

# Toronto District School Board

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Policy P105

Title: **SEXUAL MISCONDUCT**

Adopted: March 8, 2023

Effectuated: March 8, 2023

Revised: N/A

Reviewed: N/A

Authorization: Board of Trustees

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## 1.0 RATIONALE

The Sexual Misconduct Policy (the “Policy”) affirms the Toronto District School Board’s commitment to provide a safe, nurturing, positive learning and working environment, free of sexual misconduct. This Policy outlines the system’s shared responsibility in fostering a harassment free learning and working environment.

The Policy is aligned with governing legislation, including but not limited to, the *Criminal Code of Canada*, the *Education Act*, the *Child, Youth, and Family Services Act*, the *Occupational Health and Safety Act*, the *Protecting Students Act*, the *Police Services Act*, and the *Municipal Freedom of Information and Protection of Privacy Act*.

The Policy is also consistent with TDSB policies and procedures related to the reporting, investigating and dealing of abuse, neglect, exploitation, sexual harassment and misconduct within the TDSB (see Appendix A and B of this Policy for a complete list of relevant documents).

## 2.0 OBJECTIVE

To prevent sexual misconduct from taking place and to investigate and respond to incidents and complaints of such behavior in an accountable, timely and effective manner.

## 3.0 DEFINITIONS

*Anti-racism* refers to the practice of identifying, challenging, and changing the values, structures and behaviors that perpetuate systemic racism. (Ontario Anti-Racism Secretariat). Anti-racism examines the Power Imbalances between racialized people and non-racialized/white people. These imbalances play out in the form of unearned Privileges that white people benefit from, and racialized people do not (McIntosh, 1988).

*Board* refers to the Toronto District School Board, which is also referred to as the “TDSB”.

*Board Premises or Board Property* refers to any TDSB land, premises, location or thing at, upon, in or near which a student learns or an employee works.

*Confidential Information* refers to information in the possession of, or received in confidence by the TDSB, that the TDSB is either prohibited from disclosing, or is required to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act*, or other legislation, or received in confidence from other third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege.

Confidential information includes matters considered by the Board of Trustees in closed session in accordance with sections 207(2) and 207 (2.1) of the *Education Act*, which include:

- Litigation or any potential litigation affecting the Board;
- Intimate, personal or financial information in respect of a member of the Board or Committee, an employee or prospective employee of the Board or a pupil or their parent or guardian;
- The acquisition or disposal of the Board’s real property, including a school site;
- Decisions in respect of negotiations with the staff members of the Board;
- Information deemed to be “personal information” under the *Municipal Freedom of Information and Protection of Privacy Act*;
- Information subject to solicitor-client privilege; and/or
- An ongoing investigation under the *Ombudsman Act* respecting the TDSB

*Culturally Responsive* refers to an environment that is spiritually, socially and emotionally safe, as well as physically safe for people; where there is no assault challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience of learning together.

*Personal Information* refers to recorded information about an identifiable individual. As defined by the *Municipal Freedom of Information and Protection of Privacy Act* this may include, but is not limited to:

- Information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual;
- Information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- Any identifying number, symbol or other particular assigned to

- the individual;
- The address, telephone number, fingerprints or blood type of the individual
- The personal opinions or views of the individual except if they relate to another individual;
- Correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence;
- The views or opinions of another individual about the individual; and
- The individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

*Reprisal* includes any harassment, intimidation, threats, or discipline against a person for making a report to the Board about suspected sexual misconduct by an employee and/or student of the Board.

*Sexual Misconduct* refers to a wrongdoing of a sexual nature that comprises a broad range of sexual behaviors, including any sexual act and/or act targeting an individual's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened, or attempted against an individual.

*Systemic Racism* refers to when institutions or systems create or maintain racial inequity, often as a result of hidden institutional biases in policies, practices and procedures that privilege some groups and disadvantage others.

*TDSB* refers to the Toronto District School Board, which is also referred to as the "Board".

*Trauma-Informed* refers to practices that recognize the connections between violence, trauma, negative health outcomes and behaviours. These practices increase safety, control and resilience for people who are seeking services in relation to experiences of violence and/or have a history of experiencing violence.

#### **4.0 RESPONSIBILITY**

The Director of Education holds primary responsibility for implementation of this Policy.

Within the Director's Office, the executive oversight and responsibility for coordination and day-to-day management of the Policy is assigned to Associate Director, Organizational Transformation and Accountability, and Executive Superintendent, Human Rights and Indigenous Education.

## **5.0 APPLICATION AND SCOPE**

This Policy applies to all students, employees, and Trustees of the Board.

The Policy also covers, parents/guardians, school council members, visitors, third party service providers, volunteers, permit holders, customers of the Board and other members of organizations while partaking in any activities that occur in Board premises or while engaging in Board or school related activities, either in-person or online.

