

AP 403 – HARASSMENT (EMPLOYEES)

Background

The Division believes a positive school environment supports mutual respect among all individuals and protects the dignity, worth and human rights of every person. Employees have the right to an environment free of discrimination, harassment or sexual harassment.

Definitions

1. Discrimination is the denial of individual rights and freedoms in a manner that contravenes the Individual's Rights Protection Act and the Canadian Charter of Rights and Freedoms. The Individual's Rights Protection Act prohibits discrimination on the basis of race, religious belief, color, sex, marital status, age (over 18), ancestry, place of origin, physical and/or mental disability.
2. Harassment refers to unwelcome, discriminatory conduct or behavior that focuses on an individual's race, religious belief, color, sex, marital status, physical disability, age (over 18), ancestry or place of origin by placing conditions upon an individual's work, study, access to services, educational or employment opportunities.
3. Sexual Harassment refers to unwanted sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature that:
 - 3.1 Implicitly or explicitly makes submission to such conduct a term or condition of an individual's work or study.
 - 3.2 Affects access to services, employment or educational opportunities.
 - 3.3 Creates a hostile or offensive environment that interferes with an individual's work or study.
 - 3.4 Intimidates, coerces, or humiliates the victim. Harassment is not a relationship of mutual consent.

Guidelines

1. Employees will not engage in conduct or behavior which constitutes discrimination, harassment or sexual harassment.
2. Any individual subjected to discrimination, harassment or sexual harassment has a responsibility to make it clear either to an individual in a position of authority, to the alleged offender, or to both, that the behavior is unacceptable.
3. Any person in a position of authority who receives a complaint is responsible for ensuring that the complaint is addressed.
4. Employees shall not knowingly and willfully submit complaints based on false allegations.

5. Employees can obtain advice and assistance regarding strategies for confronting discrimination, harassment, or sexual harassment at an interpersonal level by contacting the Director who will appoint a resource person to provide assistance.
6. Complaints regarding discrimination, harassment or sexual harassment can be resolved through:
 - 6.1 An informal verbal complaint mechanism, which may involve voluntary mediation.
 - 6.2 Filing a formal written complaint with a person in authority.
7. The respondent is entitled to know the name(s) of individual(s) making an informal or formal complaint. In the case of a formal complaint, the respondent shall receive a copy of the letter of complaint outlining the allegations.
8. Reasonable efforts shall be made to respect the confidential nature of a complaint. However, absolute confidentiality cannot be guaranteed owing to the need for an investigation and the need to inform the respondent.
9. Resolution procedures do not take away the right to file a complaint with the Saskatchewan Human Rights Commission, the Saskatchewan Teachers' Federation, the support staff association or through civil or criminal court.

Procedures

1. Personnel Assisting in a Harassment Complaint

1.1 Supervisors

Not all incidents of harassment require formal complaints before they are addressed. For example, with respect to sexual harassment, supervisors are responsible for monitoring that part of the procedure which prohibits expressions of bias on the basis of sex or sexual orientation in any form and enforcing the policy immediately when infractions occur. They are also responsible for supervising that part of this procedure which prohibits the display of pornographic and/or exploitative pictures, cartoons and graffiti in the schools and on other Division premises, including pictures and/or messages on clothing, and enforcing the procedure immediately when infractions occur.

1.2 Where there is a complaint, supervisors must:

- 1.2.1 Ensure that there is fair treatment for all parties involved.
- 1.2.2 Declare any conflict of interest and refer the matter to their immediate supervisor.
- 1.2.3 Provide support throughout the complaint process.
- 1.2.4 Protect the complainant against possible reprisals.
- 1.2.5 Assist, if required, in the fact finding process.

1.3 Union/Association Representatives

- 1.3.1 Members of a union or association have a right to request representation for employees covered by a collective agreement.

2. Informal Complaints

2.1 Receiving an Informal Complaint

- 2.1.1 The person in a position of authority who receives an informal verbal complaint shall take action to ensure the complaint is addressed within ten (10) working days from the date the complaint is received.

