



Title: **WORKPLACE HARASSMENT**

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**Operational Procedure**

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## GENERAL

1. In accordance with the policy, these procedures provide a mechanism for dealing with workplace harassment complaints. Nothing in these procedures denies or limits access to other avenues of redress available under the law or the filing of a grievance. In such a case, this process and the procedures shall cease.
2. To protect the Bloorview School Authority (BSA) stakeholders from harassment and/or discrimination, the BSA will ensure that:
  - An investigation is conducted into incidents and complaints of harassment/discrimination that is appropriate in the circumstances;
  - The BSA stakeholder who has allegedly experienced harassment/discrimination and the alleged harasser, if that person is an employee of the BSA, will be informed in writing of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation; and
3. Information obtained about an incident or complaint of harassment, including identifying information about any individuals involved, will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint, or is otherwise required by law.
4. Records will be retained in keeping with the requirements of relevant legislation.
5. 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.
6. The Authority understands that it is difficult to come forward with a complaint of harassment and discrimination and recognizes a complainant's and respondent's interest in keeping the matter confidential including not revealing the identities of relevant witnesses cooperating in formal investigations.
7. To protect the interests of those involved, confidentiality will be fully maintained throughout the process practicable and appropriate under the circumstances. Within the work environment of both parties, it is important that all involved work to ensure that individual privacy and confidentiality are respected. Any breach of confidentiality may be subject to appropriate disciplinary action.
8. All relevant documents and records regarding harassment and discrimination allegations including identifying information about any individuals involved will not be disclosed or accessible to any Authority staff other than the Principal, the investigators, Authority Counsel and the Supervisory Officer of Education as necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint. However, records may be subject to release under the provisions of the Municipal Freedom of Information and Protection of Privacy Act. A complaint under the Human Rights Code, or legal proceedings may require disclosure of any information

collected.

9. If warranted, meetings and interviews may take place at a neutral site rather than at the school or Authority offices.
10. The Principal will be the custodian of the records and documents, and, as such, will ensure confidentiality of all materials. These files may include the names of complainants and respondents, the nature of the alleged harassment, correspondence between parties, meetings, including dates and names of attendees, information regarding the investigation process and disposition of the complaint. If the complaint is upheld, the Authority shall take appropriate disciplinary action, including a letter of reprimand or letter of termination to be retained in the personnel file of the respondent. If the complaint is upheld, a letter to the complainant indicating that corrective action has been taken, will be held in the harassment file of the Principal.
11. If the complaint is not upheld, a letter will be sent to the parties notifying them of such. In general, the letters to the complainant and the respondent will be kept in the file of the Principal. The Authority, however, reserves the right to include the letters in the respective personnel files of the complainant or respondent. If no further complaint against the respondent is received within seven (7) years, subject to any provisions in appropriate collective agreements, the contents of the investigating file may be destroyed
12. Consequently, this procedure and related policy applies to and covers all members of consultative committees, parents, volunteers, and employees of organizations not related to Bloorview School but who nevertheless work on or are invited onto Bloorview School premises.

## **FORMS OF HARASSMENT**

13. Workplace harassment can take many forms. Although there can be no exhaustive list, examples of behaviour (whether it be by a student, parent/guardian, other employee or member of the general public) that may constitute harassment include, but are not limited to the following:
  - Unwelcome jokes, slurs, innuendoes or taunting
  - Verbal abuse or threats
  - Refusal to work with or cooperate with others for discriminatory reasons
  - Isolation or exclusion
  - Reduction, removal and/or withholding of work-related responsibilities for discriminatory reasons
  - Vandalism of property
  - Unwanted practical jokes which cause embarrassment and/or humiliation

