

COMMITTEE OF THE WHOLE (CONTINUATION) PUBLIC MINUTES

Tuesday, January 18, 2022, 7:00 pm
Zoom Meeting

- Trustees: Justine Bell, Donna Blackburn, Christine Boothby, Rob Campbell, Chris Ellis, Lyra Evans, Mark Fisher, Wendy Hough, Jennifer Jennekens, Keith Penny, Sandra Schwartz, Lynn Scott, Charles Chen (Student Trustee)
- Staff: Camille Williams-Taylor (Director of Education), Brett Reynolds (Associate Director), Janice McCoy (Superintendent of Human Resources), Michele Giroux (Executive Officer, Corporate Services), Shannon Smith (Superintendent of Instruction), Prince Duah (Superintendent of Instruction), Mary Jane Farrish (Superintendent of Instruction), Shawn Lehman (Superintendent of Instruction), Peter Symmonds (Superintendent of Learning Support Services), Nadia Towaij (Superintendent of Programming and Learning K-12), Nancy Brady, Reg Laverne, Carolyn Tanner (Human Rights and Equity Advisor), Stacey Kay (Manager of Learning Support Services), Sandra Owens (Manager of Business & Learning Technologies), Diane Pernari (Manager of Communications & Information Services), Richard Sinclair (Manager of Legal Services and Labour Relations), Christina Saad (Human Rights Officer), Jennifer Mbang (Human Rights Officer), Nicole Guthrie (Manager of Board Services), Michael Guilbault (Central Audio Visual Technical Specialist), Darren Gatley (Board/Committee Coordinator)
- Guests: Thomas Holloway (OCASC), Robert James (OCEOC, ALT), Patsy Agard (OCSSAN-ALT), Stephanie Kirkey (OSSTF-District 25), Susan Gardner (ETFO), Pat Dixon (OCEOTA-ALT), Melodie Gondek (OSSTF- ESP), Seema Lamba (ACE), Lili Miller (IEAC), Sonia Nadon-Campbell (SEAC)

1. Call to Order -- Vice-Chair of the Board

Vice-Chair Penny called the public meeting to order at 7:01 p.m. He acknowledged that the meeting is taking place on unceded Algonquin Territory and thanked the Algonquin Nations for hosting the meeting on their land.

2. Matters for Action

2.1 Report 22-007, Approval of Policy P.147.GOV: Human Rights (C. Tanner)

Chair Penny advised that the report had been previously presented during the Committee of the Whole meeting on 11 January 2022 and that a supplemental memorandum was distributed to trustees outlining staff revisions to the draft policy P.147.GOV: Human Rights (the Policy) attached as Appendix D to report 22-007.

Chair Penny noted that at the time of adjournment, the following motion was tabled:

Moved by Trustee Campbell,

- A. THAT Policy P.147.GOV: Human Rights attached as Appendix D to Report 22-007, be approved;
- B. THAT Policy P.086.CUR: Religious and Creed-Based Accommodation, attached as Appendix E to Report 22-007, be rescinded; and
- C. THAT other Board Policies be amended as necessary to reflect the definitions approved in Board Policy P.147.GOV: Human Rights.

During the discussion and in response to questions, the following information was provided:

An amendment moved by Trustee Schwartz,

THAT in Policy P.147.GOV section 2.14 (a) the words “who identified with a Protected Ground” be struck.

THAT in Policy P.147.GOV section 2.14 (b) the words “related to a Protected Ground” be struck.

THAT in Policy P.147.GOV section 2.14 (c) the words “because of a Protected Ground” be struck.

THAT in Policy P.147.GOV section 2.14 (d) the word “personal” be inserted before the word “characteristics” and that the words “that are related to a Protected Ground” be struck.

- In response to a query, Director Williams-Taylor noted that the staff amendments expand the scope of the Policy beyond those under protected grounds as nobody should have to endure these infractions;
- Human Rights and Equity Advisor (HREA) Tanner advised that the goal of the Policy is to have a standard definition for the District that encompasses code and non-code based harassment and that the amendment would remove the limiting clause;
- Standardizing the definitions of harassment within the Policy will provide harmonization for all District policies;

- A “joke” as outlined in section 2.14 (a), would need to be one that was known or reasonably known to be unwelcome;
- Nuances and interpretation of possibly offensive jokes would fall under the obligations of *the Occupational Health and Safety Act* which prohibits harassment in the workplace as well as Policy P.009.HR, Respectful Workplace Policy;
- Non-code based harassment could also be interpreted as personal harassment;

An amendment moved by Trustee Schwartz,

THAT in Policy P.147.GOV section 2.14 (a) the words “who identified with a Protected Ground” be struck.

