

Administrative Procedure 170

HARASSMENT-FREE WORK/SCHOOL ENVIRONMENT

Background

The Division is committed to ensuring a positive and safe work environment that supports mutual respect among all individuals and protects the dignity, worth and human rights of every person. All school community members, including students, employees, board members, parents and legal guardians, school council members, volunteers, and contractors have the right to an environment free of harassment and discrimination. The Division has the responsibility to provide such a respectful workplace. The Division also has the responsibility to ensure that if there is a breakdown in interactions as a result of behaviours and/or communications between Division employees and/or non-employees, that every effort is made to rectify the issue and to ensure that such Division employees involved in these circumstances are engaged in necessary assessments, remediation, and interventions to prevent a re-occurrence of such behaviors and/or communications.

This administrative procedure 170 ("AP 170") applies to:

- a) all behaviours that occur at schools, school division offices, buildings under Division jurisdiction, or other settings where members of the school community interact in the course of school-related or school board-related activities, including social functions, travel, conferences or training events;
- b) all forms of written and verbal communication, including communications by email, telephone, and postings on the intranet, Internet and/or social media.

The following practices are **not** considered to be within the scope of AP 170 as long as they are carried out in "good faith":

- assignment of work and direction on how work is to be accomplished;
- situations that involve appropriate direction of employees;
- requests by supervisors for updates or status reports;
- situations that involve appropriate disciplinary action;
- expectations for reasonable quality of job performance, on-going discussions about performance expectations and/or participation in the performance management process;
- one-on-one discussions between supervisors and their staff;
- approval or denial of time off.

In all cases, making a false, frivolous, vexatious or bad faith allegation against any person subject to this AP 170 is a serious offense and is considered disrespectful behaviour that will not be tolerated and may be subject to sanction.

The following legislation and Division Administrative Procedures also address harassment in the workplace and are applicable to situations requiring their application:

- Alberta's *Occupational Health and Safety Act* amendments (effective June 1, 2018) defines harassment and violence to address workplace bullying and physical and psychological harm, including sexual and domestic violence (collectively "OH&S Workplace Harassment and Violence").

- BRSD *Administrative Procedure 161* (Occupational Health and Safety) applies to any incident which constitutes OH & S Workplace Harassment and Violence.
- BRSD *Administrative Procedure 400* (Employee Responsibilities and Conduct) explains all employees must conduct themselves in a manner that not only reflects credit to their school and Division, but that sets forth a model worthy of emulation by students.
- BRSD *Administrative Procedure 120* (Public Interest Disclosure: Whistleblower Protection).
- *The Public Interest Disclosure (Whistleblower Protection Act)* (March 1, 2018) emphasizes the importance of reporting wrongdoing in the workplace and following due process.
- The *Education Act* (January 2020). Part 3, Section 33(1)(d) states “a Board, as a partner in education, has the responsibility to ensure that each student in a school operated by the board and each staff member employed by the board is provided with a welcoming, caring, respectful and safe learning environment that respects diversity and fosters sense of belonging”.
- The Alberta Teachers Association *Code of Professional Conduct* (updated July 2018) stipulates minimum standards of professional conduct of teachers but is not an exhaustive list of such standards.
- The *Alberta Human Rights Act*, RSA 2000, C A-25.5. WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all persons is the foundation of freedom, justice and peace in the world; WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in: dignity, rights and responsibilities without regard to race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation.

Procedures

1. Definitions

- 1.1. **Harassment** may include a single incident or a series of events. Harassment occurs when someone is subjected to unwelcome verbal, written, or physical conduct. *Harassment* does not represent Conflict in Relationship. For the purpose of AP 170, **Harassment, Discrimination, Sexual Harassment, and Workplace Bullying** are collectively referred to as “**Harassment**”:
 - 1.1.1. *Harassment* refers to derogatory (e.g., excessively critical, insulting, belittling) or vexatious (e.g., aggressive, angry, antagonistic) conduct or comments that are known or ought reasonably to be known to be offensive or unwelcome. *Harassment* includes, but is not limited to, the following:
 - 1.1.1.1. any objectionable comment, act, or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat;
 - 1.1.2. *Discrimination* is also a form of *Harassment* that is prohibited in Alberta under the *Alberta Human Rights Act* if it is based on one or more of the following grounds: *Race, Religious beliefs, Colour, Gender, Gender identity, Gender expression, Physical disability, Mental disability, Age, Ancestry, Place of origin, Marital status, Source of income, Family status, and/or Sexual orientation*.
 - 1.1.3. *Sexual Harassment* includes comments, gestures or physical conduct of a sexual nature where an individual knows or ought reasonably to know that the

behaviour is unwelcome and personally offensive. *Sexual Harassment* includes, but is not limited to:

