

AP 172 – WORKPLACE DISCRIMINATION, BULLYING AND HARASSMENT

Background

The District recognizes the right of all employees to work in an environment free from discrimination, bullying and harassment. Discrimination, bullying and harassment are not acceptable or tolerated. All employees will be treated in a fair and respectful manner.

Definitions

Discrimination: Discrimination in employment based on a person's, race, colour, ancestry, place of origin, political belief, religion, gender expression, gender identity, sexual orientation, marital status, family status, physical or mental disability, physical appearance, health, age, or criminal conviction which is unrelated to the person's employment. Discrimination includes Sexual Harassment, as defined below.

Bullying and Harassment: WorkSafeBC explains that bullying and harassment includes any inappropriate conduct or comment by a person towards an employee that the person knew or reasonably ought to have known would cause that employee to be humiliated or intimidated.

Harassment is a serious matter and should be treated as such. Arbitrator Heather Laing explains:

"...Every act by which a person causes some form of anxiety to another could be labelled as harassment. But if this is so, there can be no safe interaction between human beings. Sadly, we are not perfect."

"...Not every employment bruise should be treated under this process. It would be unfortunate if the harassment process was used to vent feelings of minor discontent or general unhappiness with life in the workplace so as to trivialize those cases where substantial workplace abuses have occurred."

Personal Harassment: Personal harassment is defined as objectionable conduct or comment, directed towards a specific person or persons and has the effect of creating an intimidating, humiliating, hostile or offensive working environment. Personal harassment does not include conduct or comments made in good faith in the exercise of supervisory rights and responsibilities.

Discriminatory Harassment: Discriminatory harassment is defined as discrimination contrary to the *Human Rights Act* and includes discriminatory acts against an employee with respect to the work environment or any term or condition of employment because of race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, or age of that staff member or because that employee has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

Sexual Harassment: Sexual harassment is defined as unwelcome sexual advances, comments,

looks, suggestions, audio and visual material of a sexual nature, requests for sexual favours and other verbal or physical conduct emphasizing sexuality, gender expression, gender identity or sexual orientation when such conduct:

- Either explicitly or implicitly is a term or condition of an individual's education, employment, or any opportunity for training or promotion;
- Is used as a basis for scholastic, extra-curricular or employment decisions affecting another individual; or
- Interferes with an individual's school or work performance or creates an intimidating, hostile, offensive, or uncomfortable learning and working environment.

Complainant: An employee who believes they have been subjected to or observed Discrimination or Bullying and Harassment in the workplace.

Respondent: A person in the workplace against whom a complaint of Discrimination and/or Bullying and Harassment has been made. A respondent includes an individual, whether or not they are a workplace party. This means that a respondent could be a workplace party such as an employer, supervisor, or co-worker, or a non-workplace party such as a member of the public, a student, or anyone an employee comes into contact with at the workplace.

District Responsibilities: The District is responsible for promoting and maintaining a working/learning environment free from bullying and harassment. The District will take reasonable steps to prevent, where possible, or otherwise minimize workplace discrimination, bullying and harassment.

The District must ensure that staff have received the Discrimination, Bullying and Harassment training and are aware of the requirements to comply with these policies and procedures.

Employees with Supervisory Roles Responsibilities: Bullying and harassment excludes any reasonable action taken by an employer or supervisor relating to the management and direction of employees or the place of employment.

Employees with supervisory roles are required to exercise supervisory rights and responsibilities regarding the work of staff. Examples of reasonable management action include determining job duties or work to be performed; workloads and deadlines; layoffs, transfers, promotions, and re-organizations; work instructions, supervision or feedback; work evaluation; performance management; and discipline, suspensions, or terminations.

An employee in a supervisory role has a duty to take all reasonable steps to ensure the health and safety of employees under their supervision and as a result, a supervisor must take all reasonable steps to prevent, where possible, or otherwise minimize workplace discrimination, bullying and harassment. Workplace discrimination, bullying and harassment can lead to injury, illness, or death.

A supervisor's obligation to ensure health and safety of employees includes:

- Not engaging in discrimination, bullying and harassment of employees, other supervisors, the employer, or persons acting on behalf of the employer; and
- Applying and complying with the District policies and procedures on Discrimination, Bullying and Harassment;
- Liaising with Human Resources to undertake and participate in investigations.

Employee Responsibilities: An employee has a duty to take reasonable care to protect the health and safety of themselves and other persons, and as a result, an employee must take all reasonable steps to prevent, where possible, or otherwise minimize workplace discrimination, bullying and harassment. Workplace discrimination, bullying and harassment can lead to injury, illness, or death.

