310 Personnel and Employee Relations AP – Staff Complaints

1 Purpose

The purpose of this Division procedure is:

- To allow all individuals to be cognizant that acts of discrimination, harassment, or violence are unacceptable and will not be tolerated.
- To identify the process and accountability for reporting and investigating incidents as described within this procedure.

2 Scope

This Division procedure applies to:

- All PRPS employees, contractors, volunteers, and visitors to PRPS sites, as well as anyone carrying out duties on behalf of PRPS; both on/off PRPS sites.

3 Principles

The following principles apply:

- PRPS is committed to a culture of respect and trust in its working and learning environments
- PRPS is committed to educating its employees in the recognition of violence, harassment, and/or discrimination, as well as the operation of the Division's procedures in that regard; all staff have completed the "*Respect in the Workplace*" training (as developed by Alberta Education) as part of the employment agreement; Hour Zero modules are in place to provide annual training around Workplace Bullying and Workplace Harassment and Violence
- All actions within this procedure will occur in an objective and timely manner

4 Compliance

- All individuals mentioned in Section 2 are responsible for understanding and complying with this procedure.
- Failure to comply may result in disciplinary action up to and including termination of employment or exclusion from the school, work site, or organization.

5 Definitions

The Alberta Human Rights Act provides protection from discrimination in the following Protected Areas and Grounds as they relate to PRPS:

Protected Areas:

- Statements, publications, notices, signs, symbols, emblems, or other representations that are published, issued, or displayed before the public
- Goods, services, accommodations, or facilities typically available to the public
- Tenancy
- Employment practices; employment applications or advertisements
- Membership in trade unions, employers' organizations, or occupational association

Protected Grounds: Race, Religious beliefs, Colour, Gender, Gender identity, Gender expression, Physical disability, Mental disability, Age, Ancestry, Place of origin, Marital status, Source of income, Family status, Sexual orientation

PRPS: means Prairie Rose Public Schools

Discrimination: means the unjust or prejudicial treatment of an individual based on the above noted protected areas/grounds as well as any other protected ground identified by the Alberta Human Rights Act.

> *Note: With reference to employment, the above does not apply to a refusal, limitation, specification or preference based on a bona fide occupational requirement.*

Harassment: means any single incident or repeated incidents of objectionable or unwelcome conduct, comment, bullying or action by a person, that the person knows or ought reasonably to know, will or would cause offense or humiliation, or adversely affects an individual's health and safety (physical and/or psychological), occurring directly (in person) or indirectly (via technology or other means), and may include:

(i) conduct, comment, bullying or action because of race, religious beliefs, colour, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status, gender, gender identity, gender expression and sexual orientation

(ii) sexual solicitation, sexual advance, other unwanted verbal or physical conduct of a sexual nature, including but not limited to such actions as unwanted touching (e.g. pinching, patting, rubbing), sexist or "dirty" jokes, pictures or pornographic materials or other sexually suggestive images/materials, derogatory or degrading comments, unwelcome propositions or suggestions, innuendos, and/or comments, inquiries or demands of a sexual nature.

(iii) harassing behavior includes actions that occur at work, at any event or location related to work or resulting from work or that may negatively impact working relationships. Such behaviors may include any actions that create fear or mistrust; may be explicit or indirect, or involve physical, psychological, psychosocial, or be electronic in nature.

Harassment excludes differences of opinion or minor disagreements between co-workers, and any reasonable conduct of a supervisor, related to the supervision and management of an employee or a work site.

Violence: means the threatened, attempted, or actual conduct of a person that causes, or is likely to cause, physical or psychological injury or harm, and includes domestic or sexual violence, whether at the Division's premises or otherwise work-related. Abuse in any form erodes the mutual trust and confidence that are essential to the Division's operational effectiveness. Acts of violence destroy individual dignity, lower morale, engender fear, and break down work unit cohesiveness.

- Acts of violence can take the form of physical contact, such as hitting, shoving, pushing, kicking, or assault. The threat of violence, either overt or covert, can be just as detrimental and damaging as the physical act of violence itself.

- Acts of violence may occur as a single event or may involve a continuing series of incidents. Violence can victimize both men and women, and may be directed by or towards employees, volunteers, students, and parents/guardians.

Complainant: is the individual filing the complaint.

Respondent: is the individual against whom the complaint is filed.

Regulation Statement

General

- Action may be taken against individuals whose conduct has resulted in discrimination, harassment, or violence as defined within
- The legitimate and proper exercise of management's authority or responsibility does not constitute harassment
- No employee shall be subject to retaliation for reporting discrimination, harassment, or violence, as outlined within this procedure. Any attempt at retaliation will be viewed as harassment and will be subject to the provisions of this procedure.
- This procedure does not prohibit an employee who is subject to prohibited behaviour from exercising their rights pursuant to any other law, including submission to the Office of the Registrar (Alberta Teaching Profession Commission), further consideration regarding the Alberta Human Rights Act, or any other professional obligation, in addition to any action under this regulation.