- 1.1.3.1. inappropriate or derogatory comments, humour, insults or behaviour based on gender and/or gender identification, gender expression;
 - 1.1.3.2. inappropriate, lewd, or sexually offensive written, graphic or behavioural displays on school board property;
 - 1.1.3.3. inappropriate, lewd, or sexually offensive slogans or graphics displayed on clothing worn on school board property or during school-related activities;
 - 1.1.3.4. inappropriate conversation, physical touching, or leering that could be construed to be a sexual advance;
 - 1.1.3.5. inappropriate conversation regarding an individual's sexual behaviour;
 - 1.1.3.6. unsolicited and/or unwanted requests to engage in sexual activity;
 - 1.1.3.7. reprisal or threat of reprisal against an individual for rejecting a sexual solicitation or advance.
- 1.1.4. *Workplace Bullying and/or Bullying* refers to repeated and hostile or demeaning behaviour by an individual where the behaviour is intended to cause harm, fear or distress to another individual in the school community, including psychological harm or harm to the individual's reputation. Bullying often occurs in circumstances where one party endeavors to maintain power and control over another based upon systemic inequalities within a social setting.
- 1.1.5. ***Conflict in Relationship*** occurs through single episodic acts of breakdowns in relationships between individuals. Conflict is an inevitable component of a workforce. Disagreement and misunderstanding between parties is at the heart of conflict. However, conflict does not constitute premeditated efforts to cause harm, fear, or distress. Parameters for addressing conflict in relationship between students may be dealt with through counseling, and /or through *Administrative Procedure 350: Student Code of Conduct*.
- 1.1.6. ***Person of Authority*** refers to any person whose role with the Division establishes a supervisory relationship over others and is usually in a position of trust such as teacher or employee to whom students may be accountable. The term also includes a person who has responsibility for completing performance assessments and/or initiating disciplinary action such as administrators, directors, and supervisors.
- 1.1.7. ***Complainant*** refers to an **employee** or **non-employee** (group of employees, Board member, Division volunteer, or any Division-related adult, youth, child or group who is not a Division employee or student) who perceives himself/herself/themselves as the target of *Harassment* by anyone (employee, non-employee) in attendance at a Division facility other than a Division student.
- 1.1.8. ***Respondent*** refers to the individual or individuals identified by the *Complainant* as causing the *Harassment*.

1.1.9. **Employee** refers to the meaning given in the *Freedom of Information and Protection of Privacy (FOIP) Act* and includes employees, contractors, consultants, temporary workers, volunteers, and others providing services to, or on behalf of the Division.

1.1.10. **Non-Employee** includes Board members, students, parents or guardians, other community members who do business with the Division.

2. Collective Roles and Responsibilities

- 2.1. As an employer, the Division is responsible for preventing and eliminating all forms of *Harassment* in learning and work environments. Any person who receives a *Harassment* complaint (whether informally or formally) will act in accordance with this AP 170, and will not devalue it.
- 2.2. Prevention and appropriate response to *Harassment* requires cooperation among all employees and non-employees.
- 2.3. Employees and other individuals should take all reasonable steps to protect themselves from violence or to prevent themselves from being vulnerable. A physical response to violence is only acceptable for immediate defense and shall not extend beyond protection and disengagement.
- 2.4. Say “STOP.” No one should ignore an act of *Harassment*. The onus is on the person experiencing the *Harassment* to inform the alleged harasser that the behavior is unwelcome. If it is safe to do so, inform the offender directly or with the assistance of a person in authority that their behaviour is inappropriate, unacceptable, or unwelcome and it must stop immediately. Stay calm; be polite and direct.
- 2.5. Get “HELP”. The individual being harassed should seek support and discuss incidents of *Harassment* with a person of trust or a *Person of Authority*.
- 2.6. Document the incident. Include the date, time, who, what, when, where, and describe how you felt.
- 2.7. A *Person in Authority* will identify and implement actions to mitigate the risk upon receiving a complaint.