- Inappropriate communication via electronic mail
- Attainment and distribution of improper information from the internet
- A pattern of insulting or derogatory remarks, gestures or actions related to a person's
- Mannerisms, competence, physical appearance or other personal characteristics
- Vulgar language or gestures
- Bullying and intimidation through gestures, comments and behaviours
- Public criticism or ridicule
- Misuse of power or authority
- Isolation and/or exclusion from work-related activities
- Removal or reduction of professional responsibilities without reasonable cause
- Remarks, jokes or innuendoes about a person's racial or ethnic background
- Name-calling including derogatory racial or ethnic slurs
- The display or distribution of racist, derogatory or offensive pictures or graffiti
- Refusing to work or interact with an employee because of the employee's racial or ethnic background
- Inappropriate comments or gestures about a person's racial or ethnic background
- Threatening, vandalism, intimidation
- Stereotypical jokes regarding the ethnicity of any racialized person

Examples of Sexual Harassment include but are not limited to:

- Sexually suggestive or obscene comments
- Inappropriate touching, gestures or sexual flirtations
- Leering or inappropriate staring
- Unwelcome comments, discussion or questions about sexual activities
- Display of sexually offensive pictures or objects
- Derogatory remarks directed toward members of one sex
- Inappropriate jokes of a sexual nature

- Explicit propositions
- Sexual assault (also an offence under the Criminal Code)
- Inappropriate and unwanted comments about a person's body, dress or appearance
- Persistent unwanted sexual contact or attention

14. Social interactions, jokes and bantering, which are mutually acceptable, would not be considered harassment, if the behaviour is respectful and there is no negative impact for others in the work environment.

## **WHO MAY INITIATE A COMPLAINT**

15. Individuals who believe that they are targets of harassment may initiate a complaint. In addition, those who have witnessed harassment directly, have received reports of harassment incidents or have reasonable grounds to suspect harassment is occurring, may initiate a complaint. Third party disclosures should only go forward (to the formal stage) with the victim's consent.

16. When an individual is considering whether they have been subjected to harassment, they need to ask:

- Was the behaviour unwelcome?
- Was the behaviour personally threatening, intimidating, demeaning, humiliating or embarrassing?
- Was it deliberate?
- Has the behaviour created a negative work environment? Has it been a course of behaviour over time?
- Have you let the individual know the behaviour is unwelcome?

17. If a person experiences conduct that is inappropriate or harassing or sexual harassing in nature, it is important to understand one's options and to seek resolution to one's concerns. Employees are encouraged to pursue the course of action which they consider most appropriate and/or which they believe will be most effective in their situation.

18. If an employee believes that they have been subjected to Workplace Harassment as defined by Authority Policy, they may choose to:

- Begin with an informal resolution process.
- If the matter is resolved, no further action is required.

- If the matter is not satisfactorily resolved, the employee may then proceed to a formal complaint and investigation process.
  - Elect to go directly to a formal complaint and investigation process, if they believe that the situation requires this level of intervention.
19. While it is the employee's decision as to the course of action they wish to take, it must be noted that in situations where issues of harassment appear present, even if the employee does not choose to proceed with a complaint, BSA has an obligation by law to explore the situation further.
20. To assist in clarifying the facts of each situation, employees are encouraged to document the details regarding unwanted behaviour. As soon as possible, make a record of the details of each incident, including the time, dates, names of those who were present, if any, and circumstances surrounding the incident. Note also if you have spoken directly to the individual about unwanted behaviour, details of the dialogue and the individual's response. Specific information related to the unwanted conduct is helpful to the resolution process, whether the informal or formal process is chosen.
21. While seeking resolution, employees are asked to respect confidentiality and dignity for all those involved. In the workplace, discussion of concerns should be limited to those directly involved in the situation and/or to those who may be assisting in the resolution process.

## **DIRECT DIALOGUE**

22. If you believe that you are being subjected to any form of inappropriate behaviour, wherever possible, ask for the behaviour to stop. In many cases, when the other person becomes aware that their conduct is unwelcome, or is having a negative impact, the other person will stop the unwanted behaviour.
- Speak to the person calmly and professionally. Describe the unwanted behaviour in specific, factual statements and ask for the unwelcome behaviour to stop.
23. The complainant may choose to do this alone or in the presence of another Authority employee, facilitator, Union or bargaining unit representative. If the complainant chooses to speak to the person, it would be helpful to make a note of the conversation that took place. The complainant should tell the person calmly but firmly that the behaviour is unwelcome and must stop. This is often an effective way to end the harassment. For example, the complainant may wish to say "when I am called '\_\_\_\_\_' (statement of fact), I feel belittled and insulted (impact statement). Please refer to me by my name (needs, wants, preferences)."
24. The complainant may wish to advise the person by written communication (e-mail or letter). If one chooses this option, it is advisable to keep a copy of the letter and proof that it was received, such as a courier or a registered mail receipt. In order to protect confidentiality and to ensure receipt, the use of e-mail is not advised.