Role of Supervisor – PRPS school leaders (including School Administrators) and/or supervisors are responsible for:

- Being informed and informing employees, volunteers, contractors, and visitors of this procedure on an annual basis
- Taking immediate and appropriate action to address complaints of discrimination, harassment, or violence, in consultation with Human Resources.

Role of Employee – PRPS employees are responsible for:

- Complying with this procedure
- Making the decision to file a discrimination, harassment, or violence complaint
- Cooperating with efforts to report, investigate, and resolve matters related to a complaint, as defined within this procedure.

Reporting *(Refer to 309 – Dispute Resolution for detailed steps)*

- Individuals who believe they have been the subject of discrimination, harassment, or violence are encouraged to make their objection clearly known to the offender. Suggested course of actions include:
    - Meeting directly with the offender in a safe, appropriate setting; as per the Alberta Teaching Profession Commission, this is not a mandatory requirement
    - Request the presence of a supervisor while communicating the concern or complaint to the offender
    - Communicate the concern or complaint to the offender in writing
    - Request that the supervisor communicate the concern or complaint to the offender without being present
- Participants should document any/all interactions
- Should it be necessary, individuals are encouraged to file a formal complaint as soon as possible after the incident. The board reserves the right not to deal with any complaint that is based on alleged incidents that occurred more than six (6) months prior to the date of the complaint.

Resolution Process – a discrimination, harassment, or violence complaint may be resolved by any one or combination of the following:

Direct Action

a. Individuals experiencing perceived prohibited behaviour are encouraged to take direct action by advising the Respondent, in person or in writing and as soon as possible, that their actions are unwelcome or offensive. A Complainant may request assistance from their supervisor or from the Deputy Superintendent, where the Respondent is the supervisor, in communicating their concern to the Respondent. (Note: see Reporting above)
b. Individuals experiencing perceived prohibited behaviour should keep a record of incident and the way in which they were managed.

Informal Resolution

a. If a Complainant is not comfortable confronting the Respondent or if the offensive actions do not stop after the Respondent has been made aware (see Reporting above), the Complainant may choose to proceed with informal resolution, whereby an appropriate supervisor or the Deputy Superintendent is approached to help find a resolution to the concern.
b. If informal processes, where appropriate, do not successfully resolve the issue, the Complainant may choose to initiate a formal complaint.

Formal Complaint

a. A formal complaint must be made in writing to the Deputy Superintendent.
b. The Deputy Superintendent will make a determination as to whether an investigation is the appropriate process to resolve a complaint.
    i. Depending on the circumstances, the Deputy Superintendent may direct the complaint to an alternate process (e.g., alternative dispute resolution strategy; referral to the Employee and Family Assistance Program; or process specific to another Division regulation).
c. The Deputy Superintendent may dismiss the complaint if the Complainant does not provide adequate information within a reasonable time, lacks legitimate

grounds, and/or the complaint does not meet the definitions as described in this procedure.

d. The decision by the Deputy Superintendent to dismiss a complaint or direct the complaint through a different process can be appealed by the Complainant, in writing to the Superintendent, within ten (10) calendar days of being notified of the decision.

Review of Allegations -- workplace investigations are conducted to gather relevant facts and information in order to review allegations of misconduct of an employee; to ensure that actions of employees support Division regulations and policies; and to support accountability and identify opportunities for individual and systemic improvement.

- A review of allegations may be initiated by the Deputy Superintendent where:
  - The Deputy Superintendent is trying to determine if a formal investigation is the appropriate process to resolve a complaint
  - A pattern of inquiries or complaints over a period of time suggests that a specific problem has been identified but not corrected.
  - There is reason to believe that a broader, systemic issue exists that causes or contributes to discrimination, racism, or harassment within the workplace.
  - There is a complaint by an external party against a Division employee if sufficient information is provided and the external parties are willing participants in an investigation process.
  - In any other circumstances the Superintendent deems it appropriate and necessary.

- The findings of any formal review and/or recommendations for further action and/or next steps will be communicated in writing to the complainant and respondent.
  - Benefits and services available through the Division and/or external supports relevant to the circumstances may also be suggested. (e.g., Employee and Family Assistance Program, Inkblot supports, etc.)