3. Confidentiality

- 3.1. All *Harassment* complaints will be kept in strict confidence on a need to know basis. Reasonable effort 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* of the nature of the allegations.

4. Procedures (Includes Informal and Formal Process)

- 4.1. **Options for Employees:** Employees have the following options if they are harassed by employees or by non-employees:
 - 4.1.1. direct communication with the alleged harasser;
 - 4.1.2. informal complaint;

4.1.3. conflict resolution or mediation;

4.1.4. formal complaint.

4.2. **Response by the *Person of Authority***

4.2.1. All *Employees* and the *Person of Authority* will adopt a problem-solving approach to all claims of *Harassment*.

4.2.2. The *Person of Authority* shall deal with all *Harassment* claims in a timely fashion and:

4.2.2.1. create an atmosphere for a sensitive, timely, and decisive response;

4.2.2.2. ensure the *Complainant* and *Respondent* are informed of their rights and responsibilities for resolving the reported incident(s);

Complainant Rights:

- i. to have the complaint addressed in a fair and professional manner;
- ii. to choose which options the *Complainant* wants to pursue, i.e., to pursue the informal complaint process or to pursue the formal process;
- iii. to have all proceedings conducted with confidentiality on a need to know basis;
- iv. to be protected from retaliation;
- v. to be informed about the progress of the complaint.

Respondent Rights:

- i. to be informed of the complaint and the *Complainant's* choices as to an informal or formal process;
- ii. to respond to them;
- iii. to be informed about the progress of the complaint;
- iv. to receive fair treatment.

4.2.2.3. intervene as necessary, with help from the Assistant Superintendent-Human Resources (or designate), and other division office staff, as required;

4.2.2.4. complete appropriate forms, documenting all proceedings related to a *Harassment* complaint, and ensuring all documents are placed in a confidential file.

4.2.3. All Supervisors **must** report incidents of *Harassment* on the appropriate reporting form (170-1) and provide the forms promptly to the Assistant Superintendent-Human Resources (or designate), even if the incident has been resolved successfully at the site.

4.2.4. Upon receipt of a complaint form (170-1), the Assistant Superintendent- Human Resources (or designate) will assess the reported incident and may follow up on the matter with the *Person of Authority* and/or take any steps that may be reasonably necessary to deal with the *Harassment* claim. The Assistant Superintendent-Human Resources (or designate) shall also inform the Superintendent on a regular basis.

5. Informal Complaint

- 5.1. The *Complainant* may make an informal complaint:
 - 5.1.1. to the school principal if the *Complainant* works at or is in attendance at a school;
 - 5.1.2. to a *Person of Authority* in a Division facility if the *Complainant* works at or is in attendance at a Division facility;
 - 5.1.3. to the Assistant Superintendent-Human Resources (or designate), if the *Complainant* works at or is in attendance at Division Office or a Division Facility and is not a student;
 - 5.1.4. to the Superintendent if the *Respondent* is an Assistant Superintendent;
 - 5.1.5. to the Board Chair if the *Respondent* is the Superintendent.
- 5.2. The school principal or designate will address *Harassment* incidents involving employees at their school. This person must maintain an appropriate impartial balance between the *Complainant* and the *Respondent* and must act in a timely fashion.
- 5.3. The school principal or designate will immediately meet with all the parties and ensure that the appropriate action is taken. The steps may include one or more of the following:
 - 5.3.1. talking to the *Respondent* on the *Complainant's* behalf;
 - 5.3.2. arranging for the parties to come together to resolve the complaint;
 - 5.3.3. advising the *Complainant* of other options.
- 5.4. The informal complaint procedure shall not normally exceed **ten (10) school/business days** from the date of receipt of the informal complaint to the appropriate *Person of Authority*.
- 5.5. In cases where a non-employee is named as a *Complainant* or *Respondent* and the *Person of Authority* does not have a supervisory relationship with those named, the *Person of Authority* will contact the Assistant Superintendent-Human Resources (or designate).
- 5.6. In all circumstances, the *Person of Authority* shall complete Form 170-1 and submit a copy to the Assistant Superintendent-Human Resources (or designate).

