

OVERVIEW

The River East Transcona School Division (the Division) recognizes the right of every employee to work in an environment free of disrespectful behaviour, including violence, harassment and sexual harassment, bullying, discrimination, and other behaviours considered inappropriate in a school or school-based workplace as set out in the River East Transcona School Division Code of Conduct.

The River East Transcona School Division superintendent or designate is responsible for developing and communicating respectful schools and workplaces policies, complaint reporting and complaint resolution procedures within the organization. Senior administration shall work with all public, employee and other stakeholder groups to:

- recognize disrespectful behaviour;
- report incidents of disrespectful behaviour appropriately;
- participate in complaint handling processes appropriately.

School administration, staff and/or other people in charge at divisional facilities have an obligation to intervene in situations where disrespectful behaviour is directly observed or overheard and shall take all reasonable and practical action to attempt to resolve informal reports of disrespectful behaviour. The names of individuals associated with a respectful school or workplace complaint and/or the circumstances related to the complaint will be held in confidence except where disclosure is:

- necessary to investigate the complaint or take corrective action with respect to the complaint, or
- required by law.

No Retaliation

An employee who raises a complaint of disrespectful behaviour in good faith shall not be subject to any penalty or retaliation.

Confidentiality

The Division will not disclose the name of a complainant or an alleged harasser or the circumstances related to the complaint to any person except where disclosure is necessary to investigate the complaint or take corrective action with respect to the complaint or required by law.

All individuals who participate in an investigation, including, but not limited to the complainant, the person receiving the complaint, witnesses, the respondent, the investigator, and members of human resources shall maintain confidentiality throughout the process. Failure to maintain the confidentiality of the process is a breach of this policy and may result in disciplinary measures up to and including dismissal.

However, this paragraph does not preclude individuals from disclosing information to health professionals, other professionals and immediate family members for the purpose of obtaining help and support, including through the Employee Assistance Program.

Interference in Investigations

Any interference or attempt at coercion in the investigative process by or on behalf of the complainant or the respondent shall be considered grounds for immediate disciplinary action.

False allegations

Complaints or notification of incidents made in bad faith are considered harassment under this policy and will be investigated. If it is found that an employee made a complaint that was intentionally false or malicious, disciplinary action up to and including dismissal will result.

Legal Rights

The Respectful Schools and Workplaces Policy (Employees) is not intended to discourage or prevent an individual from exercising their legal rights pursuant to any other law. The complainant may elect to contact the Human Rights Commission at any time before, during or after the division's involvement in resolving the complaint. An employee has the right to file a complaint with the Manitoba Human Rights Commission if they believe they have been harassed on the basis of personal characteristics as defined in this policy. Where provisions with respect to disrespectful behaviour (i.e., harassment, unjust discrimination) exist within a collective agreement, the collective agreement provisions will apply.

Employee Representation

At any step of the reporting, investigation and corrective action process, the complainant or respondent may choose to be accompanied by a union representative in the case of unionized staff, or a co-worker or other counsel in the case of non-unionized staff. The union representative, co-worker or other counsel must be advised as to the requirements of confidentiality.

PROCEDURE

An employee who believes they have been subjected to disrespectful behaviour in the workplace, or an employee who is offended through third party observation of disrespectful behaviour to others, has the following options available at the school or immediate workplace level to resolve the situation.

(a) Speak directly

The employee may, wherever possible and appropriate, speak directly with the individual who they believe has exhibited disrespectful behaviour, and tell them to stop the behaviour that the employee deems disrespectful. This can be done verbally or in writing. If the complainant is not comfortable doing this, or if this course of action is inappropriate given the circumstances, or if the behaviour does not stop, the complainant is strongly encouraged to seek support or report the incident(s) – see b) and c), below.

(b) Seek support

The employee may notify an administrator or person in charge, or a representative of the human resources department. This may be done in person, by phone, in writing or by email.

The person receiving the complaint will advise and consult with the human resources department and will promptly organize an initial meeting or conversation with the complainant. In the case of a bystander giving notification of an incident, the person receiving the complaint will contact the person who is allegedly the target of the behaviour.

During the initial meeting, the person receiving the complaint will explain the various options available for resolving the complaint informally or formally.

Informal channels may include:

- An offer of coaching and support so that the complainant has greater comfort or confidence speaking directly to the respondent, if that is their preference;
- A facilitated conversation or mediation (involves engaging a neutral third party who facilitates a discussion between the parties, and who will attempt to draw out a solution from the two parties and/or propose a resolution, but does not impose a resolution);
- Seeking input from the complainant to identify other relevant informal resolution options that would be acceptable to them, as appropriate.

If the complaint can be or is resolved to the complainant's satisfaction via one of the informal channels described above, then the matter may be dispensed with.

If the complaint is not resolved to the complainant's satisfaction via an informal channel, or if it is determined that the informal channel is not appropriate, the complainant should pursue option c), file a formal complaint.

Note that an informal resolution process may not always be appropriate. Depending on the circumstances, there may be cases where there will be no other choice but to proceed with a formal investigation.

