

AP 425 – Bullying and Harassment (Staff)

Purpose

A fair, collaborative, inclusive and respectful workplace is a critical prerequisite to Nanaimo Ladysmith Public Schools (NLPS) commitment to delivering high quality public education and cultivating a reputation of excellence. Therefore, the Board is committed to creating and maintaining a respectful learning and working environment free from harassment and bullying where people, regardless of their roles or levels of responsibilities, are treated and treat each other respectfully and professionally in their interactions.

NLPS is committed to providing, in consultation with the unions and other employee groups, an awareness program to every NLPS employee so that they know and understand:

- what constitutes bullying and harassment.
- the process for dealing with incidents of bullying and harassment.
- what remedies are available if it is determined that they have been bullied or harassed.
- the importance of confidentiality regarding bullying and harassment complaints.

NLPS considers bullying and harassment in any form (including sexual harassment) to be totally unacceptable and will not tolerate its occurrence.

Application of this Administrative Procedure

Everyone shares responsibility for a respectful workplace. This administrative procedure applies to all individuals who interact with NLPS employees, regardless of their role or function. This includes all NLPS employees, students, parents, trustees, volunteers, third parties doing business with NLPS, and members of the general public.

This administrative procedure applies to all interpersonal communication regardless of where or when it occurs, and includes electronic communications such as email or social media. It is the expectation of the Board of Education that all employees and persons, regardless of location, will strive to maintain the highest level of professional and personal courtesy when interacting with NLPS employees.

Should an incident of bullying or harassment involve a non-workplace party or student/parent or any other individual that an employee comes into contact with at the workplace, the Superintendent of Schools or designate, will determine the course of action and procedures that are practicable and reasonable to follow and the parties will be so notified.

Definitions:

Bullying and harassment as per the WorkSafeBC Occupational Health and Safety Regulations, includes any inappropriate conduct or comment by a person towards a NLPS employee that the person knew, or reasonably ought to have known, would cause that employee to be humiliated or intimidated, but excludes any reasonable action taken by NLPS or a supervisor relating to the management and direction of employees or the place of employment.

Complainant refers to a NLPS employee who believes they have been subjected to behavior that is defined as bullying or harassment.

Confidentiality means that information about a complaint will be shared only with those who need to know in order to facilitate the investigation process. The respondent and complainant will be granted access to review the report at the end of the investigation. All participants in the investigation process are to keep information related to the complaint confidential and not disclose it to anyone other than their union representatives.

Cyberbullying involves the use of communication technologies such as the Internet, social networking sites, websites, email, text messaging and instant messaging to repeatedly intimidate or harass others.

Cyberbullying includes:

- Sending mean or threatening emails or text/instant messages
- Posting embarrassing photos of someone online
- Creating a website to make fun of others
- Pretending to be someone by using their name
- Tricking someone into revealing personal or embarrassing information and sending it to others

Cyberbullying affects victims in different ways than traditional bullying. It can follow a victim everywhere 24 hours a day, 7 days a week, from school, to the mall and all the way into the comfort of their home - usually safe from traditional forms of bullying.

Discrimination

The Human Rights Code forbids discrimination based on certain characteristics, often referred to as “protected grounds”. The characteristics may be the individual’s actual characteristic or they may be how the individual is perceived. The protected grounds in the BC Human Rights Code are:

Race	Ancestry	Place of Origin
Colour	Political Beliefs	Marital Status
National or Ethnic Origin	Age	Mental Disability
Religion	Gender Identity or Expression	Physical Disability
Sex	Sexual Orientation	Family Status
Indigenous Identity		

A conviction for which a pardon has been granted or a record suspended.

Workplace is any environment or location, including electronic environments, where a NLPS employee is fulfilling their duty and/or role connected with NLPS. These include, but are not limited to:

- Offices, staff rooms, classrooms, or lunch rooms, and within or on other NLPS property
- Locations where events associated with and including extra-curricular activities take place
- Locations outside of the NLPS operated premises where activities such as field trips, work-related conferences, training sessions, travel, community events or social gatherings take place
- Other locations where workplace bullying and harassment (including sexual harassment) may have a subsequent impact on the work relationship, performance or environment

Employee is an individual who receives a salary or wages from the NLPS for work performed.

Mediation involves an unbiased third party acting as facilitator in direct communication between the complainant and respondent where both parties voluntarily agree to this process. The respondent will be provided with a copy of the complaint. The complainant and respondent will be provided a copy of the report at the end of the investigation. All participants in the investigation process must keep all information related to the complaint and the investigation process confidential and not disclose such information to anyone other than their union representative, or lawyer.

