainant and the respondent indicating that the investigation is complete. Further communications may be necessary depending on the actions taken to address the complaint. The complainant and/or respondent may contact their superintendent with regards to the appropriate steps that could be taken to restore a positive working environment.

Where an allegation relates to discrimination on the basis of a ground prohibited by the *Ontario Human Rights Code*, it shall be addressed under the board's Human Rights Policy.

- 10.5.2 Standard of Proof
The standard of proof to be applied is the balance of probabilities, meaning that it is more likely than not to have occurred.
- 10.5.3 Outcomes of Formal Investigations
If there is a need to restore a positive learning or working environment or if the complainant and/or respondent require counselling, appropriate steps shall be taken to meet such needs.

Such steps may include:

- 10.5.3.1 mediation;
- 10.5.3.2 counselling for the parties;
- 10.5.3.3 application of strategies to restore a positive learning/working environment;
- 10.5.3.4 specific training for the complainant or respondent;
- 10.5.3.5 workshops for the staff and/or students in the school/workplace regarding their rights and responsibilities (APPENDIX A);
- 10.5.3.6 permanent separation of respondent and complainant from each other;
- 10.5.3.7 restorative measures.

10.5.4 Mediated Resolution

At any time during the investigation of a formal complaint, the parties may agree to hold the investigation in abeyance and attempt to achieve a mediated resolution.

Mediation involves an unbiased third party acting as a facilitator in direct communication between the parties who voluntarily agree to enter into this process. It is an opportunity to resolve disputes in a respectful and mutually agreeable manner.

Mediation is appropriate when all parties agree that a mutually agreeable solution is achievable and desirable. The investigator will request approval of the parties to function as the mediator or obtain a trained mediator from the board's list of approved mediators.

The investigator will also seek the permission of the superintendent of Human Resource Services, or designate, to pursue a mediated resolution.

In cases where an alternate mediator is sought, Human Resource Services shall provide a list of trained mediators who are acceptable to both parties.

Mediation shall be scheduled as soon as possible and at a time and place convenient for the complainant, respondent and mediator.

Any mutually agreeable settlement reached must be confirmed in a mediation agreement signed by the parties. The supervisors shall receive a copy of the mediation agreement to ensure that the terms that the parties have agreed to are being met.

10.5.5 Disciplinary Actions

10.5.5.1 Student Respondents

At the conclusion of an investigation, the principal may deem that the student's actions and/or offence warrant discipline. The principal will follow the appropriate procedures for addressing student misconduct, as outlined in the *Education Act* and other board policies and procedures, such as the board's Code of Conduct or the Safe Schools Policy.

10.5.5.2 Employee Respondents

At the conclusion of an investigation, a supervisor may deem that an employee's actions and/or offence warrant discipline. The principles of progressive discipline will be applied in dealing with disciplinary actions under this procedure. These actions will be governed by the SCDSBs "A Guide to the Principles of Progressive Discipline".

10.5.5.3 Other User Respondents

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

11. Appeal / Review

A complainant or respondent to a formal complaint may submit a request to the superintendent of Human Resource Services for a review of the decision if:

- 11.1 the investigator failed to comply with these procedures;
- 11.2 new evidence becomes known after the final decision but before the expiry of the 20 working days limitation period for requesting a review.

Such review requests must be submitted within 20 working days of receipt of the outcome of the investigation. Upon receipt of a request for a review, the superintendent of Human Resource Services will appoint a reviewer. No review of the final decision will be undertaken with regard to the claim that the conclusions drawn by the investigator(s) based on findings of fact were incorrect. Persons who file a complaint that is deemed to be “in bad faith” may appeal to the director of education or designate for a review of the case.

The reviewer will report his/her findings and recommendations to the superintendent of Human Resource Services, who will affirm or amend the final decision, or require that a new investigation be undertaken.

First Issued 1989

Revised March 1995, June 1999, September 2005, May 2006, September 2007, September 2010, August 2014, May 2017

RESPECTFUL LEARNING AND WORKING ENVIRONMENTS
RIGHTS AND RESPONSIBILITIES

Everyone has the right to work and learn in an environment that is free of unwelcome or intimidating behaviour that could create an unsafe and/or unhealthy environment and could interfere with job performance and ability to learn.

1. Responsibilities of All Persons in Board Learning/Working Environments

It is the responsibility of every person to create and contribute to a climate of understanding and mutual respect for the rights and dignity of each individual by:

- 1.1 showing courtesy and self discipline in actions and words;
- 1.2 seeking informal problem solving of issues;
- 1.3 respecting rules, regulations and practices that are in place which provide for safe and secure learning and working environments;
- 1.4 demonstrating honesty, integrity and behaviours that are representative of a positive and supportive atmosphere;
- 1.5 showing proper care and regard for board property and the property of others.