THAT in Policy P.147.GOV section 2.14 (b) the words “related to a Protected Ground” be struck.

THAT in Policy P.147.GOV section 2.14 (c) the words “because of a Protected Ground” be struck.

THAT in Policy P.147.GOV section 2.14 (d) the word “personal” be inserted before the word “characteristics” and that the words “that are related to a Protected Ground” be struck.

Carried

- In section 2.22 of the Policy, the intent is that educators would be considered to be in a position of authority when interacting with students but not when interacting with colleagues;
- Staff noted that a mechanism for principals and vice-principals to report infractions was considered to be included within the Policy; however, this obligation would be determined by procedure. Staff noted that there is no obligation for reporting outside of the HREA office and expressed concern that including an extended reporting mechanism may go beyond the existing capacity of the HREA office;
- Staff noted that dignity is foundation of human rights but cautioned against having too many definitions as it could limit nuances;
- Staff cautioned against quantifying learning materials as outlined in section 4.13 (b) of the Policy as not all learning materials can represent all identities, but rather to have many materials representing views of multiple different identities;
- Director Williams-Taylor noted that the foundation of the Policy provides for intersection with other policies and instructional practices,

allowing for accountability of pedagogical expectations to ensure that a diversity of materials are available within the classroom;

- The practice of using capital letters in the Policy to highlight defined words is the convention used in District policy writing;

An amendment moved by Trustee Scott,

THAT a definition of intersectionality be added to section 2.0 of Policy P.147.GOV.

A sub-amendment moved by Trustee Bell,

THAT "and dignity" be added after the word "intersectionality".

Carried, friendly

An amendment moved by Trustee Scott,

THAT a definition of intersectionality and dignity be added to section 2.0 of Policy P.147.GOV.

Carried, friendly

- Educators and other staff could build capacity through professional development in order to recognize a human rights violation. The HREA office will develop simplified learning resources in the future to educate employees and the school community on the Policy;
- In the event that a human rights violation occurred at a secondary school and the principal felt it was resolved, the HREA office would be satisfied. In the event however, that the complainant was not satisfied with the response, they could escalate it to the HREA office for review;
- Director Williams-Taylor noted that the Policy is intended to create a culture of social responsibility and accountability, not a punitive culture which would counter the advancing of human rights;

An amendment moved by Trustee Bell,

THAT in Policy P.147.GOV section 4.7 (e) the words "and who will report each human rights incident promptly to the office of the HREA office" be added after the word "student".

- In introducing the amendment, Trustee Bell noted that when a human rights violation occurs, it should be brought to the attention of an authority figure who could then report the occurrence to the HREA office;
- Several trustees expressed concern that the wording of the amendment was incomplete and confusing;

- Director Williams-Taylor noted that it would be significantly complicated to operationalize this as there would be capacity issues and that the interpretation of the amendment was unclear;
- Trustee Scott pointed out that section 4.9 and 4.10 of the Policy outlines the obligations of the Director of Education and senior staff and that the amendment was not necessary as it would be encompassed in the procedure;
- Director Williams-Taylor noted that if every infraction was reported to the HREA office that it would create unintended consequences including creating a culture of surveillance;

With the consent of the committee, Trustee Bell withdrew her amendment.

- Staff noted that the Policy extends beyond the Ontario Human Rights Code (OHRC) to include socioeconomic disadvantaged groups;
- Staff noted that the ORHC sets a minimum requirement and organizations, like the OCDSB, can go beyond to include additional protected grounds as required;
- A confidentiality agreement between the complainant and respondent would be in effect during an HREA investigation and information would be shared on a need-to-know basis;
- A decision by a panel of trustees from a suspension appeal hearing cannot be over-ruled by the HREA office; however, the HREA office could investigate if the student or their family felt as though there was discrimination in the process leading to the decision;
- In the event of a vexatious complaint, the HREA office would conduct an investigation based on evidence to determine a finding of facts. There may be recommendations for a remedy to mitigate future incidents but this would not include discipline for an individual, which is the responsibility of the District;

Following a break at 9:00 pm the meeting was called to order at 9:05 p.m.

An amendment moved by Trustee Lyra Evans,

THAT in Policy P.147.GOV the following sentence be added as section 4.7 (f) "Principals and/or vice-principals are responsible for reporting to the Office of the HREA the number, nature, and resolution of human rights incidents in a timely manner."

