



## **DISCRIMINATION AND HARASSMENT**

### **1. STATEMENT OF COMMITMENT**

The Swan Valley School Division is committed to:

- Providing an environment in which employees can work, students can learn and volunteers can participate which:
  - fosters respect for the dignity, worth and well-being of all members of the Division's community;
  - provides an opportunity for all individuals to develop their full potential;
    - is conducive to the pursuit of excellence.
- Ongoing education and awareness of the issues of discrimination and harassment.

In making this commitment, the Division recognizes the rich diversity of our social fabric and the benefits which diversity brings to all members of the Division's community. The Division is committed to encouraging the tolerance of and valuing of differences and, in particular, those differences which are recognized in the ***Human Rights Code***.

Under the ***Human Rights Code*** discrimination and harassment are illegal practices. It is the policy of the Swan Valley School Division that the Division will not tolerate discrimination or harassment which is contrary to the ***Human Rights Code***, on the basis of race, ancestry, place of origin, color ethnic origin, citizenship, creed, sex, sexual orientation, same-sex partner status, handicap, age, marital status or family status.

### **2. RESPONSIBILITIES OF THE STAFF, STUDENTS AND VOLUNTEERS OF THE SWAN VALLEY SCHOOL DIVISION**

It is the Division's expectation that each employee, student and volunteer will adhere to the Division's Policy by:

- refraining from engaging in discrimination and harassment which are contrary to the ***Human Rights Code***;
- reporting occurrences of discrimination and harassment;
- providing positive role models;
- supporting victims of discrimination and harassment.

### ***DISCRIMINATION AND HARASSMENT WHICH ARE CONTRARY TO THE***



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***HUMAN RIGHTS CODE, UNDERMINE THE DIGNITY AND MUTUAL***

***RESPECT OF INDIVIDUALS IN THE SYSTEM, THREATEN PERSONAL WELL-BEING AND PERFORMANCE AND WILL NOT BE TOLERATED.***

All staff and students in the Swan Valley School Division have a responsibility to respond to incidents of discrimination and harassment which are contrary to the ***Human Rights Code***.

***IN THE SCHOOL SETTING, IT IS IMPERATIVE THAT THE PRINCIPAL OR VICE-PRINCIPAL BE INFORMED OF ALL INCIDENTS OF DISCRIMINATION AND HARASSMENT THAT OCCUR IN A SCHOOL OR ON SCHOOL PROPERTY.***

***ALL CASES OF DISCRIMINATION AND HARASSMENT THAT ARE REPORTED WILL BE DEALT WITH.***

**3. PURPOSE**

These guidelines and procedures are intended to:

- i. Ensure that all employees, student and any others having an on-going relationship with the Swan Valley School Division are aware of the Division's policy on discrimination and harassment.
- ii. Through an increased emphasis on and awareness of rights and responsibilities under the ***Human Rights Code***, prevent discrimination and harassment from occurring.
- iii. Provide clear and precise procedures for the resolution of incidences of discrimination and harassment which are contrary to the ***Human Rights Code*** in all settings administered by the Swan Valley School Division.
- iv. Provide adequate information to enhance understanding of rights and responsibilities under the ***Human Rights Code*** and to ensure resolution of any complaints within the system.
- v. Underscore the seriousness of harassing or discriminatory behaviors and inform staff, students and any others having on-going relationships with the Division those punitive measures that may be adopted in the face of



repeated offenses or even single occurrences where the behavior warrants a response.

#### 4. DEFINITIONS

*Discrimination*: unequal treatment on the basis of race, ancestry, place of origin, color, ethnic origin, citizenship, creed, sex, sexual orientation, same-sex partner status, handicap, age, marital status or family status. Discrimination includes harassment and may also occur where a supervisor or teacher accepts, condones or fails to deal with discrimination or harassment by someone for which the supervisor or teacher is responsible against another in the Division's community.

*Indirect Discrimination*: (or systemic discrimination) are not blatantly discriminatory, nevertheless have the result, when applied, of excluding or restricting or giving preference to a group which is identified by a protected ground under the ***Humans Rights Code***.

*Harassment*: vexatious comment or conduct which is known or ought reasonably to be known to be unwelcome and which is linked to a protected ground under the Code. Harassment normally involves persistent comments or conduct, but may induce a single act. Supervision, evaluations and corrective actions in the normal course will not usually be found to be harassment.

