

Topic:	Creed Accommodations
Effective:	September 2017
Cross Reference:	<u>United Nations Declaration on the Rights of Indigenous Peoples;</u> <u>Ontario Human Rights Code;</u> <u>Ontario Human Rights Commission: Policy on preventing discrimination based on creed</u> <u>Ontario Human Rights Commission: Policy on competing human rights;</u> <u>Ontario Human Rights Commission: Policy on preventing discrimination because of gender identity and gender expression</u> <u>Ontario Human Rights Commission: The shadow of the law: Surveying the case law dealing with competing rights claims;</u> <u>Occupational Health & Safety Act and Regulations;</u> <u>Ministry of Education Equity and Inclusive Education Strategy;</u> <u>PPM 108: Opening or Closing Exercises in Public Elementary and Secondary Schools;</u> <u>PPM 119: Developing and implementing equity and inclusive education policies in Ontario schools</u> <u>Indigenous Education Policy;</u> <u>Equity and Inclusive Education Policy;</u> <u>Employment Equity Policy</u>
Revision Date:	February 2023
Review Date:	March 2027
Responsibility:	Superintendent of Education, Human Rights, Equity and Inclusion, Indigenous Rights and Education Equity & Inclusive Education

1. INTENDED PURPOSE:

The purpose of this administrative procedure is to set out the responsibilities of each of the parties to the accommodation process. In accordance with the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”), the Ontario Ministry of Education’s *Equity and Inclusive Education Strategy*, the *Ontario Human Rights Code* (“Code”), the Ontario Human Rights Commission’s *Policy on Preventing Discrimination Based on Creed*, and Ontario Human Rights Code’s *Guidelines on Developing Human Rights Policies and Procedures*, it is intended that the creed based accommodation process be reflective and respectful of the dignity of accommodation seekers.

2. DEFINITIONS:
Accommodation

The Ontario Human Rights Commission’s *Policy on Preventing Discrimination Based on Creed* (p. 4) states that employers, service providers, unions and housing providers have a legal duty to accommodate people’s beliefs and practices to the point of undue hardship where these are:

- Adversely affected by a standard, rule or requirement of the organization;
- Sincerely (honestly) held;
- Connected to a creed;

The duty to accommodate is an obligation that arises when requirements, factors, or

qualifications, which are imposed in good faith, have an adverse impact on, or provide an unfair preference for, a group of persons based on a protected ground under the Ontario Human Rights Code. The duty to accommodate must be provided to the point of undue hardship. In determining whether there is undue hardship, section 24(2) of the Ontario Human Rights Code provides that reference should be made to the cost of accommodation, outside sources of funding, if any, and health and safety requirements.

Fulfilling the duty to accommodate requires that the most appropriate accommodation be determined and provided short of undue hardship. The most appropriate accommodation is the one that most:

- Respects dignity (including autonomy, comfort, and confidentiality);
- Responds to a person's individualized needs;
- Allows for integration and full participation

Creed

Under the *Ontario Human Rights Code*, creed includes, but is not necessarily limited to "religious creed" or "religion". The following characteristics are relevant when considering if a belief system is a creed under the *Ontario Human Rights Code*.

A creed:

- is sincerely, freely and deeply held;
- is integrally linked to a person's self-definition and spiritual fulfillment;
- is a particular, comprehensive and overarching system of belief that governs one's conduct and practices;
- addresses ultimate questions of human existence, including ideas about life, purpose, death, and the existence or non-existence of a creator and/or a higher or different order of existence;
- has some "nexus" or connection to an organization or community that professes a shared system of belief.

Religion is typical of the kinds of beliefs and practices that are protected under the *Ontario Human Rights Code* ground of creed.

To be recognized as a religion or creed under the Ontario Human Rights Code, a belief in God or gods or a single supreme being or deity is not required.

Indigenous Creed and Spirituality

Creed includes the spiritual beliefs and practices of Indigenous cultures. Creed includes Indigenous Spirituality.

The OHRC does not define "Indigenous Spirituality" in recognition of its diversity and Indigenous peoples' right to define and determine this for themselves. Other terms may be used or preferred by Indigenous peoples, including those that are more specific to a Nation, language, place and/or people.

"Indigenous Spirituality" refers to the spiritual beliefs and practices that Indigenous peoples identify as being "traditional" or "customary" among Indigenous peoples. This may sometimes include and be practiced in combination with other faith traditions.

