

***Policy 701-
How does it apply
to me?***

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Participants:

School personnel (teachers, custodians, secretaries, teachers' assistants, administrators, etc.)
Bus Drivers
Contract and casual employees
Volunteers

Learning Objectives:

By the end of this training session participants will...

- 1) Understand the purpose and application of Policy 701;
- 2) Understand what non-professional conduct is;
- 3) Know their responsibilities for reporting incidents of non-professional conduct;
- 4) Know what to expect should a Policy 701 Complaint ever be brought against them.

Hand Outs:

Copy of Revised Policy and Complaint Summary Form
Brochure for respondents: So you are being investigated under Policy 701...

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

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

History of Policy 701:

The NBPS Harassment in the Workplace Policy, which protects all government personnel, including teachers, was implemented in 1993. It was later recognized that there was no policy in place to protect pupils, there was a significant gap in the Departments policies. 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.

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.

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 participants will understand what non-professional conduct is.

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.

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.

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 a 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.

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.

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.

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.

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.

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.

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 participants will know their responsibilities for reporting incidents of non-professional conduct.

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. (Note: An excerpt of section 31 of the Education Act has been provided for reference).

(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. (Note: An excerpt of sections 30 and 31 of the Family Services Act has been provided for reference).

Who do I report it to?

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

PLEASE NOTE:

Disagreements over student evaluations, student awards, student placement decisions and normal disciplinary action, including exclusion from co-curricular and extra-curricular activities for cause, do not fall within the scope of this policy and must be addressed with the school principal and district personnel.

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.

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.
- **It is the ethical obligation of the complainant and pupil (or parents) to keep confidential the information which is shared with them regarding the findings of the investigation.**

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

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

Notification of respondent

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.

The Investigation

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 will 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.

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.

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.

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.

The Complainant

The pupil alleged to have been subject 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.

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.

EDUCATION ACT (excerpt)
NON-PROFESSIONAL CONDUCT

Mandatory reporting of non-professional conduct

31.1(1) In this section

"administrative proceedings" includes hearings before an adjudicator under the *Public Service Labour Relations Act* and hearings before the Appeal Board;

"professional person" means a professional person as defined in subsection 30(10) of the *Family Services Act*.

31.1(2) In this section and in paragraph 57(1)(w.3)

"non-professional conduct" means 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 nineteen years.

31.1(3) A superintendent shall report to the Minister the name of any teacher or other member of the school personnel

(a) who has been convicted of an indictable offence under the *Criminal Code* (Canada),

(b) who, in the case of a teacher, the superintendent has reasonable grounds to believe has committed an act which may be grounds for the suspension or revocation of the teacher's certificate, or

(c) who is being investigated, who is seeking to resign or against whom disciplinary action is being contemplated because of non-professional conduct or alleged non-professional conduct.

31.1(4) A member of the school personnel shall immediately report to the superintendent concerned the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct.

31.1(5) A professional person who is not a member of the school personnel shall immediately report to the Minister the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct.

31.1(6) This section applies notwithstanding that the person has acquired the information through the discharge of his or her duties or within a confidential relationship.

31.1(7) A person who fails to comply with subsection (3), (4) or (5) commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category F offence.

31.1(8) No action lies for damages or otherwise against a person in relation to anything done or purported to be done in good faith, or in relation to anything omitted to

be done in good faith, in the execution or intended execution of the duty to report under this section.

31.1(9) Except in the course of judicial or administrative proceedings, no person shall reveal the identity of a person who has given information under this section without that person's written consent.

31.1(10) A person who violates subsection (9) commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category H offence.

31.1(11) No disciplinary action may be taken against, and no resignation may be accepted from, a member of the school personnel as a result of non-professional conduct or alleged non-professional conduct, nor is any agreement in relation to such disciplinary action or resignation valid, without the prior approval of the Minister.

31.1(12) The Minister may, prior to any disciplinary action being taken against a member of the school personnel, take such action as the Minister considers appropriate if, in the opinion of the Minister, a matter reported to the Minister under this section

(a) has been inadequately investigated, or

(b) may result in inappropriate disciplinary action against a member of the school personnel.

31.1(12.1) Notwithstanding subsection (12), the Minister may, at any time, act under section 30.

31.1(13) Notwithstanding any provision in any collective agreement under the *Public Service Labour Relations Act*, any information maintained in the file of a member of the school personnel with respect to a resignation or disciplinary action taken in relation to non-professional conduct shall not be removed.

FAMILY SERVICES ACT (excerpt)**PART III****PROTECTION SERVICES**

30(1) 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 the situation without delay.

30(2) This section applies notwithstanding that the person has acquired the information through the discharge of his duties or within a confidential relationship, but nothing in this subsection abrogates any privilege that may exist because of the relationship between a solicitor and the solicitor's client.

30(3) A professional person who acquires information in the discharge of the professional person's responsibilities that reasonably ought to cause the professional person to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually ill-treated or otherwise abused but who does not inform the Minister of the situation without delay commits an offence.

30(3.1) Proceedings with respect to an offence under subsection (3) may be instituted at any time within six years after the time when the subject matter of the proceedings arose.

