

<b>Personnel and Employee Relations 7100</b> <b>Employee Harassment and Prevention</b>	<b>Administrative Application</b>	
	<b>Last Reviewed /Approved on:</b>	August 30, 2021
	<b>References:</b>	Saskatchewan Employment Act Employment Standards Act STF Code of Ethics LAFOIP Section 85, 87 Education Act The Saskatchewan Human Rights Code The Occupational Health and Safety Regulations Canadian Charter of Rights and Freedoms Policy 2 – Role of the Board Policy 12 – Role of the Director
	<b>Status:</b>	Operational

## Preamble

All members of the education community have a right to work and learn in a respectful environment that is free from harassment. 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.**

- a. ***Applicability of Administrative Application 7100 – Employee Harassment and Prevention***
- b. The Employee Harassment Prevention Administrative Application applies to all employees of the school division.
- c. 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 ensure 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.
- d. 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 and the Regulations related thereto.

## 2. Definition of Harassment

- a. Harassment Based on Prohibited Grounds
  - i. Harassment is defined in Section 3-1 (l) of *The Saskatchewan Employment Act* as:

Any inappropriate conduct, comment, display, action or gesture by a person that either:

- ii. Is based on race, creed, religion<sup>1</sup>, colour, gender, sex, sexual orientation, marital status, family status disability, physical size or weight, age, nationality, ancestry, or place of origin.

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<sup>1</sup> Subject to section 16(6) of *The Saskatchewan Human Rights Code*

b. Personal Harassment

This includes any inappropriate conduct, comment, social media posts, display, action or gestures by a person that:

- i. 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,
- ii. and that constitutes a threat to the health or safety of the worker.

Personal Harassment must involve repeated conduct or a single, serious incident that causes a lasting harmful effect on the worker. All incidents of inappropriate conduct shall be appropriately addressed to ensure that the workplace remains respectful and free of harassment.

This type of harassment is prohibited under *The Saskatchewan Employment Act* and *The Saskatchewan Human Rights Code*.

c. Sexual Harassment

Sexual harassment is conduct, comment, gesture or contact of a sexual nature that is offensive, unsolicited or unwelcome. Sexual harassment may include, but is not limited to:

- i. a direct or implied threat of reprisal for refusing to comply with sexually oriented request.
- ii. Unwelcome physical contact.
- iii. Repeated and unwelcome sexual comments, suggestions that are found objectionable or offensive and cause discomfort on the job.
- iv. Unwelcome propositions, invitations, direct or indirect, to engage in behaviour of a sexual nature.
- v. unwelcome remarks, jokes, innuendos, propositions or taunting about a person's body, attire, sex or sexual orientation.
- vi. Display of sexually explicit pictures or other material.
- vii. Unwelcome emails, letters, telephone calls, or other communications.

- viii. Unwelcome inquiries and/or comments about a person's sex life or sexual orientation.
- ix. Refusing to work with or have contact with workers because of their sex, gender 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(6) 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/

- d. This Administrative application does not extend to harassment that arises out of matters or circumstances unrelated to the worker's employment. For example, harassment that occurs during a social gathering of co-workers that is not sponsored by the employer is not covered. However, harassment that occurs while attending a conference or training session at the request of the employer is covered within this administrative procedure.

### **4. Responsibilities**

#### **a. Employer**

The Board and RCSD as the employer will not condone harassment in the workplace and will take all complaints of harassment seriously.

- i. RCSD will work towards creating and maintaining a work environment that is productive, respectful, and free from harassment. This includes providing the harassment administrative application to all workers as part of the onboarding process.
- ii. A copy of this application will be posted on the school division website.