Creed includes Absence of Belief

Atheists and agnostics are also protected under the *Ontario Human Rights Code* ground of creed.

Not every belief, opinion, expression, practice or matter of conscience is a creed under the *Ontario Human Rights Code*. The *Ontario Human Rights Code* does not include a ground for political belief or conviction.

Undue Hardship

Accommodation will be provided to the point of undue hardship, as defined by the *Ontario Human Rights Commission*. A determination regarding undue hardship will be based on an assessment of costs, outside sources of funding, and health and safety. It will be based on objective evidence.

Where a determination is made that an accommodation would create undue hardship, the person requesting accommodation will be given written notice, including the reasons for the decision and the objective evidence relied upon. The accommodation seeker shall be informed of their recourse under the Board's Equity and Inclusive Education Administrative Procedure, Anti-Discrimination Policy and Procedure, and under the *Ontario Human Rights Code*.

Where a determination has been made that an accommodation would cause undue hardship, the Board will proceed to implement the next best accommodation short of undue hardship, or will consider phasing in the requested accommodation.

3. Context

- 3.1.** The Halton District School Board is committed to providing an inclusive, safe, respectful and equitable learning and working environment, free from all forms of discrimination or harassment based on creed. This begins with an understanding of the distinct rights of Indigenous peoples which include the right to self-determine Indigenous Creed as outlined in the United Nations Declaration on the Rights of Indigenous Peoples and the *Ontario Human Rights Code*. It is noted that Indigenous creed cannot be defined (externally) as it is determined by the individual. For all persons, creed is rooted in their sincerely held belief that:
- 3.1.1.** is integrally linked to a person's self-definition and spiritual fulfillment;
 - 3.1.2.** is a particular, comprehensive and overarching system of belief that governs one's conduct and practices;
 - 3.1.3.** addresses ultimate questions of human existence, including ideas about life, purpose, death, and the existence or non-existence of a creator and/or a higher or different order of existence;
 - 3.1.4.** has some "nexus" or connection to an organization or community that professes a shared system of belief.
 - 3.1.5.** Recognizing that under the *Ontario Human Rights Code*, creed includes, but is not necessarily limited to "religious creed" or "religion".
- 3.2.** The Creed Accommodation Administrative Procedure supports the recognition of the inherent dignity and inalienable rights as outlined in the *United Nations Declaration On the Rights of Indigenous Peoples*, *Ontario Human Rights Code* and the *Canadian Charter of Rights and Freedoms*. The Halton District School Board is committed to upholding the principles embodied in the *Charter* and the *Human Rights Code*, and will be held accountable for practices which infringe on the rights protected by the *Charter* and *Code*.

- 3.3. Freedom of creed is an individual right which the board, as a public institution, must not infringe consistent with the Ontario Human Rights Code. The right to freedom of creed, however, is not absolute. There is diversity within faith and creed groups and individuals have varying levels of observance. The Board appreciates and values creed diversity, and will make efforts to facilitate opportunities to engage in community consultation and awareness-raising. The Board and its staff will take all reasonable steps to ensure freedom of creed practices consistent with the Ontario *Human Rights Code*, and proactively promote, protect and support inclusive learning and working environments.
- 3.4. People's experiences of discrimination based on creed often intersect with discrimination based on other Ontario Human Rights Code grounds, such as race, ethnic origin, citizenship, ancestry, place of origin, gender identity, gender expression and sex. This includes Indigenous peoples in Ontario who face barriers practicing their creed.
- 3.5. The purpose of this administrative procedure is to set out the responsibilities of each of the parties to the accommodation process. In accordance with the United Nations Declaration on the Rights of Indigenous Peoples, the Ontario Ministry of Education's *Equity and Inclusive Education Strategy*, the Ontario Human Rights Code, the Ontario Human Rights Commission's *Policy on preventing discrimination based on Creed*, and Ontario Human Rights Code's *Guidelines on Developing Human Rights Policies and Procedures*, it is intended that the creed based accommodation process be reflective and respectful of the dignity of accommodation seekers.

