



Teachers' Rights to Work in a Healthy and Safe Environment

A GUIDE FOR TEACHERS

February 5, 2024

INTRODUCTION

Teachers have the right to be treated with respect and to work in a safe, orderly, productive, respectful and harassment-free environment. Teachers in New Brunswick are increasingly reporting incidents of inappropriate behaviour from students. The information in this publication is intended to provide information about the law in this province and to what steps are needed to deal with this kind of behaviour.

There are several laws and policies that define teachers' rights to work in a safe environment. Below are some highlights of these Acts and policies.

COLLECTIVE AGREEMENT

Article 10.01 states that the Employer is vested with the responsibility of managing the public school system of the province and of operating its services. One of these responsibilities includes enforcing safety and other regulations.

(Source: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://nbtffeb.ca/media/20230928-NBTF-CA_CC-FENB.pdf)

THE EDUCATION ACT

13(1) In support of the learning success of his or her child and the learning environment at the school, a parent is expected to communicate reasonably with school personnel employed at the school his or her child attends as required in the best interests of the child and the school community and have due care for the conduct of his or her child at school and while on the way to and from school.



14(1) It is the duty of a pupil to contribute to a safe and positive learning environment.

28(2) The duties of a principal include ensuring that reasonable steps are taken to create and maintain a safe, positive and effective learning environment.

33(1.1) The Parent School Support Committee at the school shall advise the principal of the school respecting the establishment, implementation and monitoring of the positive learning and working environment plan, which may include policies and practices to address disrespectful behaviour or misconduct in a timely manner and in a way that teaches and reinforces respect for other persons.

48(2) The duties of a superintendent, with respect to the school district for which the superintendent is appointed or reappointed, include providing leadership in the school district in promoting quality education, inclusive education, enhanced community involvement and the efficient delivery of services; ensuring effective communication links, procedures and mechanisms are in place and making an annual report to the District Education Council at the end of each school year with respect to the progress and effectiveness of the positive learning and working environment plan in the school district.

(Source: <http://laws.gnb.ca/en/showdoc/cs/E-1.12/ga:s 1:ga:s 2>)

OCCUPATIONAL HEALTH AND SAFETY ACT

Every worker has a right to a healthy and safe workplace, one that protects them from injury, illness and wage loss. And a healthy and safe workplace must be a respectful one – free of violence and harassment.

An amendment to General Regulation 91-191 of the Occupational Health and Safety Act, addressing workplace violence and harassment was made in April, 2019.

These changes protect New Brunswick's workers from a wider range of hazards and require all provincial workplaces to develop a code of practice to prevent workplace harassment. Every New Brunswick employer must also conduct a risk assessment for violence and, based on certain criteria, may also be required to develop a code of practice to prevent violence at the workplace.

Here's a link explaining these obligations: <https://www.worksafenb.ca/safety-topics/workplace-violence-and-harassment/>

HUMAN RIGHTS ACT

Sexual harassment is a violation of the *Human Rights Code*. The *Code*, also protects against discrimination and harassment based on characteristics such as race, age, sex, religion, marital status, sexual orientation and disability.

(Source: <https://www.canlii.org/en/nb/laws/stat/rsnb-2011-c-171/latest/rsnb-2011-c-171.html>)

POLICY 703 – POSITIVE LEARNING AND WORKING ENVIRONMENT

5.0 GOALS / PRINCIPLES

5.2 School personnel and students in the public school system have the right to work and to learn in a safe, orderly, productive, respectful and harassment-free environment.

6.2.4 The school's plan will reflect the school community's vision for the safe and inclusive learning and working environment it wishes to achieve. It will include the following elements:

- expectations, roles and responsibilities for staff, students, parents and volunteers;
- a continuum of interventions, supports and consequences to be employed when inappropriate behaviour is exhibited by anyone in the school environment;
- direction for managing behaviours that are more minor in nature but are disruptive because of their frequency. For example, defiance, disrespectful language and gestures, missing school or arriving late. For some students, additional individual interventions will be required. When disruptive behaviour is substantial and persistent, a formal plan of intervention must be put in place.

