

Administrative Procedure 170

HARASSMENT

Background

The Division is committed to providing and promoting a learning and working environment which continually fosters respect for the dignity and well-being of all employees, students, trustees, parents and volunteers. Such individuals have a right to an environment free from discriminating, threatening, and personal harassing, including sexual harassing behaviours. Therefore, harassment in the learning and working environment will not be tolerated and is strictly prohibited.

The Division affirms its commitment to human rights as outlined by the Alberta Human Rights Commission and thus will not tolerate actions of harassment. The Division is also committed to the investigation of reported incidents of harassment in a timely manner and the taking of any necessary action(s) or remedies as a result of an investigation.

Definitions

Personal harassment – is any unwelcome behaviour, conduct or communication, directed intentionally or unintentionally at an individual that is offensive to that individual and is based on the rights identified in the Alberta Human Rights Act, including, but not limited to, race, religious beliefs, colour, gender, age, physical disability, mental disability, ancestry, place of origin, marital status, source of income, family status or sexual orientation. Personal harassing behaviour may include but is not limited to threats, intimidation, ostracism, offensive gestures, offensive remarks or jokes, demeaning or humiliating actions or behaviour that supports a hostile or poisonous environment.

The test in determining if an action is harassing is whether a reasonable person knows or ought to know that the behaviour would be considered unwelcome, offensive, or inappropriate by the recipient. Such an action may be a single event or may involve a continuing series of incidents. It may involve the abuse of authority or position, or it may involve relations among co-workers and affiliated personnel. Personal harassment however does not include the appropriate exercising of an individual's supervisory authority.

Sexual harassment – is any unwelcomed behaviour, conduct or communication, directed intentionally or unintentionally at an individual which is sexual in nature which directly or indirectly affect or threaten in an adverse manner a person's job security, prospects, promotion, earnings, or working conditions and includes but is not limited to unwelcomed physical contact (e.g. patting, pinching, rubbing, grabbing), unwelcome remarks or compromising invitations or requests, verbal abuse or display of suggestive pictures, leering, whistling, innuendoes, jokes, demands for sexual favors, stalking, embarrassing, suggestive or threatening language, displays of pornographic materials, sexting, or behaviour that supports a hostile or poisonous environment.

Working and learning environment – is the immediate school or school jurisdiction work site and may also include;

- A playground,
- A school bus,
- Any school or work related social activities,
- Any school or work related travel and student excursions,
- Any settings where the individuals involved are engaged in work related or school related activity such as field placement or a cooperative educational work term, and
- The use of electronic or digital media such as telephone, fax, e-mail, network computers and internet communications at any time.

Hostile or poisonous environment – is a learning and working environment in which the actions of one (1) or more people may not be directed at any one person in particular but contribute to an offensive atmosphere which directly or indirectly affects a person's ability to work or learn effectively. i.e: yelling at no one in particular, pounding on a desk in frustration, slamming of doors.

Complainant – is a person who has reported a situation that appears to be a form of harassment related to the work and learning environment.

Alleged harasser – is a person accused of any above form of harassment related to the work and learning environment.

Harasser – is a person who, as a result of an investigation, has carried out any harassing behaviour.

Obligations of Work Site Parties

Social expectations about what constitutes workplace health and safety have changed over time. Issues such as psychological health (particularly workplace harassment and bullying) are included in the Occupational Health and Safety (OHS) legislation. As part of the roles of individuals at the work site, the OHS Act and OHS Code define specific duties employers, supervisors and workers must follow to address harassment and violence at the workplace.

The OHS Act states:

- Employers must, as far as reasonably practical, ensure their workers are not subject to or participate in harassment or violence at the work site.
- Supervisors must, as far as reasonably practical, ensure workers under their supervision are not subject to harassment or violence at the work site.
- Workers must refrain from causing or participating in harassment or violence.