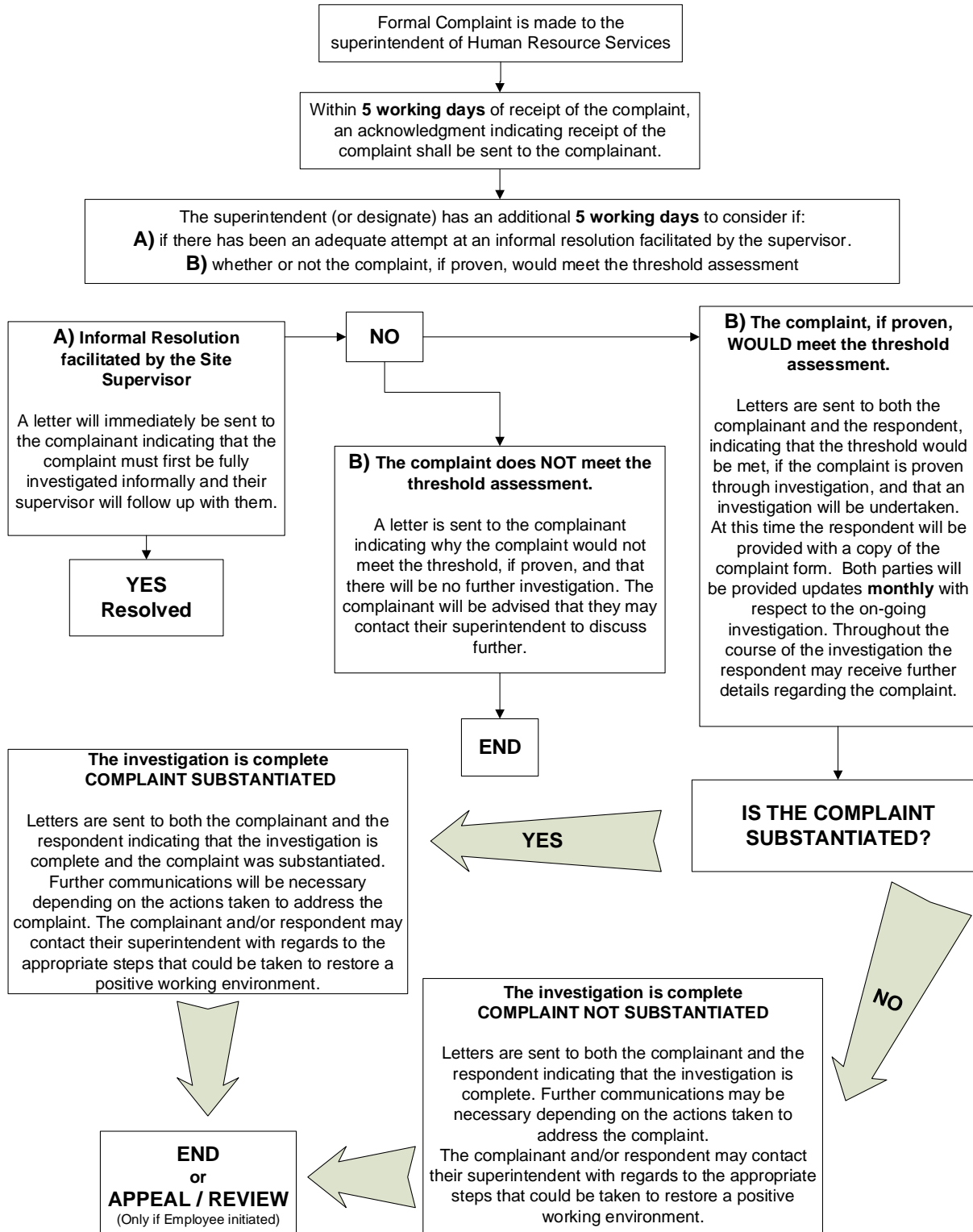
2. Responsibilities of the Simcoe County District School Board

- 2.1 To recognize the dignity and worth of every person and to provide for fairness and equal opportunities without discrimination.
- 2.2 To honour its commitment to work towards the elimination of workplace harassment.
- 2.3 To maintain an environment respectful of human rights that is safe, nurturing and positive for all persons served by it.

By knowing your rights and responsibilities, you can stop harassment. Anyone who feels that the behaviour of others is harassment or objectionable behaviour has the right and responsibility to tell others that the behaviour is offensive, unwelcome, and must cease. They also have the right to report the harassment or objectionable behaviour to someone in a position of authority who can facilitate resolution of the matter.

If you are experiencing harassment or objectionable behaviour, contact your principal, supervisor or supervisory officer.

Procedure Arising from Workplace Harassment or Objectionable Behaviour Formal Complaint



PRIVATE AND CONFIDENTIAL
WORKPLACE HARASSMENT OR OBJECTIONABLE BEHAVIOUR FORMAL COMPLAINT
FORM

I have read the appropriate policy, either Workplace Harassment or Objectionable Behaviour, and the procedures concerning the Dispute Resolution Arising from Harassment or Objectionable Behaviour.

SELECT ONLY ONE PER FORM

Harassment Complaint

Objectionable Behaviour Complaint

Name of Complainant: _____

School/Department/Worksite: _____

Complainant(s): Student Employee, Job Title _____ Other _____

Description of **alleged harassment or objectionable behaviour**.
(Please use additional pages if necessary).

Name of Respondent(s) to the complaint: _____

School/Department/Worksite: _____

Respondent(s): Student Employee, Job Title _____ Other _____

Date(s) of incident(s) or Time Frame: _____

Have you attempted to resolve the dispute informally? Yes No

If yes, describe what actions were taken? (Please use additional pages if necessary).

Complainant Signature: _____ Date: _____

The information contained in this form is of a highly confidential nature and will be protected in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. This form and any attachments will be copied to the respondent(s) named above, in accordance with the Formal Complaints Process.

INSTRUCTIONS FOR HANDLING THIS FORM

Please place this form in a sealed envelope marked "PRIVATE AND CONFIDENTIAL" and send it to the superintendent of Human Resource Services, Simcoe County District School Board 1170 Hwy. 26, Midhurst, Ontario, L9X 1N6.

Sample