An employee's obligation to take reasonable care to protect the health and safety of themselves or others includes:

- Not engaging in discrimination, bullying and harassment of other employees, supervisors, the employer or persons acting on behalf of the employer;
- Reporting to their direct supervisor if discrimination, bullying and harassment is observed or experienced in the workplace; and
- Applying and complying with the District's policies and procedures on Discrimination, Bullying and Harassment.

This Administrative Procedure applies to interpersonal and electronic communications.

Examples of bullying and harassment might include:

- Verbal aggression, insults or calling someone derogatory names;
- Vandalizing a worker's personal belongings;
- Sabotaging another person's work;
- Carrying out harmful or offensive initiation practices or hazing;
- Making personal attacks based on a worker's private life or personal traits;
- Making aggressive or threatening gestures;
- Cyber-bullying, including sending harassing emails or text messages or posting humiliating or intimidating information on social media or websites.

Bullying and Harassment (including sexual harassment) is not:

- Expressing differences of opinions;
- Offering constructive feedback, guidance, or advice about work related behaviour or performance;
- Making a legitimate complaint about someone's conduct through established procedures;
- Supervision and managing employees.

Application

This Administrative Procedure applies to all employees except where a specific provision is contained in a Collective Agreement in which case the provision(s) of the Collective Agreement shall also apply to employees covered by that Agreement.

It is recommended that employees covered by a Collective Agreement seek the counsel of union representatives before proceeding with a complaint.

Complaint/Report and Investigation Procedure

"Bullying and Harassment is a serious matter and should be treated as such. While one individual may find certain behaviors harassing, discriminatory or bullying, others may not find the same behaviors offensive. Remarks, questions, jokes, or innuendo, even if the

outcome is embarrassment to the recipient, may not be considered harassment unless they are based on age, gender, religious beliefs, sexuality, or other grounds prohibited under the Human Rights Act."

Re: British Columbia and BCGEU (1995) 499 LAC. (4th) 193.

This Administrative Procedure contains two (2) steps:

1. Informal Complaint Process (Speak Up)
2. Formal Complaint Process

Step One: Informal Process

The informal process is the first step of a complaint process and is required to be completed with the exception being that the behaviour is extremely dangerous, or the respondent is your principal or direct supervisor. In these situations, proceed to Step 2, a Formal Complaint.

1. Inform the person perpetuating the bullying and harassing actions that their actions are not acceptable to you as soon as they start to occur. Describe the specific actions that they took that caused you to feel uncomfortable, bullied, or harassed.
2. If the alleged bully is a student, parent, or other member of the public, report it to your principal or direct supervisor.
3. It is important to keep a record of dates and times when you have spoken to the person and inform your principal or direct supervisor.
4. During the informal process the principal or direct supervisor will assist by providing support, advice, or mediation.

Step Two: Formal Complaint Process

Step Two is initiated when the bullying or harassment has continued to occur after an informal process, or the behaviour is extremely dangerous, or the respondent is your principal or direct supervisor.

1. Using Form (172-1) write out a statement detailing the incident(s), explaining how the complaint meets the definition of bullying and harassment, along with any supporting documentation and the names of any witnesses. Note: The report must include pertinent facts which detail alleged incidents. When? Where? Who? What? How?
2. All complaints shall be taken seriously. The Superintendent or designate will review your formal report and supporting documents to determine an appropriate response. A confidential investigation in accordance with due process may be undertaken, expeditiously, under the direction of the Superintendent or designate to substantiate and/or resolve the complaint.
3. Where it is determined that the alleged bullying or harassment is criminal in nature, the appropriate authorities will be contacted.
4. An employee accused of bullying/harassment will be notified in writing at the earliest opportunity by the Superintendent or designate.
5. CVTF/CUPE/USW employees shall be accompanied by their union representative during any proceedings relating to the investigation of the complaint, providing no costs are incurred by the Cowichan Valley School District. Excluded employees and Principals/Vice Principals may be accompanied by a person(s) of their choice for moral support during any proceedings relating to the investigation of the complaint.
6. Within one month of receiving the written, confidential investigation report, the superintendent or designate will review with the complainant and respondent the outcome of the investigation and the appropriate action(s) to be taken. These may

include counselling, courses that develop an awareness of bullying and harassment, a verbal warning, a written warning, suspension, and/or dismissal. In appropriate circumstances employees may be referred to the District EFAP program or be encouraged to seek medical advice.

Bullies/harassers who take retaliatory action against employees who have filed complaints will be subject to discipline. Complainants who are found to have made frivolous, vexatious, or malicious complaints of Bullying and Harassment and/or Discrimination may be subject to disciplinary or corrective action.

CVTF/CUPE/USW employees should also consult their collective agreement.

Other employees should follow the Informal and/or Formal Complaint Procedure as previously outlined.

Reference: Sections 20, 22, 65, 85, 177 School Act
Human Rights Code
Workers' Compensation Act
Occupational Health and Safety Regulation

Adopted: February 16, 2016
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