



P034, Workplace Harassment Prevention Policy Review: Phase 1

To: Governance and Policy Committee

Date: 29 April, 2020

Report No.: 03-20-3859

Strategic Directions

- Create a Culture for Student and Staff Well-Being

Recommendation

It is recommended that the Policy Review Work Plan, as presented in this report, be approved.

Context

The Workplace Harassment Prevention Policy (P034) (the “Policy”) (Appendix A) is being revised in accordance with the *Occupational Health and Safety Act* which requires school boards to review their policies related to the prevention of workplace harassment and violence annually.

The proposed revisions to the Policy as outlined in the Policy Review Work Plan (Appendix B) are based on a review of legislative and operational requirements, including a proposed transferring of responsibility for non-human rights cases away from the Human Rights Office to enable it to better fulfill its mandate across employment *and* services.

Under the current Workplace Harassment Prevention Policy and Workplace Harassment Prevention and Human Rights Procedure (PR515), TDSB’s Human Rights Office is responsible for receiving and investigating, as deemed appropriate, complaints of workplace harassment that allege a violation of the *Occupational Health and Safety Act*. Under PR515, the Human Rights Office is also responsible for investigating workplace human rights complaints in employment that allege a violation of TDSB’s Human Rights Policy (P031) and the *Human Rights Code*.

In common understanding, the primary role of a human rights office would be to receive and investigate human rights complaints, that is, complaints of discrimination and harassment under the *Human Rights Code*. However, a significant proportion of cases being managed by the Human Rights Office are workplace harassment cases that do not raise *Human Rights Code* violations. This can impede the ability of the Human Rights Office to conduct timely human rights investigations and to serve student and parent populations receiving educational services, as is required to fulfill TDSB's obligations under the *Human Rights Code*.

As a school board, student well-being is necessarily a central consideration. However, under the current model, the Human Rights Office is not responsible for human rights complaints by or on behalf of students, while at the same time it is responsible for a volume of non-human rights complaints from staff.

The Human Rights Office envisions a new and expanded human rights mandate which is both more systemic and more actively encompasses educational services to students. Thus, the impetus behind shifting responsibility for non-human rights work away from the Human Rights Office is to enable it to fulfill the expanded human rights mandate which would allow it to more fully embrace its role as the TDSB office with dedicated expertise in the area of human rights. It is anticipated that Employee Services would take responsibility for workplace harassment complaints that do not also allege a violation of the *Human Rights Code*.

As part of the Policy Review Work Plan, staff completed a jurisdictional scan of similar policies from other jurisdictions in the Greater Toronto Area (see Appendix C). Of the jurisdictions considered, the Peel District School Board ("PDSB"), the York Region District School Board ("YRDSB"), and the City of Toronto are the other jurisdictions that have dedicated human rights offices that actively conduct investigations. In all three, there is a jurisdictional division such that the human rights offices do not typically process complaints that fall outside of the *Human Rights Code*. All three of these human rights offices handle complaints about human rights matters not restricted to the area of employment. The PDSB and the YRDSB accept human rights complaints by and on behalf of students, for instance. In these three jurisdictions, area supervisors or the human resources departments are responsible for handling workplace harassment complaints that fall outside of the *Human Rights Code*.

The Policy Review Work Plan, which proposes to effect the above changes in addition to other revisions to the current policy, is presented for the Committee's consideration and approval.

Action Plan and Associated Timeline

Based on the Governance and Policy Committee's input, the Policy will be reviewed in accordance with the Policy Review Work Plan and subsequently presented to the

Governance and Policy Committee for consideration and recommendation. The Policy will then be presented to the Board of Trustees for final approval.

Resource Implications

Additional resources may potentially be required to enable Employee Services to take on this new mandate of receiving, managing, investigating and resolving non-Code based workplace harassment complaints under the *Occupational Health and Safety Act*. It is understood, nonetheless, that this may be achieved through a redistribution of existing resources.

Communications Considerations

The Policy will be communicated in accordance with the Policy Review Work Plan.

Board Policy and Procedure Reference(s)

- Caring and Safe Schools Policy (P051)
- Equity Policy (P037)
- Gender-based Violence Policy (P071)
- Human Rights Policy (P031)
- Occupational Health and Safety Policy (P048)
- Respectful Learning and Working Environment Policy (P073)
- Workplace Violence Prevention Policy (P072)
- Board Code of Conduct Procedure (PR585)
- Bullying Prevention and Intervention Procedure (PR703)
- Promoting a Positive School Climate Procedure (PR697)
- Workplace Harassment Prevention and Human Rights Procedure (PR515)

Appendices

- Appendix A: Workplace Harassment Prevention Policy (P034) – Current
- Appendix B: Policy Review Work Plan
- Appendix C: Jurisdictional Scan of Institutional Responsibility for Human Rights and Workplace Harassment

From

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Toronto District School Board

Policy P034

Title: WORKPLACE HARASSMENT PREVENTION

Adopted: November 7, 2002

Effectuated: November 7, 2002

Revised: February 16, 2004; November 16, 2011; September 2016;
April 19, 2017; **June 19, 2019**

Reviewed: June 2013; October 6, 2015; April 19, 2017; **June 19, 2019**

Authorization: Board of Trustees

1.0 RATIONALE

The Toronto District School Board (the “Board”) is committed to providing a safe, nurturing, positive learning and working environment, free of harassment and discrimination, where every individual is treated with dignity and respect.

This policy is consistent with the *Occupational Health and Safety Act* (OHSA). It is intended to comply with the Board’s obligations under the OHSA and to support the Board’s Values and Respectful Learning and Working Environment Policy (P073).