The two most common forms of harassment are racial harassment and sexual harassment; but harassment on any ground protected under the Code is prohibited. For a clear understanding of harassment, and not to suggest that other forms of harassment are permissible, examples of conduct which would constitute racial or sexual harassment are set out below:

##### a) **Racial Harassment:**

Racial harassment occurs where a person engages in a course of activity or comment which refers to or emphasizes the race or other race-related characteristics of an individual and where it could be reasonably anticipated that such comment or conduct would be unwelcome.



The offensive activity need not expressly refer to a person's race, place of origin, creed, and so on, but need only be motivated by those considerations.

For example, circumstances where an individual is consistently treated in a less favorable manner compared with others in the same position, where the differential treatment is motivated by the person's race.

More direct examples of racial harassment include:

- racial epithets;
- demeaning comments made to a person because of his/her race;
- jokes or cartoons making fun of a racial group;
- inappropriate comments about cultural differences (for example, accents, clothing or dress);
- comments or conduct motivated by consideration of a person's membership in a racial group which may not be intentionally offensive, but may still be unwelcome and constitute a violation of the Code;
- physical assault which is racially motivated.

#### **b) Sexual Harassment:**

"Sexual harassment may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment."  
(Supreme Court of Canada in Janzen v. Platy Enterprises)

The types of conduct which can be found to constitute sexual harassment include:

- the use of sexually profane language;
- rude or suggestive remarks of a sexual nature;
- sexually-based jokes or cartoons, whether communicated in person or electronically;
- photographs showing men or women in sexually provocative poses;
- unwanted physical contact, including patting, touching or grabbing; □  
wolf-whistles or cat-calls which cause embarrassment;
- degrading sexually-based nick names such as "babe", "stud" or "chick";
- referring to a woman as a "fat cow";



- indicating that a woman has limited potential because of her gender; □  
bragging about sexual prowess in the hearing of others;
- intimidating behavior such as blocking a person's way or pinning them to the wall;
- stalking;
- insistent request for dates.

Sexual harassment also includes any actions taken as a reprisal against a person who has declined a sexual or invitation.

Sexual harassment does **not** include sincere personal compliments, a hug between friends or a mutual flirtation.

Age is defined as over the age of 18 years.

Family Status is limited to being in a parent and child relationship only. It does not extend to aunts, uncles, nephews, nieces, cousins.

Complainant under these guidelines, refers to any person who feels that he/she is being harassed or discriminated against.

Contractor includes any person or company which enters into a contract with the Division to provide services to the Division, or any employee or agent who acts on behalf of such person or company.

Employee under these guidelines, refers to any employee of the Swan Valley School Division. The complaint processes available to employees are also available to volunteers and, for that purpose, the word "employee" should be read to include volunteer.

Respondent under these guidelines, refers to any person who is accused of the harassing or the discriminatory behavior.

Student includes all persons, regardless of age who are enrolled in any program offered by the Swan Valley School Division.



Volunteer includes any parent or other community member who provides assistance in classrooms or around the school, or who belongs to any school or board committee and who is not remunerated for his/her activities.

## 5. RESOLUTION PROCEDURES

### 5.1 Who can use these procedures

Any employee, student or volunteer has the right to complain about situations which he/she believes to be discriminatory or harassing, whether he/she is directly involved as the victim of the discrimination or harassment or has observed the discriminatory or harassing conduct exercised against another or others.

The procedures set out below should also be used by any complainant who believes that he/she has been the subject of any act of reprisal for bringing a human rights complaint to the attention of the Board through these procedures or otherwise.

### 5.2 Locations affected by these procedures

These procedures are intended for all locations where business or social activities of the Swan Valley School Division are conducted. Discrimination and harassment can include incidents that happen away from Division property outside of normal business hours, which are linked to the workplace and employment.

### 5.3 Timelines

A complaint should be brought to the attention of the Division within six (6) months of the occurrence of the events which give rise to the complaint; however, where a reasonable circumstance exists for failing to bring the complaint within six (6) months and the delay would not result in any prejudice to the respondent, a complaint may be accepted beyond the six (6) month limit.

