



Harassment and Discrimination Prevention Investigation and Resolution - Procedure

This regulation is divided into the following sub-sections:

- A. Legislation
- B. Definitions
- C. Rights and Responsibilities
- D. Investigation and Resolution Process

A. LEGISLATION

The following is an overview of the sections of the *Manitoba Human Rights Code* that relate to workplace harassment and discrimination.

1. Section 19(1)

No person who is responsible for an activity or undertaking to which this Code applies shall

- (a) harass any person who is participating in the activity or undertaking;
or
- (b) knowingly permit, or fail to take reasonable steps to terminate, harassment of one person who is participating in the activity or undertaking by another person who is participating in the activity or undertaking.

2. Section 19(2) defines “harassment” as:

- (a) a course of abusive and unwelcome conduct or comment undertaken or made on the basis of any characteristic referred to in subsection 9(2); or
- (b) a series of objectionable and unwelcome sexual solicitations or advances; or
- (c) a sexual solicitation or advance made by a person who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome;
or

- (d) a reprisal or threat of reprisal for rejecting a sexual solicitation or advance.

3. Section 9(1) defines “discrimination” as:

- (a) differential treatment of an individual on the basis of the individual's actual or presumed membership in or association with some class or group of persons, rather than on the basis of personal merit; or
- (b) differential treatment of an individual or group on the basis of any characteristic referred to in subsection (2); or
- (c) differential treatment of an individual or group on the basis of the individual's or group's actual or presumed association with another individual or group whose identity or membership is determined by any characteristic referred to in subsection (2); or
- (d) failure to make reasonable accommodation for the special needs of any individual or group, if those special needs are based upon any characteristic referred to in subsection (2).

4. Subsection 9(2)

The applicable characteristics for the purposes of clauses in Section 9(1) (b) to (d) of the Code are:

- (a) ancestry, including colour and perceived race;
- (b) nationality or national origin;
- (c) ethnic background or origin;
- (d) religion or creed, or religious belief, religious association or religious activity;
- (e) age;
- (f) sex, including pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;
- (g) gender-determined characteristics or circumstances other than those included in clause (f);
- (h) sexual orientation;
- (i) marital or family status;
- (j) source of income;
- (k) political belief, political association or political activity;
- (l) physical or mental disability or related characteristics or circumstances, including reliance on a dog guide or other animal assistant, a wheelchair, or any other remedial appliance or device.

SEC prohibits harassment and/or discrimination on the basis of any characteristic referred to in Subsection 9(2), whether the discrimination and/or harassment is related to employment or services.

B. DEFINITIONS

1. Workplace

SEC may be liable for harassment committed by its employees outside of the normal parameters of the workplace or working hours if it has implications or repercussions in the workplace. Therefore, this policy

applies to, but is not limited to harassment and/or discrimination which occur:

- a. at a school, or lodge,
- b. outside of a school or lodge,
- c. at a school or lodge function,
- d. in the course of employment or school assignment outside of school/lodge at an employment or school/lodge-related conference or training session,
- f. during employment or school related travel, and
- g. while utilizing a communication medium (internet, telephone, mail).

2. Essential Elements of Harassment:

Harassment:

- (a) is a type of discrimination,
- (b) is unwanted,
- (c) affects the individual's ability to learn and/or work,
- (d) is an expression of power, authority or control, and is coercive in nature.

Harassment is not:

- a. normal and appropriate exercise of supervisory responsibilities, including appropriate performance management, training, work assignment and discipline,
- b. normal social interaction, good-natured joking and appropriate humour in the workplace.

3. Constructive Knowledge

Whether harassment or discrimination is intentional does not matter. What matters is the effect of the behaviour on an individual or group. Therefore,

It does not matter that the individual who displayed offensive conduct or made an offensive comment or gesture did not mean it. Intent is not necessary and ignorance is no defence.

Harassment is substantiated if the individual knew or ought to have known that the conduct, comment or gesture would likely cause offence or embarrassment.