(c) File a formal complaint

The employee may file a formal complaint in writing directly with the superintendent or their designate. See Formal Complaint Reporting Procedure.

An employee who has made a complaint under option b) or c) can end the resolution process at any time by informing the person to whom they reported the complaint that they no longer wish to continue with the resolution process. For more clarity, complainants cannot be compelled to continue a process that they have initiated, but the Division retains the right to initiate a process where the safety at others is at risk.

When determining if disrespectful behaviour has occurred, the Division shall ensure the complaint is reviewed and evaluated from the perception or frame of reference of the direct or indirect receiver of the disrespectful behaviour. All behaviours shall be judged on the basis of their consistency with human rights legislation and respect for human dignity.

If a person is found culpable of disrespectful behaviour, the person shall be considered in violation of the Respectful Schools and Workplaces Policy (Employees) and be subject to disciplinary and/or corrective action, up to and including termination of employment.

If the complainant is not satisfied with the resolution of their complaint, they may appeal the resolution. See Appeal of Discipline and Corrective Actions.

Formal Complaint Reporting Procedure

The following procedure is to be followed once an employee has determined they want to pursue a formal resolution process, or when an informal resolution process is not appropriate or no longer appropriate given the circumstances.

- (1) The complainant will document their complaint for submission to their immediate supervisor. If the immediate supervisor is the respondent, the complainant is encouraged to make their report to the person in charge at the organizational level above their immediate supervisor. This process may be elevated up to the superintendent or designate, if required.
- (2) The written complaint should contain the following information:
 - (a) Name of respondent(s);
 - (b) Specific details of the alleged incident(s) such as dates, times, specific statements and details regarding the sequences of the disrespectful behaviours and actions;
 - (c) Specific offense taken and/or injury incurred resulting from the disrespectful behaviour;
 - (d) Witnesses other than the complainant to the disrespectful behaviour;
 - (e) Corrective action the complainant would like to see implemented in order to resolve the complaint and make them whole and satisfied.

Alternatively, the person receiving the complaint (e.g., direct supervisor) will collect this information from the complainant via an interview and will draft the submission on the complainant's behalf. The written submission will be reviewed and finalized by the complainant.

- (3) Once the supervisor or person in charge receives and notes the complaint, they shall advise and consult with the human resources department to help guide resolution of an incident of disrespectful behaviour. The human resources department will be responsible to communicate with the superintendent to keep them appropriately informed, in confidence and as required.
- (4) With support from human resources, it will be determined whether the complaint falls within the definitions contained in this policy and will promptly inform the complainant of this determination. For this purpose, those receiving

the complaint will assume that the factual allegations underpinning the complaint are true. The complainant will promptly be informed as to the decision regarding whether the allegations fall within the definition of harassment, violence or discrimination under this policy.

- (5) Following the decision that the complaint can be processed under this policy, the respondent will be promptly informed in person and in writing:
 - (a) that a complaint was made against them,
 - (b) of the general nature of the complaint,
 - (c) that an investigator will be appointed promptly, and that disclosure of the allegations will be forthcoming, and
 - (d) of the interim protective measures that must be put in place (if any).

It will be part of the investigator's role to inform the respondent of the specific nature of the allegations before interviewing them, as further described below.

Investigation Procedure

- (1) If an investigation is warranted, an investigator will be assigned to the complaint. This person may be an external or internal investigator.
- (2) The investigation procedure will be based on the individual circumstances of each case. The investigator is responsible for conducting an investigation that is fair, impartial and appropriate given the seriousness and complexity of the allegations raised. A decision will be made only after the investigator has gathered all the necessary facts and both parties have had an opportunity to be heard.
- (3) The fact-gathering process will usually include:
 - (a) separate interview(s) of the complainant, the respondent and the relevant witnesses (if any) in order to obtain their version of the events;
 - (b) follow-up interviews, when appropriate;
 - (c) collection and review of any physical evidence (emails, pictures, text messages, etc.);
 - (d) a visit to the scene of the incident, where appropriate.
- (4) Following the conclusion of the investigation, the investigator will prepare a report.

If, after the initial investigation, it is found that the specifics of the complaint do not have legitimacy or merit, the complaint may be dispensed without further investigation.

The complainant shall be informed of the decision by the person who received the complaint or member of the human resources department in writing. The complainant may appeal this decision to the superintendent, Human Rights Commission, or other applicable regulatory body with jurisdiction (see Appeal Process).

If the complaint is found to be substantiated, corrective and/or restorative measures will be implemented.

CORRECTIVE ACTION

Based on the complaint investigation findings, the superintendent or designate shall determine if, and to what degree, disciplinary action is warranted against the complainant or the respondent.

Corrective action may be taken in order to ensure a workplace free from harassment, violence and discrimination and prevent a reoccurrence of the incident(s) or of similar incidents. These measures may be disciplinary, non-disciplinary or both, depending on the circumstances. They include, but are not limited to:

- an oral or written apology,
- coaching or training,
- restructuring of reporting relationships or duties,
- a verbal reprimand,
- a written reprimand,
- suspension without pay,
- dismissal, or
- any other appropriate measures or a combination of the above.