### 5.4 Mediation



At any time through the process, either the complainant or respondent or the official responsible for conducting the investigation may request mediation of the complaint. If all other parties (including the Division) are in agreement, the process will be adjourned in order that mediation may be conducted. Mediation will be facilitated on a without prejudices and “off the record” basis by a mediator who has had training in mediation. Without prejudice and “off the record” mediation means that nothing which is said by any party in the course of the mediation may be used against him/her should the mediation not be successful and the investigation be resumed. A representative of the Division will be a party in the mediation. Should the mediation be successful, the agreement reached between the parties will be confirmed in writing and signed by all parties.

Mediation may not be appropriate in all cases. For example, mediation may not be appropriate between a student and a teacher because of the imbalance in authority and power. Mediation is voluntarily entered into by both parties, signals that neither party wants the concern(s) to escalate, and that all parties hope to attain a mutually agreeable resolution.

#### 5.5 Written Records

Any person who believes that he/she is the victim of harassment or discrimination should keep a diary or record of the incidents. Such record should include the day, time and location of the incident, together with details of what occurred and any witnesses who may have observed the conduct.

#### 5.6 Confidentiality

The complainant and respondent and any witnesses interviewed in an investigation of a complaint, together with the Division official(s) involved in dealing with the complaint; however, it must be understood that, because of the Division’s obligations under the



**Human Rights Code**, the Division cannot promise any person absolute confidentiality.

The names of the complainant or respondent will not be disclosed except as may be necessary for the purposes of carrying out the resolution procedures provided for in these guidelines or where a legal process has been taken against the Division.

#### 5.7 Alternative routes for dealing with complaints

Notwithstanding anything else provided for in these resolution procedures, where, in unusual or extenuating circumstances, the Division determines that a complaint should be dealt with outside these resolution procedures, and then any other procedure which the Division determines to be appropriate in the particular circumstances will be followed.

Nothing in these procedures should be interpreted as denying or limiting access to other avenues of redress open under the law.

***NOTE: At any stage in, before or after this process, a complainant may choose to refer the complaint to the Police, Human Rights Commission, or their Professional Organization or Association. The Superintendent may choose to involve the Police.***

#### 5.8 Complaint Procedure (**see checklist**)

In some circumstances, STEP 1 may be bypassed and procedures may be started at STEP 2 by the complainant, respondent, site supervisor or Superintendent OR STEP 3 may be initiated at the outset. In many cases a difference in actual or perceived authority or power will make the strategies outlined in STEP 1 inadvisable. In any event these suggestions are not preconditions to filing a formal complaint.

***NOTE: When a student is involved, start at STEP 2.***

Complainants and respondents may seek guidance or counseling from a supervisor, a union or association representative, support services or through the Superintendent.



**STEP 1** (THE MAJORITY OF CASES ARE RESOLVED AT THIS STEP.)

Where possible, the complainant should advise the respondent that he/she considers the conduct in question to be offensive and request the respondent to stop. If the respondent fails to stop, or if the complainant does not feel comfortable in confronting the respondent in the first place, then the complainant should move to STEP 2.

In many instances the respondent does not realize that his/her behavior is unwelcome and offensive and often this will stop the offensive behavior.

**STEP 2**

The complainant will contact the site supervisor and establish an agreed plan of action for addressing the concern(s). The site supervisor is required to contact the Superintendent for a consultation within 24 hours. *(If the site supervisor is the complainant, then contact the Superintendent.)*

This plan of action may include:

- 1) the arrangement of a meeting between the site supervisor, complainant and the respondent to discuss and reach a resolution,
- 2) the arrangement of a meeting between the site supervisor and the respondent to discuss the concern(s),
- 3) referral of the concern(s) to STEP 3,
- 4) referral to other procedures as the Division considers appropriate.

Any agreement reached between the parties will be confirmed in writing. Each party receives a copy and a copy is also forwarded to the Superintendent. If no agreement is reached, move to STEP 3.

**STEP 3**

STEP 3 can be entered into at any point, including failure to reach resolution at STEP 1 and/or STEP 2, or, if the source of the complaint is the complainant's supervisor.



To enter into STEP 3 contact the Superintendent who will coordinate the process from this point forward.

A meeting will be set up between the complainant and the Superintendent or other person(s) designated to discuss the complaint.

If it appears to the Superintendent or designate(s), after meeting with the complainant, that the complaint may be resolved informally, an effort to do so will be made by the Superintendent or designate(s). This may involve meeting with the respondent separately and/or convening a meeting between the complainant and the respondent; alternatively, the matter may be referred to mediation or some other resolution satisfactory to the complainant and the Board may be entered into.

