

TYPE:	Administrative
TITLE:	Harassment, Workplace Sexual Harassment and Discrimination
NO.:	ADMIN-202
RESPONSIBILITY:	Chief Administrative Office
APPROVED BY:	Durham College Leadership Team
EFFECTIVE DATE:	May 2020
REVISED DATE(S):	
REVIEW DATE:	May 2021

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, students 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 confirm Durham College's commitment to providing an inclusive and respectful learning and working environment, as well as provide a mechanism to receive, respond to 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. Durham College recognizes the dignity and worth of every member of its community and provides for equitable treatment, free of discrimination, harassment and workplace sexual harassment. 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, or OSHA, and free from harassment and workplace sexual harassment.
- 4.2. 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.
- 4.3. Durham College values practices that foster equitable treatment among all members of the College community. Members are responsible for their actions and communications in-person, by telephone or through electronic communications, during all College-related activities, both on and off campus.
- 4.4. 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.
- 4.5. All individuals to whom this policy applies are expected to report any violations of the policy to the appropriate persons. No person reporting a violation of this policy in good faith will be penalized. Anyone who attempts or threatens reprisal against a person who initiates a report or participates in proceedings under this Policy may be subject to disciplinary action.
- 4.6. Complaints will be investigated pursuant to Section 5.1.

- 4.7. Information contained in a complaint or obtained during an investigation will be confidential to those individuals who are directly involved in reviewing, and where necessary addressing, the concern unless the College is compelled to release information in order to comply with policy, legislative, or safety requirements, including safety requirements for students and staff. Information disclosure will be reasonable to the circumstance.
- 4.8. The College recognizes that a report made under this Policy is a serious matter that may cause stress for the person who is the subject of the complaint. Accusations must be founded in serious concerns. Any person who makes a complaint in bad faith may be subject to disciplinary action under this Policy.
- 4.9. Although the Procedure is written in the language of an individual complainant, group complaints may be brought under this Policy.
- 4.10. The chief administrative officer or designate may take actions which diverge from the procedures under this policy when they are of the view that:
- The safety of College community members is at risk;
 - That a violation is deemed so serious that immediate action is required;
 - Other necessary action is required to ensure the College meets its legal obligations.
- 4.11. 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.

5. Procedure

- 5.1. Complaints of harassment and discrimination
- a) Any member of the Durham College community who believes that they have been the subject of, or may have witnessed, discrimination, harassment or workplace sexual harassment can consult with their supervisor or their designated human rights advisor to determine whether the incident may be defined as a policy violation and what steps may be taken to resolve the concern.

- b) The director, diversity, inclusion, and transitions is the designated human rights advisor for complaints made by students. The director, will apprise the associate vice-president, human resources when complaints made by students involve employees, governors, external committee members and contractors. The associate vice-president, human resources is the designated human rights advisor for employees.
- c) Supervisors who receive concerns about discrimination or harassment under this policy, may consult the human rights advisor for support and advice in seeking resolution.
- d) The human rights advisor will consider whether extenuating circumstances warrant permitting the complaints resolution process to be initiated or to extend beyond the timeframes described in this policy. If an extension is permitted, the affected parties will be notified and provided with a rationale.
- e) The College may put temporary measures in place to ensure safety and support during the complaints resolution process.

5.2. Informal Resolution

- a) A complainant may make a request that the violation cease, directly to the source. If an individual feels that they are experiencing unwanted behaviour which falls under this Policy, the individual should make an effort, if possible, to advise the person who is the source of the behaviour, either verbally or in writing, that the conduct is unwelcome.
- b) The complainant should allow the respondent an opportunity to respond to the concern expressed, and should suggest how the concern might be resolved.
- c) If the concern is resolved, the parties should agree in writing to the nature of the resolution and the date on which it occurred.
- d) A facilitated discussion between the parties, which may include a supervisor, human resources and/or union representative may also be part of an informal resolution process.

