

Toronto District School Board

Policy P034

Title:	Workplace Harassment Prevention for Non-<i>Human-Rights-Code</i> Harassment
Adopted:	November 7, 2002
Effectuated:	November 7, 2002
Revised:	February 16, 2004; November 16, 2011; September 2016; April 19, 2017; June 19, 2019; [insert new date]
Reviewed:	June 2013; October 6, 2015; April 19, 2017; June 19, 2019; [insert new date]
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”) and the Board’s obligations under the OHSA with regard to workplace harassment that is not covered by the Board’s Human Rights Policy (P031).

2.0 OBJECTIVE

This Policy is designed to promote a healthy, respectful and supportive work environment. It highlights conduct that may amount to non-Code workplace harassment (ie. harassment that is not covered by the Board’s Human Rights Policy or the *Human Rights Code*) and outlines the system’s shared responsibility for fostering a harassment-free workplace. The goal is to prevent non-Code workplace harassment from taking place and, where necessary, to investigate and respond to instances, potential instances, and complaints of such behaviour in a fair, timely and effective manner.

3.0 DEFINITIONS

Abuse of Authority occurs when a person improperly uses the power and authority inherent in their position to engage in non-Code workplace harassment. This harassment may include, but is not limited to, patterns of the following behaviours:

- undermining the performance of a worker’s job, including unjustifiably withholding information so as to interfere with a worker’s work;
-

- unnecessarily reprimanding a worker in front of others;
- improperly interfering with or inappropriately influencing a worker's career, inappropriately endangering a worker's job, or threatening to do so; or
- otherwise taking advantage of one's position to harass a worker.

Abuse of authority does not include the reasonable exercise of managerial authority in connection with: coaching or counseling, assignment and monitoring of work, performance evaluation or discipline, or other supervisory or leadership functions.

Allegation means an unproven claim or assertion that someone has violated this Policy.

Board means the Toronto District School Board, which is also referred to as the "TDSB". The TDSB is an employer, as defined by the OHSA.

Bullying means targeted and typically repeated behaviour (physical, social, verbal, electronic, written or other means) intended to cause harm, fear, isolation, or distress to a worker. Harm may include, for example: physical, psychological, or social harm; or harm to reputation, property or career. Bullying can include creating a negative environment for a worker where there is a real or perceived power imbalance between the parties (for example, based on size, age, strength, academic ability, education, employment position, economic or social status, race, immigrant status, language, ethnic origin, sex, sexual orientation, gender identity, or disability).

Note: Where the power imbalance relates to a prohibited ground under the Human Rights Policy (P031), the situation should first be assessed to determine whether the Human Rights Policy (P031) applies, and if not, it may be addressed under this Policy.

Code-Based Harassment means harassment on the basis of a prohibited ground under Ontario's *Human Rights Code* ("Code") or the Board's Human Rights Policy (P031). The prohibited grounds are:

- Age
- Ancestry
- Citizenship
- Colour
- Creed (religion, includes Indigenous spiritual practices)
- Disability or perceived disability
- Ethnic origin
- Family status
- Gender expression
- Gender identity
- Marital status (includes single, married and common law, separated, divorced, widowed; includes same and opposite-sex relationships)

Place of origin
Race
Sex (includes pregnancy and breastfeeding)
Sexual orientation
Record of offences (provincial offences or pardoned federal offences)
Socio-economic status
Association with a person identified by a ground listed above

Workplace harassment on the basis of the above grounds is prohibited by both the Code and the OHSA. Code-based workplace harassment, including sexual harassment, falls under the Human Rights Policy (P031), and is not covered under this Policy. The Human Rights Policy also addresses non-workplace harassment on the basis of the prohibited grounds, as well as discrimination.

Non-Code Workplace Harassment means 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, and is not based on a prohibited ground under the Human Rights Policy (P031) or the *Human Rights Code*.