Where the matter is not conducive to informal resolution or where the informal efforts to resolve the complaint have failed or have not be completed with one (1) week (or such longer period as the complainant may agree to), the complaint will, if it raises a breach of the **Human Rights Code**, be referred to the next stage of the resolution process.

Note: If it appears to the Superintendent or designate(s) at the point the complaint is received, that the complaint would not likely be settled informally, then the complaint will be processed to the next page.

### **Filing of Formal Complaint and Investigation**

- i. The complaint must be put in writing on the form attached to these procedures and forwarded within five (5) days to the Superintendent or the designate (hereafter referred to as “the investigator”). The investigator will meet with the complainant to ensure that he/she fully understands the particulars of the complaint and to obtain the names of any witnesses or other persons who the complainant feels may be helpful to the investigation. (Should the complainant require a longer period to complete his/her written complaint for a justified reason, a longer period will be provided).
- ii. The investigator will undertake to investigate the complaint within five (5) working days of the receipt of a complaint form. In exceptional situations, upon approval of the Superintendent, an outside investigator may be retained and timelines extended.



- iii. The investigator will interview the respondent(s) and all persons named as witnesses in the complaint. If it appears to the investigator that other persons not named, may be able to contribute relevant information to the investigation, every effort will be made to interview these potential witnesses. The investigation shall be completed as expeditiously as possible.

(In all circumstances, the complainant will be interviewed first. In most circumstances the respondent will be interviewed second since the respondent has the right to reply fully to allegations made against him/her, including dates, times, locations and name his/her witnesses.)

- iv. The investigator shall provide the complainant and the respondent each with a summary of the conclusions reached by the investigator and the actions, if any, which the School Board will take. The information provided will be confirmed, in writing, to the complainant and to the respondent.

**In the case of students under the age of 16, documents required to be sent under this Section will be copied to the respective parent/guardian.**

## 6. RESOLUTION PROCEDURES INVOLVING STUDENTS

Each school will include in its Student Code of Conduct a definition of discrimination and harassment as outlined in these guidelines, as well as the possible courses of action and consequences deemed appropriate where a student commits an offence under the terms of these guidelines.

### Student Complaints against Students

Where a complaint of discrimination or harassment by a student against a student or where circumstances occur which suggest that discrimination or harassment of a student might have occurred come to the attention of a teacher, or other staff member, such complaint must immediately be brought to the attention of the Principal or Vice-Principal. The procedure followed to deal with



the complaint or the circumstances will be those provided for under the Student Code of Conduct.

#### Complaints by Staff, Volunteers or Contractors against Students

Where a staff member, volunteer or contractor complains that a student has discriminated against or harassed him/her, the individual shall bring the complaint to the attention of the Principal and the matter will be dealt with under the Student Code of Conduct. The Principal will bring the matter to the attention of the Superintendent to become involved in dealing with the complaint.

#### Student Complaints against Staff, Volunteers or Contractors

A complaint by a student who believes that he/she is being harassed shall start at STEP 2, Section 5 of these procedures, as soon as possible. A parent, member of the school staff or volunteer who receives a complaint of discrimination or harassment from a student or who is aware of circumstances which suggest the occurrence of discrimination or harassment against a student shall bring the matter to the attention of the Principal immediately.

In the event the complaint involves circumstances which raise a suspicion on reasonable grounds that the child may be in need of protection, steps will be taken immediately to contact Child and Family Services; however, the School Board's obligation to deal with the matter is not necessarily satisfied by this action. In each case where a report is made to Child and Family Services, a determination will be made by the Superintendent whether further action under this or any other procedure should be taken.

The Principal or designate will meet with the student complainant at the earliest opportunity. The Principal should be accompanied at this meeting and at any other meeting with the student respondent or student witnesses, by a VicePrincipal, other teacher or Superintendent. (Note: If the respondent is an employee of the School Board or a contractor with the School Board, the Superintendent may accompany the Principal or may act in place of the Principal).

## **7. COMPLAINTS AGAINST SENIOR MANAGEMENT OR MEMBERS OF THE SCHOOL BOARD**

A complaint against a Senior Management, other than the Superintendent, or a member of the Board of Trustees will be made directly to the Superintendent. A



complaint against the Superintendent will be made directly to the Chair of the Board of Trustees.