Respondent refers to a person who is alleged to have engaged in bullying and harassment.

Restorative practice is the management of conflict and tension by repairing harm and rebuilding relationships.

Sexual Harassment means conduct or comments of a sexual nature that is unwelcome, and that detrimentally affects the work environment or leads to adverse job-related consequences. Sexual harassment includes, but is not limited to:

- unwanted touching
- unwelcome sexual flirtations
- advances or proposition
- sexually suggestive, obscene or degrading comments or gestures
- offensive jokes of a sexual nature
- leering or staring; displaying or circulating pictures or other material of a sexual nature
- unwelcome questions or remarks about a person's sex life, appearance or clothing

Board Policy / Administrative Procedure Linkages

- P 2.10 - Inclusion Policy
- AP 419 - Violence in the Workplace
- AP 325 – Appeals

Discrimination in the Workplace

NLPS is committed to:

- creating an environment in the school district which promotes non-discrimination consistent with the Human Rights Code.
- hiring employees on the basis of merit consistent with human rights laws.
- reducing language and cultural barriers.
- communicating effectively with employees, parents and other partner groups in our diverse community.

To differentiate between harassment and discrimination, the following definitions are offered for clarity:

Discrimination: means any form of unequal treatment based on the prohibited grounds, whether imposing extra burdens or denying benefits. It may be intentional or unintentional. It may involve direct actions that are discriminatory on their face, or it may involve rules, practices or procedures that appear neutral, but disadvantage certain groups of people. Discrimination may take obvious forms, or it may happen in very subtle ways. Even if there are many factors affecting a decision or action, if discrimination is one factor that is a violation of this procedure.

Harassment: means a comment(s) or action(s) that is/are known, or ought reasonably to be known, to be unwelcome. It can involve words or actions that are known or should be known to be offensive, embarrassing, humiliating, demeaning or unwelcome, based on prohibited ground of discrimination.

This administrative procedure focuses on the prompt resolution of complaints. However, this AP does not prevent an employee from filing a complaint under Section 13 of the Human Rights Code; employees are not entitled to duplication of process.

Employee Responsibilities

NLPS employees must:

- refrain from engaging in bullying and harassment (including sexual harassment) of other employees, supervisors, the employer or persons acting on behalf of the employer.
- report occurrences of bullying and harassment (including sexual harassment), observed or experienced in the workplace.
- apply and comply with NLPS Policies and Administrative Procedures on bullying and harassment (including sexual harassment).
- participate in training sessions provided by NLPS.

Employer Training Responsibility

NLPS has a continuing goal, to promote a bullying and harassment free workplace through an effective training program that promotes attitudinal change. NLPS and employees will be encouraged to achieve this goal.

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Training should include both teaching and non-teaching staff. When appropriate, parents and the community may be invited to participate.

Where feasible, training regarding a specific culture should be provided by a person of that culture:

- Training programs shall include such topics as multicultural education implementation, anti-racism, cross-cultural issues, human rights, valuing diversity and intervention strategies.
- Newly hired employees must receive training on the prevention of bullying and harassment.

Bullying and harassment (including Sexual Harassment) is not:

- expressing differences of opinion.
- offering constructive feedback, guidance, or advice about work-related behaviour and performance.
- making a legitimate complaint about someone's conduct through established procedures.
- supervising and Managing Employees.

Human Rights Code/Criminal Code/Grievance Procedure Reference

Filing a complaint under these procedures is not intended to preclude rights under the Collective Agreement, BC Human Rights Code, Criminal Code of Canada or other avenues of redress open under the law.

Complaint Reluctance

The Complainant may choose to not formalize or withdraw the complaint at any stage. However, NLPS may be obliged under these procedures, to continue the inquiry into the complaint and to take whatever remedial action it deems appropriate, or refer the matter to another process or procedure.

Confidentiality

All records of the complaint filed at Step 2 of the Complaint Procedure Steps, including contents of meetings, interviews, results of inquiries and other relevant material will be kept confidential, except where disclosure is required by a disciplinary or other remedial process or required by operation of law or as a consequence of contemplated or actual litigation.

The Complainant and the Respondent and any witnesses interviewed in an investigation are to maintain strict confidentiality about the complaint.

Counselling

The NLPS Employee Family Assistance Program (EFAP) is available to all employees and their immediate families and offers counselling and resource assistance on a voluntary and confidential basis.