Examples:

Conduct that may constitute non-Code workplace harassment or that could create a poisoned work environment includes, but is not limited to, patterns of the following behaviours:

- Insults; embarrassing, demeaning or intimidating remarks, comments, or gestures; name-calling, yelling, ridiculing, mocking, using abusive language and profanity
- Publicly degrading, shaming, or humiliating; threatening to share embarrassing information
- Gossiping; spreading rumours; exclusion; ignoring; ostracizing
- Workplace jokes or pranks that insult, embarrass, demean, ridicule, or intimidate; hazing
- Displaying or circulating vexatious pictures or materials in print or electronic form, including on-line
- Vexatious phone calls, e-mails, or social media posts
- Deliberately withholding resources or information
- Inappropriate excessive criticism of someone's work
- Vandalism, graffiti
- Intimidating or aggressive behaviour, for example, slamming doors, throwing or breaking objects, physical posturing such as blocking doors or entrance ways (see note below with respect to workplace violence)
- Bullying (see definition at Appendix (A))

- Cyber-bullying – bullying by electronic means, such as by email, messaging, or social media
- Abuse of authority

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

A finding of non-Code workplace harassment generally requires a course or pattern of inappropriate conduct (ie. conduct that has occurred on multiple occasions, over time). However, in exceptional circumstances, a single incident of very serious conduct may amount to non-Code workplace harassment. For example, serious abusive behaviour (verbal or physical as outlined above), especially when engaged in by someone in a position of authority.

Notes:

- Some bullying or threatening behaviours may be more appropriately addressed under the Workplace Violence Prevention Policy (P072) if there is an exercise of physical force that causes or could cause physical injury to the worker, or an attempt or threat to exercise such physical force.
- If the inappropriate behaviours (for example, threatening/harassing) are committed via TDSB electronic devices or email etc., it can also be a violation of the Acceptable Use of Information Technology Resources Policy (P088), E-mail Usage Procedure (PR572) or Code of On-line Conduct Procedure (PR571).
- Discrimination and harassment on the basis of a prohibited ground under the *Human Rights Code* are addressed under the Human Rights Policy (P031) (see above under “*Code-Based Harassment*”).

Reasonable action

A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not non-Code workplace harassment. A “reasonable action” does not include any of the examples of the behaviours listed above under non-Code workplace harassment. A “reasonable action” may include, but is not limited to, the following examples:

- A supervisor exercising the “right to manage”. For example, a supervisor making unfavourable operational decisions in alignment with operational requirements, Board mandates, or government ministry directives; providing appropriate direction; or enacting administrative rules. Such action is unlikely to meet the definition of non-Code workplace harassment even if a worker disagrees with the action or the action adversely impacts one or more individuals.
- Performance management activities related to assessing and improving

a worker's performance, productivity and effectiveness with the goal of facilitating the worker's success. For example, providing constructive feedback, recommendations and supports to improve worker performance, even if the worker does not agree.

- Discipline. Generally, a worker's concerns regarding discipline are more appropriately addressed through discussion between Employee Services and the worker's union/association/network representative, and/or the appropriate grievance/dispute resolution process, if applicable.

Other Conduct

Other conduct that is typically not non-Code workplace harassment may include, but is not limited to:

- General disagreements among workers (including supervisors).
- General acts of rudeness or incivility. For example, 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.

Poisoned Work Environment for the purpose of this Policy means a work environment that is oppressive, negative, hostile, unwelcoming, or non-inclusive as a result of vexatious behavior that is not based on a prohibited ground and that is known or ought reasonably to be known to be unwelcome. (Note: A work environment that is poisoned on the basis of a prohibited ground falls under the Human Rights Policy (P031).) The vexatious behaviour or conduct does not need to be directed toward any person or group in particular. A poisoned work environment may result from a series of incidents or a single serious incident; condonation of such behavior; and/or the failure to remedy and restore the workplace following the incident(s).

Examples:

- A supervisor has yelled at several staff, has acted maliciously, and has been inappropriately punitive. Some staff are afraid of going to work, even those who have not yet been targeted by the conduct.
- A coworker has spread embarrassing gossip about a few coworkers. The supervisor is aware but has not taken the matter seriously. Other workers are worried they may be targeted next.

Prohibited Ground means a prohibited ground under Ontario's *Human Rights Code* or the Board's Human Rights Policy (P031). See the definition of "Code-Based Harassment".

Reprisal means adverse action or threat of adverse action against an individual that is in retaliation:

- (a) for, in good faith raising concerns or claiming or enforcing a right under this Policy or associated procedure or supporting or assisting someone else to do so;
- (b) for participating in a process to address a matter under this this Policy or associated procedure; or
- (c) on the basis of a belief that the individual has engaged in (a) or (b).

Adverse action could include, for example:

- suspending, disciplining or dismissing a worker;
- intimidating, coercing, or encouraging a worker not to report a situation;
- transferring a worker to another position, shift or work location;
- reducing or changing a worker's hours;
- denying a promotion; or
- harassing a worker.

