



P031, Human Rights Policy Review: Phase 2, Status Update

To: Governance and Policy Committee

Date: 29 April, 2020

Report No.: 03-20-3860

Strategic Directions

- Create a Culture for Student and Staff Well-Being

Recommendation

It is recommended that the Human Rights Policy (P031), Review Status Update Report, be received.

Context

The purpose of this report is to provide the Board of Trustees with an update on the recommended changes related to review of the Human Rights Policy (P031) (“the Policy”) (Appendix A).

The Human Rights Policy (P031) was adopted by the Board of Trustees on May 3, 2000 and last updated on May 19, 2004. The current Policy is committed to meeting its obligation under the *Canadian Charter of Rights and Freedoms* and the *Ontario Human Rights Code* by providing safe schools and workplaces that respect the rights of every individual.

The review of the Human Rights Policy (P031) was initiated on June 7, 2017.

The proposed revisions included the following:

- The addition of a prohibited ground (gender expression) added to the *Ontario Human Rights Code* in 2012;
- Alignment with TDSB’s Workplace Harassment Prevention Policy (P034) and corresponding procedures

- Alignment with newly released policies produced by the Ontario Human Rights Commission (i.e., *Policy on Preventing Discrimination and Harassment based on Creed, Policy on Ableism and Discrimination based on Disability, OHRC policy position on sexualized and gender-specific dress codes etc.*);
- Alignment with the TDSB's Equity Policy (P037); and
- Greater clarity and simplification of the policy for ease of use and navigation

Since Phase 1 of the review process, the Human Rights Office (HRO) has undergone significant transformation in its mandate and staffing. Full staffing was completed in January 2020, enabling the HRO to resume the Policy review process to better reflect its new and expanded mandate and the Board's current strategic priorities. In addition to the proposed changes above, staff identified additional areas for review:

- Alignment with the Multi-Year Strategic Plan, particularly the section on Human Rights (pg. 45) which notes that the TDSB aims to "Identify and eliminate embedded systemic barriers and discriminatory institutional and instructional practices that negatively impact the achievement and well-being of students and staff and lead to inequitable outcomes." The updated and revised Human Rights Action Plan, moreover, commits to "develop[ing] and implement[ing] a human rights organizational change strategy to infuse human rights principles into the work of the Board, in every school, and in every workplace, including through professional learning, education and inclusive system design, monitoring and barrier review, It also commits to "develop and implement a human rights accountability framework to clarify roles and responsibilities and integrate and mainstream accountability for human rights across the Board, including through policy, procedure, and performance management and evaluation."
- Alignment with [Expected Practices for Understanding, Addressing and Preventing Discrimination](#) (TDSB, September 2019).
- Ensuring that the Board of Trustees decision from the June 19, 2019 Board meeting, relating to the "Dealing with Incidents of Racism and Hate" are embedded. This includes analyzing new data sets and insights that will be generated through the implementation of the recently developed Reporting and Responding to Incidents of Racism and Hate Involving or Impacting Students in Schools Procedure (PR728).
- A renewed emphasis on human rights data collection, analysis and reporting; building of human rights capacity and competency across the organisation; and embedding human rights competencies within hiring and performance appraisals of "directing minds" such as principals, superintendents, directors, etc., as articulated within Ontario's [Education Equity Action Plan](#) (pg. 17).
- Incorporation of the notion of "positive obligations." Other Ontario school boards – such as the [Peel District School Board](#) and Greater Essex County School Board – have human rights policies that speak to positive obligations to proactively maintain environments free from discrimination, whether or not a complaint has been made.
- In accordance with attending to positive obligations, ensuring the Policy reflects a shift away from a reactive complaints-driven approach to human rights that

places the primary onus on individual victims of discrimination to realise their rights through “conflict resolution” processes and towards a more proactive, prevention-focused, approach to human rights that places a greater onus on system leaders to monitor and transform the conditions underlying and sometimes giving rise to discrimination and harassment (i.e. a “conflict transformation” approach).

The Status Update Report is presented for the Committee’s receipt.