Where such a complaint is received, the services of an outside consultant will be retained to conduct an independent investigation. The consultant will meet with the complainant and the respondent prior to submitting a final report in order to share his/her preliminary conclusions and to obtain any further information which either may have to provide to the consultant. The consultant's report will be limited to findings of fact.

Where the report finds that inappropriate conduct has been engaged in by the respondent, the Board of Trustees will determine the correct response to be taken.

## 8. OUTCOMES

Where the complaint is upheld, one of the following consequences may be imposed for a respondent:

- a) **Where the respondent is an employee** – the respondent may be required to undergo sensitivity training; may be counseled about his/her inappropriate conduct; may be subject to discipline from a warning letter up to, and including dismissal; or may be subject to such other consequence deemed appropriate.
- b) **Where the respondent is a contractor** – the respondent may receive a letter counseling him/her not to undertake such conduct in the future; if the contractor is a company, the company may be asked to refrain from sending the employee who has been guilty of harassment or discrimination if necessary, as trespass notice may be issued against the individual; may have his/her contract cancelled; may be denied access to the school or classroom (as permitted under section 265(m) of the *Education Act*); or may be subject to such other consequence deemed appropriated.
- c) **Where the respondent is a volunteer** – the respondent may receive a letter of counseling him/her; may receive a letter of warning; may be advised that he/she is no longer permitted to act as a volunteer; may be denied access to



the school or classroom; or may be subject to such other consequence deemed appropriate.

- d) **Where the respondent is a student** – he/she will be dealt with under the Swan Valley School Division’s Student Code of Conduct.

Where the complaint is not upheld, no consequences will be imposed for the respondent unless it is determined that, while the respondent did not breach the **Human Rights Code**, neither did he/she act appropriately. In that event, one of the consequences set out above may ensue. Where the complaint is not upheld, there shall be no consequences for the complainant unless it is determined that the complaint was made in bad faith against the respondent. In this event, the complainant may be subject to any one of the consequences outlined above.

## 9. DOCUMENTATION

Documentation, including the resolution agreement, all reports, the complaint form, all material provided to the investigator(s) by any of the parties, as well as letters sent to the parties, will be kept in a secure area which will be maintained by the Superintendent. This information may be stored electronically.

Each documentation will be kept for at least seven (7) years. At the end of that period, the Superintendent will determine whether the documentation should be retained for a longer period or disposed of. Any file which is retained will be reviewed, and a decision regarding retention or disposal made, at least every two years after its initial retention.

Documentation relating to students will also be maintained by the Principal based on the schools normal policies in respect of student records. Documentation pertaining to a complaint will only be placed in the student’s cum file where the Principal deems such action to be necessary or where is required by law. A copy of all documentation will be sent to the Superintendent and will be kept until the student is no longer in the school system.

