

**PROCEDURE NO: 504.1****TITLE: Respectful Workplace Harassment Prevention**

**SOURCE:** Manitoba Workplace Safety and Health Act and Regulation (2015); Common Guide for Preventing Harassment; A Guide for Preventing Violence in the Workplace; Manitoba Labour Act

**OTHER REFERENCE:** Department of Education: A Whole-School Approach to Safety and Belonging, Preventing Violence and Bullying (2005), SRSD Student Services Handbook; SRSD Emergency Crisis Plans

**EFFECTIVE DATE:** October 24, 2017

**REVISED DATE:** September 2017

**REVIEW YEAR:**

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## **Procedure**

### **Guidelines**

The Seine River School Division (The Division) believes in and is committed to providing a safe and respectful workplace and learning environment in all of its operating facilities. The Division recognizes that every individual is entitled to a work environment free of harassment and will ensure, so far as reasonably practicable, that no individual is subjected to objectionable conduct that creates a risk to the health of any employee/volunteer or severe conduct that adversely affects an individual's psychological well-being in its workplaces.

It is the responsibility of all persons to work together in treating each other with respect and dignity and to make unresolved instances of harassment known to The Division management.

The policy applies to all employees, volunteers and students of The Division including persons employed or self-employed person(s) or contractor(s) contracted by The Division. The policy extends to:

- Any location whereby the business of The Division is being carried out and;
- Other locations and situations such as during professional development conferences, work related social gatherings, business travel, extra-curricular programs, etc... and where the prohibited behaviour may have a subsequent impact on the working relationship, environment and/or performance.

To support its commitment of harassment free workplaces, The Division will:

- Take corrective action respecting any person under its direction and or any other person under its control who is known to have violated this policy;
- Uphold every person's right to file a complaint with the Manitoba Human Rights Commission;
- Encourage and support early resolution to resolve alleged violations as soon as possible;
- Ensure known policy violations are dealt with in a fair and respectful manner and;
- Not disclose the name of a complainant or an alleged harasser or the circumstances related to the complaint to any person except where disclosure is:
  - Necessary to investigate the complaint or take corrective action with respect to the complaint or;
  - Required by law

These procedures are not intended to discourage or prevent complainants from exercising any other legal rights pursuant to any other law.

**CONFIDENTIALITY**

It must be recognized that confidentiality must be distinguished from anonymity. A complainant who wishes to seek a remedy must be prepared to identify the alleged harasser. Confidentiality of the persons involved in the complaint will be maintained, as reasonably practicable, and as allowed by law to protect both the complainant and the alleged harasser against unsubstantiated claims which might result in malicious or harmful gossip.

All aspects of an investigation (documents, conversations, notes, identities of the parties) are protected by the FIPPA (Freedom of Information and Protection of Individual Privacy Act) and PHIA (Personal Health and Information Act). All parties of a complaint must refrain from discussing the complaint with anyone else. Employees who are named as witness to alleged incidents of harassment, or who may provide information helpful to the person investigating, are expected to cooperate with any investigation.

It must be recognized that, to the extent parties choose to initiate proceedings or make comments outside of the organization's internal complaint procedure, confidentiality cannot be guaranteed.

**DEFINITIONS**

"Complainant" refers to the person who believes that he/she is being harassed and has filed a complaint with an administrator/supervisor of The Division.

"Management" refers to person(s) who are in the position(s) to direct the work of others and those who may be in charge of the workplace. i.e. Principals, Administrators, Managers and Supervisors

"Respondent" refers to the person against whom the complaint has been made.

"Workplace" refers to any place where individuals perform work, or work-related duties or functions for The Division.

"Employee" refers to: any person who is employed by the Division to perform a service, whether paid or volunteer, apprentice or in any other capacity where they are performing a service within our educational institutions.

