

<p>Personnel and Employee Relations 7100</p> <hr/> <p>Employee Harassment and Sexual Harassment Prevention</p>	Administrative Application	
	Last Reviewed /Approved on:	April 2, 2019
	References:	Saskatchewan Employment Act 2014 LAFOIP The Saskatchewan Human Rights Code Policy 2 – Role of the Board Policy 12 – Role of the Director
	Status:	Operational

Preamble

Regina Catholic School Division (RCSD) employs a large number of staff. Each staff member's wellness and safety is valued. RCSD has no tolerance for harassment of any nature. Compliance with the provisions of this administrative application is a condition of employment.

Application

In the event of a conflict between any provisions of this administrative application and applicable law, the applicable law shall apply.

1. **Applicability of Administrative Application 7100 – Employee Harassment Prevention**

- a. The Employee Harassment Prevention Administrative Application applies to all employees of the school division.
- b. Contractors who come onto the property of the school division are expected to respect the Employee Harassment Prevention Administrative Application. Persons who initiate the hiring of a contractor who will perform services for the school board shall insure that all contracts include language requiring the contractor to comply with the provisions of this administrative application. The person initiating and/or supervising the contract shall monitor compliance with the application and shall immediately report any breaches to the Director of Education.
- c. The Employee Harassment and Sexual Harassment Prevention Administrative Application complies with all requirements that, at the time of its writing, are specified in, and mandated by *The Saskatchewan Employment Act 2014* and the Regulations related thereto.

2. **Definition of Terms**

Harassment is defined in Section 2 of *The Saskatchewan Employment Act 2014*, as;
Any inappropriate conduct, comment, display, action or gesture by a person that either:

- a. is based on race, creed, religion¹, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry, or place of origin;
or

¹ Subject to section 16(5) of *The Saskatchewan Human Rights Code*

- b. adversely affects the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated;

and that constitutes a threat to the health or safety of the worker.

To constitute harassment;

- a. repeated conduct, comments, displays, actions or gestures must be established;
or
- b. a single serious occurrence of conduct, or a single, serious comment, display, action or gesture, which has a lasting, harmful effect on the worker, must be established.

Harassment does not include any reasonable action that is taken by an employer, or a manager or supervisor employed or engaged by an employer relating to the management and direction of the employer's workers or the place of employment.

Sexual harassment may include, but is not limited to:

- i. A demand for sexual favours from an employee, or by a person in a position of authority.
- ii. Indication by a person in a position of authority that sexual favours are a condition of employment or advancement in employment.
- iii. Physical assault such as deliberate touching, grabbing, pushing or unsolicited physical contact including leaning over, pinching or patting.
- iv. Repeated and unwanted sexual comments, suggestions that are found objectionable or offensive and cause discomfort on the job.
- v. Persistent propositions, invitations, or uninvited pressure for dates.
- vi. Gender based insults and taunting.
- vii. Display of suggestive pictures or other material.
- viii. Uninvited letters, telephone calls, or other communications.
- ix. Leering or whistling.
- x. Unwelcome inquiries and/or comments about a person's sex life or sexual orientation.

3. Exclusion to Definition of Terms

- a. Religious Discrimination

The Board reserves all constitutional rights and obligations that it has in addition to those accorded it by *The Saskatchewan Human Rights Code*. The Board reserves the right to discriminate based on religion as provided by section 16(5) of the Code which reads as follows:

"Nothing in this section deprives a.... board of education of the right to employ persons of a particular religion or religious creed where religious instruction forms or may form the whole or part of the instruction or training provided by the board of education pursuant to The Education Act, 1995."

b. Social Discourse

Harassment is not mutually acceptable social discourse or banter that may occur in the work environment. However, where another employee is present, and that employee is not of the same view, and that employee makes it known that he or she finds the social discourse/banter offensive, the other employees must refrain from that kind of behaviour in the presence of an employee who finds it, within reason, offensive.

c. Employer's Management Responsibility and Right

Harassment does not include any reasonable action that is taken by the Board or Administrators employed or engaged by the Board relating to the management and direction of employees or the place of employment.

4. Responsibilities

a. Employer

The Board and RCSD as the employer will not condone harassment in the workplace.

