

7.0. Safe Schools

7.0. SAFE SCHOOLS – Harassment Prevention Administrative Procedure

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Regulation and Procedure Reference: EL-1.1

Legal Reference: MB. Human Rights Commission, MB. W S & H Act Part 10

Overview:

Lakeshore School Division affirms its commitment to maintaining a safe learning and working environment that is free from harassment and at all times supports the dignity and self-esteem of individuals. Harassment of any individual will not be tolerated. An employee who believes she/he is being harassed should report the incident following the procedures set forth.

Definitions:

1. What is Harassment?

For the purpose of this procedure, the Manitoba Human Rights Code defines harassment as:

- a) A course of abusive and unwelcome conduct (i.e. a written or verbal comment, a physical act or gesture or a display, or any combination of them) directly related to the following:
 - a) ancestry, including color and perceived race;
 - b) nationality or natural origin;
 - c) ethnic background or origin;
 - d) religion or creed, or religious beliefs, religious association or religious activity;
 - e) age;
 - f) sex, including pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;
 - g) gender-determined characteristics or circumstances other than those included in clause;
 - h) sexual orientation;
 - i) marital or family status;
 - j) source of income;
 - k) political belief, political association or political activity;
 - l) physical or mental disability or related characteristics or circumstances, including reliance on a dog guide or other animal assistant, wheelchair, or remedial appliance or device

- m) physical weight and size; or
- b) Objectionable conduct that creates a risk to the health of a worker; or
- c) Severe conduct that adversely affects a worker's psychological or physical well-being if it could reasonably cause a worker to be humiliated or intimidated and is repeated, or in case of a single occurrence, has a lasting, harmful effect on a worker; or
- d) A series of objectionable and unwelcome sexual solicitations or advances; or
- e) A sexual solicitation or advance made by a person who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
- f) Sexually oriented behaviour or remarks which create a negative psychological environment for work or study. Such behaviour or remarks include, but are not restricted to:
 - i) demeaning remarks based on gender
 - ii) suggestive jokes about sex
 - iii) inappropriate comments about clothing, physical characteristics or activities
 - iv) inappropriate displays of sexual pictures or materials
 - v) derogatory terms, graffiti which degrades a person based on his/her sex or sexual orientation
 - vi) leering, ogling, and suggestive or insulting sounds
 - vii) unwanted questions or comments about one's private life
 - viii) unwanted physical contact, such as brushing up against one's body, patting or pinching
 - ix) sexual assault (an offense under the Criminal Code); or
- g) A reprisal or threat of reprisal for rejecting a sexual solicitation or advance; or
- h) In addition to the behaviours defined in the Manitoba Human Rights Code, the Division also recognizes:
 - i. a course of abusive and unwelcome conduct or comment undertaken or made on the basis of medical circumstances or illness as harassment; and
 - ii. retaliation against an individual who:
 - a.) invokes the procedure; or
 - b.) participates or cooperates in an investigation under the procedure; or
 - c.) associates with a person who invokes the procedure or participates in the complaint procedure under the procedure.

2. **What does not constitute harassment** (consistent with the Manitoba Human Rights Code)?

- 1) Consensual banter or romantic relationships where the people involved consent to what is happening, is not harassment.
- 2) Appropriate performance reviews, counseling or discipline by a supervisor or manager, is not harassment i.e.:
 - a) reasonable action taken in a reasonable manner by an employer or supervisor to:
 - i. assess, evaluate, transfer, demote, discipline or dismiss a worker, or
 - ii. manage and direct the employer's worker or workplace;
 - b) a decision by an employer or supervisor, based on reasonable grounds, not to award or provide a promotion, transfer or benefit to a worker;
 - c) reasonable action taken in reasonable manner under an ACT or regulation affecting a worker.

Terms:

Complainant: refers to the person(s) who believes she/he is being harassed and has filed a complaint.

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

COMPLAINT PROCEDURES:

Any person who believes that she/he is being harassed (within the definitions as just outlined) should act promptly in order to resolve the situation; allowing the division to work in a proactive and timely manner to prevent further harassment.

Employees are encouraged to choose the informal approach to reach a mutually acceptable agreement respecting future conduct and interaction.

However, if the complainant is not able or willing to communicate with the alleged harasser the complainant may choose to proceed directly to the Formal Procedure.

Informal Procedure:

A staff member who believes that she/he is being harassed may choose to resolve the issue by communicating (verbally or in writing e.g. email) directly with the person who is believed to be the alleged harasser (i.e. the respondent).