**HARASSMENT****Harassment is not:**

- Appropriate performance reviews, counselling, coaching or discipline by a supervisor or manager;
- Day-to-day management or supervisory decisions involving work assignments, and implementation of appropriate dress codes, provided they are carried out in a manner that is reasonable and not abusive;
- Physical contact necessary for the performance of the work using industry/professional standards;
- Conflict or disagreements in the workplace that are not based on any of the objectionable conduct as listed in 3.2 and other conduct that would reasonably be

considered acceptable within a workplace setting;

- Occasional misunderstandings, thoughtlessness or poor communication;
- Reasonable words or actions related to isolated stress or frustrations encountered in the performance of work duties;
- Consensual banter or conduct, or romantic relationships, where the people involved do not find it offensive or unwelcoming and consent to what is happening.

### **What constitutes Harassment?**

Harassment is:

- Objectionable conduct that creates a risk to the health of an employee; or
- Severe conduct that adversely affects an employee's psychological well-being.

Harassment is interpreted to include any behaviour that is known or should be known to be offensive, embarrassing, or humiliating to other individuals. Such conduct may include written, verbal, electronic media, and/or physical conduct. Harassment is not about the person's intent. It is about how the behaviour affects the victim.

Specifically, "harassment" is:

A course of abusive and unwelcome conduct or comment undertaken or made on the basis of any personal characteristic, such as:

Race	Source of income
Creed	Political belief
Religion	Political association
Colour	Political activity
Sex	Disability
Sexual orientation	Physical size or weight
Gender-determined characteristics	Age
Marital status	Nationality, ancestry, or
place of origin	Family status

### **Sexual Harassment may include:**

- a) Unwanted, persistent or abusive sexual attention;
- b) A sexual advance or solicitation may be made by a person in a position to grant or deny a benefit which may affect the employment status of an employee where the individual knows or ought to reasonably know that this attention is unwanted;
- c) Sexual oriented behaviour or remarks which create a negative psychological environment for work. Such behaviour or remarks include, but are not restricted to:
  - Demeaning remarks based on gender
  - Suggestive jokes about sex
  - Inappropriate displays of sexual pictures or materials
  - Derogatory terms, graffiti which degrades a person based on his/her sex or sexual orientation
  - Leering, ogling, and suggestive or insulting sounds

- Unwanted questions or physical acts such as brushing up against one's body, patting, or pinching
  - Sexual assault (an offence under the Criminal Code)
- d) A reprisal or threat of reprisal for the rejection of a sexual solicitation or advance.

Conduct is considered severe, if it could reasonably cause an employee to be humiliated or intimidated and is repeated, or in the case of a single occurrence, has a lasting, harmful effect on an employee.

### **Rights and Responsibilities**

#### **Employee Rights and Responsibilities**

Employees have the right to:

- A workplace free of harassment
- To file a complaint with the Manitoba Human Rights Commission.
- Have representation at harassment hearings and investigation proceedings.

Employees are responsible to:

- Handle themselves in a respectful and dignified manner to maintain an environment free from harassment.
- Report instances of harassment to their supervisors;
- Cooperate with inquiries or investigations of harassment, when requested;
- Maintain the confidentiality of anyone involved in a complaint or an investigation in which they are aware.

#### **Management Rights and Responsibilities**

Management has the right to:

- Hold employees and other person(s) under their control accountable for non-adherences to the policy.
- Be protected from frivolous or malicious claims and to;
- Manage the areas of their responsibilities to meet its operational objectives.

Management is responsible to:

- Be aware of what is happening in the workplace;
- Create and maintain a work environment that is free from harassment;
- Provide employees with the training and resources necessary to support the policy;
- Ensure that the policy is accessible, posted and communicated to employees and others that access the workplaces;
- Set an example for appropriate workplace behaviour;
- Investigate allegations of harassment incidents appropriately;
- Maintain accountability to the policy;
- Assist employees who turn to them for help with concerns or complaints that fall within this policy and;
- Work within the policy

### Harassment Allegation and Complaint Procedures

It is understood that staff will make an effort to resolve miscommunications and misunderstandings, and will follow a respectful process as outlined below, when there is an allegation of harassment.