6. Conflict Resolution and Mediation

- 6.1. If the *Complainant* and the appropriate *Person of Authority* have not been able to resolve the situation informally with the *Respondent*, or if the *Complainant* has reason to bypass that process, conflict resolution or mediation are possible next steps.
- 6.2. A *Complainant* may ask for conflict resolution or mediation, or he/she/they may agree to it if it is suggested to him/her/them.
- 6.3. If the *Complainant* wishes to participate in conflict resolution or work towards a mediated settlement, the Assistant Superintendent-Human Resources (or designate), will appoint, following approval from the Superintendent, a person to mediate the conflict, from within or outside of the Division.

- 6.4. If the parties reach a resolution, the mediator will inform the Superintendent or designate who will then assume responsibility for monitoring the progress to resolution.
- 6.5. If a resolution is not reached, the mediator will inform the Assistant Superintendent-Human Resources (or designate), who will inform the *Complainant* of her/his/their options to pursue a formal investigation under the formal complaint process in accordance with this AP 170.

7. Formal Complaint Process / Formal Investigation

- 7.1. Should the *Complainant* decide to proceed with a formal complaint she/he/they will do so by submitting a completed written form (170-2) to the Assistant Superintendent-Human Resources (or designate). Please note:
 - 7.1.1. If the Assistant Superintendent-Human Resources or any other Assistant Superintendent, is the *Complainant* or *Respondent*, then the Superintendent will receive and handle the complaint;
 - 7.1.2. If the Superintendent is the *Complainant* or the *Respondent*, then the Chair of the Board will receive and handle the complaint.
- 7.2. A formal written complaint (Form 170-2) shall be filed **within six (6) months** from the date of the most recent incident cited in the *Harassment* complaint. The Superintendent (or designate) has discretion to accept a formal complaint filed after six (6) months from the date of the most recent incident cited in the *Harassment* complaint.
- 7.3. The Assistant Superintendent-Human Resources (or designate) will arrange to have the formal *Harassment* complaint investigated.
- 7.4. If appropriate, the Assistant Superintendent-Human Resources (or designate) may attempt to resolve the complaint through discussion with the parties or may recommend conflict resolution or mediation. If this is not successful, the matter will be formally investigated.
- 7.5. After instruction on this point from the Superintendent, the Assistant Superintendent-Human Resources (or designate) will determine who will investigate the formal *Harassment* complaint.
- 7.6. The investigator may be an appropriate internal employee(s) or an external investigator. If the Assistant Superintendent (or designate) is of the view that an external investigator is to be used, the Superintendent must provide prior approval for both who is selected and the approximate cost allocated to the investigation.
- 7.7. Individuals who are named as *Respondents* in a formal complaint have the right to know in a timely fashion that they are the subject of a formal complaint, what the allegations are (that is, the specifics of the allegation, including times, dates and the alleged conduct and witnesses) and what process will be followed in the investigation.

The investigator will:

- 7.7.1. Interview the *Complainant*, and request a written statement from the *Complainant*, and document the interview either written notes or transcription from electronic recording;

- 7.7.2. Give a copy of the written statement collected in step 7.7.1. to the *Respondent* and invite him or her to respond;
- 7.7.3. Convey the response back to the *Complainant* for a reply;
- 7.7.4. As necessary, re-interview the *Complainant* and *Respondent*, interview others, and gather materials to complete the investigation;
- 7.7.5. Produce a factual report about the complaint for the Superintendent, with copies to the Assistant Superintendent-Human Resources (or designate) as long as the Respondent is not the Assistant Superintendent-Human Resources (or designate);
- 7.7.6. Wherever possible, investigations should be finalized within **3 calendar months** after the appointment of the investigator. However, the Assistant Superintendent-Human Resources (or designate) may extend the deadline where circumstances warrant;
- 7.7.7. A *Complainant* may ask the Assistant Superintendent-Human Resources (or designate) to discontinue the process at any time. Generally, the *Complainant* will have the option to discontinue the process except when the formal complaint appears to be false and malicious or except where the Assistant Superintendent-Human Resources (or designate) is of the view that to do so is not justified in the circumstances, after consultation with the Superintendent.

