

Click for video overview / Klik vir oorsig video 

GUIDELINES FOR DEALING WITH HARASSMENT AND BULLYING IN SCHOOLS¹

Harassment and bullying affect the school's code of conduct as well as relationships in the school, which makes it a governance issue for which the school governance structure must accept responsibility. These guidelines advise schools on how to deal with harassment and bullying amongst learners themselves as well as harassment and bullying of educators and non-educators by learners and/or parents and finally staff-onstaff harassment or bullying.

This document must be read in conjunction with the learners' code of conduct and the FEDSAS "Bullying and cyberbullying policy" and "Code of conduct for parents and visitors".

Harassment and bullying of learners and school staff can be tackled effectively with the school governance structure's support and through solidarity among staff, learners and parents. The key to securing a supportive and non-threatening education environment is being a value-driven school, having a strong harassment and bullying policy² with zero tolerance for harassment and bullying, along with sound cooperation between the different partners in education.

The right values and school policies

The entire school community should endorse and live in accordance with principles and values that are opposed to any form of harassment or bullying. These principles and values must be part and parcel of day-to-day life at the school. An accepted set of values

¹ This document should be read together with the document: "An overview of the functioning of independent schools in South Africa".

² See the FEDSAS policies on harassment, bullying and cyberbullying, as well as the code of conduct for parents and visitors.

and ethical behaviour within the school environment will reduce incidents of harassment. Learners and staff must first learn to respect one another and one another's convictions before any true progress will be made in preventing harassment and bullying.³ Parents must also buy into these values and be requested to respect other parents, school staff, learners and any other visitor to the school grounds.⁴

If schools are to reduce levels of sexist, racist, homophobic and any other form of harassment and bullying, explicit strategies are required. School policies should make it clear that no racist, sexist and homophobic harassment and bullying, harassment on the grounds of religion or belief, or any other form of harassment, will be tolerated. The school policies should state that the school will take action to protect all learners and staff from all forms of harassment, and must clearly set out the procedure for handling any alleged harassment.

What is harassment?

Harassment constitutes unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. It can cause a person to feel threatened, humiliated or patronised. Such behaviour can interfere with the person's work or educational performance, undermine job security and create a threatening or intimidating working or learning environment. Whether harassment is intentional or unintentional, the key issue is its effect on the person rather than the motive of the perpetrator.⁵ Harassment means directly or indirectly engaging in conduct that the perpetrator knows or ought to know causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person.⁶

People can be subjected to harassment on a wide variety of grounds, including their sex, transgender status, marital or civil partnership status, race, presumed or actual sexual

³ Contact your provincial manager for information on becoming a value-driven school.

⁴ See the opinion "The right of access to the school grounds and school activities", which deals with the governance structure's right to control access to school grounds when parents misbehave.

⁵ <https://www.teachers.org.uk/node/12522>.

⁶ The Protection from Harassment Act, 2011.

orientation, disability, real or perceived state of health, religion or belief, age, class, cultural or language differences, or membership of a specific organisation or group.⁷

Harassment can take many forms, including:⁸

- the display or distribution of offensive material, graffiti or badges;
- non-verbal abuse, such as offensive gestures and body language;
- inappropriate comments about someone's appearance;
- intrusive questioning about someone's private life;
- verbal abuse, such as suggestive remarks, "jokes" and name-calling;
- physical contact, such as unnecessary touching; or
- threatened or actual physical abuse or attack.

Learners can harass, intimidate and disrespect fellow learners or even a teacher or staff member. This may include various forms of abuse. Verbal abuse is particularly prevalent where learners bully teachers or one another. Mental abuse occurs where a learner threatens a fellow learner or teacher, leaving the victim fearing the perpetrator as well as cringing from life outside the school building. Emotional abuse include but are not limited to where a victim is harassed sexually or online, and the reputation of the victim-teacher and his or her career or any learner are put in jeopardy.⁹

Parents can also be guilty of harassment when they, for example, verbally abuse a staff member, a coach or an umpire. Parents may for instance be unhappy with decisions made by school staff, and then select to deal with it in the wrong way. For this reason,

⁷ [tps://www.teachers.org.uk/node/12522](https://www.teachers.org.uk/node/12522).

⁸ The Protection from Harassment Act defines harassment as any conduct that causes harm or may cause harm by unreasonably—

- following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
- engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or
- sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of, the complainant or a related person.

⁹ <http://nobullying.com/students-bullying-teachers-a-new-epidemic/>.

the school must clearly communicate to parents the manner in which any complaints must be lodged.

What is bullying?