No Reprisals

It is a breach of this Administrative Procedure to take retaliatory action or reprisal against a person who, in good faith, raises a concern or files a complaint under this Administrative Procedure, or for:

- invoking these procedures (whether on behalf of oneself or another individual).
- participating or co-operating in any inquiry under these procedures.
- associating with a person who has invoked these procedures or participated in these procedures.

Complaint Procedure Steps

This Administrative Procedure contains two (2) steps, which are outlined below. It is noted that some exceptions to this may apply, and Step 1 may be by passed and the complaint initiated at Step 2.

All parties involved in a complaint agree to deal with the complaint expeditiously; however, timelines set out in this procedure may be subject to variation by a representative of NLPS, after consultation with the parties and their union representative, if applicable.

Complaints must be made within one year of the alleged contravention, or within one year of the last alleged incident with continuing contraventions. Only in exceptional circumstances will complaints be accepted after a one-year time period.

Step 1 - Speak Up

- a) The Complainant is advised to record the details surrounding the incident(s) including times, dates, places, people involved, names of witnesses, if any, what was said or done, and circumstances surrounding the incident(s).
- b) The Complainant is encouraged to bring the matter to the attention of the Respondent calmly, but firmly, making a direct and clear objection indicating that the comment or conduct is not acceptable, is unwelcome, will not be tolerated and must stop. This is often an effective way to resolve the issue and end the bullying or harassment (including sexual harassment). It is important that both the Complainant and Respondent individually document any communication regarding the complaint.
- c) Before proceeding to Step 2, the Complainant may choose to either correspond with or approach their Supervisor, Union Representative, or designate to report their complaint and to discuss potential means of resolving the complaint and to request assistance in resolving the matter. A resolution may be attempted using the Informal Resolution Outcomes outlined below. If the matter is resolved to the Complainant's satisfaction, the matter is deemed to be resolved.

Informal Resolution Outcomes

- a) All discussions shall be solely an attempt to mediate the complaint;
- b) Any and all discussions shall be completely off the record and will not form part of any record;
- c) The Complainant, Respondent, and Supervisor(s) shall be present at such meetings;

Should a resolution be reached between the Complainant and Respondent at Step 1, this matter will be considered resolved.

Step 2 – Formal Process

If a complainant:

- does not feel comfortable talking to the Respondent;
- is not satisfied with the result of the initial contact with the Respondent; or
- finds the bullying and harassment (including sexual harassment) continues,

the Complainant may file a complaint with the Superintendent or designate or, where the Superintendent or designate is the alleged harasser, with the Executive Director of Human Resources. If deemed appropriate, the Superintendent, or designate, will appoint an independent investigator.

- a) When initiating the complaint process via a written complaint, the ***Workplace Bullying and harassment Complaint Form is to be used***. *This form is found attached* to these procedures. The form allows the complainant to outline the details of the particulars of the allegations. The form is to be submitted along with any other supporting documentation, to the Superintendent of Schools or designate or, where the Superintendent or designate is the alleged harasser, with the Executive Director of Human Resources. If deemed appropriate, the Superintendent, or designate, will appoint an independent investigator.
- b) The Superintendent or designate will review the particulars of the complaint. Upon conclusion of such a review, the Superintendent or designate shall determine the best course of action, which may include an investigation and/or mediation and/or an alternate dispute resolution;
- c) The Respondent cited in a complaint shall be provided with notice of the complaint, and shall be provided with a copy of the Workplace Bullying and harassment administrative procedure and Complaint Form where one is filed by the Complainant. The Superintendent of Schools or designate is responsible for ensuring that the Respondent receives a copy of the written complaint.
- d) The Superintendent of Schools or designate will inform both the Complainant and the Respondent that:
 - confidentiality will be upheld.
 - they have the right to representation during any discussions or meetings held during the process.
 - they have the right to a fair investigation.
 - they have an option of mediation if both the Complainant and Respondent agree.
 - the respondent has the right to receive a copy of the complaint.
 - relevant witnesses will be called upon for both parties.
 - vexatious or malicious complaints will not be tolerated.
 - the process will be expedited to the best of NLPS' ability.
 - the parties will be provided with a summary of the outcome.
 - both parties have access to EFAP.

Resolution

Investigations will include interviews with the complainant and respondent, and any witnesses as well as review of all relevant evidence. Following the completion of the investigation, the Employer will report to the Complainant and the Respondent on the summary of findings. The employer will only convey that the appropriate level of action has been levied and will not provide further details as this is a personnel matter. NLPS will keep a written record of investigations, including the findings.

