

TYPE:	Administrative
TITLE:	Harassment, Workplace Sexual Harassment and Discrimination
NO.:	ADMIN-202
RESPONSIBILITY:	Chief Administrative Officer
APPROVED BY:	Durham College Leadership Team
EFFECTIVE DATE:	December 2018
REVISED DATE(S):	
REVIEW DATE:	December 2019

1. Introduction

- 1.1. Any form of harassment and discrimination is incompatible with one of Durham College's core values: respect. Durham College recognizes that the best way to respond to harassment is through a proactive and preventive strategy in which all reasonable steps are taken to ensure that harassment and discrimination do not occur in the first place. If they do occur, appropriate action is taken to minimize the negative effects that such behaviour has on all employees, students, board members, contractors and visitors. Along with legislation requiring them, this policy and the accompanying procedure ensure that our employees and others have a mechanism to deal with complaints arising from the Ontario *Human Rights Code* (the "Code") and the Occupational Health and Safety Act (the "OHS").
- 1.2. This policy and procedure will be reviewed and updated annually.
- 1.3. This policy and procedure is developed in consultation with the Joint Health and Safety Committee.

2. Purpose

To provide a mechanism to receive and resolve harassment and discrimination complaints within the jurisdiction and control of Durham College.

3. Definitions

Refer to [Durham College's Standard Definitions](#).

4. Policy statements

- 4.1. Any individual to whom this policy applies is strictly prohibited from engaging in discrimination, harassment, workplace sexual harassment, systemic or indirect discrimination, or engaging in any conduct that creates a poisoned work environment. All individuals to whom this policy applies are expected to report any violations of the policy to the appropriate persons. No employee reporting a violation of this policy in good faith will be penalized. Violations will be investigated pursuant to Section 5.1.

- 4.2. Durham College recognizes the dignity and worth of every member of its community and provides for equal rights and opportunities, free of discrimination, harassment, and workplace sexual harassment. To this end, the College adopts the policy of zero tolerance, a policy that establishes that harassment and discrimination are never acceptable and will not be tolerated.
- 4.3. Information contained in a complaint or obtained during an investigation will be confidential unless the College is compelled to release information in order to comply with policy, legislative, or safety requirements, including safety requirements for for students and staff. Information disclosure will be reasonable to the circumstance.
- 4.4. Each member of the Durham College community is aware of, and shares, the responsibility for creating and maintaining an inclusive working/learning environment free from discrimination based on a prohibited ground under the Code and free from harassment and workplace sexual harassment. Durham College values practices that foster equitable treatment among all members of the College community. Members are responsible for their actions at all College-related activities, both on and off campus. As such, the College has procedures in place to address inequities and to protect the rights of all parties. This policy does not preclude the right of every person to seek assistance from the Human Rights Tribunal of Ontario or the Ministry of Labour.
- 4.5. This policy and procedure applies to:
- Students;
 - Employees;
 - Members of the Board of Governors;
 - Members of standing and ad hoc committees established by the College;
 - Members of societies, associations, or business partners that have a direct relationship or are under the authority of the College;
 - Contractors such as those undertaking constructions, provision of service or research; and
 - Visitors and guests who have no ongoing connection to the institution, but are on campus.
- 4.6. Although the Procedure is written in the in the language of an individual complainant, group complaints may be brought under this Policy.
- 4.7. The Chief Administrative Officer or designate may take actions which diverge from the procedures under this policy when they are of the view that:
- a) The safety of College community members is at risk;
 - b) That a violation is deemed so serious that immediate action is required;
 - c) Other necessary action is required to ensure the College meets its legal obligations.

5. Procedure

5.1. Complaints of harassment and discrimination

- a) A complainant may make a request that the violation cease, directly to the source.
- b) Where a person believes that a violation of the College policy on harassment and discrimination has occurred, the person may seek confidential advice from the Durham College human rights advisor (Chief Administrative Officer or their designate). The Director, Diversity, Inclusion, and Transitions is the designated human rights advisor for complaints made by students. The Director, Diversity, Inclusion, and Transition will apprise the Associate Vice-President, Human Resources when complaints made by students involve employees, governors, external committee members and contractors. The Director, Human Resources is the designated human rights advisor for employees. The human rights advisor will provide the complainant with information about the policy, as well as possible options for resolving the matter and other means of support that may be deemed appropriate.
- c) A complainant proceeding with a formal complaint must submit that complaint in writing to the human rights advisor. Statements of complaint must include the alleged grounds of the Code that have been violated (e.g. race, ancestry, place of origin, colour, ethnic origin – including language, dialect or accent – creed, sex, sexual orientation, disability, marital status, family status, citizenship, age, receipt of public assistance, record of provincial offences or pardoned federal offences, gender identity, and gender expression) and/or particulars of the prohibited conduct being complained of. Where requested, support will be provided to assist a complainant in documenting a complaint. Formal complaints will be submitted within six (6) months of the occurrence of the event(s).
- d) Where two or more complaints are filed, bringing into question an alleged practice or violation engaged in by the same person, or having facts in common, the complaints may be dealt with in the same proceeding.
- e) A person who is the subject of a complaint made under this procedure that has reason to believe that the complaint is vexatious, in bad faith, or itself a form of harassment, will have the right to file a complaint.
- f) If, in the event the human rights advisor or any other persons in positions described in the procedures is the respondent of a complaint, the president will appoint other person(s) as appropriate.
- g) If the President is the respondent of a complaint, the Chief Administrative Officer will inform the Board of Governors. The Board of Governors will appoint [an] other person(s) as appropriate.