6.2.5 The Department of Education and Early Childhood Development and school districts will provide support to the school's plan through a variety of means, including provision of resource materials and development of provincial and district protocols, where necessary.

6.6.1 A student whose conduct poses an immediate threat to the safety of others or him/herself will be subject to immediate risk reducing interventions and, if removed from school property, will be permitted to return when safety can reasonably be assured, following an assessment as per the Violent Threat and Risk Assessment Protocols or relevant procedures.

6.6.4 When it has been determined at a case conference and approved by the Superintendent, that all available interventions (including positive behavioural supports and other accommodations) have been exhausted and that the behaviour-related needs of a student cannot be met in a classroom setting, alternative educational arrangements will be made. Such a case conference will involve: the student, if appropriate, parents, relevant staff and other professionals involved with the provision of service to the student. The goal of any alternate placement will ultimately be to return the student to the classroom as soon as practicable.

(Source: Policy 703 – Positive Learning and Working Environment,
<http://www2.gnb.ca/content/dam/gnb/Departments/ed/pdf/K12/policies-politiques/e/703A.pdf>)

***Note:** Policy 322 on inclusion education does not trump this Policy.

Behaviours Not to Be Tolerated in Schools

The following are examples of behaviours exhibited by any person that are viewed as extreme and unacceptable in the New Brunswick public school system:

- bullying, cyberbullying, hazing or any form of intimidation;
- possession, use or provision of weapons - a weapon can be any object used, or intended to be used, to cause injury or death, or to threaten or intimidate a person;
- physical violence - the use of force or inciting others to use force to cause physical injury;
- dissemination of any hate propaganda material, including hate literature;
- harassment – causing a person to fear for their safety or the safety of a person known to them
- uttering threats - communicating the intent to hurt or damage a person, place or thing;
- vandalism causing extensive damage to school property and on school property.

These behaviours represent a significant disruption to the learning and working environment, endanger others or significantly impair the operation of the school and the maintenance of a positive learning and working environment.

The following are other examples of other behaviours that will not be tolerated in the New Brunswick public school system:

- accusations involving falsehood or malicious intent;
- discrimination on the basis of real or perceived race, colour, religion, national or ethnic origin, ancestry, place of origin, language group, disability, sex, sexual orientation, gender identity, age, social condition or political belief or activity;
- using disrespectful or inappropriate language or gestures;
- disorderly conduct;
- persistent or repetitive disruptive behavior or chronic minor offences;

- shoving, pushing or minor physical altercations;
- failure to comply with school rules or directions;
- intentional property damage.

These behaviours may not significantly interfere with the operation of a school but do represent a challenge to the positive learning and working environment. These behaviours may escalate into serious misconduct, reflecting the need to address these behaviours consistently and immediately.

(Source: Policy 703 – Positive Learning and Working Environment,
<http://www2.gnb.ca/content/dam/gnb/Departments/ed/pdf/K12/policies-politiques/e/703A.pdf>)

Exceptions to Behaviours Not to Be Tolerated in Schools

Some students may behave in challenging ways that are beyond the student's control or understanding. For example, these behaviours could simply represent the student's attempt to communicate with others. Where this appears to be the case, such students may not be subject to the typical consequences established by the school. The student's personalized learning plan will provide direction and will be modified if the behaviour continues to be problematic. Certain behaviours may indicate that additional consideration of the behavioural supports provided to the student is required.

(Source: Policy 703 – Positive learning and working environment, Article 6.6.3,
<http://www2.gnb.ca/content/dam/gnb/Departments/ed/pdf/K12/policies-politiques/e/703A.pdf>)

That said, any behaviour that endangers the health and safety of teaching staff should not be tolerated.

