

DISCRIMINATION AND HARASSMENT

Background

The Division is committed to providing and to promoting a learning and working environment for all persons that is free from discrimination and harassment. Behaviour which constitutes discrimination or harassment will not be tolerated and is strictly prohibited.

The Division affirms its commitment to human rights as outlined by the Alberta Human Rights Commission and thus will not tolerate actions of discrimination and harassment. The Division is also committed to the investigation of reported incidents of discrimination and harassment in a timely manner.

A staff member or student who subjects any other person to discrimination or harassment shall be subject to disciplinary action as deemed to be appropriate, including the possibility of dismissal from employment, suspension or expulsion from school.

Definitions

Complainant means the individual who makes a complaint.

Discrimination means adverse treatment based on race, religious beliefs, colour, gender, physical disability, sexual orientation, mental disability, marital status, age, ancestry, place of origin, family status, or source of income of that person or any other person. It is a denial of individual rights and freedoms in a manner which contravenes the Canadian Charter of Rights and Freedoms, the Alberta Human Rights Act, or this Administrative Procedure. Discriminatory acts can be caused through direct or indirect actions, and can result from improper action taken against, or the failure to take appropriate action on behalf of any student or staff member in contravention of the Alberta Human Rights Act or pursuant to the Charter of Rights and Freedoms.

Formal Complaint is documented and requires a written statement to be filed with an appropriate person in authority within one (1) year of the incident.

Hostile or poisonous environment is a learning and working environment in which the actions of one (1) or more people may not be directed at any one person in particular but contribute to an atmosphere which directly or indirectly affects a person's ability to work or learn effectively.

Informal Complaint is a complaint to a person in authority who acts to resolve the situation by intervening on the Complainant's behalf.

Investigator means the individual designated by the Superintendent of Schools to deal with a formal complaint pursuant to sections 5 and 6 of this Administrative Procedure.

Learning and working environment is the immediate school or Division work site and may also include;

- A playground,
- A school bus,
- Any school or work related social activities,
- Any school or work related travel and field trips,
- Any settings where the individuals involved are engaged in work related or school related activity such as field placement or a cooperative educational work term, and
- The use of electronic or digital media such as telephone, fax, e-mail, network computers and internet communications at any time.

Person in Authority means a person whose role with the Division establishes a supervisory relationship over others. The term includes supervisor, respondent's supervisor, a trusted person in a position of authority, including principals and other administrators. For students it includes teachers and other employees to whom students may be accountable.

Personal Harassment is any unwelcome behaviour, conduct or communication, directed intentionally or unintentionally at an individual that is offensive to that individual and is based on the rights identified in the Alberta Human Rights Act, including, but not limited to, race, religious beliefs, colour, gender, age, physical disability, mental disability, ancestry, place of origin, marital status, source of income, family status, sexual orientation, gender identity or gender expression. Personal harassing behaviour may include but is not limited to threats, intimidation, ostracism, offensive gestures, offensive remarks or jokes, demeaning or humiliating actions or behaviour that supports a hostile or poisonous environment.

The test in determining if an action is harassing is whether a reasonable person knows or ought to know that the behaviour would be considered unwelcome or inappropriate by the recipient. Such an action may be a single event or may involve a continuing series of incidents. It may involve the abuse of authority or position, or it may involve relations among co-workers and affiliated personnel. Personal harassment however does not include the appropriate exercising of an individual's supervisory authority.

Prohibited Behaviour means discrimination, personal harassment or sexual harassment.

Respondent means the individual who the complainant alleges has committed prohibited behaviour.

Sexual Harassment is any unwelcome behaviour that is sexual in nature. Unwanted sexual advances, unwanted requests for sexual acts, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- Such conduct undermines another individual's personal dignity by causing embarrassment, discomfort, humiliation or offence; or
- Such conduct interferes with an individual's work performance or learning opportunities by creating an intimidating or hostile work or learning environment; or
- Submission to such conduct is made either explicitly or implicitly a term or condition of

employment or of educational services; or

- Submission to or rejection of such conduct affects decisions regarding that individual's employment or educational advancement including matters such as promotion, salary, benefits, job security, grades, or employment references.

Sexual harassment includes unwanted touching (e.g. pinching, patting, rubbing), leering, sexist jokes, the display of sexually suggestive material, derogatory or degrading comments, sexually suggestive gestures, and unwelcome propositions, innuendos, demands or inquiries of a sexual nature.