Harassment is assessed in accordance with the "reasonable person" test. A "reasonable person" should know when they do or say something that may be offensive to others. Whether a person intends to offend someone does not matter. Harassment occurs where the reasonable person would find the conduct or comment to be unwelcome and offensive.

4. Types of Harassment

Three types of harassment which are

- i. the categories set out in Section 9 of the Manitoba *Human Rights Code*

ii. personal harassment and
iii. sexual harassment
are described below.

(a) the categories set out in Section 9 of the Manitoba *Human Rights Code*,

(b) Personal Harassment

Personal harassment is also known as psychological harassment or bullying.

Personal harassment is not included in the categories of harassment listed in the Manitoba *Human Rights Code*. Types of behaviour which constitute personal harassment include, but are not limited to:

Any improper behaviour by an employee which the employee knew or ought to have known would be unwelcome;

An abuse of authority where an individual's improper use of power and authority inherent in the position held is aimed at intimidating, frightening, coercing or offending those at whom it is directed. This includes actions which endanger an employee's ability to perform the job or threatens and employee's economic livelihood.

(c) Sexual Harassment

Sexual harassment can be physical or verbal and includes but is not limited to:

a course of abusive, unwelcome conduct for comments made on the basis of gender;

any sexual solicitation or advance that is unwelcome;

unwelcome sexual remarks or jokes that denigrate;

displaying derogatory materials such as pictures, cartoons or printed matter;

demands for sexual favours in return for a promise of a reward or a threat of reprisal;

action as defined as harassing in the Manitoba *Human Rights Code*;

by any person who is in a position to know, or ought to know, that such action is unwelcome.

5. Retaliation

Retaliation against an individual for having used this policy, or for having participated or cooperated in any investigation under this policy or for having been associated with a person who has used this policy or participated in these procedures, will be treated as harassment.

6. Complainant

The Complainant is the person who is the alleged victim of harassment even though that person may not lay a formal written complaint.

7. Respondent

The Respondent is the individual against whom the complaint is made.

8. Investigating Officer

The Investigating Officer is the Director of Operations or designate who has been assigned to investigate the complaint. If the respondent is the Director of Operations, the Director/Principal shall perform this task.

C. RIGHTS AND RESPONSIBILITIES

The rights and responsibilities of the school and individuals are outlined in this section.

1. SEC

The school is responsible under the Manitoba *Human Rights Code* for creating and maintaining a workplace free from harassment. SEC will therefore

- inform all employees of this policy,
- provide adequate training to ensure employees are aware of what harassment is,
- provide adequate training to ensure employees are aware of the complaint process,
- resolve complaints in a timely manner,
- make administrators aware that they are responsible for ensuring compliance with this policy and ensuring that employees have access to education and training opportunities,
- levy penalties if the Code or policy is contravened

2. Employees

Employees have a right to work in an environment free from harassment. Employees are responsible for:

- becoming familiar with the policy and procedures pertaining to harassment

- conducting themselves in a manner which respects other employees and is consistent with this policy and *The Manitoba Human Rights Code*.
- Complainants have a right to file a complaint without fear or reprisal and as confidentially as possible. Complaints may be initiated under this policy, or under the provision of the pertinent collective agreement.

Complainants are responsible for

- informing the respondent, or telling someone in a position of authority, that the behaviour is unwelcome. If the complainant feels unable to advise the respondent personally, a representative chosen by the employee may agree to advise the respondent on the employee's behalf, and
- cooperating with the investigation of the complaint.

4. Respondents

Respondents have the right to:

- be advised immediately that a complaint has been filed;
- be given the opportunity to respond in accordance with this policy or the grievance procedure;
- be represented by a person of their choice, excluding witnesses;
- have the investigation carried out as confidentially as possible, and
- be advised of the results of the investigation.

