



# ***Policy 701:*** ***Policy for the Protection of Pupils*** *Effective November 1<sup>st</sup>, 2004*

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***How does it apply to me?***



# ***AGENDA***

**MODULE 1 Purpose and Application of Policy 701**

**MODULE 2 What is non-professional conduct?**

**MODULE 3 Reporting Policy 701 Complaints**

**MODULE 4 What to expect if a complaint is filed against you**

**QUESTIONS & ANSWER PERIOD**



## **MODULE 1: Purpose and Application of Policy 701** *(Learning Objective 1)*

**By the end of this module you will understand the purpose and application of Policy 701.**





## **MODULE 1: Purpose and Application of Policy 701**

### **History of Policy 701:**

In 1996 Policy 701 was implemented to address the abuse of students by adults, recognizing that adults in the school system hold a special position of trust.

In 2004 the policy was revised and changes were made to bring clarity to some aspects of the Policy.



## **MODULE 1: Purpose and Application of Policy 701**

### **What is the purpose of Policy 701?**

- To protect pupils in the public school system from non-professional conduct by adults to which they may be exposed by virtue of being pupils, including physical, sexual, and emotional abuse and discrimination;
- To ensure that adults in the public education system understand the magnitude of the responsibility conferred upon them when parents and communities entrust their children to the public education system; and
- To eliminate non-professional conduct through the defining of acceptable standards of behaviour, prevention and effective intervention.



## **MODULE 1: Purpose and Application of Policy 701**

### **Application of Policy 701:**

- This policy is meant to protect all pupils who are registered in public schools in New Brunswick regardless of their age.
- This policy applies to all adults whose job or role within the public school system places them in contact with pupils. This includes, but is not limited to, all school personnel, contract and casual employees, visiting professionals, as well as student teachers and volunteers.



## ***MODULE 2: What is non-professional conduct?*** *(Learning Objective 2)*

**By the end of this module you will understand what constitutes non-professional conduct.**





## ***MODULE 2: What is non-professional conduct?***

***Complaint*** in this policy refers to any information received by any means from any named or anonymous source, either in person or recorded, which suggests that a child is being, or has been, subjected to non-professional conduct by an adult in the school system.

***Complainant*** in this policy refers to a person reporting non-professional conduct.

***Respondent*** refers to the person or persons against whom allegations are made under this policy.





## ***MODULE 2: What is non-professional conduct?***

### **Non-professional conduct**

Non-professional conduct is defined in section 31.1 of the Education Act as:  
“conduct having or likely to have an injurious effect on the physical, mental, social or emotional well-being of a pupil, or any other person under the age of 19 years”.

This policy subdivides such conduct into two categories: Category I - Abuse and Category II -Misconduct.



## ***MODULE 2: What is non-professional conduct?***

### **Category I: Abuse**

Abuse refers to behaviour of adults in the school system which has one or more of the following components:

- is counter to the position of trust conferred upon adults in the school system;
- is a breach of section 31(1) of the *Family Services Act*;
- is a *Criminal Code* offense involving children; or
- is a form of discrimination under the *Human Rights Act* or the Canadian Charter of Rights and Freedoms that is likely to have an injurious effect on students.



## ***MODULE 2: What is non-professional conduct?***

### **Examples of Abuse**

- behaviour of a sexual nature with pupils such as: making or accepting sexual advances or invitations, asking for a date, touching inappropriately or having sexual relationship;
- behaviour which is considered physical, sexual, or emotional abuse or neglect of a child whether or not the child is a pupil in the public school system;
- discriminatory behaviour based on race, colour, religion, national or ethnic origin, ancestry, place of origin, age, disability, marital status, sexual orientation, sex, culture, language group, or grade level.



## ***MODULE 2: What is non-professional conduct?***

### **Category II: Misconduct**

Misconduct is negative conduct towards pupils which would be judged inappropriate by New Brunswick educators. It is less severe than abuse but has damaging effects on the physical, mental, social or emotional well-being of pupils.

These effects may or may not be intended.



## ***MODULE 2: What is non-professional conduct?***

### **Examples of Misconduct**

- attempting to pursue, isolate or see pupils individually without valid reason;
- behaviour which may not necessarily be directed at anyone in particular but creates a hostile or offensive atmosphere;
- behaviour which would objectively be considered offensive or insulting, exceeding reasonable limits of discipline and has remained unremedied after normal intervention by supervisors. This includes:
  - comments, conduct or displays which demean, belittle, or cause unfair disadvantage
  - staring, perceivable to an observer, at genitals, breasts or buttocks
  - making sexual gestures or inappropriate comment or jokes.