Action Plan and Associated Timeline

Subject to the Governance and Policy Committee and Board directions, staff will implement the review of the Policy in accordance with the following actions:

- Preparing draft Policy
- Conducting public consultations (Timelines TBD due to COVID-19 concerns)
- Presenting draft Policy to Governance and Policy Committee (Timelines TBD due to COVID-19 concerns)
- Submitting Policy to Board for final approval (Timelines TBD due to COVID-19 concerns)

Resource Implications

No additional resources will be required for revisions to this Policy.

Communications Considerations

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

Board Policy and Procedure Reference(s)

- Equity Policy (P037)
- Human Rights Policy (P031)
- Workplace Harassment Prevention Policy (P034)
- Occupational Health and Safety Policy (P048)
- Workplace Violence Prevention Policy (P072)
- Board Code of Conduct Procedure (PR585)
- Bullying Prevention and Intervention Procedure (PR703)
- Workplace Harassment Procedure (PR515)

Appendices

- Appendix A: Human Rights Policy (P034) – Current

From

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Toronto District School Board

Policy P.031 EMP:

Human Rights

Statement

The Toronto District School Board is committed to maintaining a learning and working environment which actively promotes and supports human rights. The Board recognizes the value of:

- each and every student;
- a strong public education system;
- a partnership of students, schools, family and community;
- the uniqueness and diversity of our students and our community;
- the commitment and skills of our staff;
- equity, innovation, accountability and accessibility;
- learning environments that are safe, nurturing, positive and respectful.

The Toronto District School Board is committed to meeting its obligation under the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code by providing safe schools and workplaces that respect the rights of every individual. Every student, employee, trustee, parent and community member has the right to learn and work in an environment free of discrimination and harassment. Discrimination and harassment based on legislated prohibited grounds will not be tolerated. Such behaviour must be addressed not only for its cost in individual, human terms but also for its cost to our social, economic and civic future.

The purpose of this policy is to prevent discrimination and harassment through greater awareness of and responsiveness to their deleterious effects and to ensure that human rights complaints are dealt with expeditiously and effectively through consistently applied policy and procedures. Nothing in this policy or procedures denies or limits access to other avenues of redress open under the law such as a complaint to the Ontario Human Rights Commission or a grievance.

The Toronto District School Board is committed to ensuring that education on human rights issues is provided for all staff and students.

Policy P.031 EMP: Human Rights

Policy Components**1. Legislative Context**1.1. Canadian Charter of Rights and Freedoms

The *Constitution Act [1982]*, which includes the Canadian Charter of Rights and Freedoms, is the supreme law of Canada. As such, all other laws and applicable workings of governments, including school boards, must be consistent with its provisions. The charter and Supreme Court of Canada decisions made under the charter guarantee everyone equality regardless of race, national or ethnic origin, citizenship, colour, religion, marital status, sex, sexual orientation, age or mental or physical disability. The charter and Supreme Court decisions also promote the development of programs which are designed to redress the conditions of disadvantaged individuals or groups.

1.2. Ontario Human Rights Code

The provisions of the Ontario Human Rights Code apply to private parties and provincial public institutions. The code exists to prevent discrimination and harassment and, through its special program provisions, to foster proactive steps to promote human rights. Human rights law prohibits the creation and/or fostering of negative or poisoned environments that threaten basic human rights.

2. To Whom Does This Policy Apply?

This policy applies to all Toronto District School Board students, employees, trustees and other users such as members of consultative committees, clients of the Board, parents, volunteers, permit holders, contractors, and employees of organizations not related to the Board but who nevertheless work on or are invited onto Board premises. This policy also covers discrimination and harassment by such persons which occur outside the study/work place, and which are proven to have repercussions that adversely affect the Board's learning/working environment.

3. Duties and Responsibilities

A school board has a duty to maintain an environment respectful of human rights and free of discrimination and harassment for all persons served by it. It must be ever vigilant of anything that might interfere with this duty. In fostering this environment, the Board expects that everyone will:

- be aware of and sensitive to issues of discrimination and harassment
- support individuals who are, or have been, targets of discrimination and harassment.
- prevent discrimination and harassment
- take reasonable steps to remove any discriminatory barriers in employment policies and practices and in accessing programs, resources, and facilities
- take all allegations of discrimination and harassment seriously and respond promptly
- provide positive role models
- not demonstrate, allow or condone behaviour contrary to this policy, including reprisal
- report immediately hate group activity

Toronto District School Board

Policy P.031 EMP: Human Rights

3.1. Human Resource Services

The Human Resource Services Department of the Toronto District School Board has the responsibility to designate resources for ensuring the implementation of and compliance with this policy and procedures.