5. Investigator

The Investigator will immediately inform the respondent that a complaint has been filed and advise all parties of their rights and responsibilities. The Investigator will ensure each party and witness is interviewed and all relevant evidence is collected.

A final report, including recommendation, will be provided to the Director/Principal. The complainant and respondent will each be advised of the findings. The investigation file will be kept as confidential as possible.

6. Harassment/Discrimination by Outsiders

An employee who considers that he or she has been subjected to workplace harassment or discrimination by a person who is not an employee should seek the advice of the Director of Operations. The

Director of Operations will take whatever action is necessary to ensure that Southeast fulfills its responsibility to support and assist the person subjected to harassment/discrimination.

D. INVESTIGATION AND RESOLUTION PROCESS

This section outlines the process for the investigation and resolution of informal and formal complaints.

1. Informal Complaint Process

- a. An employee who believes she/he is being harassed should, where possible, inform the respondent clearly and directly that the behaviour is offensive and must stop immediately. If the employee feels unable to talk to the respondent, s/he should tell someone in a position of authority.
- b. If the complainant is unable to speak directly to the respondent, or if the harassment does not stop, the employee may be represented by a person of his/her choice.
- c. If the harassment continues, the complainant may file a formal complaint.

2. Formal Complaint Process

- a. The complainant may file a written complaint with the Director/Principal. The envelope should be marked 'personal and confidential'. If the respondent is an employee in the Director/Principals dept, the complaint should be addressed to the Chairperson, Board.
- b. Investigations will be conducted promptly, thoroughly and as confidentially as possible. Interviews with the complainant's colleagues and the respondent will be necessary.
- c. The investigation will be conducted by the Director/Principal or designate, or the Investigating Officer assigned by the Board.
- d. SEC understands that it is difficult to come forward with a complaint of workplace harassment and recognizes a complainant's interest in keeping the matter confidential.
 - i. All employees involved in the investigation process will be advised that to protect the interests of the complainant, the person complained against and any others who may report incidents of workplace harassment, confidentiality will be maintained throughout the investigatory process to the extent practicable and appropriate under the circumstances.
 - ii. All records of complaints, including contents or meeting interviews, results of investigations and other relevant material will be kept confidential by SEC, except where disclosure is required by disciplinary or other remedial process.
 - iii. Resources and supports are available and will be arranged if requested.

- e. Where the investigation results in a finding that the complaint of workplace harassment is substantiated, a written report of the investigation will be compiled and submitted to the Director/Principal or Chairperson of the board. A recommendation for appropriate action will be made in the report.
The outcome of the investigation, and any disciplinary action, will be recorded in the Employee's personnel file related to the offender. The written record will be maintained for seven years after termination of employment, unless new circumstances dictate that the written record should be kept for a longer period of time.
All reasonable action will be taken to mitigate the effects of the harassment upon the complainant.
- f. Disciplinary action taken against the respondent will be appropriate for the circumstances. Disciplinary actions can include, but will not be limited to, the following:
 - i. advise the respondent in writing that the harassment must stop immediately;
 - ii. rearrange the shift, duties or responsibilities of the respondent;
 - iii. based on the determination of guilt, the wishes of the parties and/or operational requirements, transfer the respondent;
 - iv. suspension;
 - v. termination.
- g. Frivolous or vexatious complaints will not be tolerated. Employees filing such complaints will be subject to discipline as outlined above.
- h. Where the investigation results in a finding that the complaint of workplace harassment or discrimination is not proved, all record of the complaint shall be removed from personnel files.
- i. The complainant will be informed of the outcome of the investigation and, if the complaint is substantiated, any disciplinary action taken by SEC. If the complainant is not satisfied with the outcome of the investigation or the disciplinary action taken by Southeast, the complainant will be reminded of the continuing right to file a complaint with the Manitoba Human Rights Commission.
- j. If the matter is grieved and advanced to arbitration, it is the schools responsibility to establish proof and show that appropriate disciplinary action was imposed.

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