

Coast Mountains School District 82

3000 Personnel

3605

Harassment

Date Revised: Apr. 4, 2007

Date Adopted: Nov. 1997

Responsibility

Centre:

Director of Human Resources

Policy

The Board recognizes the right of all employees to work, conduct business and otherwise interact (associate) free from harassment or sexual harassment.

The Board encourages employees to resolve complaints of harassment at the work

Definitions

- **Harassment** includes any offensive statement or behaviour which falls under one of the prohibited grounds of the Human Rights Act, specifically: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

The definition of **sexual harassment** includes:

- Any comment, look, suggestion, physical contact, real or implied action of a sexual nature, which creates an uncomfortable working environment for the recipient, made by a person who knows, or ought reasonably to know such behaviour is unwelcome; or
- any circulation or display of visual material of a sexual nature that has the effect of creating an uncomfortable working environment; or
- an implied promise of reward for complying with a request of a sexual nature; or
- a sexual advance made by a person in authority over the recipient that includes or implies a threat, or an expressed or implied denial of an opportunity which would otherwise be granted or available and may include a reprisal or threat of reprisal made after a sexual advance is rejected.

The definition of **personal harassment** includes:

- Any improper behaviour that is directed at or offensive to any person, is unwelcome, and which the person knows or ought reasonably to know would be unwelcome; or
- objectionable conduct, comment, material, or display made on either a one time or continuous basis, that demeans, belittles, intimidates, or humiliates another person; or

- the exercise of power or authority in a manner which serves no legitimate work purpose and which a person ought reasonably to know is inappropriate; or
- such misuse of power of authority as intimidation, threats, coercion, and blackmail.

The definition of harassment, both personal and sexual, **does not** include:

- routine supervision
- performance evaluations
- imposition of appropriate discipline
- a request or directive to do something that a reasonable person would consider reasonable as part of a job function
- lack of friendliness
- an apparent grumpy response
- denial of a request for time off
- other routine day-to-day interaction between an employer and an employee.

A **complainant** is the recipient of, and makes a complaint of, harassment.

A **respondent** is the alleged harasser.

Procedural fairness means that all employees have a right to:

- make complaints
- be informed of complaints against them
- be informed of remedial actions taken
- a fair hearing
- a full investigation of complaints
- confidentiality
- a representative of their choice when they are in the position of complainant or respondent

An **investigator** is normally a management individual. This person will have training or experience in investigating complaints of harassment and is well respected by both management and union members.

Confidentiality: Every effort will be made to keep the details of the complaint and subsequent records of an investigation confidential. One year after all actions following the investigation are complete (i.e. discipline, grievances, arbitration) the file of interview notes will be destroyed.

Freedom of Information Legislation requires that any person who requests information has the right to—

- all information said by him/her
- anything said about him/her but not who said it.

Mediation occurs when a neutral third party (not the investigator) provides a structured process to assist the complainant and respondent to arrive at a mutually acceptable resolution to the complaint. Mediation can be successful if—

- there is not a power imbalance between the two parties (either or both parties can have a silent advocate to ensure a balance of power)
- both parties are willing to mediate and agree on a mediator.

Vexatious complaints occur when an individual makes a complaint with malicious intent or when a complaint is made that the person knows or ought reasonably to know is neither personal or sexual harassment.

Process of Making a Complaint

Any employee who reasonably believes that he/she has been harassed, either personally or sexually, has the right to make a complaint. The complaint process follows three steps:

Step 1: Informal Resolution Procedure

1. The complainant, if comfortable with an informal resolution procedure, may choose to speak to or correspond directly with the alleged harasser to express his/her feelings about the situation.
2. Before proceeding to Step 2, the complainant may approach his/her administrative officer, Union rep or other contact person to discuss potential means of resolving the complaint and to request their assistance in mediating the complaint.
3. If the matter is resolved to the complainant's satisfaction the matter is deemed to be resolved.
4. All discussions at Step 1 are completely off the record. Discussions during Step 1 cannot lead to any disciplinary action against the complainant or the respondent.
5. If resolution is reached between complainant and respondent in Step 1, the resolution should be written up and signed by both who will be the only parties to retain copies of the resolution.
6. The Board may advise the respondent of the expectations of behaviour outlined in Board policy in a neutral, non-disciplinary manner.

7. This correspondence will not form part of the respondent's personnel file. Sending of the correspondence can be referred to as proof that the respondent has been advised about the standard of conduct.

Step 2: Filing of a Complaint

1. If a complainant chooses not to meet with the alleged harasser, or no agreement for resolution has been reached, or an agreement for resolution has been breached by the alleged harasser, a written complaint may be filed by the complainant with the Superintendent of Schools. In the event the Superintendent of Schools is involved either as the complainant or alleged harasser, the complaint shall be filed in writing with the Chairperson of the Board of Trustees.
2. The form of the complaint of Step 2 should include specific behaviours which form the basis of the complaint and the definitions of sexual/personal harassment that may apply. The form of the complaint will in no way restrict the investigation or its conclusions.
3. The employer shall notify in writing the alleged harasser of the complaint and provide notice of investigation.
4. In the event the Superintendent of Schools is involved either as the complainant or alleged harasser, the complainant shall, at the complainant's discretion, be immediately referred to either BCPSEA or a third party who shall have been named by prior agreement of the employer and the individual or their local as the case may be, who shall proceed to investigate the complaint in accordance with Step 3 and report to the Board.

Step 3: Investigation of a Complaint

1. The Superintendent of Schools will appoint a member of management personnel who has training and/or experience in investigating complaints of harassment. Where, in the opinion of the Superintendent of Schools, a suitably trained and experienced member of management personnel is not available, an outside third party suitably trained and/or experienced in investigating complaints of harassment may be appointed.
2. The complainant may request that the investigator be of the same gender as the complainant and where practicable the request will be honoured.
3. The complainant and respondent have the right to representation when being interviewed as part of the investigation.
4. The complainant has the right to a thorough and unbiased investigation, which shall take place within ten working days of the time of filing of the complaint, unless otherwise agreed to by the parties (the complainant and the Superintendent of Schools or designate).

5. The complainant has the right to be informed of remedies taken.
6. Where remedies involve disciplinary action against the respondent the complainant has only the right to be informed that disciplinary action was or was not taken.

Step 4: Remedies

1. Where the investigation determines that harassment has taken place remedies available to the complainant include but are not limited to the following:
 - a) reinstatement of sick leave used as a result of the harassment;
 - b) any necessary counselling where Employee Assistance Plan (EAP) services are fully utilized or where EAP cannot provide the necessary services to deal with the negative effects of the harassment;
 - c) redress of any career advancement or success denied due to the negative effects of the harassment;
 - d) recover of other losses and/or remedies which are directly related to the harassment.

Vexatious Complaints

When the investigation determines that harassment has not taken place and the complaint was made vexatiously, the investigator will report to the Superintendent of Schools. The investigator may make recommendations to the Superintendent of Schools regarding appropriate disciplinary action to be taken.

Harassment and Sexual Harassment Awareness Programs

The Board will make available to all new employees (both those covered by Collective Agreements and excluded staff) a workshop in recognizing and responding to personal and sexual harassment.