- In introducing the amendment, Trustee Lyra Evans suggested that it is important to gather data from the HREA office in order to measure progress;

- Trustee Blackburn expressed the view that the amendment could create a culture of fear as an unintended consequence as students and staff may become fearful that each interaction could be interpreted in multiple ways as an infraction;
- Director Williams-Taylor recognized the value of the cultural framework that the Policy promotes and expressed concern regarding compliance, accountability and measurement of fact as each school may engage with students and staff differently. She noted that operational issues of actualizing the proposed reporting and the reliability of accurate data could be an issue as there would be no way of knowing what was not reported. She noted that prioritizing a culture of compliance disallows focusing on the culture of practice that promotes positive systemic change;
- Trustee Scott recognized the intent of the amendment but expressed concern with the wording, as “human rights incident” is unclear and could be left for interpretation. She queried who would be responsible to distinguish what is a human rights incident. Trustee Scott advised that the Policy already contains an expectation of monitoring which presumes data collection for measuring success and that the Director of Education should have the responsibility of providing a process as part of the procedure to accompany the Policy. She added that the Policy encompasses expectations that there will be monitoring and reporting requirements;
- Trustee Campbell expressed concern with operationalizing and having central oversight for each interaction with the amendment. He suggested that a threshold could be used for monitoring, oversight, and collecting information to identify trends that could affect policies;
- Director Williams-Taylor noted that an established threshold for the nature of the transgressions reported through the procedure could provide clarity and make reports from the HREA office more meaningful;

A sub-amendment moved by Trustee Campbell,

THAT "of determined human rights violations leading to school-based sanctions or disciplinary actions" replace “of human rights incidents in a timely manner” after the word “resolution.”

- Staff expressed concern that limiting the amendment to school -based sanctions could have the unintended impact of minimizing the nature of complaints in that potential infractions may not get an appropriate response or may not be reported;

- Trustee Lyra Evans advised that the sub-amendment may be too prescriptive;
- Members noted that the sub-amendment may not capture significant issues and that “human rights incidents” in the main amendment could be defined through instructing educators on what human rights incidents entail. Members noted that clarity could be provided by expanding on the procedure;
- In response to a query, Director Williams-Taylor noted that although the procedures have not yet been completed, the plan for reporting to trustees entail the HREA office cyclically reporting on identified trends. The HREA office would examine patterns in collected data which would then be brought to the attention of the Director with suggested recommendations for action. Director Williams-Taylor noted that this would allow trustees to fulfil obligations of oversight and provide opportunities to discuss systemic and structural practices;
- Director Williams-Taylor noted that reports on student outcomes, surveys, data sets, and the envisioned reports from the HREA office may have intersections, however, the combined extensive information of other reports would be important for trustees to examine and consider;
- Director Williams-Taylor noted that the language of the sub-amendment may limit the scope of the Policy and may cause unintended harm. She noted that determining human rights violations may be best served within the procedure;
- In response to a query, Director Williams-Taylor noted that the sub-amendment would create a category outlining the disciplinary action taken in schools within the report that would come from the HREA office;
- Trustee Scott expressed the view that the sub-amendment removes the focus from the objective of the Policy in promoting significant behaviour change through learning;
- Staff noted that if the amendment put forth by Trustee Lyra Evans was carried, the type of data collection required should be defined;

With the consent of the committee, Trustee Campbell withdrew his amendment.

An amendment moved by Trustee Lyra Evans,

THAT in Policy P.147.GOV the following sentence be added as section 4.7 (f) “Principals and/or vice-principals are responsible for reporting to the

Office of the HREA the number, nature, and resolution of human rights incidents in a timely manner.”

Carried

- Speaking publicly and sharing information would be outlined in the procedure. The Policy outlines that concerns and complaints will be treated confidentially by the District and shared on a need-to-know basis, as permitted by law or related procedures of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). Details contained in the procedure with respect to confidentiality and information sharing will not be available by the 25 January 2022 Board meeting;
- Staff noted that surveys and public consultation undertaken on the Policy indicated that lack of trust was a significant issue, and it will take work to rebuild trust. The establishment of the HREA office indicates that the Ministry is working to rebuild or create trust with marginalized communities;
- Director Williams-Taylor advised that when proving to communities that action has been taken, it cannot be demonstrated by quantitative differences, it can only be demonstrated in a change in experience;
- Director Williams-Taylor advised that the purpose of public reporting of complaints to the office of the HREA is to demonstrate accountability to trustees and the District regarding commitment and practice in an effort to change the organization to enhance the experience of the school community;
- Staff noted that legal human rights obligations to not discriminate would apply to all aspects of employment, including any disciplinary actions taken with employees;
- Staff advised that human rights laws prevail over collective agreements; however, the Policy cannot change what is outlined in a collective agreement;
- Superintendent McCoy advised that where there is conflict between a collective agreement and human rights law, human rights law prevails. In a conflict between policy and a collective agreement, in general the collective agreement would prevail;
- Director Williams-Taylor advised that communicating the outcome of an investigation to the community or individuals will be contemplated in the procedure and not the policy. She added that privacy with respect to specific responses to an individual's behaviours and the obligation