2.0 OBJECTIVE

This policy is designed to promote a healthy, respectful and supportive working and learning environment. It highlights conduct that may lead to workplace harassment as well as outlines the system’s shared responsibility in fostering a harassment free workplace. The goal is to prevent workplace harassment from taking place and, where necessary, to investigate and respond to incidents/complaints of such behavior in a fair, timely and effective manner.

3.1 DEFINITIONS

Allegation is an unproven claim or assertion that someone has done something wrong based on one’s belief that a violation of this policy has occurred.

Alternative Dispute Resolution (ADR) is a voluntary, confidential process in which parties of a dispute or disagreement can come to a mutual understanding/agreement to resolve their differences. This can involve a facilitated discussion (mediation) among parties with a neutral third party facilitator.

Board is the Toronto District School Board (also referred to as TDSB). The TDSB is an employer, as defined by the OHSA.

Bullying is aggressive and typically repeated behaviour (physical, social, verbal, electronic, written or other means) intended to cause harm (e.g., physical, psychological, social, academic), fear or distress to another individual or to the individual's reputation or property. It could also include creating a negative environment for another individual where there is a real or perceived power imbalance between the parties, based on one's size, age, strength, intelligence, group affiliation, economic or social status, race, colour, ancestry, religion, citizenship, marital status ethnic origin, place of origin, family circumstance, sexual orientation, gender, gender identity, gender expression, disability or receipt of special education.

Conduct that may constitute bullying includes, but is not limited to the following:

- Physical – tripping, hitting, pushing, slapping
- Verbal – name-calling, mocking, insults or racist, homophobic, transphobic comments
- Social – gossiping, spreading rumours, exclusion, public humiliation, ignoring, graffiti
- Cyber-bullying (bullying by electronic means) – creating a web page or blog, assuming the identity of another person; posting messages on the internet pretending to be another person; communicating material electronically to more than one individual or posting offensive material on a website that may be accessed by one or more individuals

Complainant is anyone who makes a complaint under this policy, alleging that workplace harassment has occurred.

Human Rights Office (HRO) is an office within the TDSB, that is neutral and unbiased and is a resource to all covered under this policy. The HRO upholds the Board's policies on harassment and discrimination, as well as the associated laws (e.g., *Occupational Health & Safety Act*, *Ontario Human Rights Code*).

Poisoned Work Environment is a negative working environment created by a form of harassment. The harassment may include inappropriate comments, behaviour, or display of offensive material which has an adverse impact on an individual or a group. The comment or behaviour is typically repetitive in nature and happens over an extended period of time; however, one incident (if serious enough) can poison a work environment and have lasting effects on an individual/group beyond the original incident(s). The offending behaviour or conduct does not have to be directed towards any person or group in particular.

Conduct that may create a poisoned work environment includes, but is not limited to the following:

- Repeated yelling and swearing openly in the working environment (does not have to be directed at anyone in particular)
- Display of inappropriate, offensive (including sexist/homophobic) material (pin-ups, posters, graffiti etc.)
- Repeated inappropriate comments, open discussions or jokes of a sexual nature
- Bullying behaviours (repeated taunting, insults, and other inappropriate behaviour intended to cause distress in another person or publically shame, humiliate or degrade). With bullying, there is usually a difference in power.
- Condoning harassing or discriminatory behaviours

Reprisal is any harassment, intimidation, threats, or discipline against a person (e.g., complainant, respondent, witness, investigator) for making a report to the Board regarding an incident/complaint of alleged harassment/discrimination. It can also include retaliation against someone who has participated in or is believed to have participated in a process to address a matter under this policy and associated procedure.

Respondent is anyone who has a complaint made against them under this policy.

Supervisor is a person who has charge of a workplace or authority over workers, in accordance with the OHSA.

TDSB is the Toronto District School Board, which is also referred to as the "Board".

Vexatious is conduct that is inappropriate, unnecessary and that a reasonable person would consider offensive, distressing or demeaning. Vexatious complaints are complaints that are brought forward without sufficient merit, solely to cause annoyance or distress.

Worker (for the purpose of this policy) is any person included in the definition of "worker" under the OHSA including, but not limited to regular, temporary, probationary employees, co-op students and contract employees.

Workplace under the OHSA is any land, premises, location or thing at, upon, in or near which a worker works. For the purpose of this policy it also includes any place where individuals perform work or work-related duties or functions. Schools and school-related activities, such as extra-curricular activities and excursions comprise the workplace, as do Board offices and facilities (including eating, lounge/changing areas and vehicles used for work purposes or on work

property). Conferences, workshops, training sessions and staff functions (e.g., staff parties, retirement celebrations) also fall within the scope of this policy.

Workplace Conflict is negative or unfavourable interaction within the workplace between one or more individuals or groups that results from differing ideas, beliefs, decisions, goals or values related directly to their job/organization. Workplace conflict can also result from individuals just not “getting along.” This is sometimes referred to as “Personality Conflicts.”

Causes of workplace conflict may include, but are not limited to the following:

- Competing for limited resources
- Conflict between personal and departmental/organizational goals
- Differing expectations of productivity levels/work performance
- Disagreement on how to achieve organizational or team goals
- Lack of role clarity
- Organizational change
- Poor/ineffective communication
- Individual differences in opinions, thoughts or life/work styles (personality conflict)

Workplace conflict is a natural occurrence and is not always negative. It is not in and of itself, harassment. How workplace conflict is managed (or not), determines whether it has an adverse or positive effect on individuals/groups.

Positive Effects of workplace conflict

Conflict appropriately managed can signal the need for change leading to process improvements, higher productivity or improved service delivery.

