

AVON MAITLAND DISTRICT SCHOOL BOARD

ADMINISTRATIVE PROCEDURE

NO. 405

SUBJECT: ALLEGATIONS AGAINST EMPLOYEES AND VOLUNTEERS

Legal References: *Education Act: Section 170 (1) 12.1 Duties of Boards: Charges, Convictions; Education Act: Section 283 Chief Executive Officer: Maintain an Effective Organization; Ontario College of Teachers Act; Teaching Profession Act; Ontario Regulation 437/97 Professional Misconduct; Guideline - Ontario Schools Code of Conduct; Ministry of Education Policy/Program Memorandum 9 Duty to Report Children in Need of Protection; Child and Family Services Act; Student Protection Act 2002; Criminal Code of Canada*

Related References: *Administrative Procedure (AP) 346 Children in Need of Protection; AP351 Code of Conduct; AP352 Promoting Positive Student Behaviour Including Progressive Discipline and Bullying Prevention and Intervention; AP495 Volunteer Programs in the Schools; Police/School Board Protocol (Appendix B, AP 351)*

1. Duty of Care

- 1.1 This administrative procedure has been established to support the duty of care that the Director of Education and superintendents, principals, supervisors and staff members have to protect all students in their care.
- 1.2 The Director of Education and designates, in turn, have a responsibility to provide all staff members with fair treatment and a careful and impartial review of circumstances when allegations come forward.
- 1.3 This procedure is meant to apply in any circumstances where an allegation or suspicion exists that a student has been abused, assaulted or mistreated by an employee of Avon Maitland District School Board.
- 1.4 It is understood that a volunteer is a person who serves without remuneration from the board. This procedure applies to volunteers.
- 1.5 This procedure does not define the conduct, which may initiate the steps required in this procedure.
- 1.6 This procedure rather describes a process of inquiry, consultation and decision-making designed to meet legal requirements while also placing appropriate emphasis on the safety and well being of students and staff members.

2. Obligation to Report

- 2.1 The *Child and Family Services Act* imposes an obligation on an individual who has reasonable grounds to suspect that a child is in need of protection to forthwith report the suspicion and the information upon which the suspicion is based to a society. Section 37(2) of the Act defines when a child is in need of protection, and section 72,

- which sets out the duty to report, incorporates the circumstances defined in Section 37.
- 2.2 The *Child and Family Services Act* does not apply to children who are sixteen (16) years of age or older unless the child is subject to a protection order. Allegations involving students who are sixteen (16) years of age or older will be investigated by the police.
 - 2.3 The duty of staff members to report an allegation of abuse to the Children's Aid Society includes allegations and/or suspicions against students, peers and against individuals employed by the board. The duty is personal and cannot be delegated to, or assumed by anyone else, including a principal, other staff member, or senior administrator. The duty to report applies whether the alleged perpetrator is a community member, family member, board employee or volunteer.
 - 2.4 This procedure is intended to apply only to situations where the allegations are against a staff member of Avon Maitland District School Board or a volunteer. Administrative Procedure 346 Children in Need of Protection deals with other situations.
 - 2.5 The duty of staff members to report is ongoing. In circumstances where additional reasonable grounds arise leading to the suspicion that a child is in need of protection, the staff member has an obligation to make a report to a society even if the staff member has made a report on a previous ocChildren's Aid Societyion.
 - 2.6 Staff members are advised that every person who performs professional duties as defined in section 72(4) of the *Child and Family Services Act* who fails to report where there are "reasonable grounds to suspect" that a child is in need of protection can be convicted of an offence which is subject to a fine. See Appendix A for the relevant section of the Act.
 - 2.7 Staff members who are members of the Ontario College of Teachers are reminded that a failure to comply with the member's duties under the *Child and Family Services Act* is a defined ground of professional misconduct under Regulation 437/97 of the *College of Teachers Act*.
 - 2.8 It is the responsibility of the Children's Aid Society to determine whether there is a need for investigation under the *Child and Family Services Act*. It is the police who determine whether there is sufficient evidence for criminal charges. The Director or designate(s) will determine whether there is a need for an internal investigation. An internal investigation may take place concurrently with other investigations, or following other investigations.
 - 2.9 Relevant sections of the *Child and Family Services Act* and the *Criminal Code of Canada* are attached in Appendix A.
 - 2.10 A staff member has the right to have union representation at any meetings where the staff member informs his/her principal or supervisor about an allegation.

