



P034, Workplace Harassment Prevention: Annual Review

To: Governance and Policy Committee

Date: 29 May, 2019

Report No.: 05-19-3665

Strategic Directions

- Create a Culture for Student and Staff Well-Being

Recommendation

It is recommended that the Workplace Harassment Prevention Policy (P034), as presented in this report, be approved.

Context

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

In accordance with the Board’s Policy Development and Management Procedure (PR501), section 6.17: “policies that are mandated by legislation to be reviewed on an annual basis may undergo a simplified review process annually and a complete process every four years (e.g., Occupational Health and Safety Policy, Workplace Harassment Prevention Policy, Workplace Violence Prevention Policy, etc.). Under the simplified process, the policy may be exempted from consultation requirement if no substantive changes to the policy are being proposed”.

Upon reviewing the *Occupational Health and Safety Act* and the *Ontario Human Rights Code*, no substantial changes are being recommended. It is therefore proposed that the simplified review process be applied.

Staff is recommending two housekeeping revisions. The first revision relates to a position title update in section 4 – Responsibility to align with the current organizational

structure. The second housekeeping change relates to updating the list of reference documents in section 5 – Application and Scope and section 10 – Reference Documents. These revisions can be found in Appendix A attached.

Action Plan and Associated Timeline

Subject to the Governance and Policy Committee's approval, the Policy will be submitted to the Board of Trustees on June 19, 2019 for final approval.

Resource Implications

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

Communications Considerations

Following Board approval, the Policy will be posted on the Board's public website. In addition, a message will be circulated to the System Leaders' Bulletin instructing site management and school principals throughout the TDSB system to post the Policy in a conspicuous location within their workplace.

Board Policy and Procedure Reference(s)

- Equity Policy (P037)
- 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)
- Workplace Harassment Procedure (PR515)

Appendices

- Appendix A: Workplace Harassment Prevention Policy (P034) – Revised with Tracked Changes

From

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Toronto District School Board

Policy P034

Title: **WORKPLACE HARASSMENT PREVENTION**

Adopted: November 7, 2002

Effected: November 7, 2002

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

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

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.

3.0 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.

Appendix A

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. Associate Director, Equity and Achievement

5.0 APPLICATION AND SCOPE

This policy addresses workplace harassment under the OHS Act and applies to all workers within the meaning of the OHS Act. 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.
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- 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*.

9.0 APPENDICES

N/A

10.0 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)
- ~~Occupational Health and Safety (P048)~~
- 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)
- ~~Complaint Protocol for the Board Member Code of Conduct (PR708)~~
- E-mail Usage (PR572)
- Workplace Harassment Prevention and Human Rights (PR515)
- ~~Parent Concern Protocol (PR505)~~
- ~~Promoting a Positive School Climate (PR697)~~
- ~~Sexual Misconduct by Students (PR608)~~
- ~~Workplace Harassment Prevention & Human Rights Procedure~~

Legislative Acts:

- ~~Municipal Freedom of Information and Protection of Privacy Act~~
- *Occupational Health and Safety Act*
- *Ontario Human Rights Code*