25. The Authority encourages employees to raise concerns of workplace conduct with the offending party, or with an appropriate third-party resource, early in the dispute, before the situation escalates and when resolution is more easily attainable. Employee who believes that they are being harassed should raise their concern or complaint as soon as possible from the date of the alleged incidents.
26. Promptness in reporting a complaint protects the rights of both the person making the complaint and the person whose actions are in question. No formal written records are completed at this stage for inclusion in an official file although both parties and any third party should keep personal documentation of the meetings.
27. Some helpful hints in writing a letter:
  - Be brief
  - Be factual and clear
  - Give dates, time and location - describe the specific incident
  - State the impact on you (i.e., how it made you feel) - state what you would like to have happen
  - Sign your letter
28. If, however, you do not feel comfortable approaching the individual, or if your efforts to communicate are unsuccessful, there are several options available under the Policy.

## **INITIATING A COMPLAINT**

29. Employee complainants should contact the Principal, a colleague, union, federation or association representative. If an employee requires assistance in making this complaint, another individual such as a colleague, union, federation or association representative should make the complaint on the employee's behalf.
30. If the Principal is the party alleged to be responsible for the harassment or alleged to condone the harassment, the complaint should be reported to the Supervisory Officer. If the Supervisory Officer is the party alleged to be responsible for the harassment or alleged to condone the harassment, the complaint should be reported to the Chair of the Board.
31. Employee respondents may wish to contact the Principal, a colleague, union, federation or association representative. For assistance and representation throughout the complaint process, both employee complainants and employee respondents are referred to the list above.
32. Individuals who are named as respondents in a complaint have a right to know in a timely manner that they are the subject of a complaint, 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 actions.

33. Prior to initiating any complaint and throughout the complaint process, complainants have a right to assistance and support. Individuals who are named as respondents in a complaint, as well as witnesses, also have a right to assistance and support throughout the complaint process. The following people may provide support – Principal, union/federation/association representative or a colleague employee.

## **INFORMAL RESOLUTION**

34. Informal Resolution is a procedure that provides an opportunity for parties to resolve a dispute mutually in a respectful manner. The Authority encourages staff, as well as union representatives, to first attempt informal resolution as a means of resolving issues.

35. Through the informal resolution process, an employee with a concern regarding inappropriate or harassing behaviour may contact a third-party resource of their choice, in order to discuss the situation in confidence and explore how the matter may best be resolved.

Third party resources include the Principal, Vice-Principal or Union representative. Enquiries and discussions at this stage will be treated as confidential and the employee is under no obligation to file a formal complaint.

36. Within an informal resolution process, there is opportunity to discuss the details of incidents or concerns, review the details of the Policy and Procedures, then discuss problem-solving avenues.

37. The Supervisory Officer or Principal as well as union/federation representative may facilitate an informal resolution by:

- Suggesting that the complainant confront the problem by making it clear to the alleged harasser that the behaviour is not acceptable and by obtaining a commitment that the behaviour will stop;
- Informing the alleged harasser of the concern regarding the behaviour, and the Authority's expectation for appropriate behaviour by providing a copy of the Workplace Harassment policy and procedures and/or other relevant Authority policies and by obtaining a commitment that the behaviour will stop; and
- Following up with the complainant to ensure that the behaviour has stopped

38. In cases where an informal plan of action is implemented, the Supervisory Officer or Principal shall follow up by monitoring the situation, holding, if necessary, subsequent meetings with the parties and taking further steps to ensure that the harassment has stopped.