## ***MODULE 2: What is non-professional conduct?***

### **Guidelines: Inappropriate Behaviour Management**

Inappropriate behaviour management refers to an approach to dealing with pupils that is counterproductive to learning and/or maintaining a positive learning environment in the school.

It reflects poor judgment or limited behaviour management skills.

It is not abuse or misconduct as defined by this policy.

It must be treated by supervisors as any personnel issue which requires performance management.



## ***MODULE 2: What is non-professional conduct?***

### **Examples of Inappropriate Behaviour Management**

- personal attacks on pupils' characters rather than dealing with their behaviour;
- continuous use of sarcasm;
- undue, non-constructive criticism in dealing with pupils; and
- habitual uncontrolled temper.

Please note that repeated Inappropriate Behaviour Management may become Misconduct if a supervisor has addressed it with the employee and the behaviour has not been corrected.



## ***MODULE 2: What is non-professional conduct?***

### **But he/she said it was okay?**

It is important to note that because of the position of trust held by adults in the public education system, a student cannot give consent. This means that adults must conduct themselves in a professional manner at all times.

### **But he/she didn't try to stop me?**

The failure by a student to report, or attempt to stop non-professional conduct directed at him/her, cannot be taken as justification for such non-professional conduct.

### **But I didn't know I was doing anything wrong?**

Ignorance of acceptable conduct will not be considered an excuse for non-professional conduct.





## ***MODULE 2: What is non-professional conduct?***

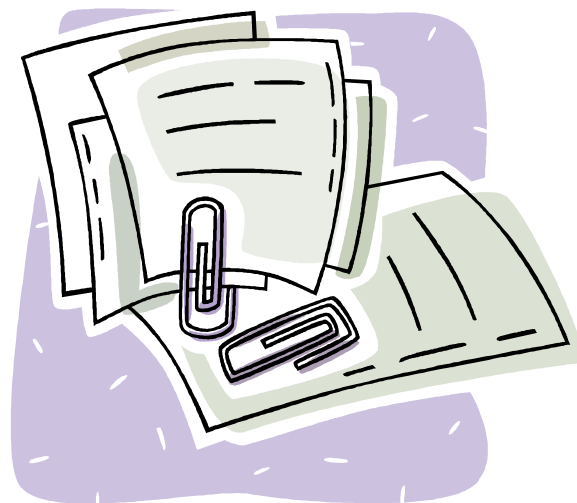
### **Examples of Appropriate Behaviour**

- Normal work or achievement evaluations and disciplinary measures taken for valid reasons which are consistent with the Education Act;
- Physical force or restraint not exceeding that required for the protection of an orderly learning environment, personal safety, the protection of others, or the protection of school property;
- Compliments which respect an individual's dignity;
- Patting the back, holding the hand, or hugging to comfort a pupil as appropriate to the situation and the physical or developmental age of the child; and
- Assisting with toileting or personal care to the extent that a pupil is not able to perform these tasks without assistance.



## ***MODULE 3: Reporting Policy 701 Complaints*** *(Learning Objective 3)*

**By the end of this module you will know your responsibilities for reporting incidents of non-professional conduct.**





## ***MODULE 3: Reporting Policy 701 Complaints***

### **Reporting requirements**

All persons acting within the public school system have an ethical and legal obligation to report non-professional conduct.

#### **A) Education Act**

The Education Act states that non-professional conduct must be reported to the Superintendent and/or the Minister of Education. All school personnel, including volunteers are subject to these provisions, even if the information was acquired within a confidential relationship. The obligation to report supercedes any agreement of confidentiality.



## ***MODULE 3: Reporting Policy 701 Complaints***

### **Reporting requirements (cont.)**

#### **B) Family Services Act**

Under the provisions of the Family Services Act, any person who has information causing him to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually ill-treated or otherwise abused shall inform the Minister of Family and Community Services of such abuse immediately. A professional person who does not inform the Minister of Family and Community Services of the situation without delay commits an offence.



## ***MODULE 3: Reporting Policy 701 Complaints***

Any member of the school personnel who has reasonable grounds to believe that any adult who is in contact with pupils in the public school system has been charged with any violent crime or crime against a child, or who has otherwise engaged in non-professional conduct, shall immediately inform the Superintendent of the school district in which that person is active.

In turn the Superintendent shall inform the Director of Human Resources of the Department of Education.



## ***MODULE 3: Reporting Policy 701 Complaints***

### **Confidentiality**

Every effort is made to keep the complainant's/pupil's identity confidential. However, in order to adequately address a situation, it may be necessary to release the complainant's/pupil's name to the investigators and possibly to the respondent.

The complainant's/pupil's identity will not be disclosed when there is a possibility of placing the complainant/pupil at risk of harm.