Adverse Effects of workplace conflict

Unresolved conflict or conflict not appropriately managed can lead to a decrease in productivity, increased stress and absenteeism.

Matters relating to workplace conflict should be addressed as soon as possible with the support of a supervisor (or next level supervisor if the supervisor is involved in the conflict) and the union/association/network or other representative, if applicable. Consideration should be given to the appropriateness for the conflict to be addressed through mediation/alternative dispute resolution, with the support of a third party mediator. Open communication is very important.

Workplace Harassment is engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or is workplace sexual harassment.

Workplace Sexual Harassment is engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, **or** making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

Conduct that may constitute workplace harassment includes but is not limited to patterns of the following behaviours:

- Verbally abusive behaviour – ongoing name calling, yelling, ridiculing, remarks or insults that demean, using abusive language and profanity
- Ongoing offensive gestures or comments
- Workplace pranks that result in insult or embarrassment
- Vandalism, graffiti, hazing
- Gossiping or spreading malicious rumours that adversely impact individuals/groups
- Persistent ostracizing or persistent exclusion of an individual/group
- Ongoing public humiliation or shaming
- Intimidating behaviours:
 - Physical - slamming doors, throwing or breaking objects, physical posturing – blocking doors/entrance ways, mocking
 - Verbal – persistent shouting, use of profanities or other verbally abusive behaviour (as outlined above)
 - Inappropriate use of electronic devices – threatening messages etc.
- Bullying (including Cyber-bullying, which occurs through use of electronic communication e.g., e-mail, social media)
- Abuse of Authority (utilizing one's authority over another in a manner outlined as abusive or intimidating, as noted above).

The impact of these behaviours on an individual will be taken into consideration.

Note: Some bullying or threatening behaviours may be more appropriately covered under the Workplace Violence Prevention Policy (P072), if the threats or bullying involves actions that result in physical harm or an attempt to inflict physical harm on a worker in the workplace. If the inappropriate behaviours (threatening/harassing) are committed via TDSB electronic devices or email etc. it can also be in violation of the Acceptable Use of Information Technology Resources Policy (P088), E-mail Usage Procedure (PR572) or Code of On-line Conduct Procedure (PR571).

Conduct that may constitute workplace sexual harassment includes, but is not limited to patterns of the following behaviours:

- Sexually suggestive or obscene remarks or gestures
- Bragging about sexual prowess or discussing sexual activities
- Displaying sexualized pin ups, screensavers, messages etc.
- Circulating, telling or participating in sexual jokes, communications etc.
- Negative/stereotypical comments/jokes based on gender, sex, sexual orientation, gender identity, gender expression
- Gender-related comments about an individual's physical characteristics or mannerisms and/or behaviours that reinforce traditional heterosexual gender norms
- Leering (inappropriate suggestive staring at a person's body)
- Sexual advance or "solicitation" for a sexual relationship, especially if in a position of power over the individual (able to confer, grant or deny a benefit to them). This may include a supervisor making advances towards a worker or a worker/supervisor making advances towards a contractor

A finding of workplace harassment (including workplace sexual harassment), generally requires a course or established pattern of inappropriate conduct; however, in exceptional circumstances a single incident of very serious conduct may amount to workplace harassment.

Conduct that may be considered "single incident" workplace harassment (including workplace sexual harassment), includes, but is not limited to the following behaviours:

- Inappropriate/unwanted touching of a sexual nature
- Serious abusive behaviour (verbal or physical as outlined above), especially when engaged in by someone in a position of authority

The OHSA also outlines that workplace harassment is not the following:

- A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace

Examples of "a reasonable action" and other conduct that is typically not workplace harassment may include, but is not limited to:

- Supervisor exercising the "right to manage" (e.g., a supervisor making unfavourable operational decisions in alignment with operational requirements, Board mandates, Ministry directives)
- Performance management activities related to assessing and improving worker's performance, productivity and effectiveness with the goal of

facilitating the worker's success. (e.g., providing constructive feedback, recommendations and supports to improve worker performance, even if they do not agree)

- Discipline (Generally, a worker's concerns regarding discipline are more appropriately addressed through discussion between the Employee Services Department and the worker's union/association/network representative, and/or the appropriate grievance/dispute resolution process, if applicable)
- General disagreement with supervisory direction, feedback, operational changes, administrative rules etc., which adversely impact one or more individuals
- General disagreements among workers (including supervisors)
- General acts of rudeness or incivility (e.g., occasionally responding in an abrupt manner, not extending general courtesy like saying please or thank you, or not promptly responding to emails or voice mail)

While the conduct may be considered undesirable, it typically does not meet the definition of workplace harassment. A "reasonable action" by a supervisor does not include any of the examples of the behaviours listed under workplace harassment.

4.0 RESPONSIBILITY

The Director of Education holds primary responsibility for implementation of this Policy.

Within the Director's Office, the responsibility for coordination, day-to-day management of the Policy is assigned to the Executive Superintendent, Human rights and Indigenous Education.

5.0 APPLICATION AND SCOPE

This policy addresses workplace harassment under the OHSA and applies to all workers within the meaning of the OHSA. It addresses workplace harassment from all sources, including supervisors, workers, trustees, students, parents, suppliers, and members of the public.

The Board also has policies/procedures in place to deal with other forms of harassment or offensive conduct including the Reporting of Suspected Wrongdoing (Whistleblowing) Policy (P066), Human Rights Policy (P031), Board Member Code of Conduct Policy (P075), Gender-Based Violence Policy (P071), Caring and Safe Schools Policy (P051), Dealing with Abuse and Neglect of Students Policy (P045), Workplace Harassment Prevention and Human Rights (PR515), Board Code of Conduct Procedure (PR585) and the Bullying

Prevention and Intervention Procedure (PR703). See section 10.0 for a complete list of other relevant policies and procedure.