39. The Supervisory Officer or Principal shall advise those involved in the informal resolution process that information obtained during an informal resolution will not be introduced as evidence in any subsequent formal proceeding.



40. For informal complaints, where the parties are members of a union, federation, association or members of the school community, a resolution facilitated by the appropriate representatives is recommended, if acceptable to the parties.

## **HOW TO RESPOND IF ALLEGATIONS OF INAPPROPRIATE CONDUCT OR HARASSMENT ARE MADE AGAINST YOU**

41. If allegations are made against you, listen to the concerns of the other party. If your behaviour is inappropriate or harassing in nature, cease the unwelcome behaviour and offer an apology to the person(s) affected by your conduct.
42. If you believe that the allegations are unfounded, discuss the matter with your union representative or the Principal, as may be appropriate to the situation. Review the Authority's policy and procedures, including your rights within the process, and discuss your options in responding to the situation.
43. If a third-party facilitator or external investigator is involved, provide them with information that is factual and specific regarding your response to the allegations. It is helpful to document your version of alleged incidents, detailing the names of the individual(s) involved, when and where incidents may have occurred, noting any witnesses, if applicable.
44. Remember that allegations may not be confirmed in fact. Authority policy and procedures are committed to ensuring that each party has full opportunity to present their side and that the rights and dignity of all parties are respected in the process.

## **MANAGERIAL PROCEDURES FOR DEALING WITH A COMPLAINT**

45. The Supervisory Officer or Principal may become aware of harassment in the workplace or learning environment in different ways. They may observe harassment directly or receive a report from the individual affected. The Workplace Harassment policies and procedures requires that all those who are covered by the policy report immediately alleged occurrences of harassment. Consequently, the Supervisory Officer or Principal may receive reports from third parties.
46. Under Formal Resolution, the Supervisory Officer or Principal shall ensure that the following steps are taken as soon as possible:
  - Take appropriate steps to ensure the safety of the complainant;
  - Notify the complainant(s), the respondent(s), and witness(es) that they are entitled to support and assistance throughout the process;
  - Ensure that the respondent(s) have a copy of the complaint;
  - Interview the complainant(s) and/or the third party reporting the complaint;
  - Inform the respondent(s) of the allegations and provide an opportunity for

response;

- Interview the respondent(s);
- Interview the witness(es);
- Come to conclusions about whether a specific incident did or did not occur based on a balance of probabilities;
- Ensure that the complainant(s) and respondent(s) receive a copy of the report with findings and conclusions;
- Provide an opportunity for the complainant(s) affected and the respondent(s) to respond to the findings and to the conclusions; and
- Take appropriate action to resolve the situation.

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

47. The standard of proof to be applied is the balance of probabilities.

48. It is important that the Supervisory Officer or Principal pay attention to symptoms of possible harassment such as reduced productivity, changes in behaviour, absenteeism, request for transfer or rumours. Without assistance, the targets of harassment may be embarrassed or reluctant to report a situation.

49. A speedy resolution of a complaint can prevent escalation and further negative consequences while promoting restoration of a health learning or workplace environment.

50. In all cases, the Supervisory Officer or Principal has a duty to respond to and take action to resolve any alleged or suspected situations involving harassment.

## **MEDIATED RESOLUTION**

51. 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 manner.

52. Where there is already a formal complaint being investigated under these procedures, at any time during the investigation, the parties may agree to hold the investigation in abeyance and attempt to achieve a mediated resolution.

53. Mediation is not appropriate in the following circumstances:

- Not all parties are sincerely committed to the process;
- One of the parties is in a position to withhold or confer a benefit, since the authority/power imbalance may result in coercion;
- Students are involved in disputes with employees or other users, including parents and community covered by this policy.

