

## 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 “*OHS*”) prohibits workplace harassment (but not discrimination). Unlike the *Code*, under the *OHS*, all workplace harassment is prohibited and no specific ground of harassment needs to be identified. However, the *OHS* 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 *OHS*.<sup>1</sup> Personal harassment not related to any prohibited ground receives protection only under the *OHS*. 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 *OHS* 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.

---

<sup>1</sup> Grounds-based harassment in employment that is prohibited by the *Code* (workplace racial harassment for instance) is also prohibited by the *OHS* 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 *OHSa*.

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 *OHSa*.

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 *OHSA* 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 *OHSA*.

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 *OHSA*, including alleged *OHSA* 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.<sup>2</sup>

---

<sup>2</sup> 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.<sup>3</sup>

#### 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.

---

<sup>3</sup> 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 *OHS*A, 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.<sup>4</sup>

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

---

<sup>4</sup> Although both the *OHS*A 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 *OHS*A complaints that do not indicate grounds of discrimination proceed through the formal process. There is no indication of how *OHS*A 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.