- i. Will work towards creating and maintaining a work environment free from harassment.
- ii. In keeping with its commitment to facilitate a Catholic climate conducive to both learning and working, and when, following the investigation process, it is determined that harassment has occurred, the Senior Leadership Team (SLT) will take appropriate corrective action including discipline or termination of employment with respect to the perpetrator of the harassment.
- iii. SLT make every effort, consistent with the procedures outlined in this policy, to resolve harassment situations and provide support and assistance to persons subjected to harassment.

b. Supervisory Staff

All appointed supervisory staff are obligated to act quickly upon information concerning incidents of harassment. They are to be sensitive to issues relating to harassment and the effects that such behaviour has on employees and the work environment.

All supervisory staff are directed to take appropriate action as further defined in this Administrative Application when allegations of harassment are made known in the manner herein defined.

c. Employee

Each employee has an individual responsibility to support a workplace free from harassment. Employees have a responsibility to refrain from engaging in harassing behaviour at the workplace. Employees have an obligation to change behaviour if they know, suspect, or are informed that another might consider their actions harassment.

As a first step, an employee who believes that he or she has been harassed should tell the offender OR an appropriate person in authority that he/she objects to this type of

behaviour.

5. Prevention

Harassment varies in kind, degree and in perception of injury. It is recognized, therefore, that no single structure or process can resolve all of the issues involved. RCSD recognizes the importance of the prevention of harassment and is committed to:

- a. Clarify its objectives with respect to harassment and through communication and consistent application of this policy;
- b. Support specific programs of education and awareness on harassment.

6. Occupational Health and Safety Committee

Each work site Occupational Health and Safety Committee is expected to become informed concerning harassment issues and, where it is known, to provide support and information to persons at the work site who may be the subject of harassment.

7. Complaint and Resolution Procedures

a. Reporting

- i. Any employee who feels that he/she has been harassed is advised to immediately tell the harasser to stop.
- ii. If an employee knows or suspects any type harassment is happening to a co-worker, the employee is encouraged to:
 - (1) Support the co-worker.
 - (2) Encourage the co-worker to report the harassment as soon as possible to the appropriate authority.
- iii. If an employee cannot confront the harasser, or where the victim has told the perpetrator to stop, and the harassment continues, the employee is advised to promptly report the conduct:
 - (1) By making an informal complaint to the employee's immediate supervisor.
 - (2) By making a formal complaint, in writing, to any one of the following persons:
 - (a) The employee's immediate supervisor.
 - (b) The principal of the school.
 - (c) The designated senior administrator or Human Resources Superintendent.
 - (d) The Director of Education ("**Director**").

b. Informal Complaint Resolution Procedures

- i. Informal resolution is not a required step in the resolution process.

- ii. When an employee makes an informal complaint, the supervisor to whom the informal complaint was made shall in consultation with the complainant select from the following courses of action available:
 - (1) Speak directly with the alleged harasser and attempt to resolve the situation in an informal manner.
 - (2) Advise the complainant to contact the alleged harasser by letter in order to discourage the alleged harasser from further harassment.
 - (3) Arrange for mediation (“Addendum 1” attached) of the complaint if either party requests mediation and if both parties are willing to participate in the mediation process.
 - (4) The supervisor or person to whom the alleged harassment complaint is made shall make a written record summarizing the complaint and its resolution. Such record shall be forwarded to the Superintendent of Human Resources and shall be kept in strict confidence unless required for formal complaint resolution procedures.
 - (5) If no other alternate method of dealing with the complaint appears to be reasonable or acceptable, the supervisor shall advise the employee to make a formal written complaint.

c. Formal Complaint—Investigation

- i. Any employee who feels that he/she has been harassed is advised to immediately tell the harasser to stop.
- ii. Where an employee chooses to make a formal complaint, the complaint should be filed as soon as possible after the incident has occurred. Formal complaints must be filed within a reasonable period of time of the alleged harassment.
- iii. Formal complaints must be written and signed by the complainant(s), and must be remitted in the following format:
 - (1) Name of Complainant
 - (2) Home Phone Number of Complainant
 - (3) Work Phone Number of Complainant
 - (4) Work Place of the Complainant
 - (5) Nature of Complaint
 - (6) Respondent (Alleged harasser's name)
 - (7) Details of the Complaint—Describe incident(s) detailing behaviour, what was said, date and location, circumstances surrounding the incident, the names of any witnesses