6.0 POLICY

- 6.1 The Board is committed to respectful, equitable service delivery and employment practices through the prevention of workplace harassment (including workplace sexual harassment). The Board will not tolerate, condone or ignore workplace harassment in its schools, facilities and other workplaces.
- 6.2 All workers are encouraged to report workplace harassment to the appropriate person in accordance with procedures made pursuant to this policy. Workers will not be penalized for reporting (in good faith) an incident, making a complaint or for participating in an investigation under to this policy. Reprisal is prohibited under this policy and the OHSA. See section 6.9 (a) regarding vexatious complaints.
- 6.3 Any person reporting an incident or complaint of workplace harassment or who participates in a process to resolve a matter under this policy (including investigators), will keep that information confidential and not disclose or release to anyone any information about the incident/complaint except to the extent necessary to protect a worker(s), to investigate the complaint/incident, to take corrective action or as otherwise required by law. This extends to details of a complaint (including its existence), meetings about an incident/complaint, identifying information about a person including names of witnesses, contact made with an investigator etc. This is a continuous obligation that extends beyond employment with the TDSB. Seeking advice from a worker's own union/association representatives in addressing workplace harassment is permitted, and may be required by some Collective Agreements.
- 6.4 This is a continuous obligation that extends beyond employment with the TDSB. Seeking advice from a worker's own union/association representatives in addressing workplace harassment is permitted, and may be required by some Collective Agreements.
- 6.5 All persons covered under this policy are responsible for creating, maintaining and contributing to a climate of understanding and mutual respect for the rights and dignity of each person by doing the following:
 - (a) Do not engage in behavior that is or may be perceived as workplace harassment;
 - (b) If comfortable, advise the alleged harasser that the conduct is unwelcome and ask that person to stop;

- (c) If approached as per the above, it is expected that the individual will work with the person raising a concern, to resolve the matter;
- (d) If an individual is not comfortable approaching the alleged harasser or an individual is approached and the behaviour does not stop, report incidents of workplace harassment to a Supervisor or the Human Rights Office (workers can also seek help addressing workplace harassment through their respective union/association, the TDSB Employee and Family Assistance Program, or other resources as outlined in the associated procedures);
- (e) Cooperate fully in any attempts to resolve an incident or complaint and cooperate fully in the investigation of any incident or complaint under this policy;
- (f) Do not knowingly or recklessly provide false or misleading statements or information to an investigator investigating a matter under this policy;
- (g) Maintain confidentiality with respect to incidents/complaints of matters relating to this policy and associated procedures.

6.6 The Board recognizes that general acts of rudeness/incivility by any worker, or less than optimal management styles are behaviours that are not desirable in the workplace and may adversely impact one or more individuals; however, these behaviours are not typically workplace harassment. They are concerning, however, and should be addressed through a supervisor or if a supervisor is involved in the undesirable behaviour, through the next level supervisor. Workers who are unionized or otherwise represented, should contact their respective union/association or network representative to work together with the supervisor (or next level supervisor as per above), to address the concerns. Consideration should also be given to whether the services of a third party mediator may be appropriate in the circumstances. If these behaviours are left unchecked, they can potentially lead to workplace conflict, harassing behaviours or ultimately, a poisoned work environment.

6.7 The Board will promote a healthy, respectful and supportive work environment by providing:

- (a) Information and instruction on the prevention of workplace harassment through this policy and the associated procedure, to be shared with all workers;
- (b) An environment that encourages reporting all incidents of harassment;
- (c) A process to handle and investigate workplace harassment incidents and complaints in a manner appropriate given the circumstances, through this policy and the associated procedures.

6.8 Supervisors will be responsible for not only their own conduct, but also for addressing the conduct of those under their supervision. To prevent

workplace harassment and to address incidents/complaints of workplace harassment management will do the following:

- (a) Lead by example by not engaging in, tolerating or condoning harassment;
- (b) Make all reasonable efforts to protect workers from all forms of harassment by maintaining a working/learning environment that is respectful;
- (c) Post and make available (electronically or by hard copy), the Workplace Harassment Prevention Policy and associated procedure in the workplace, visible to employees/students;
- (d) Be aware/knowledgeable of this policy and associated procedure;
- (e) Educate or provide educational opportunities for workers to ensure they are aware that harassment will not be tolerated, and understand their rights and responsibilities as it relates to this policy and associated procedure;
- (f) Take all incidents and complaints of workplace harassment seriously by:
 - (i) Intervening when workplace harassment occurs or is suspected to have occurred;
 - (ii) Acting promptly on all allegations/incidents/complaints of harassment;
 - (iii) Investigating incidents and complaints of workplace harassment in a manner appropriate given the circumstances, in accordance with this policy, associated procedure and the OHSA;
 - (iv) Making inquiries/consulting with the Human Rights Office, as appropriate, to assist in effectively managing incidents/complaints;
 - (v) Taking remedial and/or disciplinary action (in consultation with Employee Services), with any person found to have engaged in workplace harassment or conduct in violation of this policy. Remedial action may include but is not limited to, training and education or other actions as deemed appropriate given the circumstances. Remedial action for persons who are not employees is taken after consultation with the Legal Services;
 - (vi) Department and/or Safe Schools Department and/or applicable Superintendent, as appropriate. This may result in, but is not limited to, denial of access to Board premises or issuance of trespass notices.