4. Rights, Legislation and Policy

- 4.1. All school boards exist within a broader context of law and public policy that protect and defend human rights. At the Board, a number of policy statements have been developed that reinforce both federal and provincial legislation, and also help ensure that the freedoms they set out are protected within the school system.
- 4.2. *United Nations Declaration on the Rights of Indigenous Peoples*
 - 4.2.1. Article 12(1): Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
 - 4.2.2. Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.
 - 4.2.3. Article 34: Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

- 4.3. Section 2(a) of the *Canadian Charter of Rights and Freedoms* guarantees freedom of religion in the sense of the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice. Furthermore, section 15 of the *Charter provides* every individual with equality before and under the law and equal protection and equal benefit of the law without discrimination on various grounds of identity, including religion.
- 4.4. Charter and Constitution Act Section 25 of the Charter and section 35 of *The Constitution Act*, 1982 recognize and affirm the constitutional rights of Indigenous peoples in Canada. This includes but is not limited to enforcing treaties and Aboriginal land titles, and the right to preserve traditional cultural practices and activities such as fishing, logging, hunting and other customary and sacred traditions.
- 4.5. *The Ontario Human Rights Code* protects an individual's freedom from discriminatory or harassing behaviours based on creed. In addition to and consistent with this legislation, the *Education Act*, its regulations and policies govern equity and inclusion in schools.
- 4.6. The Board recognizes, and is committed to, the values of freedom of creed and freedom from discriminatory or harassing behaviour based on creed through its human rights policies including: HDSB Indigenous Education Policy; HDSB Equity and Inclusive Education Policy; HDSB Employment Equity Policy; HDSB Harassment and Discrimination Policy, HDSB Safe and Inclusive Schools Policy; and, curriculum documents. All of these will be informed by, and interpreted in accordance with, the principles of the *Ontario Human Rights Code*.

5. General Guidelines for Creed Accommodation

- 5.1. The Board is committed to providing a learning and working environment that is inclusive and will take all reasonable steps to accommodate creed beliefs. Creed accommodations will be provided in accordance with the principles of dignity, individualization, and inclusion. The Board will work cooperatively, and in a spirit of respect, with all partners in the accommodation process.

Two broad branches of creed accommodations can be identified. Environmental considerations include dietary requirements and food restrictions; prayer /meditation. The second branch being creed-based leave days and other creed observances.

The HDSB has the duty to balance competing rights under the *Code*, taking into account individual circumstances.

- 5.2. The duty to accommodate religious or creed based requests involves both:
 - 5.2.1. the provision of a reasonable accommodation, qualified by the responsibility to take all circumstances into account, including any other rights, and
 - 5.2.2. engaging in a meaningful, good-faith process to assess needs and find appropriate solutions.

- 5.3. It is the role of the Board and its employees to demonstrate respect for the diverse religious and creed beliefs and practices of employees, students and their families. All religious and creed accommodation requests will be taken seriously. No person will be penalized or subject to reprisal for making an accommodation request in good faith.
 - 5.4. Consultative and collaborative determinations amongst school administrators, and/or corporate supervisors in consultation with Human Resources (where applicable) regarding appropriate accommodations are arrived at by applying the *Ontario Human Rights Code*'s criteria of accommodation to the point of undue hardship with the Board's ability to fulfill its duties under Board policies and the Education Act. The System Principals and/or Superintendent of Indigenous Rights & Education, Human Rights, Equity & Inclusive Education are available for support and guidance.
 - 5.5. Procedures for initiating an accommodation process for creed based reasons are available on the HDSB Board websites, and upon request the Board shall provide accessible formats. Students, families and employees are requested to submit a request as early as possible in the school year, in writing or in person using the appropriate forms (Appendix A and B).
- 6. Specific Guidelines for Creed Accommodation**
- 6.1. The Ontario Ministry of Education directs school boards to consider possible accommodations, on an individual case by case basis. Accommodations are determined through a collaborative and consultative process.
 - 6.2. Requests for accommodation should be specific and include details of the area of the Board practice about which the request is being made. Emphasis will be placed by administrators and supervisors on understanding the situation, context and practices that guide the request and the process of regular reviews of the accommodation, and learning impacts on students. The specific context of the request being made should be included on Appendix A – *Parent/Guardian or Student Creed Accommodation Request Form*, or Appendix B – *Employee Creed Accommodation Request Form*.
 - 6.3. Discussion between families, school and board employees about religious and creed based accommodations should be entered into with a sense of mutual respect, building trust and understanding.
- 7. Procedures for Creed Accommodation Requests**
- 7.1. **Employees**

The accommodation request should be made as early as possible, using Appendix B – *Employee Creed Accommodation Request Form*.

Upon receiving the request, the school administrator/supervisor and the employee will meet to discuss the specific accommodations requested.

Employee requests for use of days for creed observation are to be submitted via the internal absence reporting system.