Supervisor means a person who has charge of a workplace or authority over workers.

TDSB means the Toronto District School Board, which is also referred to as the "Board". The TDSB is an employer, as defined by the OHSA.

Vexatious conduct means conduct that is inappropriate or unnecessary and that a worker reasonably experiences as offensive, embarrassing, humiliating, distressing or demeaning.

Note: This definition incorporates a subjective component—the worker actually experiences the conduct as offensive, embarrassing, humiliating or distressing; and an objective component that considers, from the point of view of a "reasonable" third party, how such behaviour would generally be received by an individual in the worker's circumstances.

Vexatious complaint means a complaint that is deliberately false, or that is brought forward without sufficient merit, solely to cause annoyance or distress. It is important to note that there is a difference between a vexatious complaint and a complaint that is unsubstantiated but that was brought forward based on the complainant's good faith belief that harassment occurred.

Worker means any person included in the definition of "worker" under the OHSA including, but not limited to: regular, temporary, and probationary employees; co-op students; and contract employees.

Workplace means 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 or changing areas, and vehicles used for work purposes or on work property). Conferences, workshops, training sessions and staff functions (for example, staff parties and retirement celebrations) also fall within the scope of this Policy.

Regardless of where it occurs, conduct that has work-related consequences may be considered to have occurred in the workplace. Phone calls, electronic messages, and postings on electronic and social media may form part of the workplace, particularly when addressed to a worker or when the content is related to a worker or the workplace.

Workplace Conflict means disagreement, discord, or unfavourable interactions within the workplace between one or more individuals or groups that may result from differing ideas, beliefs, decisions, goals or values related directly to their job or organization. Workplace conflict can also result from individuals just not “getting along.” This is sometimes referred to as a “personality conflict.”

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

- competing for limited resources;
- conflict between personal and departmental or organizational goals;
- differing expectations of productivity levels or work performance;
- disagreement on how to achieve organizational or team goals;
- lack of role clarity;
- organizational change;
- poor or ineffective communication; or
- individual differences in opinions, thoughts, communication styles, 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. Whether and how workplace conflict is managed, determines whether it has an adverse or positive effect on individuals, groups or the workplace. Conflict appropriately managed can signal the need for change leading to process improvements, higher productivity or improved service delivery. Unresolved conflict or conflict not appropriately managed can lead to a decrease in productivity, increased stress, and absenteeism. If left unchecked, it can ultimately lead to harassing behaviours or a poisoned work environment.

4.0 RESPONSIBILITY

The Director of Education holds primary responsibility for implementation of this

Policy.

Within the Director's Office, the responsibility for coordination and day-to-day management of the Policy is assigned to the Executive Superintendent, Employee Services.

5.0 APPLICATION AND SCOPE

This Policy addresses workplace harassment under the OHSa that is not covered by the Board's Human Rights Policy (P031), that is, workplace harassment that is not based on a prohibited ground under the *Human Rights Code* or Human Rights Policy (P031). It applies to all TDSB workers and addresses non-Code workplace harassment from all sources, including supervisors, workers, trustees, students, parents, suppliers, and members of the public.

Code-based harassment and discrimination, including sexual harassment, fall under the Human Rights Policy (P031), and are not covered under this Policy. The Board also has policies and procedures in place to deal with other forms of harassment or harmful conduct. See section 10.0 for a list of other relevant policies and procedures.

6.0 POLICY

6.1 The Board is committed to respectful, equitable employment practices through the prevention of all forms of non-Code workplace harassment. The Board will not tolerate, condone or ignore non-Code workplace harassment in its schools, facilities and other workplaces.

6.2 All workers are responsible for creating, maintaining, and contributing to a climate of understanding and mutual respect for the rights and dignity of each person. All workers are required to do the following:

- (a) Do not engage in non-Code workplace harassment, the creation of a poisoned work environment, or reprisal.
- (b) Cooperate fully in appropriate attempts under this Policy or associated procedure to address a situation or complaint.
- (c) Cooperate fully in the investigation of a situation or complaint under this Policy and associated procedure.
- (d) Do not make a vexatious complaint.
- (e) Do not purposefully, or recklessly provide false or misleading statements or information to an investigator investigating a matter under this Policy.
- (f) Maintain confidentiality in accordance with the procedure made pursuant to this Policy.