Appeal of Discipline or Corrective Actions

Any employee covered under an existing collective agreement has the right to appeal any discipline or corrective action issued through the grievance provisions of their collective agreement.

In all other cases: within seven calendar days of the employee becoming aware of disciplinary action being recommended by the superintendent or designate, the employee may appeal the severity of the discipline/action to the superintendent or designate. The superintendent or designate shall review the employee's appeal details and render a decision on the discipline/action or may substitute an alternative solution.

DEFINITIONS

The Division adopts the following definitions for the purposes of this Respectful Schools and Workplaces (Employees) Regulation:

(1) **Complainant:**

An employee who is the direct or indirect receiver of disrespectful behaviour and who has filed a complaint with the Division.

(2) **Direct Receiver:**

An employee directly subject to disrespectful behaviour.

(3) **Indirect Receiver:**

An employee not directly subjected to disrespectful behaviour but has been offended through third party observation of disrespectful behaviour to others.

(4) **Respondent:**

An employee against whom the respectful schools and workplaces complaint has been made.

(5) **Workplace:**

A River East Transcona school or school-based workplace (e.g., Administration Offices, Transportation Department office, etc.) or place where work is conducted (e.g., a training facility).

(6) **Disrespectful behaviour:**

Unethical behaviours that undermine trust relationships in school and work settings including violence, harassment and sexual harassment, bullying, discrimination, and other behaviours considered inappropriate in a school or school-based workplace as set out in the River East Transcona School Division Code of Conduct.

(7) **Violence:**

Acts or behaviours that include, but not limited to:

- willfully causing harm to a person, or
- willful intent to cause harm to a person.

(8) **Harassment and Sexual Harassment:**

Acts or behaviours that can be considered harassment include, but not limited to:

- (a) Engaging in a course of abusive, vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.
- (b) Any inappropriate conduct, comment, display, action or gesture by a person that is made on the basis of a personal characteristic as defined in this policy
- (c) Sexual harassment, which may include:
 - (i) A series of objectionable and unwelcome sexual solicitations or advances.
 - (ii) 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 to reasonably know that it is unwelcome.
 - (iii) Reprisal or threat of reprisal for rejecting a sexual solicitation or advance.
 - (iv) Sexually oriented behaviour or remarks which create a negative psychological environment for work or study such as, but are not restricted to:
 - demeaning remarks based on gender;
 - suggestive jokes about sex;
 - inappropriate comments about clothing, physical characteristics or activities;
 - inappropriate displays of sexual pictures or materials;
 - derogatory terms, graffiti which degrades a person based on his/her sex or sexual orientation;

- leering, ogling, and suggestive or insulting sounds;
- unwanted questions or comments about one's private life;
- unwanted physical contact, such as brushing up against one's body, patting or pinching;
- sexual assault (an offence under *The Criminal Code*).

(9) **Bullying:**

Severe, repeated conduct that adversely affects an employee's psychological or physical well-being if it could reasonably cause an employee to be humiliated or intimidated, or a single occurrence, if it is shown to have a lasting, harmful effect.

Bullying takes place in a context of a real or perceived power imbalance between the people involved and is typically, but need not be, repeated behaviour.

It may be direct (face to face) or indirect (through others), and it may take place through any form of expression – including written, verbal, or physical – or by means of any form of electronic communication (referred to as cyber-bullying), including social media, text messaging, instant messaging, websites, or email.

(10) **Discrimination**

Treating a person or group differently, to their disadvantage and without reasonable cause, on the basis of a personal characteristics as defined in this policy.

(11) **Personal characteristics**

The Manitoba Human Rights Code prohibits harassment or unjust discrimination of employees on the basis of any of the following characteristics:

- (a) ancestry, including colour and perceived race;
- (b) nationality or natural origin;
- (c) ethnic background or origin;
- (d) religion or creed, or religious belief, religious association or religious activity;
- (e) age;

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- (f) sex, including pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;
 - (g) gender-determined characteristics or circumstances other than those included in other sections of the Code;
 - (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 other remedial appliance or device.

Note: Not all negative behaviours will fall within the definitions in this policy. Some examples that do not constitute disrespectful behaviours are listed below.

- Carrying out managerial duties in a respectful and professional manner (for example, following up on work absences, taking corrective or disciplinary measures when justified or counselling an employee about their performance appraisal when done in a non-discriminatory and respectful manner).
- Taking a single or isolated action that cannot reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee.
- Excluding individuals from a particular job based on specific occupational requirements necessary to accomplish the safe and efficient performance of the job.
- Offering constructive criticism about, for example, work mistakes or communication skills.

Each case is unique and must be examined in its own context, taking into account the surrounding circumstances and specific relationships in order to determine whether a particular behaviour or pattern of behaviour constitutes a violation of this policy.

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