- (8) Objections made known—Have you previously told the respondent that you object to his/her behaviour and/or told an appropriate person in authority or union official of your concerns? If so, please detail.
- (9) Consent – Authorize the release of information about complaint to the respondent.
- iv. The person receiving the formal complaint shall immediately report the complaint to the Superintendent of Human Resources who will notify the Director.
 - (1) Should the harassment complaint involve a student, the parents/guardians shall be apprised of the incident.
- v. The Human Resources Superintendent in consultation with the Director immediately upon receipt of the complaint shall determine whether or not the complaint warrants investigation. An investigation deemed necessary shall immediately be facilitated. (“Addendum 2” attached). Such facilitation may include:
 - (1) Contracting out the investigation.
 - (2) Appointment of a division Out-of-Scope staff member to conduct the investigation.
 - (3) Investigation by the Director.
- vi. It is expected that all investigations will be conducted fairly.
- vii. In the event the Director is the subject of the complaint or is the complainant, the person receiving the complaint shall report it directly to the Board Chair who shall immediately bring it to the attention of the Board. The Board shall appoint an appropriate person to be in charge of the investigation.
- d. Access to Other Proceedings
Nothing in this policy shall be construed as preventing an employee from dealing with an incident of harassment by:
 - i. Filing a complaint under *The Saskatchewan Human Rights Code*, which provides in Section 9 and Section 16 that persons shall not be discriminated against in business or employment.
 - ii. Filing a complaint with an Occupational Health Officer pursuant to *The Saskatchewan Employment Act 2014* which provides, in Section 3, that the employers shall ensure so far as is reasonably practicable the employees are not exposed to harassment.
 - iii. Reporting the incident to the police or other authorities if the circumstances so warrant.
 - iv. Taking any other steps available under any other statute or law.

Where an employee has accessed other proceedings, any investigation being conducted by the school division be suspended until all other proceedings have come to completion.

8. Corrective Action

- a. Where harassment has been substantiated, the harasser will be subject to appropriate corrective action including discipline or termination of employment. Discipline is to encompass a range from verbal reprimand up to and including termination of employment.
- b. Factors to be considered in determining the severity of the corrective action may include, but need not necessarily be limited to:
 - i. The severity of the harassment.
 - ii. The persistence of the harassment.
 - iii. Whether or not the harasser, by demonstrable action, displays co-operation and willingness to change.
- c. Under normal circumstances, if a work transfer is an outcome of the case, the harasser will be transferred, not the complainant.
- d. Where the school official believes the complaint regarding a student is valid, the school official shall determine an appropriate disciplinary action. Disciplinary action may include:
 - i. Written or verbal apology.
 - ii. Verbal warning.
 - iii. Written reprimand.
 - iv. Distancing the respondent (within school).
 - v. Suspension.
 - vi. Counselling.
- e. At the request of either party, the matter may be referred to the Education Services Superintendent for resolution. If the Education Services Superintendent believes that mediation may be an appropriate method of resolving the situation, the Director may appoint a mediator.
- f. The Education Services Superintendent may recommend referral to the system suspension committee. Further disciplinary action may be taken including:
 - i. Alternate education placement.
 - ii. Extended suspension.
 - iii. Homebound education.
 - iv. Expulsion.

9. Records/Documents Relating to the Complaint and Investigation

All records and documents relating to the complaint and investigation shall be forwarded in confidence to the Superintendent of Human Resource Services for retention. All records will be kept confidential except where disclosure is required. Such records shall be retained for seven (7) years.

No record of a complaint will be placed in an employee's personnel file except where an individual has received discipline as a result of a substantiated complaint and/or where it has been determined a complaint was malicious and/or frivolous.

10. Retaliation

If retaliation is proven to have occurred, disciplinary action shall take place.

11. Complaints Made in Good Faith

Disciplinary action will not be taken against an employee whose complaint of harassment has not been substantiated and where such complaint was made in good faith.

12. Malicious and/or Frivolous Complaints

Malicious and/or frivolous complaints of harassment will be viewed as serious offences by the Board and will result in disciplinary action against the complainant and a record of such disciplinary action will be documented in the personnel file of the complainant.

13. Confidentiality

- a. Receipt of a complaint will be held in strict confidence.
- b. The name of a complainant or an alleged harasser or the circumstances related to the complaint will not be disclosed to any person except where disclosure is:
 - i. Necessary for the purposes of investigating the complaint or taking corrective or disciplinary action with respect to the complaint.
 - ii. Required by law.
 - iii. Permitted by *The Local Authority Freedom of Information of Protection and Privacy Act*.

14. Implementation/Responsibilities of the Board

- a. In-service for Occupational Health and Safety Committee members shall be conducted as need requires.
- b. RCSD shall provide training for school division personnel conducting investigations. In-service for investigators shall continue as need requires.
- c. At the beginning of each school year Administrators shall advise staff and students of this administrative application along with appropriate protocol to assist in resolution of complaints should they arise.
- d. Harassment prevention educational programs shall be carried out on an ongoing basis in the division to support a safe and orderly environment nurturing Gospel ethos.