5.2. Policy, practice, procedure

- a) The human rights advisor will investigate and endeavor to affect a resolution to a complaint specific to College policy, practice and/or procedure.
- b) Where the formal complaint is specific to a College policy, practice and/or procedure, the human rights advisor or designate shall inform the related vice-president, in writing, within five (5) business days, that a complaint has been received and shall forward a copy of any written documentation outlining the complaint. The vice-president will advise the next steps to be taken.
- c) The vice-president will have ten (10) business days to respond in writing to the human rights advisor, and the human rights advisor will have a further five (5) business days to respond to the complainant.

5.3. Person(s)

- a) When the formal complaint involves a person(s), the human rights advisor or designate shall inform the respondent(s), in writing, within five (5) business days, that a complaint has been received and shall forward a copy of any written documentation outlining the complaint to the respondent(s), including the name of the complainant.
- b) The respondent(s) will have five (5) days to respond, in writing, to the human rights advisor.
- c) The human rights advisor or designate will investigate any formal complaint that involves a person[s]. Complaints about a policy, practice or procedure are responded to as stated in 5.1 above.

5.4. Person(s) – decision not to proceed with a complaint

There are four circumstances under which a complaint under this policy would not move forward:

- a) Complainants may, at their discretion, decide to withdraw a complaint at any point in the process.
- b) The human rights advisor shall advise a complainant where:
 - The complaint is one that should more appropriately be dealt with through other College procedures or mechanisms, such as the office of the Manager, Student Conduct & Campus Investigations; academic policies and procedures; OHSA; collective agreements; the College Sexual Assault and Sexual Violence or Student Conduct policy;

- The subject matter of the complaint appears to be trivial, frivolous, vexatious or made in bad faith; or,
 - The complaint appears not to be within the jurisdiction of the College.
- c) When a complainant withdraws a complaint, the College maintains the right to continue to proceed with the complaint where there are safety concerns, legal or reputational implications, repeated offences, a pattern of behaviour, or at the College's discretion in order to meet any legal obligations it may have.

5.5. Decision to proceed with complaint

If, after the respondent's reply, (5.3) the complainant is not satisfied, the complainant will have ten (10) business days to request, in writing, that the complaint continue to mediation.

5.6. Resolution through mediation

In the case of an alleged contravention of the Harassment, Workplace Sexual Harassment, and Discrimination Policy, the human rights advisor or a designate shall coordinate mediation within the ten (10) business days of the complainant filing a request for mediation with the parties involved. The mediator will attempt to affect a settlement of the complaint through mediation.

In the course of mediation, the human rights advisor shall act as follows:

- a) Will counsel the respondent[s] to do anything that, in the opinion of the College, the respondent[s] ought to do to achieve compliance with the policy, both in respect of the complaint and in respect of future practices;
- b) May consult with external agencies such as the office of the Ontario Human Rights Commission for advice and assistance; and
- c) May take other such action as deemed appropriate.

Where the complainant[s] and respondent[s] to the complaint agree to the resolution, it shall be affected by the College and the complaint considered resolved.

If the complaint is not resolved through mediation or either the complainant[s] or the respondent[s] refuses mediation, the complaint may proceed to resolution through investigation/fact-finding. The complainant or the respondent will submit to the College, in writing, within five (5) business days, a notice that the complaint has not been resolved by mediation, and a request that the complaint proceed to the next stage.

Mediation shall be strictly voluntary, and either the complainant or the respondent to the complaint may refuse to participate.

5.7. Resolution through investigation/fact-finding

The College shall appoint, within ten (10) business days of written notification of failed mediation, an investigator/fact-finder at the request of the complainant(s) or respondent(s). In most circumstances, the investigator/fact-finder will be identified by the Associate Vice-president, Human Resources.

The complainant(s) and respondent(s) will be notified, in writing of the appointment of the investigator/fact-finder.

The fact-finder, will be appointed by the College to:

- Determine whether a violation of the College policy on harassment and discrimination has occurred; and
- Determine who, if anyone, has violated the policy.

The fact-finder will have, for the purposes of the inquiry, all documents, statements, access to person(s) and other information or materials that the complainant[s] and respondent[s] to the complaint, wishes to present. In addition, the fact-finder may request further documents or materials that are needed in the course of their investigation, with respect to the complaint.

The fact-finder's report shall go to the human rights advisor within thirty (30) business days after the date of the fact-finder being appointed.