3. Administrative Procedures

- 3.1 Step One: Reporting
 - 3.1.1 An initiating incident occurs when a staff member or volunteer is suspected of conduct, which places a child in need of protection (e.g., to have abused,

assaulted or mistreated a student). Most frequently, this allegation will be disclosed or come forward to the principal/supervisor or designate.

- 3.1.2 The person who has reasonable grounds to believe that a staff member's conduct places a child under the age of 16 (or who was under the age of 16 at the time the alleged incident took place) in need of protection must exercise his or her personal responsibility to report forthwith to the Children's Aid Society in the area in which the child normally resides, in this Children's Aid Society, the Huron-Perth Children's Aid Society.
- 3.1.3 When the student is 16 or older, the person who has reasonable grounds to believe that a staff member has abused, assaulted, or mistreated a student (or students) must inform the principal or supervisor, who will in turn discuss the situation with the Superintendent of Education (Human Resources), or designate. It is not the staff member's, principal's/supervisor's or designates responsibility to prove that the student has been abused, assaulted or mistreated. Alleged victims over the age of 16 should be encouraged to contact the police. Should an alleged victim over the age of 16 give written consent, police may be contacted by the school principal.
- 3.1.4 When a report is made to a society, the principal or supervisor must be notified immediately that a report has been made and the principal or supervisor must notify the Superintendent of Education (Human Resources), or designate. In situations where a report is made about a principal or supervisor, the Superintendent of Education (Human Resources) or Administrator of Human Resources will be directly notified. Where the Superintendent of Education (Human Resources) or the Administrator of Human Resources are not readily available, the Director or designate must be notified. All action taken with respect to a report shall be documented.
- 3.1.5 A person who has made a report to the principal or supervisor regarding a specific situation and is not satisfied with the response may contact the Superintendent of Education (Human Resources) or designate directly.
- 3.1.6 The principal/supervisor or designate must not investigate or interview the alleged victim, witnesses, staff or other students. The Children's Aid Society worker has prime responsibility for the protection of the child and the investigation of the alleged abuse under the *Child and Family Services Act* if the alleged victim is under the age of 16 (or was under the age of 16 at the time of the alleged incident). A police officer has prime responsibility for investigation of the alleged offence under the *Criminal Code of Canada*.
- 3.1.7 The Director of Education will undertake to ensure the safety of any alleged or potential victims through whatever means are deemed appropriate. The Director may remove the staff member from the school setting and/or suspend the staff member with or without pay pending the outcome of the investigation conducted by the Director or designate.
- 3.1.8 Under the *Student Protection Act, 2002* the Director must remove a teacher or temporary teacher from the classroom, and from duties involving contact with pupils if they are charged with or convicted of an offence under the *Criminal Code* involving sexual conduct and minors, or any other offence which in the opinion of the Director indicates that students may be at risk.
- 3.1.9 Avon Maitland District School Board and its staff members will cooperate fully with the Children's Aid Society and the police during any investigation, and provide access to relevant information, except as prohibited by law.

3.2 Step Two: Advise the Staff Member

- 3.2.1 Section 18(1)(b) of *Regulation Made Under the Teaching Profession Act* requires that a teacher making an adverse report about another teacher "furnish him with a written statement of the report at the earliest possible time and not later than three days after making the report." Every effort will be

made to enable teachers to meet this obligation. However, until permission is received from either the police or the Children's Aid Society the teacher whose behaviour has been reported must NOT be contacted regarding the allegation or disclosure. This is to ensure that the rights of potential victims and the accused person(s) are protected and to prevent possible destruction of evidence.