## 10. OTHER OVERLAPPING PROCEEDINGS

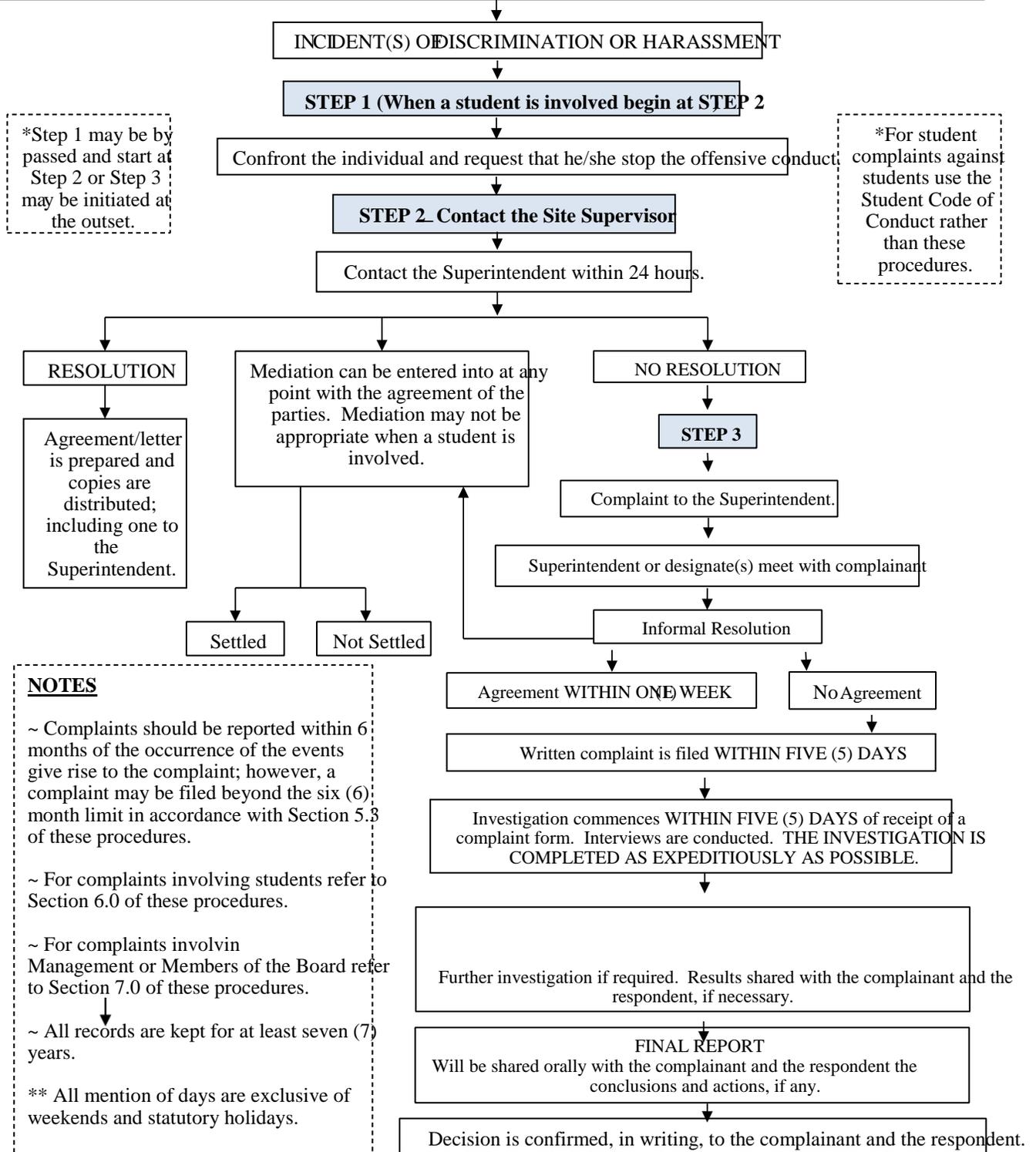
The initiation of other proceedings by a complainant which may duplicate the process under these guidelines will not result in the termination of any processes commenced under these guidelines except where carrying on the process may result in prejudice to the Board. The Superintendent will be responsible for



making the decision to terminate or, if a decision to terminate has been made, to reinstitute a process which has been commended under this guide.



**REPORTING PROCEDURES WHEN DISCRIMINATION OR HARASSMENT IS SUSPECTED**





## DISCRIMINATION AND HARASSMENT FORMAL COMPLAINT FORM

Complainants may seek assistance before completing this form.

*The information contained in this form is of a highly confidential nature and will  
be protected in accordance with Section 5.6 of these Procedures.*

***“PRIVATE AND CONFIDENTIAL”***

Full Name of Complainant: \_\_\_\_\_

School/Department/Work Site: \_\_\_\_\_

Status of Complainant (mark an X):

Student

Employee

Job Title: \_\_\_\_\_

Other \_\_\_\_\_

Description of Alleged Discrimination and/or Harassment.

\_\_\_\_\_  
\_\_\_\_\_

Name(s) of Person(s) Accused of Discrimination or Harassment:

\_\_\_\_\_  
\_\_\_\_\_

Date(s) of Incident(s) or Time Frame and Location of Incident:

\_\_\_\_\_  
\_\_\_\_\_

Has this complaint been reported previously? If so, to whom, and what actions were taken?

\_\_\_\_\_



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Resolution Requested: \_\_\_\_\_

Complainant(s) Signature(s): \_\_\_\_\_ Date: \_\_\_\_\_

Print & Sign Name

\_\_\_\_\_ Date: \_\_\_\_\_  
Print & Sign Name

**INSTRUCTIONS FOR HANDLING THIS FORM**

Place this form in a sealed envelope marked "PRIVATE AND CONFIDENTIAL" and forward to the Superintendent of the Swan Valley School Division.