8. Resolution

- 8.1. After the Assistant Superintendent-Human Resources (or designate) has received the investigation report from the investigator and the investigation confirms that prohibited behavior has occurred, the Superintendent and the Assistant Superintendent-Human Resources (or designate) will initiate the appropriate remedy.
- 8.2. If the Superintendent has been delegated the authority by the Board under the *Education Act* to recommend termination of a teacher and if the circumstances warrant a teacher termination recommendation, the appropriate remedy will be initiated by the Assistant Superintendent-Human Resources (or designate).
- 8.3. The Assistant Superintendent-Human Resources (or designate) will retain the documents related to the investigation.
- 8.4. If the *Respondent* is an employee, documents related to disciplinary action will be placed in the *Respondent's* personnel file.

9. Options for Non-Employees

- 9.1. *Non-employees* have the following options if they are harassed by employees, students, or other non-employees:
 - 9.1.1. direct communication with the harasser;
 - 9.1.2. informal complaint;
 - 9.1.3. conflict resolution or mediation;
 - 9.1.4. formal investigation.

- 9.2. *Non-employees* and Division employees are expected to adopt a problem-solving approach aimed at helping all parties reach a satisfactory resolution.
- 9.3. In all of these cases, the Assistant Superintendent-Human Resources (or designate) will receive the complaint and take all necessary steps to respond to the *Harassment* claim in accordance with the procedures set about above at 7.1. For the purpose of this complaint, the *Person of Authority* is the Assistant Superintendent-Human Resources.

10. Steps Taken Following an Investigation

- 10.1. If the results of the investigation do not support the allegations, the *Harassment* 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 his/her personnel file.
- 10.2. If the results of the investigation support the *Harassment* allegations, a range of sanctions may be imposed on the *Respondent* by the Superintendent. The sanctions will depend upon the nature and seriousness of the offence.
 - 10.2.1. For employees, the range of sanctions may include:
 - 10.2.1.1. formal apology to complainant;
 - 10.2.1.2. letter in personnel file;
 - 10.2.1.3. required counselling or program for offender;
 - 10.2.1.4. suspension with or without pay, as applicable and in accordance with the *Education Act*, if a teacher;
 - 10.2.1.5. termination of employment (for teacher: in accordance with the *Education Act*; for other employees: as according to their contract, offer letter or *Employment Standards*.).
 - 10.2.2. Non-employees who, upon investigation, are found to have harassed, may be barred from contact with the *Complainant* and/or Division property to the extent appropriate and permitted by law. Remedies may include:
 - 10.2.2.1. formal apology to *Complainant*;
 - 10.2.2.2. a reprimand and/or letter;
 - 10.2.2.3. denial of access to Division property;
 - 10.2.2.4. denial of services;
 - 10.2.2.5. loss of contract/position;
 - 10.2.2.6. recommendation for counselling.
 - 10.2.3. 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 Superintendent. The sanctions depend upon the nature and seriousness of the offence. For employees, the range of sanctions may include: a verbal warning, a written reprimand with a copy retained in the complainant's file, transfer (if teacher: in accordance with the *Education Act*), demotion, suspension or termination of employment (if teacher: in accordance with the *Education Act*).

11. Retaliation

- 11.1. 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.
- 11.2. Retaliation against individuals participating in the complaint resolution process is not to be confused with sanctions imposed for harassment or making false allegations.

References: Sections 11, 33, 52, 53, 54, 197, 204, 222 *Education Act*, Statutes of Alberta, 2012, Ch.E-0.3
Alberta Human Rights Act, Revised Statutes of Alberta 2000, Chapter A-25.5
Employment Standards Code, Revised Statutes of Alberta 2000, Chapter E-9
The Alberta Teachers' Association Code of Professional Conduct
Occupational Health and Safety Act, Statutes of Alberta, 2017, Chapter O-2.1
Occupational Health and Safety Code, Alberta Regulation 87/2009
Occupational Health and Safety Administrative Procedure 418
Public Interest Disclosure (Whistleblower Protection) Administrative Procedure 120

Appendix: Harassment-Free Work/School Environment - Appendix 170
(Organizational Commitment to Workplace Harassment and Violence Prevention)

Forms: Harassment Complaint (Informal) 170-1
Harassment Complaint (Formal) 170-2

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