- 6.3** The Board will promote a healthy, respectful and supportive work environment by providing:
- (a) information and instruction on the prevention of non-Code workplace harassment, a poisoned work environment, and reprisal, including by sharing this Policy and the associated procedure with all workers;
 - (b) an environment that encourages reporting all instances of harassment; and
 - (c) a process to handle and investigate non-Code workplace harassment, poisoned work environment, and reprisal instances, potential instances, and complaints in a manner appropriate in the circumstances, through this Policy and the associated procedure.
- 6.4** Supervisors are responsible for not only their own conduct, but also for addressing the conduct of those under their supervision. To prevent non-Code workplace harassment, poisoned work environment, and reprisal and to address instances, potential instances, and complaints, management will do the following:
- (a) Lead by example by not engaging in, tolerating or condoning non-Code workplace harassment, a poisoned work environment, or reprisal.
 - (b) Make all reasonable efforts to protect workers from all forms of harassment by maintaining a work environment that is respectful.
 - (c) Post this Policy and associated procedure in a conspicuous location in the workplace, where it would be likely to come to workers' attention, and make the Policy and procedure available to workers (electronically or by hard copy).
 - (d) Be aware and 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 that they understand their rights and responsibilities as they relate to this Policy and associated procedure.
 - (f) Take all instances, potential instances, and complaints of non-Code workplace harassment, poisoned environment, and reprisal seriously by promptly:
 - (i) intervening when it occurs or is suspected to have occurred;
 - (ii) investigating allegations, instances, potential instances, and complaints of non-Code workplace harassment, poisoned

environment and reprisal in a manner appropriate in the circumstances, in accordance with this Policy, associated procedure and the OHSA;

- (iii) making inquiries or consulting with other Board departments, as appropriate, to assist in effectively managing allegations, instances, potential instances, and complaints; and
- (iv) taking remedial and/or disciplinary action, with any person found to have engaged in conduct in violation of this Policy. Remedial action may include, but is not limited to, training and education or other actions as deemed appropriate in the circumstances. Remedial action for employees is taken in consultation with Employee Services. Remedial action for persons who are not employees is taken after consultation with the Legal Services Department and/or Safe Schools Department and/or applicable superintendent, as appropriate, and may entail, but is not limited to, denial of access to Board premises or issuance of trespass notices.

- 6.5** All workers, including those who witness, are encouraged to report non-Code workplace harassment, a poisoned work environment, or reprisal to the appropriate person (typically one's supervisor or the next level supervisor not involved or implicated) in accordance with the procedure made pursuant to this Policy. Reprisal against workers is prohibited (please see above definition of "reprisal").
- 6.6** Any person who makes a complaint of non-Code workplace harassment, poisoned work environment, or reprisal or who participates in a process to address and/or resolve a matter under this Policy, will adhere to the confidentiality provisions set out in the procedure made pursuant to this Policy.
- 6.7** Action may be taken with any employee who fails to abide by the requirements set out in this Policy, including but not limited to remedial action or discipline, up to and including termination of employment.
- 6.8** This Policy must be interpreted harmoniously with the spirit and intent of the *Human Rights Code*, and the Board's Human Rights Policy (P031) and Equity Policy (P037), and shall not be interpreted or applied in a manner that undermines the values or rights reflected in them.

Example: A person experiencing racism from another worker isolates themselves away from that person, and avoids speaking to them. They also warn another racialized worker about that person's racism. This reaction to experiencing racism is not workplace harassment. While the ideal circumstance is for all TDSB

supervisors to be approachable and responsive so that workers experiencing racism can address such matters through them, workers should not be penalized when they feel unable to do so or when such efforts fail and other strategies are employed.

6.9 ADDRESSING INCIDENTS OF SUSPECTED HARASSMENT

Workers should refer to the procedure created pursuant to this Policy for information on addressing situations or complaints of suspected non-Code workplace harassment, poisoned work environment, and reprisal.

7.0 EVALUATION

This Policy will be reviewed as required, but at least annually, in accordance with the OHSA

8.0 APPENDICES

Not Applicable

9.0 SPECIFIC DIRECTIVES

The Director will issue an operational procedure to implement this Policy, including setting out the process for addressing incidents or complaints of suspected non-Code workplace harassment, poisoned work environment, and reprisal.

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)
- 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)
- Human Rights (PR515)
- Workplace Harassment Prevention for Non-Code Harassment (PR517)

Legislative Acts:

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

DRAFT