The availability of paid and unpaid leaves is detailed in the provisions of each employee's collective agreement.
 - 7.2. **Students**

Students and/or parents/guardians must present verbal or written notice specifying their

accommodation requirements relating to creed observances. School administrators will ask for these to be outlined in detail using Appendix A – *Parent/Guardian or Student Creed Accommodation Requirement Form*.

School administrators and parent(s)/guardian(s) and/or students will meet to discuss the specific accommodations. The Ontario Ministry of Education directs school boards to consider possible accommodations on an individual case by case basis.

School administrators and/or school staff shall not be placed in the position of monitoring a child's compliance with creed based obligation, and enforcing such practices (e.g., performing daily prayers or wearing a head covering) is not the responsibility of the school or the Board.

8. Reconsideration of Denied Requests

Notwithstanding the Board's duty to accommodate, an individual may feel unsatisfied with the process and/or outcome. The Board will take reasonable and timely steps to address the unresolved issues raised. Parents/guardians can refer to the [HDSB Administrative Procedure for Dealing with Public Concerns](#). Staff can consult with their Supervisor/Manager, Human Resources Department, or Union/Federation representative for support.

9. Reasonable Limitations to Creed Accommodations

The Board supports freedom of creed and an individual's right to manifest their creed beliefs and observances. The right to freedom of creed, however, is not absolute. The Canadian *Charter of Rights and Freedoms*, provincial human rights legislation (including the Ontario *Human Rights Code*) and the courts recognize that no rights are absolute and no one right is more important than another right.

Human rights protections, and the *HDSB Administrative Procedure for Creed Accommodations* do not extend to observances that are hateful, or incite hatred or violence against other individuals or groups, or that contravene international human rights standards or criminal law.

The HDSB recognizes that rights have limits and in some situations may not accommodate creed values and beliefs where they substantially interfere with the rights of others as prescribed in the *Ontario Human Rights Code*. Where the learning in the classroom or school program promotes inclusion on any of the protected grounds in the *Ontario Human Rights Code*, the HDSB will not provide creed based or any other accommodation.

Appendix A

Student Creed Accommodation Request Form

The Halton District School Board values diversity and inclusion. It has policies and procedures to accommodate the diverse creed observances of students in schools. This form should be used to request a particular accommodation, which the Board will receive and process on a case-by-case basis. This form should be completed by a parent/guardian and/or student over the age of 18.

Please complete the form at the start of the school year or as soon after as possible.

The completed form should be submitted to **the school office**.

Name of person submitting: _____ (first) _____ (last)

Contact Information: Phone: _____ Email: _____

Date of submission: _____ (Day/Month/Year)

I am: ☐ Student ☐ Parent ☐ Guardian

Name of student(s) and grade(s) for whom accommodation requirement is being submitted:

Name	Grade	School Name

Creed Accommodation : Please describe the creed accommodation for each student:

Please submit the completed form to the school office staff.

Municipal Freedom of Information and Protection of Privacy Act: Personal information on this form is collected under the legal authority of the Education Act, R.S.O. 1990, c.E-2, and regulations as amended. This information will be used for administrative purposes for providing religious accommodation for the student. Questions regarding this collection should be directed to the Records Manager at the Halton District School Board, [2050 Guelph Line, Burlington, Ontario, L7P 5A8](#). Tel: [905-335-3663](tel:905-335-3663)

Appendix B

Employee Creed Accommodation Request Form

The Halton District School Board values diversity and inclusion. It has policies and procedures to accommodate the diverse creed observances of its employees. This form should be used to request a particular accommodation, which the Board will receive and process on a case-by-case basis. This form should be completed by the employee making the request. *Note: If requesting a creed day observance please submit using [this link](#).*

The completed form should be submitted to **the employee's supervisor**.

Name of person submitting (*print*): _____ (first) _____ (last)

Contact Information: Phone: _____ Email: _____

Date of submission: _____ (Day/Month/Year)

School or work location: _____

Supervisor's Name: _____

Creed Accommodation : Please describe the creed accommodation:

Please submit the completed form to your supervisor.

Municipal Freedom of Information and Protection of Privacy Act: Personal information on this form is collected under the legal authority of the Education Act, R.S.O. 1990, c.E-2, and regulations as amended. This information will be used for administrative purposes for providing religious accommodation. Questions regarding this collection should be directed to the Records Manager at the Halton District School Board, [2050 Guelph Line, Burlington, Ontario, L7P 5A8](#). Tel: [905-335-3663](#)