A written response to the report will be given to the complainant[s] and respondent(s) from the human rights advisor within ten (10) business days of the human rights advisor receiving the report. The written response will include a brief description of any corrective action that the College has taken or will take as a result of the investigation.

5.8. Consequences of policy violation

Where it is found through the fact-finding report that a violation of the policy has occurred, the College may take disciplinary action including, but not restricted to, the following:

5.8.1. Warning

A written notification that continuation or repetition of conduct found to be in violation of the College's policy on harassment and discrimination will be cause for further disciplinary action up to and including dismissal.

5.8.2. Disciplinary directive

A directive from the College that specifies certain directive behaviour with which the party(s) must comply, which may include education and/or sensitivity training. If the directive is disregarded, further action will be taken.

5.8.3. Suspension

A written notification of exclusion from attending work or class for a specific period of time. Suspension may include exclusion from a campus and property belonging to the College.

5.8.4. Dismissal

Termination of student, employee, governor, contractor status, subject to any grievance procedure, Employee Code of Conduct or Student Conduct policy and procedure.

5.9. Confidentiality and record keeping

Information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will not be disclosed unless the disclosure is necessary for the purpose of investigating or taking corrective action with respect to the incident or complaint, employees or is otherwise required by law.

Records of complaints – contents of meetings, interviews, investigations, reports and recommendations and any other material related to the complaint will be collected and stored in a sealed envelope in numbered files, to ensure confidentiality and will be retained in Human Resources. The files will be cross-referenced to a list of names of complainants/respondents, date and file number. The file may be opened if a subsequent complaint is filed, or at the request of the Ontario Human Rights Commission, the Ministry of Labour, or as otherwise required by law. These documents will be kept for a minimum of one year after the file has been closed.

5.10. Prevention and education

Human Resources and Student Affairs, in co-operation with the bargaining units, administrative staff and students will develop education/prevention initiatives that will include:

Informing all current and new students, employees, and contractors of the Harassment, Workplace Sexual Harassment, and Discrimination Policies and Procedures and how to locate them.

An opportunity for managers, supervisors and others in authority to be informed of their responsibilities under the policy, the *Code*, and the *OHSA* to create and maintain an environment free from harassment and discrimination, as well as be made aware of their rights. They will also be informed of the complaint procedures and various internal and external mechanisms available.

Posting the policy in public view to notify visitors and guests.

5.11. Reprisals

Individuals have the right to file a complaint of harassment and/or discrimination and participate in an investigation by the College. Anyone who subjects an individual to reprisals will be subject to investigation by the chief administrative officer, or designate, and may be subject to disciplinary action.

5.12. Rights to seek resolution outside

This procedure is to ensure that the College, its staff, students, board members, contractors and visitors comply with the College policy on harassment and discrimination. However, it does not preclude any individual from seeking other options available, such as the Ontario Human Rights Commission, the Ministry of Labour, the Ontario or federal courts and/or any other public agency and/or the collective agreement(s). In the event that a complainant decides to pursue their complaint in another forum, the College may decide to terminate or suspend the processing of the complaint made under this policy.

5.13. Counselling

All parties will be encouraged to obtain counselling, recognizing the serious impact that harassment and discrimination have on an individual's psychological well-being. The College will assist in any way deemed reasonable at the request of either party. The human rights advisor can provide information about supports available to both the complainant and the respondent

6. Roles and responsibilities

- 6.1. The Chief Administrative Officer, or their designate, is the designated human rights advisor. The Director, Diversity, Inclusion, and Transition is the designated human rights advisor for all complaints made by students. Where the complaint made by a student(s) involves an employee, the Director, Diversity, Inclusion, and Transition will advise and consult with the Associate Vice-President, Human Resources.

6.2. The advisor is responsible for ensuring the College is abiding by all applicable legislation and directives as they relate to harassment and discrimination, and that the College properly investigates any harassment or discrimination situation:

- a) On campus;
- b) Off campus (at College-specific functions);
- c) At work/academic assignments/placements;
- d) During work/study-related travel;
- e) Involving telephone, written or electronic communication; and
- f) On social media.

7. Accessibility for Ontarians with Disabilities Act considerations

Accessibility for Ontarians with Disabilities Act (AODA) standards have been considered in the development of this policy and procedure and it adheres to the principles outlined in the College's commitment to accessibility as demonstrated by the Accessibility Plan (ADMIN-203).

8. Non-compliance implications

- 8.1. Failure to properly report or act on a harassment or discrimination complaint could result in damages to an external or internal member of the campus community and to the College through financial or reputational loss.
- 8.2. Failure to comply with this policy and procedure could have legal implications for the organization; could result in the Ministry of Labour appointing a third party investigator, could result in a human rights complaint, and could result in charges under the *OHSA*.

9. Communications plan

- A message will be posted on ICE alerting employees when new or revised policies and procedures are added to ICE.
- A message will be posted on MyCampus alerting students when new or revised policies and procedures are added.

10. Related forms, legislation or external resources

- Durham College Common Records Schedule
- Ontario Human Rights Code
- Ontario Occupational Health and Safety Act