- iii. In keeping with its commitment to facilitate a Catholic climate conducive to both learning and working, and when, following the review process and appropriate action thereafter it is determined that harassment has occurred, the Director or delegate will take appropriate corrective action including discipline or termination of employment with respect to the perpetrator of the harassment.
- iv. The Director and/or delegate will 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

In accordance with Part III of *The Saskatchewan Employment Act*, all employees have 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 following the complaint procedure outline below:

### **Complaint Procedure**

- i. Complainants have three recommended courses of action: personal contact, an oral report, or a written report.
- ii. Because it is often best if allegations of personal harassment are resolved closest to the source of harassment, it is recommended that the complainant first approach the respondent to attempt to resolve the alleged harassment.
- iii. If the complainant believes personal contact would not satisfactorily resolve the situation, the complainant may report the incident orally to his or her immediate supervisor.
- iv. The immediate supervisor shall review the complaint and report verbally his or her findings of the complainant and the respondent within two weeks. Such a review is to include an interview with the respondent and may include other interviews deemed appropriate by the supervisor.
- v. Notwithstanding the preceding procedures, the complainant may submit a formal, written complaint to his or her School Superintendent. In the event the respondent is the School Superintendent, the written complaint is to be

forwarded to the Director of Education or delegate. In the event the respondent is the Director of Education, the written complaint is to be forwarded to the Board Chair. The complaint must be recorded in writing using the Harassment Formal Complaint Form.

### **Investigation Process**

- i. Upon receipt of the formal, written complaint, the School Superintendent will provide the complaint to the Superintendent of Human Resources or designate and will work alongside Human Resources as necessary throughout the investigation.
- ii. The investigation will commence and conclude as soon as is reasonably possible.
- iii. Witnesses are interviewed separately, and written witness statements are prepared.
- iv. Witnesses are asked to review and sign their written statements.
- v. Witnesses are advised to keep the investigation and the identity of the complainant and respondent in confidence unless they are required to disclose them by law.
- vi. The complainant and respondent are entitled to be accompanied by union counsel during the interview and investigation process.
- vii. During the investigation process, both the complainant and the respondent are entitled to be informed of all the allegations made against them and allowed the opportunity to make full statement in response.
- viii. This does not mean that either party is entitled to see or receive copies of the complete statements. However, both are entitled to see or receive an adequate summary of the findings.
- ix. The Superintendent of Human Resources or delegate shall provide a written report to the Director of Education within three (3) weeks of the date of the formal complaint. The written report shall include a summary of the evidence, a description of any conflict in the evidence, the conclusions on the facts and reasons for reaching those conclusions, as well as the recommended action where harassment has been found to have occurred.
- x. The Director of Education and/or delegate shall meet with the complainant and the respondent, separately, to review the findings of the investigation.
- xi. If the alleged harassment is determined to be true, the respondent may be subject to appropriate disciplinary action as determined by the Director of Education and/or delegate, which may include any or a combination of a verbal reprimand, written reprimand, suspension, and/or dismissal.
- xii. Where harassment has not been substantiated no action will be taken against an employee who has made the complaint in good faith.

- xiii. Under normal circumstances, if a work transfer is an outcome of the investigation, the respondent will be transferred, not the complainant.

#### **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. Individuals may not be aware of the effects of their behaviour. In many cases, speaking to the person directly about the unwanted behaviour will be enough to resolve a situation.
- b. In certain instances, it may be more effective for a supervisor to speak with the respondent or to arrange and facilitate a meeting between the complainant and respondent as per Administrative Application 7130.
- c. Clarify its objectives with respect to harassment and through communication and consistent application of this policy.
- d. 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. Access to Other Proceedings**

Nothing in this policy shall be construed as preventing an employee from dealing with an incident of harassment by:

- a. 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.
- b. Filing a complaint with an Occupational Health Officer pursuant to The Saskatchewan Employment Act which provides, in Section 3, that the employers shall ensure so far as is reasonably practicable the employees are not exposed to harassment.
- c. Reporting the incident to the police or other authorities if the circumstances so warrant.
- d. 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.

**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.

**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 ensure 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.

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.