ADDENDUM 1 -- MEDIATION

Mediation

The purpose of mediation is to find remedies to difficulties that exist between the complainant and respondent. Mediation would be undertaken to allow the parties to share an understanding of and participate in the development of a resolution of their difficulties.

For mediation to proceed, both parties (complainant and respondent) must agree to mediation.

If mediation is unsuccessful, an investigation of the complaint will be undertaken.

If the investigation process was chosen in the first instance and the investigation has commenced, the parties may choose to stay the investigation and undertake mediation in lieu. While mediation may be requested at any point during the investigation process, if the mediation does not result in resolution, the investigation will resume and will not be interrupted by further requests for mediation.

The complainant and respondent are required to agree that all communication and documentation used in mediation be treated as confidential and will not be admissible in any other proceedings. Furthermore, the complainant and respondent shall agree to not call the mediator to testify or provide any materials from the mediation in any other proceedings.

The Mediator shall retain all information provided by both parties during mediation until the conclusion of the mediation process. Information provided during the mediation process will not be disclosed to subsequent investigators.

Both parties are responsible for reaching terms of resolution that are satisfactory to them. The mediator shall remain impartial and not advocate for either party, nor will the mediator advise either party to accept or reject a proposed agreement. The role of the mediator is to assist the parties in finding a mutually satisfactory resolution to the problem. The mediator facilitates a process that helps the parties reach their own agreement.

Persons engaged as mediators shall not subsequently become engaged as investigators in those cases where they have served as mediators. This is to ensure that, during mediation, the parties express themselves freely and openly, and to minimize concerns that information given in confidence may end up in an investigation report.

Complainants and respondents are entitled to representation during the mediation process. The representatives serve as support to ensure that the interests of the complainant and respondent are addressed in the mediated resolution.

In the event a mediated agreement is reached:

- The terms and conditions of the agreement will be put in writing and signed by the respondent, complainant, and mediator.
- The terms of the mediated agreement shall be forwarded to the Superintendent of Human Resource Services.
- The mediation agreement will be kept in a secure file (in the name of the Respondent) in the office of the Superintendent of Human Resource Services for twelve (12) months, unless

otherwise agreed to in the mediation process.

- No disciplinary action beyond that agreed to in the mediation process will be taken by the Board, nor will a grievance be filed—it is anticipated that, in the event of a mediated settlement, either the STF or CUPE representatives, as the case may be, will 'sign off' on the filing of a grievance.
- The complainant, respondent, and the Director of Education, unless otherwise agreed to in the mediation process, will be provided with a copy of the mediation agreement.

The mediation file will be destroyed upon the completion of a mediated agreement or completion of the investigation. It shall be the responsibility of the Mediator to insure the destruction of the mediation file upon the completion of the mediated agreement or when it is clear that a mediated agreement is not possible.

ADDENDUM 2 -- INVESTIGATION

Investigation

Investigators are authorized by the policy to collect, gather, or copy evidence related to cases under investigation. Any evidence taken will be returned to its owner at the completion of the investigation. Access to personnel files is subject to the consent of the person to whom the file applies.

The person who investigates the complaint shall:

- Notify the alleged harasser of the complaint and provide the alleged harasser with information concerning the circumstances of the complaint, including a copy of the written complaint;
- Request the alleged harasser to respond to the complaint in writing;
- Interview the complainant, the alleged harasser, and any other persons who may have knowledge of the conduct complained of;
- Make a written report of the complaint and the results of the investigation (and any findings or recommendations deemed appropriate) to the Director of Education ("Director") or, if the Director is the respondent, to the Chairperson of the School Board; and
- Inform the employee and the alleged harasser in writing of the results of the investigation.

At any stage of the investigation, the complainant and the alleged harasser may choose to be accompanied by one other person of their choice.

At any stage of the investigation, the parties may choose to stay the investigation and undertake mediation in lieu. While mediation may be requested at any point during the investigation process, if the mediation does not result in resolution, the investigation will resume and will not be interrupted by further requests for mediation.

After receiving the results of the investigation, either party may make a further submission in writing and such written submission shall be placed in the investigation file.

Where harassment has been substantiated, and disciplinary action has been taken, a record of such action taken and a copy of the initial complaint shall be placed in the personnel file of the employee.

Access to the personnel file, and to the record of discipline, shall be limited by the guidelines governing access to personnel files.