#### Step 1 – Informal Resolution

- a) When an employee feels that he/she has been harassed and is comfortable doing so, he/she is encouraged to advise the alleged harasser that the behaviour is unwelcome and should stop. If the complainant is satisfied with the outcome, the process may be considered resolved at this stage.
- b) If this approach does not stop the unwelcome behaviour, or when a complainant feels unable or is unwilling to use this approach, the individual is encouraged to approach their direct supervisor/manager or school administrator.
- c) If the supervisor/manager or school administrator is the alleged harasser, the Complainant may contact the Human Resources department directly and/or notify the appropriate Superintendent by submitting the completed *Statement of Complaint* form directly to the attention of the Human Resources department or deliver the form in person. The *Statement of Complaint* form is available on Sharepoint, or from the WSH site committee, or from a School Principal or Manager, or from Human Resources.
- d) Those who feel they are being subjected to harassment are encouraged to keep a written log of all incidents, including dates, times, other individuals in the area, and detailed description of the events.

#### Step 2 – Supervisor/Manager/Principal Assisted Resolution

- a) While The Division recognizes that it will often be difficult to come forward with a complaint of harassment, it encourages all employees to do so. Individuals trained in responding to allegations of harassment will be made available in everydivision location for this purpose. The complainant may contact their direct supervisor, manager, or principals (unless the person is the alleged harasser in which case the Complainant may contact the Human Resources Department).
- b) The person to whom a complaint of harassment is made under this policy shall provide guidance and advice to the Complainant.
- c) If the complainant so requests, the supervisor, manager, principal, or other individual approached herein, may provide assistance to the Complainant in approaching the Respondent and requesting that the offensive behaviour stop. This individual and the Complainant will jointly determine how best to approach the Respondent.
- d) In any case, if not informed in c) above, the Respondent shall be informed of the allegations against him/her and be given an opportunity to respond. How this information is relayed shall be determined by the supervisor/manager/principal in consultation with the Complainant.

- e) Interventions to achieve a resolution at this stage may take, but shall not be limited to, any of the following forms:
- Mediation between the two parties;
  - Meeting with the parties to discuss the matter and set expectations for future behavior;
  - Referral to counseling/education on harassment and sensitivity issues, and/or;
  - A commitment by the Respondent to treat the Complainant with respect and dignity at all times in the future.
- f) Those to whom harassment is reported shall keep a confidential written account of all information they receive in conjunction with a complaint (this will include the attached "Statement of Complaint", a copy of which will be submitted to the Human Resources department immediately and or as soon as reasonably practical).
- g) If a supervisor, manager, or school administrator assisted resolution between the parties is successful, this process terminates at this stage (a copy of the resolution shall be sent immediately to the Human Resources department).

If the supervisor, manager, or school administrator assisted resolution is not acceptable, or if the complaint is not appropriate for informal resolution, it will be forwarded to Step 3 – Investigation (as soon as possible).

- h) At any time in this process, Human Resources may be consulted by any party for support in resolution.

### Step 3 – Investigation

- a) Determination by Human Resources
- Upon receipt of a formal and written complaint regarding allegations of Harassment, a Human Resources representative will:
- Notify the site Safety and Health Committee co-chairs of any harassment allegations,
  - Make a determination whether the complaint, on its face, establishes a potential case of harassment under the Division's Policy. The Human Resources department in making this determination will make a reasonable judgment as to whether the respondent knew, or should have reasonably known, that their behaviour towards the Complainant was unwelcomed. The School Division will provide a time frame for determination (as soon as possible).

Generally this will result in the one of the following findings:

- That harassment as per the Respectful Workplace Policy is established on its face by the facts and circumstances raised, and the complaint shall proceed to investigation.
- That the facts and circumstances on their face do not disclose a case of harassment as per the Respectful Workplace Policy, but there is evidence of workplace conflict which must be addressed through more appropriate methods.
- That the facts and circumstances on their face do not disclose a case of harassment as per the Respectful Workplace Policy, and no further action is required.