Do teachers have the right to refuse work when they are concerned about their personal health and safety?

NEW BRUNSWICK'S OCCUPATIONAL HEALTH AND SAFETY ACT

RIGHT TO REFUSE

19 An employee may refuse to do any act where he has reasonable grounds for believing that the act is likely to endanger his health or safety or the health or safety of any other employee.

What steps do I need to take when I have reason to believe work is likely to endanger others or myself?

- Don't ignore it.
- Fill out a Right to Refuse Form (here is a sample from WorkSafe NB: https://www.worksafenb.ca/media/60872/righttorefuseform_epd-2020.pdf)
- Report your concern to the school principal promptly with specific reasons why you believe the work will endanger your health or safety. Stay at your workplace for your normal working hours.
 - The school principal must react to your concern by conducting a thorough investigation.
 - At this point, whether or not the employer or supervisor agrees with the employee's refusal, under the Occupational Health and Safety (OHS) Act, the employee cannot be ordered or forced to do the work and cannot be disciplined for refusing the work they consider unsafe.
- If the matter is not resolved to your satisfaction, bring the matter to the attention of the school's Joint Health and Safety Committee (JHSC) as soon as possible who will conduct a thorough investigation.
- If there is no JHSC or the matter is still not resolved to your satisfaction, contact WorkSafeNB at 1-800-999-9775 to report your concerns, and a health and safety officer will investigate.
- If you are considering invoking your right to refuse, this would be a good time to contact the NBTF who can advise you if necessary.

Important guidelines and information to follow when exercising your right to refuse

- The employee must remain in a safe place unless assigned reasonable alternate work or given other directions by the employer while the matter is being investigated.
- Any re-assignment must follow the rules of the collective agreement.

- An employer must continue to pay wages and benefits for an employee throughout this process unless the employee does not accept to do the alternate work that is assigned.
- The employer can assign another employee to perform the work the first employee has refused, provided the supervisor informs the other employee of the refusal and the reasons for the refusal.
- If another employee accepts to carry out the work and the work is completed, the matter will be considered resolved to the satisfaction of the employee who initiated the work refusal and the right to refuse is ended.
- For more details, see WorkSafeNB website – <https://www.worksafenb.ca/workers/health-safety/your-rights/>
- Fill out the Violent Incident Report on the NBTF Website (<https://nbtffenb.ca/workplace-violent-incident-report/>)

If a teacher is injured at work

In the event of an accident, injury or occupational disease at work, you must immediately:

- Report the accident to your employer as soon as possible and in accordance with the workplace procedure set by your employer for accident reporting.
- Get medical treatment, if required, and advise the treating physician that this is a work-related injury so that the medical reports can be forwarded to WorkSafeNB as soon as possible.
- Complete an application for Workers' Compensation Benefits, (<https://www.worksafenb.ca/info/new-way-to-apply-for-benefits-and-report-injuries/>) for any injury and submit it to WorkSafe NB within 3 days of the incident.
- If the above conditions apply, together with your employer, complete a Form and ensure the report is forwarded to WorkSafeNB **within three days of the incident.**
- Please note: you and your employer cannot agree not to report the accident.
- In all cases of workplace injury, minor or major, complete the WorkSafeNB Form with your employer and ensure that it is submitted to WSNB. If there is disagreement between you and your employer, you must still complete the Form and forward it to WorkSafeNB immediately.

What to do when there is misconduct by a parent or visitor?