The complainant may also speak directly to their Workplace Safety and Health Representative and or their Union/Association Representative in accordance with their respective Collective Agreements.

Formal Procedure:

If early resolution is not successful or is not deemed appropriate, the complainant may file a complaint with the Superintendent or designate. Complaints must be made or filed in a timely manner and no later than six (6) months from the date on which the event(s) took place. If a complainant wishes to make a formal complaint the following process will be followed:

Step 1 - Filing a Complaint:

The complainant submits a written statement of complaint to the Superintendent or designate which contains particulars of the allegations including:

- a. the name and position of the alleged harasser (if the person is unknown a detailed description should be provided);
- b. as many details as possible about the conduct or comments;
- c. the frequency of the conduct or comments, including dates and times where applicable;
- d. where the conduct/comments occurred;
- e. the name of any witnesses to the conduct/comments, if any;
- f. how the complainant responded to the conduct/comments; and
- g. whether the alleged harasser made and/or carried out any threats or promises in connection with the conduct/comments.

Step 2 - Acknowledgement of the Statement of Complaint:

Upon receipt of the formal written complaint, the Superintendent or designate will respond to the complainant indicating that the communication has been received. The Superintendent or designate may contact the complainant for clarification as needed.

At any time during the process, the Superintendent or designate shall be empowered to take interim action as may be deemed necessary with respect to the complainant and the alleged harasser, pending the outcome of the alleged complaint.

Step 3 - Review of the Complaint:

Once the complaint has been acknowledged, the Superintendent or designate reviews the complaint in a reasonable and timely manner. If it is determined from the initial review that the complaint is not substantive or does not fit within the definitions of harassment, the complainant is informed in writing and redirected to the appropriate avenue of recourse.

Step 4 – Notice of Investigation:

If the Superintendent or designate concludes from the initial review that a violation of the Harassment Prevention Regulation and Procedure *may* have occurred, they will provide written notice to the respondent indicating the existence of a formal harassment complaint.

Step 5 – Investigation:

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

- a meeting with the Complainant to review the Statement of Complaint and to seek any such details as needed;
- a summary of the complaint provided to the Respondent in advance of meeting.
- 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);
- collection of all relevant evidence, and;
- interviews with and/or receipt of written submissions from all witnesses considered to be material.

Both complainant and respondent have the right to be accompanied by a union representative during the investigative process.

Step 6 – Decision:

Subsequent to the investigation of the facts the Principal, Supervisor or designate may:

- a) dismiss the complaint or
- b) endeavour to resolve the matter through a conflict resolution process or
- c) take disciplinary action as warranted; or
- d) recommend further action or
- e) take disciplinary action against the complainant, if in the course of the investigation, the Principal or Supervisor finds that the complaint was malicious and without grounds.

The appropriate parties involved will be advised in writing on the determination of the alleged harassment.

Documentation pertaining to the complaint and investigation will be maintained in a confidential file separate from the personnel files of either party unless disciplinary action results, which will be placed in the relevant personnel file.

In the event that the action taken by the Superintendent or designate is unacceptable to either the complainant or the respondent, the matter shall be referred to the Lakeshore School Division Board of Trustees in writing for their consideration and action.

Note: In addition to levying a complaint pursuant to the Division Procedure, the complainant has the right to pursue her/his complaint through the Manitoba Human Rights Commission or where appropriate to law enforcement agencies under the Criminal Code of Canada, or both.

Consequences:

Where it is found that a violation of the procedure has occurred, the Superintendent or designate may take disciplinary action including, but not restricted to the following:

- a) verbal warning

- b) written warning included in the staff file
- c) suspension of staff with or without pay for a specified period of time
- d) transfer to another location
- e) dismissal
- f) police involvement
- g) requirement for clinical and or counseling services
- h) exclusion from Division facilities.

Confidentiality:

All records, documents, notes and transcripts of an investigation shall remain confidential.

Except where disclosure is:

- a) required by Law
- b) necessary to investigate the complaint or take corrective action
(subject to the requirements of the Freedom of Information and the
Right to Privacy Act).

Furthermore, the employer will keep the identity of the complainant confidential except where the disclosure is:

- a) required by Law
- b) necessary to investigate the complaint or take corrective action
(subject to the requirements of the Freedom of Information and the
Right to Privacy Act).

Parties to a complaint are advised to refrain from discussing the complaint with anyone other than those specified as appropriate in this regulation and procedure.