The behaviour giving rise to a complaint need not be intentional in order to be considered sexual harassment; it is sufficient that the offender knows, or ought reasonably to know, that the behaviour is offensive and unwelcome.

Procedures

1. General

- 1.1 These procedures apply to cases of discrimination, personal harassment, and sexual harassment between and among staff members, or by staff members toward students. Discrimination and harassment incidents by or among students shall be dealt with pursuant to Administrative Procedure 350 – Student Conduct, Administrative Procedure 352 – Student Harassment and Bullying, and Administrative Procedure 355 – Student Discipline.
- 1.2 Complainants, respondents and persons in authority who are involved in complaint resolution processes shall be provided with information regarding:
 - 1.2.1 Administrative Procedure 170 – Discrimination and Harassment;
 - 1.2.2 Any counselling, support, sick leave benefits, and advisor services available to employees;
 - 1.2.3 The right of the complainant and the respondent to be accompanied by a union or association representative or another individual;
 - 1.2.4 The right of the complainant to withdraw the complaint at any stage in the process;
 - 1.2.5 Alternative routes for addressing the complaint.
- 1.3 At any time in the informal or formal complaint process, mediation is an option for the complainant and respondent, if both parties agree.
- 1.4 Both the complainant and respondent have the right to seek representation from a union or professional organization, or another individual at no cost to the Division.
- 1.5 The complainant and the respondent are encouraged to co-operate with the investigation and resolution of the complaint.

2. Confidentiality and Privacy of Information

- 2.1 The Division recognizes the difficulty of reporting personally harassing or sexually harassing behaviour, and understands that confidentiality is important to the complainant. Confidentiality will be maintained throughout the complaint procedure to

the extent possible.

- 2.2 Information relating to the complaint, including the identity of the parties involved, will only be disclosed to the extent necessary to thoroughly investigate the complaint and as may be required in accordance with the privacy and access provisions contained under the Freedom of Information and Protection of Privacy (FOIP) Act.

3. Direct Action

- 3.1 Individuals who believe they are experiencing prohibited behaviour are to:

- 3.1.1 Tell the harasser that his or her behaviour is unwelcome and ask him/her to stop.
- 3.1.2 Keep a record of all incidents including the date, time, location, nature of the prohibited behaviour, possible witnesses, circumstances surrounding the incidents, and your response including any action taken to stop the prohibited behaviour.
- 3.1.3 If you are not able to communicate verbally, advise the offender, in writing, that his or her behaviour is unacceptable and unwelcome and ask him or her to stop.
- 3.1.4 Promptly report the prohibited behaviour to a trusted adult or person in authority.
- 3.1.5 Any employee or student who believes that a colleague or fellow student has experienced or is experiencing discrimination, personal harassment, sexual harassment or retaliation is encouraged to notify a trusted adult or person in authority as soon as possible.

- 3.2 This Administrative Procedure does not preclude the complainant from reporting harassment of a discriminatory nature to the Alberta Human Rights Commission, or if the matter is perceived to be criminal in nature, to the police.

- 3.2.1 All reports to the Human Rights Commission must be filed within one (1) year of the date of the incident.

4. Informal Complaint

- 4.1 If the complainant is unable to take direct action or the prohibited behaviour continues, the complainant is to promptly make an informal complaint by informing a person in authority.

- 4.1.1 The person in authority shall act to resolve the situation by intervening on the complainant's behalf, by arranging for the respondent and complainant to come together to resolve the complaint, or by advising the complainant where appropriate of other options.
- 4.1.2 If this does not successfully resolve the issue, the complainant may choose to initiate a formal complaint. It is not necessary to initiate an informal complaint before filing a formal complaint. If a formal complaint is initiated, it supersedes an informal complaint.
- 4.1.3 At any time after the initiation of an informal complaint, the complainant may request that no further action be taken.

- 4.1.4 A complaint may also be filed through the union as a grievance. In such cases the collective agreement grievance procedure will be followed. If a complaint is filed through the union as a grievance, a meeting will be held with the union representative before and after the investigation.