Procedures

1. Employees, students, parents, volunteers, and visitors must conduct themselves in a manner which promotes and protects the best interests and well being of employees, students, co-workers, parents, volunteers and visitors.
2. An employee, student, parent, volunteer or visitor who subjects an employee, student, parent, volunteer or visitor to any form of harassment may be subject to disciplinary action up to and including dismissal from employment or exclusion from the Division learning and working environment.
3. Action may be taken against members of the public whose conduct has resulted in any form of harassment of employees, students, parents, volunteers, visitors or representatives of the Division.
 - 3.1 An employee or student who considers that he/she has been subjected to harassment in the learning or working environment by a person who is not a student, employee, parent or volunteer for the Division, is to seek the advice of his/her immediate supervisor.
 - 3.2 The supervisor will take whatever action is deemed appropriate to ensure that the Division fulfills its responsibility to support and assist the individual who has been subjected to such alleged harassment.
4. It is the responsibility of all supervisory personnel to inform themselves and to make their employees, students, volunteers and visitors aware of these procedures.
5. It is the responsibility of all employees, students, parents, volunteers, and visitors to help maintain a harassment-free, working and learning environment through, but not limited to, participating in education programs, reducing incidents of harassment by practicing incidents of prevention and reporting incidents of harassment as outlined in these procedures.
6. Where an employee or student believes that a fellow employee or student has experienced or is experiencing harassment in the learning or working environment, and reports this belief to his/her immediate supervisor or Principal, as the case may be, the supervisor or Principal will meet with the person who is said to have been subjected to harassing behaviors in the learning or working environment and will take such steps as are appropriate, including referral of the complaint to the Associate Superintendent, Human Resources and Administration.
7. In the absence of a specific complaint, the Associate Superintendent, Human Resources and Administration may initiate an independent investigation where:
 - 7.1 There is a pattern of inquiries or complaints over which time suggests the existence of a specific problem which has been identified but not corrected;
 - 7.2 There is reason to believe that a broader, systemic problem exists in the learning and working environment which causes, contributes to or encourages harassment;
 - 7.3 As a result of an investigation, a specific complaint is not supported but there is reasonable evidence that a broader systemic problem exists; or

- 7.4 In any other circumstances the Associate Superintendent, Human Resources and Administration deems it appropriate.
8. Any retaliation against an individual for:
 - 8.1 Invoking this procedure whether on their own behalf or on behalf of another individual;
 - 8.2 Participating or cooperating in any investigation under this procedure; or
 - 8.3 Associating with a person who has invoked or participated in this procedureis strictly prohibited and will be subject to discipline, up to and including dismissal from employment, or exclusion from the Division's working and learning environment.
9. If an individual has experienced retaliation, the individual must inform his/her supervisor, Principal or the Associate Superintendent, Human Resources and Administration about the exact nature of the behaviour.
10. The Associate Superintendent, Human Resources and Administration will initiate an investigation into the allegations of retaliation.
11. Harassment inquiries or complaints are confidential and may only be disclosed to investigate and respond to a complaint and to advise the alleged harasser about the complaint and the identity of the complainant. Any unauthorized disclosure of confidential information relating to a harassment complaint may result in disciplinary action.
12. If a harassment complaint is filed in good faith, and the complainant is an employee, no permanent documentation will be placed in the complainant's file, regardless of the outcome. However, any employee who knowingly and willfully submits a complaint based on false allegations will be subject to disciplinary action and documentation will be retained on his/her personnel file.
13. If an investigation determines that a complaint falsely accused another of any form of harassment, knowingly or in a malicious or vindictive manner, the complainant may be subject to disciplinary action, up to and including termination, or legal action for an employee or suspension or expulsion from school for a student.
14. The Associate Superintendent, Human Resources and Administration will ensure that this procedure is widely publicized and distributed among all supervisory personnel and staff members.
15. This procedure does not affect an individual's right to file a complaint or to respond to a complaint with the Alberta Human Rights Commission or to seek other redress as may be provided by law, or by an employee's union or association. Complaints filed with the Alberta Human Rights Commission must be received within one (1) year of the incident. If circumstances warrant it, a charge of assault may be filed with the police.

Time Limit to File a Complaint

16. Complaints of harassment are to be made within a reasonable period of time from the date of occurrence. Complaints which are filed more than one (1) year from the date of the

occurrence may not, at the discretion of the Associate Superintendent, Human Resources and Administration, be investigated.

Informal Complaint Process

17. If an employee, student, volunteer or visitor believes they are being harassed, he/she is to:
 - 17.1 Immediately inform the alleged harasser of the unwelcome behaviour and tell the alleged harasser to stop. This can be done verbally or in writing stating disapproval of the alleged harasser's behaviour and/or actions. Individuals who believe they have been the subject of harassment have a responsibility to make their objection known to the alleged harasser. Individuals can seek the support of their immediate supervisor, teacher, counsellor, Principal, union or association representative as to how to proceed.
 - 17.2 If an individual is not comfortable confronting the alleged harasser, an individual may contact a colleague and/or supervisor to provide informal intervention towards an acceptable resolution of the situation. Professional staff will follow the Code of Professional Conduct. Students may obtain advice or assistance regarding strategies designed to address individual or peer harassment by contacting a teacher, a counsellor or the Principal.
 - 17.3 A written record of dates, times, places, the nature of the behaviour and the names of any people who may have witnessed the incidents is to be kept. Also, an indication of what action has been taken to stop the harassment is to be noted.
 - 17.4 The use of an informal complaint process is not a pre-requisite to seeking a formal complaint process.