- The conduct of parents or other visitors that disrupts the learning and working environment is unacceptable and will be acted upon as per the direction in the school's plan and policy 703 – Positive Learning and Working Environment.
- When misconduct occurs involving a parent or visitor, the informal dispute resolution measures described in Appendix C must be employed. Every reasonable effort shall be made to resolve the issue between the immediate parties directly and as quickly as possible.
- When misconduct is repetitive, harassing or chronic, contravenes this policy or becomes substantial and persistent, and informal dispute resolution has proven unsuccessful, the formal reporting procedures provided in Appendix C should be followed (only after all other options have been exhausted). Principals must ensure appropriate follow-up.
- When misconduct by a parent or a visitor poses an immediate threat to the positive learning and working environment, school personnel, the principal or a designate will inform the individual that the conduct is inappropriate and ask the person to stop. If necessary, school personnel can exclude the person from school property.
- A notice under the Trespass Act can also be issued by school administrators should the situation warrant the individual's removal from school grounds for an extended period of time. See Appendix C.

(Source: Policy 703 – Positive learning and working environment, Article 6.8, <https://www2.qnb.ca/content/dam/qnb/Departments/ed/pdf/K12/policies-politiques/e/703AC.pdf>)

- A teacher who is subjected to defamatory public comments by an adult outside of school may have to resort to private legal action. If such comments are by a fellow teacher or a member of the administration, a teacher may have to be dealt with through a grievance under the Collective Agreement and/or the Code of Professional Conduct of the New Brunswick Teachers' Association.

What to do when there is cyber-harassment or defamation by a third party?

The NBTF has received legal advice to the effect that proceedings against parents or other person in the community (ex. defamation claims), are beyond the scope of its mandate as

a bargaining agent. However, the NBTF can help to ensure that the employer complies with its duty to provide teachers with a safe and respectful workplace.

In cases of cyber-harassment, the Employer has to take necessary measures to protect the teachers in these situations.

Example of measures by the employer are, but not limited to:

- Develop an action plan when the employer becomes aware that a teacher has been harassed by a third party;
- Communicate with the third party to have the post removed;
- Send a cease-and-desist letter to the third party;
- Contact the owners of the social media platform to have the post removed;
- Contact RCMP.

What to do when there is harassment by other personnel?

Harassment is a form of discrimination. It involves any unwanted physical or verbal behaviour that offends or humiliates you. Generally, harassment is a behaviour that persists over time. Serious one-time incidents can also sometimes be considered harassment. Workplace Harassment shall be reported in accordance with the New Brunswick's Respectful Workplace Policy that provides for both informal and formal procedures to resolve workplace harassment.

To determine which procedure is appropriate for the teacher's situation s/he should refer to the policy. It can be read online at:

<https://www2.gnb.ca/content/dam/gnb/Departments/ohr-brh/pdf/other/2913-RespectfulWorkplace.pdf>

Should the police be called?

If you have been threatened, assaulted, or if you are worried about your safety, you should consider contacting the police in addition to notifying school officials. They can intervene and in case of criminal behaviour, they can take additional actions.

If you are concerned for your safety, your family or your property, the police may be able to assist you in obtaining a peace bond. If the parent or student agrees, they can sign an

agreement “to keep the peace and be of good behaviour”. If they do not agree, the court can order a peace bond, if there are reasonable grounds for your fears.

Role of the New Brunswick Teachers' Federation

It is the employer's duty to provide teachers with a safe work environment and to support teachers who believe that their health or safety is in danger. If you feel you are not receiving the help you need from your employer or that your statutory or collective agreement rights have been violated, the New Brunswick Teachers' Federation will advise you, and if necessary, intercede on your behalf. If you are in need of assistance from your union representatives, call 1 800 999-9775 to be directed to the appropriate person.

Contact Information for the NBTF Labour Relations Officers

Barry Snider: 506-452-1762, barry.snider@nbtffenb.ca

- Contact person for all **teachers** in ASD-S, ASD-N and ASD-W
- Contact person for **school administrators** in ASD-E and francophone districts DSF-S, DSF-NE and DFS-NO

Nicole LeBlanc: 506-452-1768, nicole.leblanc@nbtffenb.ca

- Contact person for all **teachers** in ASD-E and francophone districts DSF-S, DSF-NE and DFS-NO
- Contact person for **school administrators** in ASD-S, ASD-N and ASD-W