- 2.1.2 The person in a position of authority shall take the following actions:

- 2.1.2.1 Provide the complainant and respondent with information regarding discrimination/harassment, including Division procedures.
- 2.1.2.2 Discuss issues of confidentiality and limits to confidentiality when a complaint is received.
- 2.1.2.3 Assist the complainant in speaking to the respondent directly, or speak to the respondent on the complainant's behalf to outline the allegations and attempt to resolve the complaint informally.
- 2.1.2.4 Monitor the status of the complaint to see that it is satisfactorily resolved.

2.2 Voluntary Mediation

- 2.2.1 If the individual in a position of authority is unable to resolve the complaint, the complainant and respondent will be asked whether they are willing to enter into voluntary mediation.
- 2.2.2 Voluntary mediation shall occur within fifteen (15) working days from the date the informal complaint is received.
- 2.2.3 The focus of the mediation process is educational and preventative, rather than punitive.
- 2.2.4 If the complainant and respondent agree, the individual in a position of authority shall act as or appoint a neutral third party acceptable to both.
- 2.2.5 If the informal complaint is not resolved through voluntary mediation, a formal complaint may be filled.

2.3 Outcome of an Informal Complaint

- 2.3.1 If a complainant confronts the respondent directly and resolves the problem at that level, no sanctions shall be applied by the Division.
- 2.3.2 If an individual in a position of authority is asked to speak to the respondent and the behavior appears to be in violation of Division procedure, a written warning may be issued indicating that such behavior is unacceptable.
- 2.3.3 If both parties enter voluntary mediation, an acceptable resolution may be achieved. If the complaint is not resolved through mediation, a formal investigation may be initiated.

- 2.4 As part of the informal complaint process, a secured file will be created which includes:
 - 2.4.1 The name of the complainant(s) and respondent(s).
 - 2.4.2 The nature of the alleged harassment.
 - 2.4.3 A record of all meetings to date which specifies meeting dates and names of attendees, but does not include the nature or details of the discussions.
 - 2.4.4 The present disposition of the complaint.
 - 2.4.5 Six (6) months following successful resolution of informal complaints, this file will be destroyed.

3. Formal Complaint Process

3.1 Making a Formal Complaint

- 3.1.1 A formal complaint consists of a signed written statement outlining the charges, describing the specific incident(s), the dates and any witness(es) who may have been present.
- 3.1.2 A formal complaint may be filed up to six (6) months from the date of the most recent incident cited in the letter of complaint.
- 3.1.3 The complainant must notify the person in authority immediately if a complaint is filed with the Saskatchewan Human Rights Commission, police, the Saskatchewan Teachers' Federation, a support staff association, or if civil court action is initiated while the charges are still under review by the Division. The Director or designate may elect to process the complaint or stay the procedures pending the outcome of the other investigation.

3.2 Receiving a Formal Complaint

- 3.2.1 An individual in a position of authority shall:
 - 3.2.1.1 Accept the formal complaint, provided no more than six (6) months has elapsed since the most recent incident outlined in the complaint. The Director or designate may elect to consider a complaint received after this time.
 - 3.2.1.2 Verify that the charges may represent a violation of Division procedures.
 - 3.2.1.3 Notify and provide a copy of the complaint to the respondent and the Director.

3.3 Resolving a Formal Complaint

- 3.3.1 An individual shall be appointed by the Director to conduct an investigation regarding the complaint. Every attempt will be made, throughout investigative proceedings on the part of all parties concerned, to respect the confidential nature of the information.
- 3.3.2 The complainant and respondent shall have the opportunity to:
 - 3.3.2.1 Provide written submissions to the investigator.
 - 3.3.2.2 Respond to the other party's written submission.