Vexatious/Malicious Complaints

Complaints or reports of bullying and harassment are serious matters. Employees who are found to have made frivolous, vexatious/Malicious, bad faith, or malicious complaints of bullying and harassment may be subject to disciplinary action, up to and including dismissal.

This Administrative Procedure is backed up by the following Sections of the Workers Compensation Act:

- Section 115(1) (a) requires an employer to take all reasonable steps in the circumstances to ensure the health and safety of its workers.
- Section 115(2) (e) of the *Act* requires an employer to inform, instruct, train and supervise workers to ensure their safety and that of other workers.

Other legislation, policies and contracts must be considered in conjunction with this administrative procedure:

- This Administrative Procedure is not intended to address incidents of discrimination under the BC Human Rights Code.
- The conduct of the Board of Education is addressed in Policy 2.3 - Enforcement of the Trustee Code of Conduct Procedure.
- Inappropriate behaviour by an adult toward a student is not covered by this Administrative Procedure. The School Act, the Ministry of Education's Teacher Regulation Branch, the Child, Family and the Community Services Act will define and govern the standard of behaviour required of adults when dealing with students.
- Inappropriate behaviour by an employee toward a parent or volunteer is not covered by this Administrative Procedure.
- This Administrative Procedure excludes the legitimate exercise of management rights and any reasonable action taken by the NLPS or a supervisor relating to the management and direction of employees or the place of employment, including supervisory decisions involving work direction, evaluation, investigations and disciplinary action.
- This Administrative Procedure does not apply to the reasonable exercise of parent and student rights in bringing forward concerns about the treatment of students by employees, when done in a respectful manner. Parents and students can challenge the decision of NLPS staff through the NLPS Appeal and Complaint Procedures (AP 325).
- This Administrative Procedure does not cover interpersonal conflicts or interpersonal relations, unless they involve bullying or harassment.

COMPLAINT FORM
Workplace Bullying and Harassment

PRIVATE AND CONFIDENTIAL

Complainants may seek assistance before completing this form.

This form, along with any documentation supporting this complaint (e.g. emails, handwritten notes, photographs, or physical evidence like vandalized personal belongings), is to be submitted to the Superintendent or designate. (If the Respondent is the Superintendent of Schools or designate, submit this form and supporting documentation to either the Executive Director of Human Resources or a third party who shall have been named by prior agreement of the District and the Union).

SECTION 1 – COMPLAINANT

Name of Complainant:

School/Department/Work Site:

Phone:

Email:

Signature:

Date:

SECTION 2 – RESPONDENT(S)

Name of Respondent:

School/Department/Work Site:

Phone:

Email:

SECTION 3 – NATURE OF THE COMPLAINT

Indicate what form of harassment or bullying or discrimination has allegedly occurred. Complaints of discrimination must be based on one or more of the prohibited grounds as set out in the Human Rights Code of British Columbia.

SECTION 4 – INCIDENT(S)

Description of Behaviour Start with the most recent incident first. Follow in reverse chronological order.

Provide a detailed account of the incident(s) including, as much as possible, verbatim or “quoted” comments, descriptions of physical demeanour, gestures, tone of voice, facial expression, etc. Times and dates should be included in this section. Verbatim comments should be placed inside quotation marks. If you are paraphrasing, please indicate this by using appropriate phrases (e.g. ...said something like...). Include the names of any witnesses to the incident at the end of this section.

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Incident 1

Date: _____ **Approx. Time:** _____ **Location:** _____
Description: _____
Witness (es): _____

Incident 2

Date: _____ **Approx. Time:** _____ **Location:** _____
Description: _____
Witness (es): _____

Incident 3

Date: _____ **Approx. Time:** _____ **Location:** _____
Description: _____
Witness (es): _____

SECTION 5 – DESIRED OUTCOME

What would you like to see happen in order for you to consider this issue to be resolved?

SECTION – 6 BACKGROUND INFORMATION

If relevant and appropriate, provide background information, for example, the workings of the school/area involved, any relevant history in the school/area involved, and/or any unique features of the school/area that might help us understand the context of the complaint. Also, provide a brief description of any events or behaviours that led up to the first reported incident.

Complainant Signature: _____ **Date:** _____

Superintendent or designee’s Signature (indicating receipt): _____ **Date:** _____

The information contained in this form is of a highly confidential nature and will be protected as outlined in the District’s procedures to address workplace bullying and harassment (including sexual harassment) incidents and complaints.

Adopted: April 28, 2004

Amended: February 5, 2020, July 2022, January 2023

References: The BC Human Rights Code ‘AP 425 – Harassment Forms’