

Living Sky School Division No. 202

Administrative Procedure (AP) Manual



Procedure Name: Harassment (Employees)			
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Legal Reference(s):	<i>The Saskatchewan Human Rights Code, 2018</i> <i>The Saskatchewan Employment Act and The Occupational Health and Safety Regulations, 2020</i> <i>The Saskatchewan Employment Act</i> <i>The Education Act, 1995-Section 86</i>		

Background

Pursuant to *The Human Rights Code, 2018* and *The Saskatchewan Employment Act* and *The Saskatchewan Occupational Health and Safety Regulations, 2020*, Living Sky School Division (LSKYSD) acknowledges that every employee is entitled to a workplace free of harassment and is committed to ensure, as far as is reasonably practicable, a workplace free of harassment. Harassment will not be tolerated. All reported incidents of harassment will be investigated and corrective action will be taken respecting any individual under the employer's direction who subjects a worker of the division to harassment.

Scope

This procedure addresses harassment directed towards Living Sky School Division employees and applies to all employees of the division, including practicum/intern students, volunteers and contracted workers.

Definitions

Harassment is defined under *The Saskatchewan Employment Act* as any inappropriate conduct, comment, display, action or gesture by a person towards a worker that either:

- Is based on any prohibited ground as defined in *The Saskatchewan Human Rights Code, 2018* or on physical size or weight; or
 - Adversely affects the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause the worker to be humiliated or intimidated; and
 - Constitutes a threat to the health or safety of the worker
- Or
- Any conduct, comment, display action or gesture by a person towards a worker that:
 - Is of a sexual nature, and;
 - The person knows or ought reasonably to know is unwelcome

The Saskatchewan Human Rights Code, 2018 outlines the following prohibited grounds:

- religion;
- creed;
- marital status;



- d. family status;
- e. sex;
- f. sexual orientation;
- g. disability;
- h. age;
- i. colour;
- j. ancestry;
- k. nationality;
- l. place of origin;
- m. race or perceived race;
- n. receipt of public assistance;
- o. gender identity;

“receipt of public assistance” means the receipt of:

- a. assistance as defined in *The Saskatchewan Assistance Act*; or
- b. a benefit as defined in *The Saskatchewan Income Plan Act*;

A **worker** is defined as an individual, including a supervisor, who is engaged in the service of an employer. It includes practicum/intern students, volunteers and contracted workers

Harassment is not:

Day-to-day management or supervisory decisions involving work assignments, job assessment and evaluation, workplace inspections, implementation of appropriate dress codes and disciplinary action are not considered harassment even if they sometimes involve unpleasant consequences. Managerial actions must be carried out in a manner that is reasonable and not abusive.

Other situations that do not constitute harassment include:

- physical contact necessary for the performance of the work using accepted industry standards;
- conduct which all parties agree is inoffensive or welcome; or
- disagreements in the workplace that are not based on one of the prohibited grounds.

Roles & Responsibilities

Employer

- Make every reasonable effort to ensure that no employee is subject to harassment by promoting a safe and respectful workplace
- Promptly investigate any reported incident of harassment and take corrective action respecting any person who is determined to have engaged in harassment of its employees.

Supervisor



- Annually review and discuss the purpose of this procedure with workers under their supervision.

Worker

- Participate in ensuring that the workplace is a harassment free place.
- Refrain from encouraging, causing or participating in the harassment of any worker of LSKYSD.
- Be an active bystander. Follow the procedure outlined in this document to address workplace harassment behaviour when witnessed or observed.
- Report any incidents of harassment using *5.32A Formal Harassment Complaint Form*.
- Co-operate with any investigation into harassment complaints.

Procedures

1. If an employee knows or suspects that a co-worker is the victim of harassment, that employee is encouraged to support the co-worker and advise the co-worker to report the harassment as soon as possible to the appropriate authorities.
2. If a worker feels that they are being harassed, as per the definitions in this procedure, the following actions should be taken:
 - a. If the worker feels safe to do so, immediately communicate to the alleged harasser that their behaviour is unwelcome and to tell the alleged harasser to stop the behaviour.
 - b. Document the incident of harassment by completing *5.32A Formal Harassment Complaint Form*, making sure to provide as much detail as possible.
 - c. Submit the *5.32A Formal Harassment Complaint Form* to either their administrator/service lead/superintendent or the human resource department
3. If the *5.32A Formal Harassment Complaint Form* is submitted to an administrator/service lead/superintendent, the recipient of the report shall immediately forward a copy of the form to the human resources department.
4. Investigation of the complaint will be undertaken by the human resources department immediately upon receipt of a complaint. There shall be no unnecessary delay in the investigation of the complaint. Where a member of the human resource department is the complainant or the subject of the complaint, the director shall appoint another person to conduct the investigation and file a report with the board of education.
5. If at any point in the investigation, the investigator believed the complainant will be exposed to continued harassment or reprisal while waiting for the investigation or resolution process to conclude, the investigator must take immediate action to protect the worker. These actions should respect the harasser's right based on their employment contract or collective bargaining agreement and may include:
 - a. cautioning the alleged harasser about the types of behavior that will not be tolerated;
 - b. moving the alleged harasser to another work unit;
 - c. moving the complainant to another work unit at the complainant's request; and
 - d. suspending the alleged harasser with pay while waiting for a final determination.
6. Receipt of a complaint will be held in strict confidence and the highest level of confidentiality



maintained. Individuals involved in the incident of harassment, those receiving the report of and/or completing an investigation into the incident of harassment should not discuss details around the complaint with other division staff, administrators or members of the public, unless for the purpose of investigating incident.