Bullying is a form of discriminatory harassment in which the bully undermines, belittles or assaults the victim. Bullies may seek to exploit others' perceived personal weaknesses, either because they enjoy the feeling of power, because they are under pressure themselves, or even because they believe such behaviour is the best means of managing relationships.¹⁰

Learner bullying of teachers may occur in and outside class. The former takes attention away from the lesson and the teacher, which puts the learner in control of the classroom.¹¹ The latter may occur through cyberbullying via social media, by sending derogatory texts, images and instant messages to other learners, by merely disrespecting the staff member in the hallway or at a school event, or by spreading false and harmful rumours among fellow learners and staff members of the school.¹²

Common features of harassment and bullying¹³

- The different forms of behaviour constituting harassment and bullying all entail behaviour that is ***unwanted by the recipient***.
- In many cases, the behaviour of the alleged harasser or bully ***may not be easily linked to any specific factor*** and may in fact ***appear to be completely arbitrary***.
- Both harassment and bullying are very often derived from the ***relationship between the two people*** involved.
- ***Abuse of power*** is normally a key element.

¹⁰ <https://www.teachers.org.uk/node/12522>.

¹¹ <http://nobullying.com/students-bullying-teachers-a-new-epidemic/>.

¹² <http://nobullying.com/students-bullying-teachers-a-new-epidemic/>.

¹³ <https://www.teachers.org.uk/node/12522>.

- Harassment or bullying may also be motivated by **forms of prejudice**, such as sexism, racism, ageism or homophobia.

Teachers perceive some forms of harassment and bullying as more difficult to challenge and harder to report, as certain behaviour has come to be accepted as “normal”, such as sexual harassment of female staff by male pupils. For example, female teachers commonly report that they are advised to ignore sexist or sexual content of language between pupils or directed at them, with excuses such as “boys will be boys” or “it’s a joke” often being offered.

Addressing harassment and bullying

It is essential for everyone to feel confident that their complaints will be treated seriously, confidentially and sensitively. The responsible staff members or governance structure members have a responsibility to act speedily, and are advised to seek prompt advice from FEDSAS. **A more detailed step-by-step guide to resolving harassment/bullying problems is included as Annexure A to this document.**

All allegations of harassment and bullying should be dealt with consistently. The first step in tackling harassment is to make it clear to the alleged harasser that the behaviour is unacceptable. The victim may find it difficult to challenge the person concerned and may wish to be accompanied by a fellow learner, staff member or parent.

If the victim feels unable to personally speak to the individual concerned, the request for the behaviour to stop may be put in writing.¹⁴ The ideal outcome at this stage is for the alleged unacceptable behaviour to stop, so that the learning and teaching environment can become secure and non-threatening. If the alleged bully is unwittingly behaving in an unacceptable way as a result of being under pressure him or herself, this informal approach may be extremely successful in changing behaviour.

¹⁴ See Appendix A: Step-by-step guide to dealing with harassment or bullying.

If the allegedly unacceptable behaviour continues or the victim wishes to take the matter further, the victim is advised to contact his/her union (if it is a staff member) or a legal representative for advice on the matter.

If the victim decides to lodge an oral or written complaint, the alleged harasser should be informed accordingly. Assistance with the process should be sought from the school principal, or from a senior staff member if the principal is the alleged harasser.

An allegation of harassment and bullying is a serious matter for the person against whom the complaint is lodged. The harasser has equal rights to representation from his/her union (if the perpetrator is a staff member). The employer's disciplinary procedure should be followed in the case of a proven transgression.

Where the harasser is a learner, the actions to be taken against the learner should be communicated to the parents and the learner. The school's code of conduct must be followed with regard to the investigation of an alleged breach of the code.¹⁵

Where a parent is the harasser, the chairperson of the governance structure must arrange a meeting with the parent and discuss the issues in a mature manner, with the necessary sensitivity and confidentiality. If a parent persists with the unwanted behaviour, the governance structure may restrict the parent's access to the school grounds.

The role of the school governance structure in respect of harassment and bullying

The school governance structure stands in a position of trust towards the school and the learners.¹⁶ This implies that the governance structure must look after the well-being of the staff members and the learners. The governance structure may also establish committees to help it perform its duties.¹⁷ One such committee may be a school safety committee. This committee can deal with all forms of safety within a school (for example fencing, security, access to school grounds, as well as harassment and bullying). School safety

¹⁵ See the FEDSAS draft code of conduct for learners, as well as the document "Certain aspects with regard to the inquiry prior to, and the process of, a disciplinary hearing".

¹⁶ It should also be evident from the school's founding deeds or constitution that this is the school's position.

¹⁷ Consult your school's founding documents and/or constitution to determine which powers are granted to these committees.

committees provide an effective forum to monitor the measures taken by schools to address their health and safety problems, including harassment and bullying. They can also help promote a climate of zero tolerance of harassment and bullying. Where a stakeholder in the school is concerned about the levels of bullying, he or she may raise the issue with the safety committee. Issues can then be resolved either through the introduction and implementation of agreed policies or, where such policies already exist, by seeking to ensure that they are adhered to. School safety committees are however not a source of redress for individuals who allege having been bullied. Instead, these committees are a means of preventing bullying.¹⁸

Legal remedies

Our law has firmly established that all forms of harassment or bullying are prohibited. Here are some of the legal remedies available to combat harassment.