Notwithstanding the timelines within these procedures, the Human Resources department may direct that a complaint or allegation of harassment be referred to any previous steps within this Policy's Procedures.

b) Appointment of the Investigation Committee

The School Division shall appoint one or more investigators to investigate the complaint. The Investigation Committee will usually consist of the Complainant's supervisor and a trained Human Resources professional (if neither are parties to the complaint). External supports may also be assigned.

An individual who has assisted with a complaint at a previous stage may not serve on the Investigation Committee dealing with the same complaint. Consideration will also be given to any potential bias, and connections between parties involved, to avoid any conflicts of interest or bias.

The School Division will determine the parameters of the investigation and the committee will report on the progress of their investigation as necessary.

The Investigation Committee shall conduct and complete its investigation within a reasonable time from the date the Investigation Committee was struck. If a lengthier process than twenty working days is anticipated for any reason, the Human Resources department will communicate the reasons for the delay, and anticipated timelines, to all parties involved.

c) Investigation process

The investigation shall include, at a minimum, the following components:

- i. A meeting with the Complainant to review the Statement of Complainant and to seek any clarification as needed;
- ii. A meeting with the Respondent for the purposes of communicating the allegation and receiving the Respondent's version of events (which may be requested in writing);
- iii. Collection of all relevant evidence, and;
- iv. interviews with and/or receipt of written submissions from all witnesses the investigative Committee considers relevant.

d) Preparing the Investigation Findings Report

The Investigative Committee shall prepare a report setting out its findings and/or recommendations within a reasonable period (normally twenty working days from the date the Investigative Committee was struck).

The investigators shall release their report to the Superintendent, the Complainant, and the Respondent. Generally, the findings will be one of the following:

- The complaint of harassment is substantiated by the evidence, or;
- The complaint of harassment is not substantiated by the evidence;
- The complaint of harassment is not substantiated by the evidence, but there are interpersonal conflict issues which need to be resolved through appropriate measures;
- The complaint of harassment is not substantiated and there is evidence that the complaint is frivolous, vexatious or made in bad faith.

The report shall also include, where applicable, any recommendations for corrective action in the workplace.

There may be instances where the Investigative Committee determines that a complaint has been both unfounded and motivated by malice. In such cases, the School Division shall take any steps they deem appropriate.

#### Step 4 - Response to the Report

Within five working days of the receipt of the report, the Complainant and the Respondent shall respond to the report in writing in one of three ways:

- I. They may accept the report (failure to act will be deemed acceptance of the report);
- II. They may make further written submissions in response to the report, or;
- III. They may request a further meeting at which the investigators may hear further evidence and/or receive submissions on a defined and specific factual matter.

#### Resolution

##### Accountability and Rehabilitative Actions

Where an allegation and complaint of harassment are substantiated, progressive discipline and/or rehabilitative corrective action appropriate to the severity of the harassment will be assessed by the Respondent's direct supervisor, in consultation with the Human Resources department. Corrective action(s) may include and are not limited to, one or more of the following:

- A formal apology
- Counseling and/or education on harassment
- A written warning
- Suspension without pay
- A disciplinary transfer
- The termination or removal of the offending worker, contractor or person

#### Retaliation

Anyone who retaliates in any way against a person who has brought forth a complaint or allegation of harassment may be guilty of harassment and will be held accountable if evidence of retaliation is found and will be subject to any of the corrective actions described previously in 6.1 Accountability. Privacy and confidentiality will be respected to protect all parties involved in a complaint of harassment.

#### References

- Part 10 of Manitoba Workplace Safety and Health Regulation, M.R. 217/2006
- The Human Rights Code, Section 19(2)

See also: *Statement of Complaint – Harassment* form on SharePoint.