6.9 The Human Rights Office (HRO) is neutral and unbiased and is a resource to all covered under this policy. The HRO will work to prevent workplace harassment and respond to inquiries, incidents/complaints of workplace harassment by doing the following:

- (a) Assisting with the development of education, information and instruction materials related to the prevention of workplace harassment, and the Board's Workplace Harassment Prevention Policy and associated procedure;
- (b) Providing independent, unbiased, confidential advice to all covered under this policy (includes complainants, respondents etc.);
- (c) Conducting preliminary assessments of incidents/complaints of workplace harassment (as outlined in the associated procedure), in order to determine if on the face of the complaint the allegation(s) meet the definition of workplace harassment and to determine appropriate next steps to deal with an incident/complaint, in a manner appropriate in the circumstances. This may include re-directing matters to another department of the Board, as deemed appropriate. Actions taken or fact-finding conducted for the purposes of an assessment will be deemed an investigation appropriate in the circumstances for purposes of the OHSA, if the assessment determines no further investigation of the matter is warranted;
- (d) Assisting with resolving incidents/complaints formally or informally;
- (e) Assisting with the provision of Mediation or Alternative Dispute Resolution (ADR) services, as deemed appropriate or;
- (f) Formally investigating matters, as deemed appropriate by the HRO.

6.10 Action will be taken with anyone found to have violated this policy, as follows:

- (a) Any worker found in violation of this policy may be subject to remedial action or discipline, up to and including termination of employment (Knowingly or purposefully making false or misleading statements during an investigation, or making a false or vexatious complaint, is considered a violation of this policy).
- (b) Supervisory staff who fail to take appropriate action to resolve incidents and complaints (formal or informal), or who fail to act appropriately on findings of violations of this policy will be found to have violated this policy and may be subject to remedial action or discipline, up to and including termination of employment.

7.0 SPECIFIC DIRECTIVES

The Director is authorized to issue operational procedures to implement this policy.

8.0 EVALUATION

The Workplace Harassment Prevention Policy will be reviewed as required, and at least annually, in accordance with the *Occupational Health and Safety Act*.

9.1 APPENDICES

- Not Applicable

10.1 REFERENCE DOCUMENTS

Policies:

- Acceptable Use of Information Technology Resources (P088)
- Board Member Code of Conduct (P075)
- Caring and Safe Schools (P051)
- Dealing with Abuse and Neglect of Students (P045)
- Gender-Based Violence (P071)
- Human Rights (P031)
- Reporting of Suspected Wrongdoing (Whistleblowing) (P066)
- Respectful Learning and Working Environment (P073)
- Workplace Violence Prevention (P072)

Procedures:

- Abuse and Neglect of Students (PR560)
- Board Code of Conduct (PR585)
- Bullying Prevention and Intervention (PR703)
- Code of On-line Conduct (PR571)
- E-mail Usage (PR572)
- Workplace Harassment Prevention and Human Rights (PR515)

Legislative Acts:

- *Occupational Health and Safety Act*
- *Ontario Human Rights Code*

POLICY REVIEW WORK PLAN

Date: [April 29, 2020](#)

All policies will be reviewed to ensure consistency with the TDSB's Mission, Values and Goals Policy (P002), the Equity Policy (P037) and the Board's Multi-Year Strategic Plan.

POLICY INFORMATION

Policy Title and Policy Number: [Workplace Harassment Prevention \(P034\)](#)

Review during fiscal year: [2019-2020](#)

Last reviewed: [June 19, 2019](#)

Director's Council member responsible for this Policy review: [Executive Superintendent, Employee Services; and Executive Superintendent, Human Rights and Indigenous Education.](#)

Phase I. PLANNING AND OBTAINING TRUSTEES' DIRECTIONS

This Policy Review Work Plan has been discussed with the Policy Coordinator:

☒ Yes

☐ No

This Policy Review Work Plan will be discussed at the Governance and Policy Committee meeting held on: [April 29, 2020](#)

Phase II. REVISIONS

Formatting Changes

The Policy will be reformatted to ensure alignment with the current Policy Template (Operational Procedure PR501, Policy Development and Management, Appendix A):

☒ Yes

☐ No

Content Changes

The Policy requires content revisions:

☒ Yes

☐ No

The content changes are due to the following reason(s):

- ☐ Legislation
- ☐ Government directives/policies
- ☒ Board decisions
- ☒ Multi-Year Strategic Plan requirements
- ☒ Operational requirements
- ☒ Simplify and/or update using plain language
- ☒ Alignment with Equity Policy

Detailed information on the proposed content changes, including findings of the policy equity assessment:

- Ensure alignment of the Workplace Harassment Prevention Policy (P034) with the governing legislation and caselaw.
- Ensure provisions of the Workplace Harassment Prevention Policy (P034) adhere to the principles of equity as per the Equity Policy (P037).
- Remove *Human Rights Code*-based harassment that currently falls under the jurisdiction of both the Human Rights Policy (P031) and the Workplace Harassment Prevention Policy (P034) from the ambit of the Workplace Harassment Prevention Policy (P034), and remove references to TDSB's Human Rights Office (HRO) from the Workplace Harassment Prevention Policy (P034). This would permit TDSB to assign responsibility for matters that do not fall under the *Human Rights Code* and Human Rights Policy (P031) to Employee Services, better enabling the TDSB to fulfill its human rights and equity commitments to employees, students, parents and community.
- Update the Responsibility section of the Policy to remove Executive Superintendent, Human Rights and Indigenous Education; and replace with Executive Superintendent, Employee Services (Executive Lead TBC).
- Streamline organizational structure and language usage to make it more accessible and user-friendly.
- Ensure consistency of the Policy with the approved Policy Template.