The Constitution, the supreme law of our country, provides that everyone is equal before the law and has the right to equal protection and benefit of the law (section 9). In terms of section 10, everyone has inherent dignity and the right to have their dignity respected and protected. Furthermore, in terms of section 12, everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence, and not to be treated or punished in a cruel, inhuman or degrading way. Each and every person, including the state, must respect these fundamental rights.

The Protection from Harassment Act 17 of 2011 (PHA) has been designed to give effect to some of the most fundamental human rights contained in the Constitution. It affords victims of harassment an effective remedy against such behaviour and introduces measures that will enable the relevant organs of state to give full effect to the provisions of the PHA. The PHA permits any person who alleges that he or she is being subjected to harassment to apply to a magistrate's court for a protection order against harassment. According to the PHA, harassment consists of either non-sexual harassment or sexual

¹⁸ <https://www.teachers.org.uk/node/12522>.

harassment. It should however be noted that a person who acts in terms of the PHA may not do so frivolously, vexatiously or unreasonably.

The Employment Equity Act,¹⁹ the Labour Relations Act²⁰ and the Promotion of Equality and Prevention of Unfair Discrimination Act²¹ (PEPUDA) prohibit harassment based on a person's sex, gender and sexual orientation in the workplace. The Labour Relations Act in particular describes sexual harassment as a form of misconduct and provides that the employer may, in terms of its code of conduct, take disciplinary action against the alleged harasser, and the alleged harasser may be fairly dismissed.

FEDSAS Support & Legal Services

2022

¹⁹ 55 of 1998.

²⁰ 66 of 1995.

²¹ 4 of 2000.

STEP-BY-STEP GUIDE TO DEALING WITH HARASSMENT OR BULLYING

Informal stage

The informal stage entails an informal conversation between the complainant and perpetrator. If it is appropriate to do so, the complainant may be assisted in approaching the individual directly and pointing out that his/her behaviour is offensive and unwelcome and must stop.

The aim of this conversation is not to point fingers, but to establish why the perpetrator is acting in a certain manner, and to request him/her to cease the behaviour.

The complainant can approach the school principal or a senior staff member to facilitate the conversation. Both the complainant and the perpetrator may be accompanied by either a fellow learner, parent or staff member. The tone of the conversation is very important, and the facilitator must ensure that an atmosphere of mutual respect prevails.

Formal stage

If the informal stage fails to resolve the situation or is inappropriate due to the gravity of the complaint, a formal complaint or grievance may be lodged with the governance structure or school principal. A formal grievance will have to be lodged in writing, including:

- the name of the person against whom the complaint is made;
- details of the incident(s); and
- a request for assistance in ensuring that the harassing or bullying behaviour stops.

If the complaint is directed to the school principal and involves a learner or parent as the transgressor, the governance structure must be informed.

The governance structure may suggest that the dispute be handled by an independent mediator on an informal basis. If this approach is not appropriate, the governance structure should investigate the complaint. The complaint can be referred to the safety committee of the governance structure.

Both the complainant and the perpetrator will be interviewed separately, and where applicable, witnesses will also be called. Again, both parties may be accompanied by either a fellow learner, parent or staff member, depending on the circumstances.

The investigation will conclude with a written report by the investigating officer to the school governance structure. It will include findings on whether the alleged conduct took place, and if so, what action, whether disciplinary or otherwise, is recommended. Action short of disciplinary action might for example include issuing an instruction to the alleged bully to stop the offensive behaviour, requiring that an apology be tendered and/or providing appropriate guidance or training to the alleged bully.

Where disciplinary action²² is recommended, this should be instituted without delay. In some cases, the investigating officer may recommend that no action be taken against the alleged bully/harasser. This might be appropriate where there is insufficient evidence to support the complaint, which makes the initial gathering of details vitally important, or where the complaint is simply untrue.

Occasionally, malicious allegations are made. In such cases, the investigating officer may recommend that disciplinary action be taken against the complainant. However, victims who make genuine complaints in good faith have nothing to fear.

Both sides must receive a letter setting out the findings of the presiding officer, along with the decisions taken by the governance structure. Where an internal appeal procedure exists, the parties must be informed accordingly. Any and all disciplinary action must take place within the parameters of the governance structure's policies and codes of conduct.

²² See the document "The nature and course of a disciplinary hearing" on www.fedsas.org.za.

If a parent is the alleged perpetrator, the governance structure cannot institute disciplinary action. The chairperson, or person delegated by the governance structure, must meet with the parent and discuss the issue (the victim may be present, if requested). The parent must be requested to immediately cease the unacceptable behaviour. If a parent persists with the behaviour, the governance structure may restrict the parent's access to the school grounds or request the police to remove the parent from the grounds.

In cases where the perpetrator's presence on the school grounds threatens the safety of other learners, staff members or visitors to the school grounds, the governance structure must request him/her to leave the school grounds, or in the case of a learner who is not suspended, isolate the learner, or request the police to remove the person from the school grounds.

As a last resort, the complainant may apply to a magistrate's court for a protection order against the perpetrator.