54. The Supervisory Officer or Principal shall advise both parties who agree to mediation that information obtained during a mediation or an attempted settlement arising from the mediation cannot be introduced as evidence in any subsequent formal proceeding.
55. In cases where mediation is sought, trained mediators who are acceptable to both parties shall be provided. In no circumstances shall a mediator be used who is involved in any capacity in the same learning or work site as the parties.
56. Meetings required for mediation sessions shall be scheduled as soon as possible and, where practical, in a time and place convenient for the complainant, the respondent and the mediator.
57. Any settlement that is reached must be mutually accepted by the parties in writing.
58. The Supervisory Officer or Principal shall ensure that the terms that the parties have agreed to have been met.
59. In the mediated process, each relevant BSA stakeholder retains the right to decide how to respond to harassment, including either verbal or written communication with the respondent, in order to resolve the situation. At this stage, since only advice is being sought, names need not be disclosed. All such enquiries to a third party will be treated as confidential and the complainant is under no obligation to file a formal complaint.

## **FORMAL COMPLAINT RESOLUTION**

60. If, upon receiving a complaint, the Principal or designate determines that the conduct complained of (even if it occurred) does not fall within the definition of harassment or discrimination, the procedures outlined in this policy do not apply. In that case, no investigation under this policy will ensue. Depending on the circumstances, the concerns may be addressed and/or investigated under another Authority policy, alternative dispute resolution process, or through the grievance process (if applicable).
61. The Principal/Designate will confirm in writing to the complainant, receipt of the complaint within seven (7) working days.
62. The Principal /Designate will forward a copy of the complaint to the respondent within seven (7) working days of receipt of the complaint.
63. The fact-finding investigation process shall begin within ten (10) working days but no later than fifteen (15) working days of the request to the Principal unless circumstances dictate otherwise.
64. The Principal may conduct the investigation directly, or may assign a Designate(s) to act in this role. In order to ensure objectivity, the designation of investigators will be determined by the needs of the complaint, and may include the use of trained Authority personnel and/or external consultants. The goal in determining who should investigate the complaint will be to ensure full objectivity, freedom from conflict of interest and an absence of a power imbalance.

65. The investigation shall conclude within seventy (70) working days from the commencement of the investigation unless circumstances dictate otherwise.
66. The Principal/Designate will discuss the complaint separately with the two parties, and may consult with others who are in a position to provide relevant information. Both parties may recommend relevant witnesses. Both parties and all witnesses have the right to union representation during these and any other discussions during this process. Witness participation is voluntary. The Authority cannot compel witnesses to participate in this process.
67. With respect to members of the Ontario Teachers' Federation, in accordance with Section 18 "Duties of a Member to Fellow Members" of the Regulation made under the *Teaching Profession Act*, (1) A member shall, [...] (b) on making an adverse report on another member, furnish the member with a written statement of the report at the earliest possible time and not later than three days after making the report; (c) notwithstanding section 18(1)(b), a member who makes an adverse report about another member respecting suspected sexual abuse of a student by that other member need not provide the member or her with a copy of the report or with any information about the report.
68. Following the interviews, documentation will be prepared by the Principal/Designate, or the external consultant, if one has been assigned, based on the information provided during the interviews.
69. Both parties will be given a copy of a summary report which will provide the results of the investigation and any corrective action that has been or that will be taken as a result of the investigation. Both parties will have the opportunity to respond to the findings within ten (10) working days of receipt of the report.
70. Upon receipt of the investigator'(s) report, the Principal or Supervisory Officer will meet separately or together with the relevant parties to resolve the complaint. If the incident is resolved at this stage, no further action will be taken.
71. The complainant, at any stage, may choose to withdraw the complaint. The Authority, however, may still be obliged to investigate.
72. The provisions of this Policy do not take away an employee's right to take action outside of its provisions. For example, using any of the internal options does not mean one cannot exercise other rights such as filing a complaint directly to the Ministry of Labour or the Ontario Human Rights Tribunal.
73. The investigation may conclude with a finding of harassment or prohibited conduct; or it may conclude that there is an insufficient basis of information to support a finding of harassment or prohibited conduct, dependant upon the facts and analysis of information.
74. Where anyone is found responsible for workplace harassment or prohibited conduct, actions will be taken to change and eliminate any illegal or inappropriate behaviour.

75. Corrective measures may include, but are not limited to:

- Mediation
- Counselling
- Education and training
- Formal written apology
- Warning
- Change of work assignment
- Disciplinary action, in accordance with Authority policy and procedures, up to and including dismissal.