Formal Complaint Process

18. A formal complaint may proceed in the following instances:
 - 18.1 If the complaint has not been resolved at the informal level; or
 - 18.2 Should the harassment continue; or
 - 18.3 The complainant, complainant's supervisor or Associate Superintendent, Human Resources and Administration believe that the formal process is more appropriate.
19. Filing a Formal Complaint
 - 19.1 If the harassment or unfair treatment resulting from any form of harassment does not stop after speaking to the alleged harasser, or if the individual believes there are reasonable grounds, the immediate supervisor or Principal is to be contacted immediately.
 - 19.2 If the supervisor or Principal is the alleged harasser, his/her immediate supervisor or, alternatively, the Associate Superintendent, Human Resources and Administration is to be contacted.
20. When reasonable grounds exist, the individual is to make a full written and signed complaint.
 - 20.1 Complaints are to be filed as soon as possible to ensure witnesses are available, details are not forgotten and the situation is resolved without delay.

- 20.2 Individuals, including students, employees, volunteers, or visitors wishing to file a formal harassment complaint are to:
 - 20.2.1 Document the nature of the alleged harassment, the name of the alleged offender and the date(s), time(s) and location(s) of the harassment;
 - 20.2.2 Meet with the Associate Superintendent, Human Resources and Administration to review the information; and
 - 20.2.3 File a written signed statement of complaint with the Associate Superintendent, Human Resources and Administration.
- 20.3 A union, association representative, direct supervisor, teacher, counsellor, Principal may accompany an employee/student for consultative purposes.
- 21. A complainant is to report the complaint through a formal statement to one (1) of the following individuals:
 - 21.1 Director or Supervisor.
 - 21.2 Associate Superintendent, Human Resources and Administration.
 - 21.3 Union or Association Representative.
- 22. A complainant who is a student is to report the problem to a teacher, counsellor or school administrator.
- 23. A complaint against the Superintendent is to be made in writing to the Board Chair who will, in conjunction with legal advice, determine the appropriate procedure to be followed in the circumstances.
- 24. It is the responsibility of a teacher, counsellor, school administrator, or any person supervising one (1) or more individuals to take immediate and appropriate action to report or deal with incidents of harassment of any type whether brought to their attention or personally observed.
- 25. Under no circumstances is a legitimate complaint to be dismissed or downplayed nor is the complainant to be told to deal with it personally. In the event of any form of harassment, the matter may proceed through either an informal or formal resolution. The Associate Superintendent, Human Resources and Administration, or in the case of students, the Principal, may make the decision to pursue either an informal or formal resolution.
- 26. All parties concerned will treat these matters in strict confidence. Information relating to the complaint will only be disclosed to the extent necessary to investigate the complaint. The Associate Superintendent, Human Resources and Administration may access legal counsel.

Investigating a Formal Complaint Filed by an Employee, Volunteer, or Visitor

- 27. Upon receipt of a formal harassment complaint, and where the Associate Superintendent, Human Resources and Administration determines that the complaint will be resolved formally, the Associate Superintendent, Human Resources and Administration will:
 - 27.1 Advise the complainant that they have the right to file a complaint with the Alberta Human Rights Commission or to report the matter to the police where there is an indication that a criminal offence may have been committed;
 - 27.2 In the case of a possible criminal offense, and in consultation with the police, the matter may be referred to the police;