- ☒ A review of leading practices for similar policies across jurisdictions has been completed and is included with this Work Plan.

Phase III. INTERNAL REVIEWS AND SIGN-OFFS

The Policy review will include TDSB divisions affected by the Policy:

- ☒ Business Operations and Service Excellence
- ☒ Equity, Well-Being and School Improvement
- ☒ Human Rights and Indigenous Education
- ☒ Leadership, Learning and School Improvement
- ☒ School Operations and Service Excellence

In addition, the following departments will be required to sign-off on the proposed Draft Policy:

- ☒ Legal Services
- ☒ Policy Services
- ☒ Government, Public and Community Relations

A sign-off from the Director of Education will be obtained before proceeding with external consultations and/or Committee/Board approval.

- ☒ Director of Education

Phase IV. EXTERNAL CONSULTATIONS

Are external consultations applicable to this Policy?

- ☒ Yes
- ☐ No (*Ministry of Education mandated policy or corporate policy without external stakeholders*)

Mandatory external consultations will include, at a minimum:

1. Posting of the working draft Policy on TDSB website for public feedback:
duration TBD due to COVID 19 concerns

2. Extending invitations for consultation to:

- ☒ Student Senate

and

all Community Advisory Committees of the Board and conducting consultations with the Community Advisory Committees that expressed interest (either individually with each interested committee or collectively with representatives of all interested committees): duration TBD due to COVID 19 concerns

- 1) ☒ Alternative Schools Community Advisory Committee
- 2) ☒ Black Student Achievement Community Advisory Committee
- 3) ☒ Community Use of Schools Community Advisory Committee
- 4) ☒ Early Years Community Advisory Committee
- 5) ☒ Environmental Sustainability Community Advisory Committee
- 6) ☒ Equity Policy Community Advisory Committee
- 7) ☒ French-as-a-Second-Language Community Advisory Committee
- 8) ☒ Inner City Community Advisory Committee
- 9) ☒ LGBTQ2S Community Advisory Committee
- 10) ☒ Parent Involvement Advisory Committee (PIAC)
- 11) ☒ Special Education Advisory Committee (SEAC)
- 12) ☒ Urban Indigenous Community Advisory Committee

In addition to mandatory consultations, other external participants and projected dates of consultation(s) include:

- ☐ School Councils
- ☒ Professional Associations and Unions
- ☐ Other:

The following methods will be applied in the external consultations: [\[at least two or more methods must be selected\]](#)

- ☐ Public meeting
- ☐ Facilitated focus group
- ☒ Call for public delegations
- ☐ Expert panel discussion
- ☐ Survey
- ☒ Posting on the TDSB website
- ☒ Other: [electronic communication](#)

Phase V. COMMITTEE/BOARD APPROVALS

Following external consultations and revisions, the working draft Policy will be presented to the Governance and Policy Committee.

Following recommendation by the Governance and Policy Committee, the revised Policy will be presented to the Board of Trustees.

Once approved, the revised Policy will replace the existing policy on the TDSB website.

Phase VI. IMPLEMENTATION

Following Board approval, the final revised Policy will be communicated through:

- ☒ Posting of the revised Policy on the TDSB website through the Policy Coordinator
- ☒ Sharing with staff through the System Leaders' Bulletin
- ☒ Informing departments at staff meetings and channeling information to the school principals through respective superintendents
- ☒ Implementation of a broad communication plan for internal and external audiences, include summary of policy revisions and expected outcomes

Policy implementation will include:

- ☐ Conducting information/training sessions to TDSB staff affected by the Policy

The projected time period for conducting information/training sessions to staff will be: [Not applicable](#)

- ☒ Review of associated procedures or initiate development of new procedures:

[PR515 - Workplace Harassment Prevention and Human Rights](#)

JURISDICTIONAL SCAN OF INSTITUTIONAL RESPONSIBILITY FOR HUMAN RIGHTS AND WORKPLACE HARASSMENT

Background

The *Ontario Human Rights Code* (the “*Code*”) prohibits discrimination and harassment in employment and the provision of services on the basis of the prohibited grounds of age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, record of offences (in employment only), sex, and sexual orientation.

The *Occupational Health and Safety Act* (the “*OHSA*”) prohibits workplace harassment (but not discrimination). Unlike the *Code*, under the *OHSA*, all workplace harassment is prohibited and no specific ground of harassment needs to be identified. However, the *OHSA* provides specific protections in the case of sexual harassment.

There is significant overlap, most obviously in the case of sexual harassment, between harassment protections for workers under the *Code* and the *OHSA*.¹ Personal harassment not related to any prohibited ground receives protection only under the *OHSA*. Discrimination is only covered by the *Code*.

The Toronto District School Board’s (“TDSB” or the “Board”) obligations under the *Code* are reflected in the Board’s Human Rights Policy (P031), whereas TDSB’s obligations under the *OHSA* are reflected in the Workplace Harassment Prevention Policy (P034). For Board workers, the two policies are operationalized in one procedure: the Workplace Harassment Prevention and Human Rights Procedure (PR515). Currently, pursuant to both policy and procedure, the Board’s responsibility for receiving, assessing, investigating, and resolving formal human rights and workplace harassment complaints (human rights based and non-human rights based) rests with the Human Rights Office (“HRO”). The HRO may maintain jurisdiction over formal complaints submitted to the HRO involving human rights and/or non-human rights related allegations of workplace harassment, and directly conducts more complex investigations in these regards. Where no prohibited grounds of discrimination are identified or where the investigation is expected to be straightforward, the HRO may refer such complaints to management (often a Principal or Superintendent of Education) to conduct the investigation, with the HRO providing case management support and oversight as needed. The HRO currently does not directly receive complaints from students and parents, and only admits complaints involving employees, in keeping with the application and scope of the Board’s Workplace Harassment Prevention and Human Rights Procedure (PR515), which places carriage of student and parent complaints in the hands of management and the school administration.