If any disciplinary process is initiated, the Authority employee has the right to union representation.

If, as a result of the findings, disciplinary action is taken, this shall be noted on the employee's personnel file subject to any provisions in appropriate collective agreements or as required by law.

## **CORRECTIVE ACTIONS**

76. Corrective measures for visitors to BSA premises may include, but are not limited to appropriate measures from the above list as well as:

- Administrative measures such as a verbal warning or written reprimand, access by appointment only, accompanied access only.
- Denial of Premise Access

77. In the event a complaint is not substantiated, no further action will be taken, subject to the section on maintaining records. However, if there is a need to restore a positive learning or working environment or if the complainant and/or respondent require counseling, appropriate steps shall be taken to meet such needs.

78. Follow-up Possibilities

- Counseling for the parties;
- Application of strategies to restore a positive learning/working environment;
- Mediation;
- Specific training for the complainant or respondent;
- Workshops for the staff and/or students in the school/workplace regarding their rights and responsibilities (see Appendix A);

- Permanent separation of respondent and complainant from each other;
- Restorative measures.
- Contact with the police

79. The Principal shall impose discipline as appropriate. The principles of progressive discipline will be applied in dealing with disciplinary actions under this policy. This would include the following possibilities:

- Verbal warning;
- A written reprimand delivered to the respondent with a copy to the respondent's personnel file.
- Transfer of assignment
- Withholding a promotion
- Demotion
- Suspension with pay;
- Suspension without pay;
- Dismissal from employment with the Authority.
- Report to the Ontario College of Teachers, or other professional colleges

80. For other user respondents, actions must be determined as appropriate for the individual situation and may include such responses as a letter of disapproval or 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.

81. In addition to disciplinary responses, other responses may include but not be limited to:

- i. Counselling for the parties
- ii. Specific training for the respondent
- iii. An appropriate workshop or course
- iv. An in-service to be delivered to relevant parties, or all staff as appropriate

## **REVIEW**

82. In the event a complainant or respondent to a formal complaint has one or both of the specific concerns set out below, within ten (10) days of receipt of the decision, a request may be made by either the complainant or the respondent to the Supervisory Officer to review the decision.

83. The grounds for review are:

- the investigators did not comply with the procedures set out in this Policy; or

- new evidence has become known after the decision but before the expiry of the ten (10) working days limitation period for requesting a review.

84. No review of the decision will be undertaken with regard to the claim that the conclusions drawn by the investigator(s) based on findings of fact were incorrect.

85. A review will affirm or amend a decision or require that a new investigation be undertaken.

**WORKPLACE HARASSMENT  
RIGHTS AND RESPONSIBILITIES**

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

<b>Responsibilities of the Authority</b>	<b>Responsibilities of all persons working in Bloorview School Authority learning/working environment</b>
<ul style="list-style-type: none"> <li>• It is the responsibility of Bloorview School Authority to recognize the dignity and worth of every person and to provide for fairness and equal opportunities without discrimination.</li> <li>• It is a commitment of Bloorview School Authority to work towards the elimination of discrimination and harassment.</li> <li>• It is the duty of Bloorview School Authority to maintain an environment respectful of human rights that is safe, nurturing and positive for all persons served by it.</li> </ul>	<p>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:</p> <ul style="list-style-type: none"> <li>• showing courtesy and self discipline in actions and words;</li> <li>• seeking informal problem-solving of issues;</li> <li>• respecting rules, regulations and practices that are in place which provide for safe and secure learning and working environments;</li> <li>• demonstrating honesty, integrity and behaviors that are representative of a positive and supportive atmosphere; and</li> <li>• showing proper care and regard for Bloorview School property and for the property of others.</li> </ul>

**By knowing your rights and responsibilities, you can stop harassment**

Anyone who feels that they are being harassed has the right and responsibility to tell the alleged harasser that the behaviour is offensive, unwelcomed, and must be stopped. They also have the right to report the offensive behaviour to someone in a position of authority who can facilitate resolution of the matter.

**If you are experiencing harassing behaviour, contact the Principal.**