5.3. Formal Resolution

- a) 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, colour, ancestry, creed, place of origin, ethnic origin, citizenship, sex (including pregnancy, gender identity), sexual orientation, age, disability, marital status, family status, receipt of public assistance) 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).

- b) 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.
- c) 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. The designated human rights advisor will provide advice in such cases.
- d) In the event a respondent named in a complaint holds the position of Dean/Director, or a higher position in the organization (with the exception noted in 5.1 "o" below), the human rights advisor will hire an external investigator to conduct an independent review and investigation.
- e) In the event the human rights advisor or any other persons in positions described in this policy and procedure is the respondent of a complaint, or has a conflict/perceived conflict of interest, the president or designate will appoint other person(s) as appropriate.
- f) If the president is the respondent to a complaint, the chief administrative officer will inform the Board of Governors. The Board of Governors will appoint [an] other person(s) as appropriate.

5.4. Formal Resolution Process: 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.

5.5. Formal Resolution Process: Person(s)

- a) When the formal complaint involving a person(s) is proceeding, the complainant will submit a written statement outlining the specific details of the complaint. The complainant shall be informed that they will be identified to the respondent, if this has not already happened, and that their statements will be shared with the respondent
- b) 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.

- c) The respondent(s) will have five (5) business days to respond, in writing, to the human rights advisor or designate. A copy of the written response will be shared with the complainant.
- d) The human rights advisor or designate will investigate any formal complaint that involves a person(s).

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

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

- 1) Complainants may, at their discretion, decide to withdraw a complaint at any point in the process.

The human rights advisor shall advise a complainant where:

- 2) 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; OHS/A; collective agreements; the College Sexual Assault and Sexual Violence or Student Conduct policy;
- 3) The subject matter of the complaint appears to be trivial, frivolous, vexatious or made in bad faith; or,
- 4) The complaint appears not to be within the jurisdiction of the College.

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.

5.7. 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 review of the complaint continue. The human rights advisor will discuss next steps appropriate to the complaint.

5.8. Resolution through formal mediation

The human rights advisor or a designate may coordinate a mediation meeting. Participation in mediation shall be voluntary for all parties involved. The college will appoint a mediator in a timely manner, normally within ten (10) business days, and 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 mediated resolution, it shall be affected by the College and the complaint considered resolved.

If the complaint is not resolved through 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 process of reviewing the complaint proceed.

5.9. Resolution through investigation/fact-finding

The College shall appoint an investigator/fact-finder at the request of the complainant(s) or respondent(s) within ten (10) business days, or a timeframe reasonable to the circumstance. In most circumstances, the investigator/fact-finder will be identified by the associate vice-president, human resources where the complaint is filed by an employee or the director diversity, inclusion and transitions where the complaint is filed by a student.

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 relevant human rights advisor(s) within thirty (30) business days after the date the fact-finding process has concluded, or within a timeframe reasonable to the circumstance.

A written response to the report will be given to the complainant[s] and respondent(s) from the human rights advisor(s) within ten (10) business days of the human rights advisor(s) 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. Any witnesses interviewed as part of the investigation process will be advised when the investigation has concluded.

5.10. 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:

5.10.1. 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.

5.10.2. Additional Training

A directive from the College that specifies certain corrective 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.

5.10.3. 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.

5.10.4. Dismissal

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

5.11. 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. All records associated with the complaint, that do not form part of the Human Resource file, are to be destroyed. 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.

5.12. 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.
- Ensuring managers, supervisors and others in authority are informed of their responsibilities under the policy, the *Code*, and the *OHS*A 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.

5.13. 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.

5.14. 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.

5.15. Counselling

All parties will be encouraged to obtain counselling, recognizing the serious impact that harassment and discrimination may have on an individual's 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 which may include the employee assistance program, where applicable representation through the bargaining unit, and where necessary a senior administrator to provide advice and counsel on the process.

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 complaints initiated by students. Where the complaint made by a student(s) involves an employee, the director 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 *OHS*A.

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