- 3.2.2 Notwithstanding Section 18 (1) (b) of *Regulation Made Under the Teaching Profession Act*, Section 12 (2) of the *Teaching Profession Act* states that a teacher "who makes an adverse report about another member respecting suspected sexual abuse of a student by that other member need not provide him or her with a copy of the report or with any other information about the report." This is to ensure that the rights of potential victims and the accused person(s) are protected and to prevent possible destruction of evidence.
 - 3.2.3 Once permission is given by either the police or the Children's Aid Society, and following consultation with the Superintendent of Education (Human Resources) or designate, the principal/supervisor or designate shall advise the staff member, and, with the approval of the staff member, the union representative where one exists, that an allegation of abuse, assault, or misconduct has been made.
 - 3.2.4 Under no circumstances shall the principal/supervisor or designate disclose the complainant's identity or the nature of the allegations to the staff member without the express consent of the Children's Aid Society intake worker, the police officer, or the Superintendent of Education (Human Resources) or designate.
- 3.3 Step Three: Formal Investigation by the Director or Designate
- 3.3.1 It is the responsibility of the Director of Education, on behalf of the board, to determine whether there are grounds for concern under the administrative procedures or practices of Avon Maitland District School Board, the *Education Act*, or other legislation. This does not preclude that other third party investigations may be undertaken.
 - 3.3.2 Where a situation involving a staff member is reported to the Children's Aid Society or the police, the Superintendent of Education (Human Resources) or designate shall review the matter to determine if the staff member needs to be removed from the school setting and/or suspended with or without pay pending the outcome of any investigations by a third party (e.g., Children's Aid Society or police), and/or the Director or designate.
 - 3.3.3 If a decision has been made to proceed with a formal investigation by the Director or designate, the staff member shall be advised immediately. A contact with the staff member will take place to outline the general investigation process and to indicate to the staff member who will be involved on the board's behalf in the investigation. The involvement of any external parties, as may be required, will also be addressed to the greatest extent possible.
 - 3.3.4 The staff member will be informed that he or she has the right to have union representation present at any meetings conducted during the course of the investigation of the allegation. This includes situations where staff members inform their supervisor about an allegation which may potentially come forward.
 - 3.3.5 In the course of the investigation, the Superintendent of Education (Human Resources) or designate shall meet with the staff member. The specifics of the allegations shall be disclosed and the staff member shall be provided with an opportunity to respond to those allegations. The staff member will be reminded that he or she has the right to have union and/or legal

representation at this or any other meeting at which the staff member is present during the course of the investigation.

- 3.3.6 If, following a formal investigation by the Director or designate, the incident of alleged abuse, assault, or mistreatment is not substantiated, the Superintendent of Education (Human Resources) will indicate this in writing with a letter of closure to the staff member and to their principal/supervisor. No copy of this letter will be placed in any file.
- 3.3.7 If, following a formal investigation, it is determined that discipline, up to and including dismissal, of an employee is warranted, the Superintendent of Education (Human Resources) shall initiate such action in accordance with district practice.
- 3.3.8 Principal/supervisors and staff members shall not communicate with other students, other staff members, other parents or the community about the disclosure, or criminal charges.

ALLEGATIONS AGAINST EMPLOYEES

These references are provided for information only. For the complete text, references should be made to the provisions in their entirety in the official version of the *Criminal Code of Canada* and Statutes.

The statutory obligation to report suspected child abuse:

1. Applies to every person who performs professional or official duties with respect to a child, including teachers, principals, supervisory officers, members of the support staff and volunteers.
2. Arises if the objective test is met (i.e. that there are reasonable grounds to suspect abuse regardless of whether one believes the information).
3. Requires a report be made to the local Children's Aid Society.
4. Protects the informant from civil liability in an action instituted by a parent or any other person. This holds unless the informant acted maliciously or without reasonable grounds to suspect the information was true.

Section 72(1) of the *Child and Family Services Act* states:

"In this section and in sections 73, 74 and 75, "to suffer abuse". When used in reference to a child, means to be in need of protection within the meaning of clause 37 (2) (a), (c), (e), (f), and (h)"

(a) Physical abuse, (c) Sexual abuse, (e) Medical treatment, (f) Emotional harm, and (h) Emotional, mental abuse

Section 72(2) of the *Child and Family Services Act* states:

"A person who believes on reasonable grounds that a child is or may be in need of protection shall forthwith report the belief and the information upon which it is based to a society."

Section 72(3) of the *Child and Family Services Act* states:

"Despite the provisions of any other Act, a person referred to in subsection (4) who, in the source of his or her professional or official duties, has reasonable grounds to suspect that a child is or may be suffering or may have suffered abuse shall forthwith report the suspicion and the information on which it is based to a society."