to share information is very complex and has significant legal considerations;

- In response to a query from Trustee Lyra Evans, Director Williams-Taylor noted that there are multiple platforms of action and when reviewing the strategic action plan outlined in the Indigenous, Equity and Human Rights Roadmap, there are opportunities to speak to the behaviours, actions, implementation, and opportunities available within the District to make changes. She noted that the Policy is not the only platform to advance conversations for change;

An amendment moved by Trustee Campbell,

THAT in Policy P.147.GOV section 3.5 (a) the words “and equitably” be added after the word ‘equally’ and in section 3.6 replace the first ‘and’ with “, equity” after the word “equality”

Carried, friendly

An amendment moved by Trustee Campbell,

THAT 4.13 to be prefaced with the words “In addition to the obligations of Persons in Positions of Authority,”

Carried, friendly

- The current accountability mechanism regarding a “second look” when determining that an accommodation cannot be provided because of undue hardship, is an appeal process, of which some appeals would fall under the Complaints Policy procedure;
- Staff noted that the procedure to accompany the Policy will provide clarity regarding thresholds and how undue hardship is determined. The Policy would provide general framework for assessing requests for accommodation;

An amendment moved by Trustee Campbell,

THAT the following words be added to section 4.9 (f) before the semi-colon “Including the general rationale and related incidence rates for District denials of full accommodation on an undue hardship basis.”

- In introducing the amendment, Trustee Campbell noted that the intent is to determine what constitutes a valid threshold for accommodation requirements. He noted that it is important for trustees to understand and identify any trends in denial of full accommodation requests as these could have policy and budget implications;
- Director Williams-Taylor noted that the amendment’s parameters regarding a denial of full accommodation needs to be discussed. She

clarified that accommodation that is sought or preferred is not always the accommodation that is provided and advised that accommodations provided would meet the needs of the individual but may not be exactly what the applicant wanted;

An amendment moved by Trustee Campbell,

THAT the following words be added to section 4.9 (f) before the semi-colon "Including the general rationale and related incidence rates for District denials of full accommodation on an undue hardship basis."

Defeated

- Director Williams-Taylor advised that contractors, permit holders, and other third-parties on OCDSB property are held responsible in following District standards of conduct. If a third-party was found to be using District facilities in a manner that violated the Policy or procedures, the District would no longer engage with those groups;

The 10:30 vote received the required 2/3 majority to continue

- Section 2.22 could be clarified as positions of authority do not only occur in the presence of students as there are employees that hold positions of authority over other employees;
- Staff noted that wording for section 2.9 of the Policy was derived from Policy P.086.CUR: Religious and Creed-Based Accommodation. Staff advised that criteria outlined in section 2.9 (a) to (e) of the Policy need to be met to be considered as a Creed and that this is the standard of a test that is put forward by the OHRC.

Moved by Trustee Campbell

- A. **THAT Policy P.147.GOV: Human Rights attached as Appendix D to Report 22-007, be approved, as amended;**
- B. **THAT Policy P.086.CUR: Religious and Creed-Based Accommodation, attached as Appendix E to Report 22-007, be rescinded; and**
- C. **THAT other Board Policies be amended as necessary to reflect the definitions approved in Board Policy P.147.GOV: Human Rights.**

Carried

3. Matters for Discussion

- 3.1 Report 22-004, Specialized Program Class Referral Information 2021-2022 (P. Symmonds)

Moved by Trustee Lyra Evans,

THAT Report 22-004, Specialized Program Class Referral Information 2021-2022 be continued at a date and time to be determined by agenda planning.

Defeated

Trustees agreed to provide written comments and direct questions on Report 22-004, Specialized Program Class Referral Information 2021-2022 to Superintendent Symmonds, in writing. The superintendent agreed to provide responses in a memorandum to trustees.

4. Adjournment

The meeting adjourned at 10:58 p.m.

Keith Penny, Chair