- The Complainant may withdraw their complaint at any stage in the complaint or investigation process. The Division, however, may initiate and proceed with an investigation process at the discretion of the Deputy Superintendent.
  - Information collected and retained as part of an investigation may be subject to release as part of a legal process or under Alberta's Access to Information Act (ATIA), while personal privacy rules are handled under the Protection of Privacy Act (POPA).
  - Anonymity and complete confidentiality cannot be guaranteed once a complaint is made. A Complainant and a Respondent have a right to know what has been said about them and by whom, except where information about each other or a third party is not directly related to the complaint, or the Deputy Superintendent:
    i. determines, in accordance with *ATIA/POPA*, that disclosure of personal information will constitute an unreasonable invasion of a third party's personal privacy; or
    ii. reasonably believes that disclosure of information will jeopardize the safety of an individual.

Note: If the Deputy Superintendent is identified as the respondent, the Superintendent shall manage the process. If the Superintendent is identified as the respondent, the Board Chair shall manage the process.

- Complaints will NOT generally be accepted for formal review if:
    i. The Complainant is anonymous or third-party, though follow-up may occur and investigated where warranted and when sufficient information is provided; or
    ii. The issue has been previously investigated, except in circumstances where previously unknown information emerges

Investigation Process

a. The Deputy Superintendent will inform the Superintendent, the Complainant, the Respondent, and the administrative supervisor(s) of the parties involved, of the general nature of the complaint and that an investigation has been initiated.
b. The Deputy Superintendent may conduct an investigation or appoint an alternate individual(s) to complete the investigation process.
c. During any part of the investigation process, the parties have the right to be accompanied by a union/professional association representative or other legal representative, at no additional cost to the Division.
d. Parties are not permitted to audio or video record the investigation interview; however, written notes may be taken. The parties will be provided the opportunity to confirm their statements and/or responses to the Investigator.
e. If the investigator is not the Deputy Superintendent, the investigator will provide a confidential summary report to the Deputy Superintendent, that includes the Investigator's opinion, based on gathered information, on findings specific to each allegation. The standard of proof used by the Investigator will be the balance of probabilities (i.e. whether it is more likely than not the alleged event has occurred), which is the standard used in human rights and civil matters. Findings of the Investigator are not subject to appeal.
f. The Complainant and Respondent shall be provided with a summary of the investigation findings but are not entitled to a full copy of the investigation report. The summary will be prepared in accordance with *ATIA/POPA* and will be provided to the parties by the Deputy Superintendent, with the opportunity to respond in writing within ten (10) calendar days.
    i. Either the Complainant or the Respondent may request a review of the investigator's findings and/or any disciplinary sanctions imposed, to the Superintendent of Schools. Any review conducted by the Superintendent of Schools is final and binding and subject to no further review or appeal.
    ii. Either party has the right to seek civil and/or criminal redress through the courts, file a complaint with the Alberta Human Rights Commission, file a complaint with the Office of the Registrar (Alberta Teaching Profession Commission), file a grievance in accordance with the provisions of any applicable collective agreement or other recourse afforded under the Occupational Health and Safety Act, the Education Act, or the Teaching Profession Act.

g. The Deputy Superintendent will communicate findings, and responses to the findings (where responses are provided within the timeframe indicated) to the administrative supervisor of the Respondent (or the next level administrative supervisor in the line of authority, where the administrative supervisor of the Respondent is a witness or is the Respondent) and will support the respective administrative supervisor(s) in taking appropriate action through Division processes, if an allegation is substantiated. Subject to any legislative requirements, Division processes may include a recommendation by the administrative supervisor to their respective supervisor.
    - Appropriate action will consider the impact of the prohibited behaviour on the Complainant and the work environment and may include, but is not limited to, one or more of the following:
        i. Direction to make a formal, written apology
        ii. Non-disciplinary letter
        iii. Written reprimand
        iv. Direction to participate in a relevant educational opportunity
        v. Recommendation to the appropriate authority for:
            a) Transfer to another Division location
            b) Suspension (with or without pay)
            c) Termination
        vi. Any other measures deemed appropriate by the administrative supervisor
h. Regardless of the outcome of the investigation, the Complainant will not be disciplined if the complaint was made in good faith.
    I. If evidence indicates that the complaint was vexatious or malicious or a deliberate attempt to avoid supervision and/or performance management, the Complainant may be subject to discipline, up to and including a recommendation for termination of employment.
i. Inclusion in the Employee File of any/all information pertaining to a complaint will be at the discretion of the Superintendent. If the investigation does not find evidence to support the allegation(s), no documentation concerning the complaint is retained on the Respondent's Employee File.

Retaliation *(Refer to 309 – Dispute Resolution for detailed steps)*

Any retaliation against an individual for filing a complaint or participating in an investigation or associating with a complainant:

- Is strictly prohibited and may be subject to discipline, up to and including termination of employment or exclusion from a school or work site.
- If an individual believes they have experienced retaliation, they must inform their supervisor immediately. Any/all formal complaints should follow the same process/steps as outlined within this procedure.

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