- 27.3 Notify the alleged harasser in writing of the complaint; provide the alleged harasser with a copy of the complaint; and inform the alleged harasser that an investigation has been initiated;
 - 27.4 Notify the immediate supervisor(s) of the name of the alleged harasser and the name of the complainant and that a formal complaint has been filed and that an investigation is underway;
 - 27.5 Conduct the investigation by interviewing the complainant and the alleged harasser. The investigation may also include interviews with witnesses and employees, both past and present;
 - 27.6 Consider all pertinent information; and
 - 27.7 Prepare an investigation report within twenty (20) working days of receiving a written complaint. If additional time is required to complete an investigation and prepare a written investigation report, the Associate Superintendent, Human Resources and Administration will notify the alleged harasser and the complainant regarding the extension in the timeline.
28. Should an investigation be contracted out to a third party, the Associate Superintendent, Human Resources and Administration will make a decision to dismiss or act upon the investigation report within ten (10) working days of receiving the report.
29. If an investigation resulting from a formal complaint finds sufficient evidence to support that harassment occurred, the Associate Superintendent, Human Resources and Administration may determine the appropriate course of action which may include, but is not limited to:
- 29.1 Discipline of an employee found to have committed an act of harassment, which may range from a reprimand, enrolment in an educational process, up to and including termination.
 - 29.2 Referral of the matter to the appropriate legal authority with a recommendation for formal charges against the individual found to have committed an act of any form of harassment.
 - 29.3 Referral of the victim and alleged harasser, if an employee, to the Division's Employee Assistance Program for counseling and support.
 - 29.4 Recommend to the victim that they seek legal advice about personal protection and/or compensation from the individual found to have committed an act of harassment.
 - 29.5 Referral of the matter to Division legal representatives to assist in obtaining protection of employees, volunteers, parent and Division representatives.
 - 29.6 Any combination of the above or any other action deemed appropriate to ensure the safety and well-being of affiliated personnel and the Division's interests.
30. Where appropriate, the Associate Superintendent, Human Resources and Administration and Senior Administration may consult with the Alberta Human Rights Commission or legal counsel to review precedents in similar cases, in order to recommend a fair and just resolution to the matter.
31. The investigation report may be discussed with the immediate supervisor prior to a final decision being made.

32. The Associate Superintendent, Human Resources and Administration will provide a one-page written summary of the investigation report to the complainant and the harasser or alleged harasser.
33. All records of harassment or retaliation investigation must be kept separate from the harasser's personnel file except where the complaint is determined to be true.
34. If the complaint is found to be true, the Notice of Complaint (27.3) and the one-page written summary will be kept on the harasser's personnel file.
35. If the investigation fails to disclose evidence to support the complaint, no record of the complaint can be kept in the alleged harasser's employee personnel file and the Associate Superintendent, Human Resources and Administration will provide a formal letter to the alleged harasser confirming that the complaint has been dismissed.
36. Whether an investigation finds sufficient or insufficient evidence to support the complaint that harassment occurred, the investigation report and supporting documentation will be sealed and maintained in a locked and secure file only unsealed by the Associate Superintendent, Human Resources and Administration, if future allegations occur.

Investigating a Formal Complaint Filed by a Student

37. A student wishing to file a formal harassment complaint is to do so in writing and:
 - 37.1 Document the nature of the alleged harassment, the name of the alleged offender and the date(s), time(s) and location(s) of the harassment;
 - 37.2 Meet with the Principal to review the information; and
 - 37.3 File a formal written complaint with the Principal.
38. Where a student is either the complainant or alleged harasser, the Principal in consultation with the complainant, will determine whether to pursue a formal or informal resolution.
39. Upon receipt of a formal written harassment complaint, and where the Principal determines that the complaint will be resolved formally, the Principal will;
 - 39.1 Inform the complainant and alleged harasser that a complaint has been received.
 - 39.2 Conduct an investigation which may consist of personal interviews with the student complainant, the student alleged harasser and others who may have knowledge of the incidents or circumstances that led to the complaint.
 - 39.3 Notify the Associate Superintendent, Human Resources and Administration of the complaint when such a complaint involves an adult as either the complainant or alleged harasser.
40. The parents of the student complainant and/or student alleged harasser will be contacted at an appropriate point during the investigation.
41. All parties concerned will treat these matters in strict confidence. Information relating to the complaint will only be disclosed to the extent necessary to investigate the complaint. The Principal may access legal counsel.
42. Upon completion of an investigation, the Principal will administer appropriate disciplinary action if harassing behaviour has occurred.

43. Upon completion of the investigation, the Principal will communicate the results to both parties or to the parents as the case may be.
44. Records of student complaints must be kept in accordance with the Student Record Regulation 97/2019.

Reference: Section 33, 52, 53, 197, 204, 222 Education Act
Alberta Human Rights Act
ATA Code of Professional Conduct
Canadian Charter of Rights and Freedoms
Canadian Human Rights Act
Child Youth and Family Enhancement Act
Criminal Code
Employment Standards Code
Healthy Interactions
Individual's Rights Protection Act
Occupational Health and Safety Act
Student Record Regulation 97/2019