Section 72(4) of the *Child and Family Services Act* states that the duty to report affects the following persons:

"Subsection (3) applies to every person who performs professional or official duties with respect to a child, including:

- a) *A health care professional, including a physician, nurse, dentist, pharmacist, and psychologist;*
- b) *A teacher, school principal, social worker, family counsellor, priest, rabbi, clergyman, operator or employee of a day nursery and youth and recreation workers; and*
- c) *A service provider and an employee of a service provider*

Section 72(7) of the *Child and Family Services Act* states:

"This section applies although the information reported may be confidential or privileged, and no action for making the report shall be instituted against a person who acts in accordance with subsection (2) or (3) unless the person acts maliciously or without reasonable grounds for the

belief or suspicion, as the Children's Aid Society may be."

Section 85(1) of the *Child and Family Services Act* states:

"A person who contravenes, (c) subsection 72(3) (reporting child abuse); and a Director, officer, or employee of a corporation who authorizes, permits, or concurs in such a contravention by the corporation is guilty of an offence and, on conviction, is liable to a fine of not more than \$1000 or, except in the Children's Aid Society of contravention of subsection 72(3), to imprisonment for a term of not more than one year, or to both."

The *Criminal Code of Canada* defines assault in Section 265 as follows:

- (1) *A person commits an assault when*
 - a) *Without the consent of another person, the person applies force intentionally to that other person, directly or indirectly;*
 - b) *The person attempts or threatens, by an act or a gesture, to apply force to another person, if the person has, or causes that other person to believe upon reasonable grounds that the person has present ability to affect his/her purpose; or*
 - c) *While openly wearing or carrying a weapon or an imitation thereof, the person accosts or impedes another person or begs.*
- (2) *This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.*
- (3) *For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of*
 - a) *The application of force to the complainant or to a person other than the complainant;*
 - b) *Threats or fear of the application of force to the complainant or to a person other than the complainant;*
 - c) *Fraud; or*
 - d) *The exercise of authority.*

Section 43 of the *Criminal Code of Canada* states:

"Every school teacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or a child, as the Children's Aid Society may be, who is under his care, if the force does not exceed what is reasonable under the circumstances."

NOTE: In a court Children's Aid Society a teacher was charged with physical assault after breaking up a fight between two students. The judge cited a Supreme Court of Canada ruling (Ogg-Moss v. the Queen) which established that section 43 authorizes the use of force by a teacher provided it is being used "by way of correction" and "for benefit of his education"; however, "any punishment ... motivated by arbitrariness, caprice, anger or bad humour constitutes an offence punishable like ordinary offences."

Sexual Interference: occurs when a person touches, for a sexual purpose, the body of a person under the age of fourteen.

Section 151 of the *Criminal Code of Canada* states:

"Every person, who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of fourteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction."

Invitation to Sexual Touching: occurs when a person invites a person under the age of fourteen years to touch, for a sexual purpose, the body of any person.

Section 152 of the *Criminal Code of Canada* states:

"Every person, who, for a sexual purpose, invites, counsels or incites a person under the age of fourteen years to touch, directly or indirectly, with a part of the body or with an object the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of fourteen years, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction."

Sexual Exploitation: occurs when a person in a position of trust or authority towards a young person touches the young person for a sexual purpose or invites the young person to touch for a sexual purpose the body of any person. A "young person" means a person fourteen years of age or more under the age of eighteen years.

Section 153(1) and (2) of the *Criminal Code of Canada* states:

- (1) *"Every person who is in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency and who:
 - a) For a sexual purpose, touches, directly or indirectly, with a part of the body or with any object, any part of the body of the young person; or
 - b) For a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or is guilty of an offence punishable on summary conviction.*
- (2) *In this section 'young person' means a person fourteen years of age or more but under the age of eighteen years."*

Sexual Assault: is an assault which includes sexual overtones or implications. Sexual assault occurs when a person applies force intentionally on another person for a sexual purpose (refer to above notation on Section 265).

Section 12 (2) and (3) of the *Teaching Profession Act* states:

- (2) **Reporting Sexual Abuse** - *Despite any regulation made under subsection (1), a member who makes an adverse report about another member respecting suspected sexual abuse of a student by that other member need not provide him or her with a copy of the report or any information about the report.*
- (3) **Definition** – *In subsection (2),*
"Sexual abuse" *of a student by a member means,*
 - a) *Sexual intercourse or other forms of physical sexual relations between the members and the student;*
 - b) *Touching, of a sexual nature, of the student by the member, or*
 - c) *Behaviour or remarks of a sexual nature by the member towards the student.*