30(4) Where the Minister has reasonable grounds to suspect that a professional person has committed an offence under subsection (3), the Minister may, regardless of any action the Minister may take with respect to prosecution, require any professional society, association or other organization authorized under the laws of the Province to regulate the professional activities of the person to cause an investigation to be made into the matter.

30(5) No action lies, in relation to the giving of information under this section, against a person who in good faith complies therewith.

30(5.01) No action shall be commenced against a person in relation to the giving of information to the Minister under this section except with leave of the court.

30(5.02) An application for leave shall be commenced by a Notice of Application served on the respondent and the Minister in accordance with the Rules of Court.

30(5.03) On an application for leave, leave shall be granted only if the applicant establishes, by affidavit or otherwise, a *prima facie* case that the person who gave the information to the Minister did not give the information in good faith.

30(5.04) If leave is not granted, the court may order the applicant to pay all or any portion of the costs of the application.

30(5.05) An action against a person in relation to the giving of information to the Minister under this section is a nullity if the action is commenced without the leave of the court.

30(5.1) A person who willfully gives false information under this section commits an offence.

30(6) Except in the course of judicial proceedings, no person shall reveal the identity of a person who has given information under this section without that person's written consent.

30(7) Any person who violates subsection (6) commits an offence.

30(8) Upon completion of any investigation undertaken by the Minister as a result of any information provided by any person, the Minister may so advise the person who provided the information, and shall inform

- (a) the parent;
- (b) any person identified during the investigation as a person neglecting or ill-treating the child; and
- (c) the child, if in the opinion of the Minister he is capable of understanding,

as to the findings and conclusions drawn by the Minister.

30(8.1) Notwithstanding subsection (8), the Minister shall not inform any person referred to in paragraphs (8)(a) to (c) of the findings and conclusion drawn by the Minister if

- (a) in the opinion of the Minister, the giving of the information would have the effect of putting the child's well-being at risk,
- (b) in the opinion of the Minister, the giving of the information may impede any criminal investigation related to the neglect or ill-treatment of the child, or
- (c) in the case of a person identified during an investigation as neglecting or ill-treating the child, the person has not been contacted as part of the Minister's investigation.

30(9) Notwithstanding the *Evidence Act*, a spouse may be compelled to testify as a witness in the course of judicial proceedings brought against his spouse under this Act with respect to abuse or neglect of a child or an adult.

30(10) For the purposes of this section "professional person" means a physician, nurse, dentist or other health or mental health professional, an administrator of a hospital facility, a school principal, school teacher or other teaching professional, a social work administrator, social worker or other social service professional, a child care worker in any day care center or child caring institution, a police or law enforcement officer, a psychologist, a guidance counsellor, or a recreational services administrator or worker, and includes any other person who by virtue of his employment or occupation has a responsibility to discharge a duty of care towards a child.

30.1(1) The Minister may, in accordance with subsection (2), provide to a child or parent or guardian of a child or to a person or organization providing services to children information relating to

- (a) the conviction of a person for assault or sexual assault of a child under the *Criminal Code*, (Canada),
- (b) a court order made under this Act in relation to a danger to a child's security or development under paragraph 31(1)(e), or
- (c) the findings and conclusions drawn by the Minister after conducting an investigation under subsection 31(2) in relation to a danger to a child's security and development under paragraph 31(1)(e).

30.1(2) Information may be provided under subsection (1) by the Minister if within five years before the release of the information

- (a) the person in respect of whom the information is to be released has been convicted of assault or sexual assault of a child under the *Criminal Code*, (Canada),
- (b) a court has found that the person in respect of whom the information is to be released has posed a danger to a child's security or development under paragraph 31(1)(e), or
- (c) the Minister, after conducting an investigation under subsection 31(2), has concluded that the person in respect of whom the information is to be released has posed a danger to the security or development of a child under paragraph 31(1)(e).

30.1(3) The Minister when providing information under this section shall not disclose the name of any child.

30.1(4) The giving of information by the Minister under this section shall be deemed for all purposes not to be a contravention of any Act or regulation or any common law rule of confidentiality.

31(1) The security or development of a child may be in danger when

- (a) the child is without adequate care, supervision or control;
- (b) the child is living in unfit or improper circumstances;
- (c) the child is in the care of a person who is unable or unwilling to provide adequate care, supervision or control of the child;
- (d) the child is in the care of a person whose conduct endangers the life, health or emotional well-being of the child;
- (e) the child is physically or sexually abused, physically or emotionally neglected, sexually exploited or in danger of such treatment;
- (f) the child is living in a situation where there is domestic violence;

(g) the child is in the care of a person who neglects or refuses to provide or obtain proper medical, surgical or other remedial care or treatment necessary for the health or well-being of the child or refuses to permit such care or treatment to be supplied to the child;

(h) the child is beyond the control of the person caring for him;

(i) the child by his behaviour, condition, environment or association, is likely to injure himself or others;

(j) the child is in the care of a person who does not have a right to custody of the child, without the consent of a person having such right;

(k) the child is in the care of a person who neglects or refuses to ensure that the child attends school; or

(l) the child has committed an offence or, if the child is under the age of twelve years, has committed an act or omission that would constitute an offence for which the child could be convicted if the child were twelve years of age or older.