The Board is reconsidering where to place responsibility for non-*Code*-based harassment incidents and complaints in policy and procedure, as well as student and parent complaints of discrimination. This scan explores whether responsibility for *Code* and non-*Code* workplace complaints in other jurisdictions lies with the same office, and considers which board department or individual has responsibility for the complaints process.

¹ Grounds-based harassment in employment that is prohibited by the *Code* (workplace racial harassment for instance) is also prohibited by the *OHSA* as workplace harassment (but without reference to the ground).

Policies and procedures of the following Ontario boards located in the Greater Toronto Area were considered:

- Toronto Catholic District School Board (“TCDSB”)
- York Region District School Board (“YRDSB”)
- York Catholic District School Board (“YCDSB”)
- Peel District School Board (“PDSB”)
- Dufferin-Peel Catholic District School Board (“DPCDSB”)
- Conseil scolaire Viamonde (“CSV”)
- Conseil scolaire catholique MonAvenir (“CSCM”)
- Halton District School Board (“HDSB”)
- Halton Catholic District School Board (“HCDSB”)
- Durham District School Board (“DDSB”)
- Durham Catholic District School Board (“DCDSB”)

The approaches of City of Toronto and the Ontario Public Service (“OPS”) were also considered.

Summary

All jurisdictions considered have policies that codify protections under both the *Code* and the *OHS*A.

The PDSB, the YRDSB, and the City of Toronto are the only jurisdictions considered that have dedicated human rights offices that actively conduct investigations. In all three, there is a jurisdictional division such that the human rights offices do not typically process complaints that fall outside of the *Code*. All three of these human rights offices handle complaints about human rights matters, and these are not restricted to the area of employment. The PDSB and the YRDSB accept human rights complaints by and on behalf of students, for instance. In these jurisdictions, site supervisors or the human resources departments are responsible for workplace harassment complaints that fall under the *OHS*A.

In the OPS, there is no division of responsibility between the two regimes. However, the office dedicated to human rights and workplace harassment does not conduct investigations. Rather, investigations are conducted by management or external investigators. The Workplace Discrimination and Harassment Prevention Program staff (“Advisors”) have an advisory role and are responsible for storing records following the conclusion of the investigation.

In the remaining jurisdictions without specialised human rights offices, there is no division of responsibility between human rights and workplace harassment, and local supervisors or the human resources departments are responsible for both.

A. Jurisdictions with a Division of Responsibility between Human Rights Violations and Workplace Harassment

York Region District School Board

At the YRDSB, there is now a jurisdictional division between *Human Rights Code* and non-*Human Rights Code* complaints. The division was instituted recently following the creation of the Human Rights Commissioner's position.

The Human Rights Commissioner's Office ("HRCO") at the YRDSB now deals with formal *Code*-based complaints that relate to a prohibited ground of discrimination. The HRCO conducts threshold assessments of complaints received under the "Human Rights: Code-Related Harassment and Discrimination Policy and Procedure" to determine whether complaints fall within its jurisdiction, and is responsible for conducting formal investigations. The formal process administered by the HRCO is available to all members of the YRDSB community, including students and employees, who have already attempted to resolve the matter through the informal site-based process.

In the case of non-*Code* workplace harassment complaints, the superintendent responsible for the area in which the alleged harassment took place is responsible for assigning an investigator. Human Resources Services acts in a consultative role and is responsible for keeping records of the investigation.

Sexual harassment complaints must be pursued under the *Code* process.

Peel District School Board

The PDSB also has a division of responsibility between human rights and *OHS*A complaints, with the Human Rights Commissioner's Office ("HRCO") taking full-carriage of all *Code*-based complaints it receives, and the Manager of Labour Relations ("MLR") having responsibility for complaints under the *OHS*A.

Previously, both regimes were managed by Human Resources Support Services. However, following the creation of the Human Rights Commissioner's Office ("HRCO") in December 2018, which reports to the Director of Education, the HRCO has jurisdiction over all formal human rights complaints from members of the PDSB community including students. The HRCO conducts threshold assessments to determine whether complaints fall within its jurisdiction, and is responsible for conducting formal human rights investigations. In speaking with the Commissioner, she explained that, at this time, these investigations are conducted directly by the HRCO. She also indicated that, because their office is at arms-length from the board, their investigations could not be referred to a Superintendent of Education ("SOE") to conduct the investigation on their behalf.

The MLR is responsible for workplace harassment complaints that allege breaches of the *OHS*A, including alleged *OHS*A breaches that would also breach the *Code*. Intake and threshold

assessments are conducted by the MLR or designee. An investigator, who may be supervisory staff, is assigned to conduct an investigation if warranted, and the investigation report is remitted to the MLR to take appropriate action.

Complainants whose matter falls under both jurisdictions can choose to go to either the MLR or the HRCO, or they might proceed through the MLR first, and could later complain to the HRCO.

The Commissioner indicated that SOEs are responsible for conducting human rights investigations if the matter is brought to them by the complainant; in this case, the HRCO's existence does not supplant the managerial duty to investigate.

City of Toronto

Although the City of Toronto has a single policy and an associated procedure for responding to both human rights and workplace harassment (covering both *Code* and *OHS*A violations), the procedure specifies that division management is responsible for intervening and addressing complaints that do not engage the prohibited grounds under the *Code*, and that managers should contact Employee and Labour Relations and the Human Rights Office ("HRO") for assistance. The HRO provides consultations to individuals and management to provide information and advice regarding both the *Code* and the *OHS*A.