3.2. Teachers

Teachers have a particular obligation to ensure that the learning environment is free of discrimination and harassment and to respond speedily to breaches of this policy when they occur. The Board recognizes that preventive education and proactive practices are the best long-term strategies to achieve an inclusive learning and working environment. It is essential, therefore, that Toronto District School Board programs, curriculum, teaching methods and management practices support the values embodied in this policy.

3.3. Supervisory and Managerial Personnel

Supervisory and managerial personnel have a specific duty to implement the policy. This duty includes prevention of and response to discrimination and harassment and the education of staff, students and the school community.

Failure to take measures to address discrimination and harassment in the learning and working environment may have legal implications for the Board.

4. Grounds and Forms of Discrimination

4.1. Grounds of Discrimination

Under this policy, the Board upholds and supports the right to equal treatment without discrimination based on the following prohibited grounds:

- Age
- Ancestry
- Citizenship
- Colour
- Creed (faith)
- Disability
- Ethnic origin
- Family status
- Gender
- Gender identity
- Marital status
- Place of origin
- Race
- Same-sex partnership status
- Sexual orientation
- Socio-economic status

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4.2. Forms of Discrimination

Discrimination is defined as unfair treatment of a person or group based on the grounds listed above. Discrimination can occur in many ways including the following:

- Direct discrimination: Any action from individuals, groups or organizations, whether intended or unintended, which differentiates between persons based on their membership in a protected group as set out in this policy other than special programs designed to address the conditions of individuals or groups
- Indirect discrimination or condonation: Occurring when discrimination and harassing behaviour are either overlooked or accepted particularly by supervisory or managerial personnel
- Systemic discrimination: Arising from policies, procedures, practices and conduct which may not be discriminatory in their intent but adversely impact individuals or groups protected by this policy where the adverse impact arises from one of the prohibited grounds of discrimination
- Harassment: A form of discrimination defined as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. Sexual harassment is a particular form of harassment. It can take the form of a sexual advance, request for sexual favours or sexual flirtation or banter made by any person, including a person in a position to grant, confer or deny a benefit, privilege, or advancement, where the person engaging in such conduct knows, or ought reasonably to know, that it is unwelcome. Sexual attention by an employee toward a student is unacceptable under any circumstances and shall constitute a violation of this policy
- Failure to reasonably accommodate a person short of undue hardship on any of the grounds covered by this policy.
- Discrimination against individuals because of their relationship or association with a person or persons identified by a prohibited ground of discrimination under this policy.
- Reprisals which may include threats, intimidation, denial of opportunity or undue negative focus on the rights of individuals or groups who claim and enforce their rights under this policy.
- Negative or “poisoned” environments created and fostered by acts or omissions that maintain offensive or intimidating climates for study or work. Poisoned learning environments include inappropriate or non-inclusive curriculum and pedagogy, bias or discriminatory barriers in existing policies, programs, or assessment procedures, and discriminatory comments made by teachers and other employees. Poisoned working environments thrive where there is managerial or supervisory condonation of discriminatory or harassing behaviour. Poisoned environments can also be created where there is inattention to fair and equitable recruitment and employment policies, practices and procedures.
- Hate group activities

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5. Hate Group Activities

Hate group activities represent some of the most destructive forms of human rights-based discrimination by promoting hatred against identifiable groups of people. Hate groups generally label and disparage people who may include immigrants, people with disabilities, members of particular racial, religious or cultural groups, people who are gay or lesbian. Hate group activities will not be tolerated. Such activities contravene this policy, and other potential board policies related to school safety and may also contravene the Criminal Code of Canada.

6. Complaints

All those who are covered by this policy are entitled and encouraged to complain about discrimination and harassment and are entitled to have access to the complaint procedures. In addition, nothing in these procedures precludes individuals who believe they are targets of (or have witnessed) discrimination and harassment from directly expressing that the behaviour is inappropriate and must stop immediately. Many complaints can be resolved quickly and effectively using this approach. In order to stop discrimination and harassment, supervisory and managerial personnel must expeditiously address and attempt to resolve complaints under this policy and procedures.