5. Formal Complaint

- 5.1 A formal complaint is to be filed promptly and must be filed in writing within one (1) year of the date of the prohibited behaviour, with the Superintendent or designate.
- 5.2 The Superintendent or designate shall inform forthwith the respondent, and the supervisors where appropriate of the complainant and respondent about the formal complaint.
- 5.3 An investigator shall be chosen by the Superintendent or designate. The Division will make reasonable efforts to find a mutually acceptable investigator but if this is not possible, the Superintendent or designate will appoint an investigator to ensure that the process is implemented expeditiously.
- 5.4 An investigator shall attempt to resolve the complaint through conciliation or mediation.
 - 5.4.1 If conciliation or mediation is not successful within thirty (30) days from the date of appointment of the investigator, or alternatively if either the complainant or respondent does not wish to participate in conciliation or mediation, then the matter shall be investigated.

6. Investigation

- 6.1 The investigator shall request a detailed written statement from the complainant. Should the complainant prefer, the investigator shall interview the complainant.
- 6.2 If the complainant provides a written statement, the investigator will follow up with an interview of the complainant.
- 6.3 The investigator shall interview the complainant and respondent as necessary.
- 6.4 The investigator shall interview any other persons and gather such other materials as may be necessary for the investigator to conclude the investigation.
- 6.5 The investigator may provide the parties with the written statements and a written summary of the interviews, where deemed appropriate, and be subject to the application of the privacy provisions of the Freedom of Information and Protection of Privacy Act.
- 6.6 The investigator shall produce a report of fact and findings relating to the complaint made.
- 6.7 The investigator's report shall be provided to the Superintendent or designate within thirty (30) days of the filing of the formal complaint.
 - 6.7.1 The Superintendent or designate may extend the timeline for the submission of the report but in any event it is to be completed as soon as practically possible.
 - 6.7.2 A summary of the report or the findings may be shared with the complainant and the respondent as is deemed appropriate.

7. Consequences

7.1 Prohibited Behaviour

- 7.1.1 If the Superintendent or designate concludes that prohibited behaviour has been committed, a range of sanctions may be imposed as deemed appropriate by the Superintendent or designate. These may include:
 - 7.1.1.1 A written apology;
 - 7.1.1.2 A written reprimand delivered to the harasser, and recorded in their personnel or student file;
 - 7.1.1.3 Referral to counseling;
 - 7.1.1.4 Transfer;
 - 7.1.1.5 Withholding of promotion;
 - 7.1.1.6 Demotion;
 - 7.1.1.7 Suspension or termination (for employees);
 - 7.1.1.8 Suspension or expulsion (for students).
- 7.1.2 For serious or repeat prohibited behaviours, the appropriate sanction may be dismissal. Information regarding the decision and disciplinary action shall be placed in the respondent's personnel file.
- 7.1.3 If the respondent is a teacher and the Superintendent or designate decides that dismissal is warranted, then the Superintendent or designate will make this recommendation to the Board.

7.2 If the Superintendent or designate concludes that an intentionally false allegation of prohibited behaviour has been made, a range of sanctions may be imposed on the complainant as deemed appropriate by the Superintendent or designate. For serious or repeat false allegations of prohibited behaviours, the appropriate sanction may be dismissal.

7.3 If the Superintendent or designate concludes that the formal complaint is unfounded, documentation is not included in the personnel file of the respondent. However, the respondent may request to have relevant information placed on their own file.

7.4 Whether the complaint is upheld or not, no documentation will be placed on the complainant's personnel file where the complaint is filed in good faith. However, the complainant may request to have relevant information placed on their own file.

8. Retaliation

8.1 The Division will not tolerate retaliatory action by any individual including officers, employees, agents or students which is taken with the intent of dissuading or punishing an individual for participating in the complainant resolution process.

8.2 Retaliation against an individual making a complaint or providing information to an investigator pursuant to a complaint is considered to be harassment and will, where substantiated, result in disciplinary action up to and including dismissal from employment in appropriate circumstances.

8.3 Other disciplinary actions may include the requirement for the provision of a written

apology; a written reprimand delivered to the harasser and recorded in their personnel or student file; referral to counselling; transfer; withholding a promotion; demotion, or suspension or expulsion for students.

9. A complaint against the Superintendent or designate is to be made in writing to the Board Chair who shall, in conjunction with legal advice, determine the appropriate procedure to be followed in the circumstances.

Adopted/Revised/Reviewed: JUN 2016/NOV 2019/JAN

Reference: Section 33, 52, 53, 197, 204, 222 Education Act
Alberta Human Rights Act
Child Youth and Family Enhancement Act
Employment Standards Code
Occupational Health and Safety Act
Canadian Charter of Rights and Freedoms
Canadian Human Rights Act
Criminal Code
Individual's Rights Protection Act
Student Record Regulation 225/2006
ATA Code of Professional Conduct