The HRO will only accept complaints from employees of non-*Code* workplace harassment where there is evidence that division management has failed to meet policy obligations.

All formal complaints that engage a prohibited ground are referred to the HRO for mediation and/or investigation. The HRO accepts complaints regarding all areas covered by the *Code* (i.e. employment, services, contracts, and housing accommodations).

Management conducts the threshold assessment and determines whether an investigation is required before referring a complaint to the HRO.

B. Jurisdictions with a Single Process for Workplace *Human Rights Code* and *OHS*A Violations

The remaining jurisdictions have a single process for responding to employee allegations of violations of the *Code* and the *OHS*A.

Although not repeated below, it is noted that most of these jurisdictions have an initial informal process where the complainant seeks the assistance of their supervisor to resolve the matter by seeking to facilitate an agreement between the parties.²

² Some jurisdictions specify that this process may be unavailable in the case of sexual harassment because of the *OHS*A-imposed obligation to conduct an investigation.

Other than the OPS, none of these jurisdictions have dedicated human rights offices, although a few of the boards now have a Human Rights and Equity Advisor (“HREA”) whose role is not yet reflected in the written policy and procedure.³

Toronto Catholic District School Board

At the TCDSB, the Superintendent of Human Resources (or designate) is responsible for investigating workplace harassment and *Code*-based workplace complaints. However, all managers and also the Conflict Resolution Department have responsibility for key aspects of the process.

York Catholic District School Board

The YCDSB procedure indicates that workplace harassment and discrimination complaints are submitted to the complainant’s superordinate before being investigated. Investigations are facilitated by the Superintendent of Human Resources and the investigation report is provided to the school superintendent or Superintendent of Human Resources to make findings of fact and to decide the outcome.

At the YCDSB, all managers are required to receive training on how to conduct an investigation into a complaint of “workplace harassment, including sexual harassment”.

Dufferin-Peel Catholic District School Board

The DPCDSB has an initial informal process for workplace discrimination and harassment which includes initial fact finding by the supervisor, manager, or principal, including conducting witness interviews.

For formal complaints, the Supervisor of Employee Relations receives the written complaint and is responsible for appointing an investigator or mediator.

Conseil scolaire Viamonde (French public school board)

The CSV has a single policy and related procedure for workplace harassment and harassment and discrimination contrary to the *Code*. Notably, this regime can be invoked by workers and by students.

For formal complaints by students, school administration informs the respondent, provides a summary of the allegations, initiates the investigation process, receives the investigation results, and determines and imposes appropriate measures in response.

³ DDSB, DPCDSB, and TCDSB.

For formal complaints by employees, whether *Code*-related or not, the complaint is submitted to the supervisor who notifies the respondent and provides the respondent with a summary of the allegations, and then the human resources department has carriage of the complaint.

In the case of both students and employees, the investigation is conducted by a person named by the Director of Education or their delegate.

Conseil scolaire catholique MonAvenir (French Catholic school board)

The CSCM has a single policy for workers which references the *OHSA*, but not the *Code*. However it does have two separate procedures: one for *Code*-based harassment and discrimination for employees, and another for workplace harassment. Although the two procedures mirror one another in content, they specify that where a prohibited ground is identified (ie. sexual harassment), it is the *Code* procedure that applies.

Under both procedures, the Attendance Management Advisor and Health and Safety Advisor are responsible for providing information and advice to prospective complainants, and assisting them to write up the complaint.

Formal complaints are submitted to the human resources department, and the board is responsible for investigation and mediation. However it is not identified which office or individual carries out this duty.

Halton District School Board

At the HDSB, formal complaints are submitted to the Executive Officer of Human Resources (or a designate), who is responsible for investigation or information resolution.⁴

Although students can make a complaint under this workplace harassment policy, student complaints about student behaviour are addressed under a separate process.

Halton Catholic District School Board

At the HCDSB, workplace discrimination and harassment formal complaints are submitted to the Executive Officer, Human Resources Services, who is responsible for conducting investigations.

Durham District School Board

⁴ Although both the *OHSA* and the *Code* are referenced in the HDSB procedure, the procedure states that the complaint will be referred to the formal process if it raises a breach of the *Code*. However, it is unclear whether or not *OHSA* complaints that do not indicate grounds of discrimination proceed through the formal process. There is no indication of how *OHSA* complaints that do not raise a *Code* violation should be disposed of if they are not resolved at the informal stage. This may be a drafting oversight.

At the DDSB, formal workplace harassment and discrimination complaint investigations are conducted by the Superintendent of Education/Employee Relations.

Durham Catholic District School Board

The DCDSB's informal workplace harassment and discrimination process includes initial fact finding by the supervisor, including interviewing witnesses, following which there can be a signed agreement, discipline imposed if appropriate, or a referral to the Superintendent of Human Resources and Administrative Services (or designate) who is responsible for conducting the formal complaint process.

Ontario Public Service

At the OPS, the Workplace Discrimination and Harassment Prevention ("WDHP") office is responsible for coordinating all complaints that fall within the scope of the *Code* or the *OHSA*. The WDHP office conducts the threshold assessment, and if the complaint is within scope, the WDHP office recommends to the responsible manager a resolution mechanism or appropriate action based on the nature of the allegations. Upon receiving the recommendation, the manager determines what approach to take. Informal and formal investigations are conducted by management or external investigators. The WDHP office does not conduct investigations. Rather, it has an advisory role and is responsible for storing records following the conclusion of the investigation.