Schools and school-related activities, such as extra-curricular activities, Board-sponsored sporting events and board-operated before- and after-school programs and excursions comprising the learning and working environment, fall within the scope of this Policy, 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 also fall within the scope of this Policy.

## **6.0 POLICY**

### **Board Commitment**

- 6.1 The Board is committed to a safe, nurturing, positive learning and working environment, free of sexual misconduct. The Board will not tolerate, condone or ignore sexual misconduct at the TDSB.
- 6.2 In accordance with the *Child, Youth, and Family Services Act*, all TDSB employees who have reasonable grounds to suspect that a child is, or may need protection, must first immediately report the suspicion and the information on which it is based directly to a children's aid society.

### **Investigation Framework**

- 6.3 The Board will establish an anti-oppressive, anti-racist, trauma-informed, culturally responsive, unbiased, clear, and accountable framework for reporting and investigating sexual misconduct incidents at the TDSB.
- 6.4 The Board will investigate incidents of sexual misconduct and will take corrective measures in a timely manner.

### **Human Rights and Equity Principles**

- 6.5 The Board will ensure that the processes related to sexual misconduct investigations adhere to the principles of equity, human rights, anti-racism, anti-oppression, and transparency, in accordance with the Human Rights Policy (P031) and the Equity Policy (P037).

- 6.6 The Board will promote equity and provide a culturally safe (in particular anti-oppressive and anti-racist), nurturing, positive, and respectful learning environment focused on preventing sexual misconduct for all students, including Black and Indigenous students, students with special education needs, and newcomer students.

### **Upholding Indigenous Rights**

- 6.7 The TDSB recognizes the importance of Indigenous education programs and in providing culturally responsive and identity affirming supports to Indigenous students and staff.
- 6.8 The Board will uphold that Indigenous Peoples are protected of their rights, as outlined in the UN Declaration on the Rights of Indigenous Peoples (inclusive of First Nations, Métis and Inuit) when assessing and investigating sexual misconduct incidents effecting Indigenous staff, students, and their families at the TDSB.

### **Collaborative Investigation**

- 6.9 The Board will engage, when appropriate, with TDSB centralized departments (such as Caring and Safe Schools, Employee Services (for staff only), and Social Work and Attendance) and community partners (e.g., Toronto Police Service, Children’s Aid Society) to provide consultation about the event and to work collaboratively when assessing and/or investigating sexual misconduct incidents.
- 6.10 Any investigations done collaboratively with respective TDSB departments and community partners will ensure confidentiality and privacy for all parties involved, in accordance with appropriate legislation (e.g., *MFIPAA*), Board policies and procedures.

### **Investigations Involving Students**

- 6.11 As per the *Child, Youth, and Family Services Act*, and provision 6.2 aforementioned, all complaints and suspicions related to sexual misconduct involving children must first be reported to the children’s aid society.
- 6.12 To ensure system-wide consistency, compliance, and eliminate bias, the Board will require all complaints related to sexual misconduct involving students be reported to local administration (i.e., Principal) and central administration (i.e., Superintendent, TDSB centralized departments) for assessment and investigation.

6.13 The Board will review investigation processes and take appropriate corrective and/or preventative measures, including implementing local (i.e., schools), and system changes.

6.14 When assessing and investigating complaints related to sexual misconduct involving students, the Board will apply all applicable policies and associated procedures, including:

- Anti-Sex Trafficking Policy (P099)
- Caring and Safe Schools Policy (P051)
- Dealing with Abuse and Neglect of Students Policy (P045)
- Equity Policy (P037)
- Gender-Based Violence Policy (P071)
- Human Rights Policy (P031)

The list of current policies and procedures applicable to assessment and investigation of incidents involving students is provided in Appendix A.

### **Investigations Involving Staff**

6.15 To ensure system-wide consistency, compliance, and eliminate bias, the Board will ensure all complaints related to sexual misconduct between staff be reported to Employee Services for assessment and investigation.

6.16 The Board will review investigation processes and take appropriate corrective and/or preventative measures, including implementing local (i.e., schools), and system changes.

6.17 When assessing and investigating complaints related to sexual misconduct involving staff, the Board will apply all applicable policies and associated procedures, including:

- Anti-Sex Trafficking Policy (P099)
- Caring and Safe Schools Policy (P051)
- Dealing with Abuse and Neglect of Students Policy (P045)
- Equity Policy (P037)
- Human Rights Policy (P031)
- Workplace Violence Prevention Policy (P072)

The list of current policies and procedures applicable to assessment and investigation of incidents involving staff is provided in Appendix B.

### **Safety and Support**

6.18 The Board will ensure that all individuals involved in sexual misconduct investigations will be offered supports, which may include trauma-informed

and culturally responsive supports, assistance and accommodations, and/or interim measures.

### **Communicating to the School Community**

6.19 The Board will establish a system-wide framework outlining expectations of timely communication, when and where appropriate, to the school community and Trustees in response to sexual misconduct incidents at the TDSB. Any communication related to investigations will be in accordance with appropriate legislation, Board policies and procedures, protecting confidential and personal information of all parties involved.