- 3.3.2.3 Appear before the investigator to provide oral submissions.
 - 3.3.2.4 Respond to one another's statements.
 - 3.3.2.5 Have someone present to provide advice and assistance (e.g., legal counsel, association/union representative, Division Office representative).
 - 3.3.3 The investigator shall have the right to ask questions of the complainant and respondent.
 - 3.3.4 The investigator's findings shall be detailed in a report to the Director.
 - 3.3.5 Resolution of a formal complaint shall occur within three (3) months of the date on which the complaint was filed.
 - 3.3.6 Complaint files will be secured for a period of six (6) months following the resolution and/or last procedure pursued by the complainant or respondent, and barring any reoccurrence of harassment by the respondent. After six (6) months, the file will be destroyed.
- 3.4 Outcome of a Formal Complaint
- 3.4.1 If the results of the investigation support allegations in the letter of complaint, a range of sanctions may be imposed on the respondent by the Director. The sanctions depend upon the nature and seriousness of the offence. The range of sanctions include a verbal warning, a written reprimand with a copy retained in the respondent's file, transfer, demotion, suspension or termination of employment.
 - 3.4.2 If the results of the investigation do not support the allegations, the complaint will be dismissed and a letter will be issued indicating that the respondent has been cleared of all allegations. An individual cleared of allegations has the option of requesting that a copy of the letter be placed in the personnel file.
 - 3.4.3 If the evidence indicates that the complainant knowingly and willfully made false allegations in an attempt to cause harm to the respondent, a range of sanctions may be imposed on the complainant by the Director.
 - 3.4.3.1 The sanctions depend upon the nature and seriousness of the offence.
 - 3.4.3.2 The range of sanctions include a verbal warning, a written reprimand with a copy retained in the complainant's file, transfer, demotion, suspension or termination of employment.

4. Appeals

- 4.1 Either the complainant or the respondent may appeal to the Board if dissatisfied with the resolution of a formal complaint.

- 4.2 Either party has the right to seek civil or criminal redress through the courts or to file a complaint with the Saskatchewan Teachers' Federation, the support staff association or the Saskatchewan Human Rights Commission.
5. Retaliation
 - 5.1 No employee shall take retaliatory action with the intent of dissuading or punishing an individual for participating in the complaint resolution process. Sanctions may be imposed for retaliation.
 - 5.2 Sanctions imposed for retaliation against individuals participating in the complaint resolution process are not to be confused with sanctions imposed for harassment or making false allegations.
6. Role of the Division Office Representative
 - 6.1 Provide support, information and in-servicing to employees with respect to harassment and Division procedures.
 - 6.2 On request, help the complainants and/or respondents with advice and discussion on ways to:
 - 6.2.1 Determine whether or not incidents described constitute harassment.
 - 6.2.2 Solve a harassment complaint.
 - 6.2.3 Clarify concerns.
 - 6.2.4 Assist in bringing both parties to a meeting where mediation of the complaint or exploration of optional routes toward conflict resolution can be satisfactorily resolved.
 - 6.2.5 Speak to the respondent on behalf of the complainant.
 - 6.2.6 Facilitate maintenance and ongoing monitoring of this administrative procedure.
 - 6.2.7 Assume responsibility for the securing of complaint files following discontinuation/resolution of a complaint. The complainant is not to identify the alleged respondent at this preliminary stage of complaint handling. No written records of informal inquiry will be kept.
7. It is the responsibility of every Principal, manager and supervisor to ensure that the workplace under his/her jurisdiction is free from sexual or other forms of harassment and that complaints of such behaviors are investigated promptly, seriously and in a strictly confidential manner.
8. Employees who are members of an employee association who are not satisfied with the action taken with respect to a complaint may pursue that matter through the appropriate grievance procedure.
9. Employees not covered by bargaining units who are not satisfied with the action taken with respect to a complaint may appeal the decision to the Director.

10. Nothing in the foregoing affects an employee's right to file a complaint with the Saskatchewan Human Rights Commission if he/she feels that the decision is not acceptable.

Reference: Sections 85, 87, 108, 109, 175, 231 Education Act