*There is an ethical obligation for all persons involved in a case to keep the information pertaining to the case confidential.*



## ***MODULE 4: What to expect if a complaint is filed against you*** *(Learning Objective 4)*

**By the end of this module you will know what to expect should a Policy 701 Complaint ever be brought against you.**





## ***MODULE 4: What to expect if a complaint is filed against you***

### **What must happen before the investigation begins?**

- As the respondent, you will be informed of the complaint at a face-to-face meeting in the workplace as soon as possible.
- You will be provided with a written statement of allegations (preferably at the face-to-face meeting). The written statement of allegations may be a summary of the complaint and may or may not include the identity of the complainant and/or pupil.
- You will also be informed that you have the right to be accompanied at any point in the investigation process by a person of your choosing, or to have union representation if applicable.
- You will be informed of any measures being taken to minimize the contact between yourself and the pupil. A common measure taken is to reassign the respondent to home with pay, pending the outcome of the investigation.
- You may be offered the services of the Employee Family Assistance Program (EFAP) as a Policy 701 investigation is often a stressful process.
- A letter should be sent to you following the initial meeting.





## ***MODULE 4: What to expect if a compliant is filed against you***

### **What happens once the investigation has been launched?**

- The Superintendent must keep you informed of the progress of the investigation; this may include periodical phone calls, meetings or written correspondence.
- Regardless of the involvement of external agencies (Family & Community Services and/or the police) the Superintendent shall ensure investigations are concluded in a timely manner. Internal investigations should normally be concluded within three months, taking particular circumstances into account.
- Where external agencies are involved, the investigation team will conduct a joint investigation with the external agencies and/or make use of information obtained by external agencies, to the extent possible.
- Once all witnesses have been interviewed and prior to the conclusion of the investigation, the investigator/investigation team must give you the opportunity to respond to the allegations and to defend yourself against them.



## ***MODULE 4: What to expect if a complaint is filed against you***

### **What happens after the investigation has been completed?**

At the conclusion of the investigation, the investigation team shall provide a written report to the Superintendent.

The report must:

- describe the investigation procedure used;
- describe the events in detail;
- state whether the complaint was founded, unfounded, unsubstantiated, or false;
- include the names of the complainant and the respondent.



## ***MODULE 4: What to expect if a complaint is filed against you***

### **What happens after the investigation has been completed? (cont.)**

When disciplinary measures are contemplated, you will be given the opportunity to meet with the Superintendent or designate. You will have an opportunity to respond to the findings of the investigation. You may be given the opportunity to review the report or a summary of the report.

Should the employer allow you to read the investigation report or provide you with a summary of the report, the names of all other parties will be blocked out.

The information provided to all parties must respect the confidential nature of such cases. Sub-section 31.1(9) of the Education Act prohibits revealing the names of school personnel and professional persons who have reported a reasonable belief of non-professional conduct.

The Superintendent must address counselling support during the period of the investigation and after resolution of the situation for the complainant, other pupils who may have been traumatized and the respondent, especially in cases of false allegations.



## ***MODULE 4: What to expect if a complaint is filed against you***

### **False or malicious complaints**

False accusation means a complaint under Policy 701 which the complainant knew to be untrue.

### ***The Superintendent shall take action in every case of proven false accusation.***

A complaint under this policy that involves falsehood or malicious intent or is otherwise made in bad faith, as determined by the investigation, shall be subject to appropriate disciplinary action up to and including suspension in the case of pupils, dismissal of employees or banning from school premises and possible legal action in the case of parents and volunteers.

Disciplinary action taken by the school system does not preclude the respondent from pursuing a civil action on their own behalf.



## ***MODULE 4: What to expect if a complaint is filed against you***

### **Communicating the Outcome of an Investigation**

#### **The Department of Education**

The Superintendent will forward the report and his/her recommendations regarding the disposition of the case to the Director of Human Resources of the Department of Education.

In cases where there is to be a resignation or any disciplinary action related to non-professional conduct, this action is subject to approval by the Minister of Education.



## ***MODULE 4: What to expect if a complaint is filed against you***

### **Communicating the Outcome of an Investigation (cont.)**

#### The Respondent

You will be notified in writing of the following:

- whether the complaint was determined to be founded, unfounded, unsubstantiated, or false
- any disciplinary action that is to be noted in your employee file; and
- the ethical obligation to keep confidential the information that has been shared with them.

#### The Complainant

The pupil alleged to have been subjected to non-professional conduct or his/her parents if appropriate, and the complainant, where applicable, shall be informed in writing of the following:

- whether the complaint was determined to be founded, unfounded, unsubstantiated, or false;
- any action to be taken that pertains to the student, for example any accommodation that is to be introduced for the benefit of the student; and
- the ethical obligation to keep confidential the information that has been shared with them.



# QUESTIONS