### **Training**

6.20 The Board will provide evidence-based education related to preventing, recognizing, and reporting sexual misconduct at the TDSB.

6.21 The Board will provide training to designated staff, which may include, on how to investigate/address sexual misconduct incidents in an anti-oppressive, anti-racist, trauma-informed, culturally responsive and unbiased manner.

### **Protection against Reprisal**

6.22 The Board will make every effort to ensure that a person, who in good faith brings forward suspicions of sexual misconduct under this Policy, and any associated persons, including witnesses, is protected from reprisal, harassment, retaliation, or adverse employment or contract consequence.

### **Reporting to the Board of Trustees and the Director of Education**

6.23 The Board will provide annual reports regarding prevention efforts to the Board of Trustees based on statistically significant trends and developments.

### **Retention of Records**

6.24 All electronic and paper records obtained through an investigation must be treated as highly confidential and will only be accessed by authorized officials. Only individuals overseeing investigations are to retain records related to the respective investigations of sexual misconduct.

6.25 Records will be retained for a term specified in the Board's records retention schedule unless other legal requirements necessitate a longer term. Upon expiry of the retention term, records will be disposed of securely so that they cannot be retrieved or reconstructed.

## 7.0 EVALUATION

This Policy will be reviewed as required, but at a minimum every four (4) years.

## 8.0 APPENDICES

Appendix A: List of Policies and Procedures - Investigations involving Students

Appendix B: List of Policies and Procedures - Investigations involving Staff

## 9.0 SPECIFIC DIRECTIVES

The Director of Education has authority to issue operational procedures to implement this Policy.

## 10.0 REFERENCE DOCUMENTS

### Policies:

- Anti-Sex Trafficking Policy (P099)
- Caring and Safe Schools Policy (P051)
- Dealing with Abuse and Neglect of Students Policy (P045)
- Equity Policy (P037)
- Gender-Based Violence Policy (P071)
- Human Rights Policy (P031)
- Workplace Violence Prevention Policy (P072)

### Legislative Acts and Regulations:

- *Child, Youth, and Family Services Act, 2017*
- *Education Act*
- *Human Rights Code*
- *Protecting Students Act*
- *Municipal Freedom of Information and Protection of Privacy Act*
- *Ombudsman Act*

### Other Documents:

- [PPM 9: Duty to Report Children in Need of Protection](#)
- [PPM 166: Keeping Students Safe: Policy Framework for School Board Anti-Sex Trafficking Protocols](#)

### Resources:

- Sexual Abuse Prevention Program : <https://www.oct.ca/public/sexual-abuse-prevention-program>



## Appendix A

### LIST OF POLICIES AND PROCEDURES: INVESTIGATIONS INVOLVING STUDENTS

The list of current policies and procedures applicable to assessment and investigation of incidents involving students:

- **Anti-Sex Trafficking Policy (P099)**
- **Caring and Safe Schools Policy (P051)**
  - Board Code of Conduct (PR585)
  - Hearing of an Appeal Under Section 265(1)(m) of the Education Act Procedure (PR602)
  - Non-discretionary and Discretionary Student Transfers Procedure (PR540)
  - Police/School Board Protocol (PR698)
  - Programs for Students on Long-term Suspensions and Expulsions Procedure (PR586)
  - Progressive Discipline and Promoting Positive Student Behaviour Procedure (PR702)
  - Promoting a Positive School Climate Procedure (PR697)
  - Refusal to Admit Procedure (PR724)
  - Video Surveillance Procedure (PR694)
- **Dealing with Abuse and Neglect of Students Policy (P045)**
  - Dealing with Abuse and Neglect of Students Procedure (PR560)
- **Equity Policy (P037)**
- **Gender-Based Violence Policy (P071)**
  - Sexual Misconduct by Students Procedure (PR608)
- **Human Rights Policy (P031)**
  - Reporting and Responding to Racism and Hate Incidents Involving or Impacting Students in Schools Procedure (PR728)

## Appendix B

The list of current policies and procedures applicable to assessment and investigation of incidents involving staff:

- **Anti-Sex Trafficking Policy (P099)**
- **Caring and Safe Schools Policy (P051)**
  - Board Code of Conduct (PR585)
  - Police/School Board Protocol (PR698)
  - Promoting a Positive School Climate Procedure (PR697)
  - Refusal to Admit Procedure (PR724)
  - Video Surveillance Procedure (PR694)
- **Dealing with Abuse and Neglect of Students Policy (P045)**
  - Dealing with Abuse and Neglect of Students Procedure (PR560)
- **Equity Policy (P037)**
- **Human Rights Policy (P031)**
  - Workplace Harassment Prevention and Human Rights Procedure (PR515)
- **Workplace Violence Prevention Policy (P072)**