Colleague Procedure

PROCEDURE TYPE: Administrative
PROCEDURE TITLE: Harassment, Workplace Sexual Harassment, and Discrimination
PROCEDURE NO.: ADMIN-202.1
RESPONSIBILITY: Chief Administrative Officer
APPROVED BY: Durham College Leadership Team
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1. Introduction

In order to protect employees, students, and visitors, the organization is required to have a procedure with respect to harassment, workplace sexual harassment, and discrimination. This procedure is to be read in conjunction with ADMIN-202 – Harassment, Workplace Sexual Harassment, and Discrimination, the Ontario Human Rights Code (the “Code”) and the Occupational Health and Safety Act (the “OHSA”).

2. Definitions

2.1. Workplace Harassment

Harassment is engaging in a course of vexatious comment or conduct against an individual or group that is known, or ought reasonably to be known to be unwelcome. Harassment may be based on one or more of the prohibited grounds set out in the Code, or it may be any course of inappropriate conduct or comment which makes a reasonable person feel uncomfortable, embarrassed, offended or intimidated and/or results in a poisoned working or learning environment. While harassment is usually defined as resulting from a pattern or course of behaviour, one act may be so egregious that it constitutes harassment on its own. Reasonable action by a college, a manager and/or a supervisor in the course of managing the workplace is not workplace harassment. Examples of this include but are not limited to the following:

- Transfer, demotion, discipline, counsel or dismissal of an employee in a reasonable manner.
- A decision, based on reasonable grounds and facts, not to promote or grant another benefit in connection with an employee’s employment or performance.
- The right and responsibility of managers to conduct ongoing evaluations of employee performance at work, which may include reasonable criticism of
performance and/or may result in reasonable changes to a person’s assignment as a result of an evaluation.

Workplace sexual harassment is also workplace harassment.

The prohibited grounds set out in the Code are:

- Age
- Ancestry, colour, race
- Citizenship
- Ethnic origin
- Place of origin
- Creed
- Disability
- Family status
- Marital status (including single status)
- Gender identity, gender expression
- Receipt of public assistance (in housing only)
- Record of offences (in employment only)
- Sex (including pregnancy and breastfeeding)
- Sexual orientation.

2.2. Workplace sexual harassment

Sexual harassment is one, or a series of, comment(s) or conduct that is gender-related or of a sexual nature that is known or might reasonably be known to be unwelcome/unwanted, offensive, intimidating, hostile or inappropriate. In order to constitute sexual harassment, the conduct complained of must detrimentally affect the complainant’s work/study environment by creating a hostile atmosphere in which the victim is made to feel inferior, inadequate, or offended. Examples include gestures; remarks; jokes; slurs; taunting; innuendo; threats; physical; verbal or sexual assault; unwanted physical contact; invitations; leering; the display of sexually offensive material; solicitation; demands; penalties related to sexual orientation, marital, or family status; unwanted attention; implied or express promise of reward or benefit in return for sexual favours; implied or express threat or act of reprisal if sexual favours are not given; and sexual assault; making a sexual solicitation or advance where the person making the advance is in a position to confer, grant, or deny a benefit or advancement to a worker or student and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.
2.3. Discrimination

Discrimination refers to actions or behaviours that result in unfavourable or adverse treatment or preferential treatment based on the prohibited grounds of discrimination set out in the Code. This includes any differential treatment, with common examples including a refusal to provide goods, services or facilities; exclusion from employment or employment benefits; refusal to work with, teach, or study with someone; and failure to provide reasonable physical access and accommodation.

2.4. Indirect discrimination

Indirect discrimination refers to comments and/or behaviours that are not directed to an individual but are audible and/or visible to them and are discriminatory based on the provisions of the Code.

2.5. Systemic harassment/discrimination

Systemic harassment/discrimination refers to policies, practices, procedures, actions or inaction that appear neutral, but have an adverse impact associated with one of the prohibited grounds. An example would be a refusal to address or refer to an individual using their lived or preferred pronoun.

2.6. Poisoned Work Environment

A poisoned work environment is created when an individual engages in conduct or makes comments that create a negative work environment based on the prohibited grounds set out in the Code or contrary to the OHSA. The comment or conduct must be of a significant nature or degree and have the effect of ‘poisoning’ the work/study environment. A complainant does not have to be a direct target to be adversely affected by a negative environment both real and virtual. It includes conduct or a comment that creates and maintains an offensive, hostile or intimidating climate for work/study. Examples include exposure to graffiti, signs, cartoons and remarks, along with exclusion and adverse treatment related to one or more of the prohibited grounds.

3. Procedure

3.1. Complaints of harassment and discrimination

3.1.1. Complaint Process

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 manager, Diversity, Inclusion, and Transition is the
designated human rights advisor for complaints made by students. The manager, Diversity, Inclusion, and Transition will apprise the chief administrative officer when complaints made by students involve employees, governors, external committee members and contractors. 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, and 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.

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 persons 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.

3.2. Response

Responding to complaints of harassment/discrimination by an individual.

a) The human rights advisor will investigate and endeavour to affect a resolution to a complaint specific to college policy, practice and/or procedure.

b) The human rights advisor or designate will investigate a formal complaint that involves a person(s).

c) 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.
3.3. **Policy, practice, procedure**

a) 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.

b) 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 five (5) business days to respond to the complainant.

3.4. **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.

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

a) A complainant 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; and collective agreements; the college Sexual Assault and Sexual Violence and Student Conduct policies.
- 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.
3.6. **Decision to proceed with complaint**

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

3.7. **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 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 party(s) to do anything that, in the opinion of the college, the party(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 party to the complaint agrees 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 party 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 subject of the complaint may refuse to participate.

3.8. **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 her or his inquiry, all documents, statements, access to person(s) and other information or materials that the party(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 and respondent(s) from the human rights advisor within 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.

3.9. 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:

3.10. 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.

3.11. 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.

3.12. 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.
3.13. Dismissal

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

3.14. 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, 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.

3.15. 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 procedure 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.

3.16. 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.
3.17. Rights to seek resolution outside the college

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).

3.18. 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.

4. Roles and responsibilities

The human rights 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:

- On campus;
- Off campus (at college-specific functions);
- At work/academic assignments/placements;
- During work/study-related travel; and
- Involving telephone, written or electronic communication.

5. Accessibility for Ontarians with Disabilities Act (AODA) Considerations

This policy adheres to the principles outlined in the AODA standards and the college's commitment to accessibility, as demonstrated by the Accessibility Policy (ADMIN-203).

6. Related policies, procedures and directives

- Durham College Common Records Schedule
- Durham College Employee Code of Conduct Policy EMPL-317
- Durham College Harassment, Workplace Sexual Harassment and Discrimination Procedure ADMIN-202
- Durham College Health & Safety Policy EMPL-301 and Procedure EMPL-301.1
- Durham College Sexual Assault and Sexual Violence Policy ADMIN-244 and Procedure ADMIN-244.1
• Durham College Student Conduct Policy ACAD-115 and Procedure ACAD-115.1
• Durham College Workplace Violence Prevention Policy EMPL-313 and Procedure 313.1
• Ontario Human Rights Code (the “Code”).
• Ontario Occupational Health and Safety Act (the “OHSA”).