- a. The name of the complainant, the alleged harasser and circumstances related to a complaint shall not be disclosed to any person except where the disclosure is necessary for the purposes of investigating the complaint or taking corrective action with respect to the complaint or as required by law.

The individual investigating the complaint shall take the following actions:

7. Informal Resolution Process

- a. If the complainant indicates in their complaint form that they are interested in pursuing an informal resolution process with the harasser, the investigator shall:
 - i. Meet with the complainant to gain a better understanding of the concern and resolution sought
 - ii. Meet with the alleged harasser to determine whether there is agreement to engage in an informal resolution process
 - iii. If both parties are in agreement, facilitate the informal resolution process
- b. The informal resolution process shall prioritize resolving the issue rather than determining fault or implementing disciplinary measures. This type of resolution may encompass a variety of strategies and ensure a positive resolution and prevent future incidents from occurring.
- c. Where the complainant and alleged harasser agree to a resolution, the investigator shall follow up with the complainant at an identified future date to ensure that the resolution was effective in stopping and preventing further harassment.
- d. If either the investigator or complainant are not satisfied with the outcome of the informal resolution process, the formal complaint process will be initiated

8. Formal Complaint Process

- a. The formal complaint process will be initiated if:
 - i. the complainant does not indicate interest in engaging in an informal resolution process;
 - ii. the investigator determines that an informal resolution process will not be safe or effective;
 - iii. the alleged harasser does not agree to participate in the informal resolution process; or
 - iv. the informal resolution process does not result in satisfactory outcomes.
- b. The formal complaint process will consist of an investigation involving the following steps:
 - i. Interview the complainant.
 - ii. Notify the alleged harasser of the complaint, and provide the alleged harasser with information concerning the circumstances of the complaint.
 - iii. Interview or request statements from the alleged harasser and any other person who may have knowledge of the alleged complaint.
 - iv. Review files/records to determine if harasser has previous record of harassment or related behaviour.
 - v. Conclude the investigation with a written report of the complaint and the results of the investigation of the complaint. The written report shall be provided by the Human Resources Department or designate, to the director and shall contain recommendations



- of the action to be taken, if any, as a result of the complaint.
- c. At any stage of the investigation, the complainant and the alleged harasser may choose to be accompanied by a friend, union representative, association representative or other person of their choice.
 - d. If harassment is deemed to have occurred, a letter will be placed in the harassers file, detailing the incident of harassment and the discipline imposed.
 - e. If harassment is deemed to have not occurred, the harasser and complainant will be notified in writing.
 - f. Where harassment has not been substantiated, no action will be taken against an employee who has made a complaint in good faith.
 - g. If the investigation uncovers that the complainant made a deliberate false claim, a letter will be placed in the complainants files, detailing the incident and the discipline imposed. Where appropriate, those involved in the investigation may be informed that harassment was not found to have taken place if the reputation of the alleged harasser may be negatively affected.
9. Following an investigation, appropriate discipline shall be applied in keeping with natural justice and due process with the aim of stopping, preventing or deterring harassment. Such discipline shall be consistent with the provisions of any applicable collective agreement and may include measures up to and including termination of employment. The severity of the discipline will depend on:
- a. whether the conduct is an offence under the Criminal Code;
 - b. whether the conduct is an offence under the Act or *The Saskatchewan Human Rights Code, 2018*;
 - c. the extent of the mental or physical injury caused to the complainant;
 - d. whether the harasser persisted in behavior that was known to be offensive to the complainant; or whether the harasser abused a position of authority.
10. Either party may, after receiving the results of the investigation, make a further submission in writing, and such written submission shall be placed in the file.
11. All records relating to the complaint and investigation shall be kept on file for five years at which point they shall then be transferred to a secured confidential file at Central Office.
12. This procedure is not intended to discourage or prevent a complainant from exercising any other legal rights pursuant to law, including:
- a. requesting the assistance of an Occupational Health Officer to resolve a harassment complaint after first trying to resolve the matter with the employer.
 - b. initiating a complaint directly to the Saskatchewan Human Rights Commission.
13. Third Party Harassers
- This administrative procedure covers harassment connected to any matter or circumstance arising out of the employee's employment. Living Sky School Division recognizes that parents, volunteers, visitors, contractors and others invited to the workplace could engage or participate in the harassment of an employee. While Living Sky School Division may have limited ability to investigate or control their conduct, action will be taken to stop or reduce the risk to employees of being harassed by third parties. This action may include:
- a. posting the harassment policy in a location visible to third parties; and
 - b. requiring certain contractors and their workers to accept and meet the terms of the harassment



policy; and

- c. removing workers who participate in harassment.

Where an individual has been asked to stop abusing or harassing an employee and does not, employees are authorized to end telephone conversations, politely decline service and to ask the individual to leave the workplace.

14. Harassment by a student

This procedure applies to and should be followed in cases where workers feel that they are being harassed, as per definitions in this procedure, by a student or group of students. Where the investigator has deemed harassment to have occurred, steps will be taken to correct and extinguish the student or students' behaviour through processes outlined in Living Sky School Division Administrative Procedures as well as the The Education Act, 1995.

Appendix

5.32A Formal Harassment Complaint Form