



SCHOOL BOARD INVESTIGATIONS RELATED TO HARASSMENT COMPLAINTS

The *Occupational Health and Safety Act (OHSA)* requires that every school board must have a written workplace harassment policy posted and readily accessible to employees. Most school boards post their policies online. School boards are expected, in consultation with joint health and safety committees, to develop a program to implement a workplace harassment policy. A key element of this program is that it must set out how incidents or complaints of workplace harassment will be investigated and dealt with. Normally, such complaints are addressed through an investigation process.

Who Investigates?

The choice of investigator differs from school board to school board and sometimes even differs from complaint to complaint within the same school board. Sometimes, superintendents are assigned to investigate complaints. Sometimes staff from an internal labour relations or human rights office are assigned to investigate. In some instances, school boards will retain a “third party” investigator: this is someone who is not employed by the school board but whom the school board pays to conduct the investigation. Third party investigators often have specific training in carrying out workplace investigations: sometimes they are lawyers or educators. Your school board’s workplace harassment policy may specify who the investigator will be but often this remains within school board discretion.

What is the Process?

If your workplace harassment policy sets out a detailed process through which investigations will be conducted, then that is the process the investigator is likely to follow. A school board that retains an investigator who conducts an investigation in a manner that is inconsistent with the school board’s own policy runs some risk of liability. The parties and any witnesses are typically interviewed. After all information is gathered, the investigator will prepare a report on the witnesses interviewed, the evidence obtained and the conclusions reached about whether and how the policy has been breached. The length of an investigation will depend on a range of factors, including witness availability. We have seen investigations completed in a matter of weeks while others have taken months to complete.

What’s in an Interview?

The investigator normally meets with the complainant first and the respondent second. Depending on the nature of the complaint and the number of people involved, these interviews may be brief or may involve multiple days. They may be scheduled at the school, at a school board office or at a different location designated by the investigator.

The investigator decides who, apart from the parties, will be interviewed. It is important that a party to the complaint identify potential witnesses to the investigator early on in the process if they hope that those witnesses will be interviewed as part of the investigation. ETFO recommends that each party to the complaint identify witnesses to the investigator. Sometimes an interview with one witness will lead to other witnesses being identified as well. Investigators will not always decide to interview every witness that a party identifies as relevant: disputes may arise where the investigator has failed to interview relevant witnesses or has demonstrated bias in their selection of witnesses.

The investigator typically decides the order for witness interviews. Once the investigator has completed witness interviews, they will meet with the complainant and respondent separately again to share some of those details and provide them with opportunity to respond to new or additional information shared.

In the interview itself, the investigator may ask a range of questions related to or arising out of the harassment complaint.

Workplace harassment investigations involving many witnesses from a workplace can create a difficult dynamic in the school. It may be clear to staff that several people are being called away from duties and are likely being interviewed by the investigator.

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There should be no reprisal against someone for participating in such an investigation: any incidents of reprisal should be brought to the attention of ETFO as soon as possible. Persisting in discussion about a workplace investigation can in itself become harassing to the complainant or respondent.

Anyone interviewed in a workplace harassment complaint will be expected to conduct themselves professionally and respect the confidential nature of the investigation process. If you are interviewed, you must be honest about the information you know and you must act in good faith. Lying in a complaint process or engaging in bad faith could lead to job or professional college ramifications. We recommend against engaging in speculation in an interview. Any information shared should be accurate to what the interviewee has seen or heard or otherwise has been a party to.

Can I Have Representation at an Interview?

Anyone who is interviewed as part of a workplace harassment complaint should have the option of involving union representation at the interview. ETFO has often been involved in representing the complainant, respondent and/or witnesses in the course of workplace harassment complaints. Where opposite sides in a complaint process are seeking representation, the leading practice would be that all members involved would have union representation.

It is important that anyone participating in an interview as part of a workplace harassment complaint be prepared. The parties should be made aware of any complaint and response documents. They should have a clear chronology of the events at issue, a list of potential witnesses and bring any relevant documents.

What is the Result of an Investigation?

The investigator will prepare a report at the end of the investigation. That report typically includes the investigator's review and assessment of the evidence provided through the interview process as well as the investigator's conclusions about whether the respondent(s) engaged in workplace harassment. If the investigator has concluded that the complainant made the allegations in bad faith, this would also be included in the report.

Whether a school board will share the report with the parties varies between boards. At minimum, however, the complainant employee must be informed of the results of the investigation and any corrective action that has been taken or that will be taken as a result of the investigation.

Whether the investigation and the steps taken in response to the investigation are enough for the board to have satisfied its obligations to the complainant is something that should be reviewed with the ETFO local and/or provincial staff. Similarly, whether the school board has taken legitimate action against a respondent or someone else because of a finding from a workplace harassment complaint should be reviewed with the ETFO local and/or provincial staff.

The fact that a workplace harassment investigation has been conducted about a complaint does not in itself preclude the possibility of a grievance being filed by ETFO or an individual complaint being initiated with the Ontario Human Rights Tribunal.

For additional information on workplace harassment and sexual harassment as it relates to the OHS and human rights, please refer to the PRS Matters Bulletin, Volume # 93. For more information, please contact Professional Relation Staff at 416-962-3836 or 1-888-838-3836 at the provincial office.

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