



## RELIGIOUS AND CREED ACCOMMODATIONS

Legal References:	<a href="#"><i>Canadian Charter of Rights and Freedoms</i> (Section 15);</a> <a href="#"><i>Ontario Human Rights Code</i> (The Code);</a> <a href="#"><i>The Education Act</i>;</a> <a href="#"><i>PPM No. 108, "Opening or Closing Exercises in Public Elementary and Secondary Schools"</i>;</a> <a href="#"><i>PPM No. 119, "Developing and Implementing Equity and Inclusive Education Policies in Ontario Schools"</i>;</a> <a href="#"><i>PPM No. 162, "Exemption from Instruction related to the Human Development and Sexual Health Expectations in The Ontario Curriculum: Health and Physical Education, Grades 1–8, 2019"</i></a>
Related References:	<a href="#"><i>Policy 1008 – Equity and Inclusion</i>;</a> <a href="#"><i>Policy 1017 - Human Rights</i></a> <a href="#"><i>The Multifaith Information Manual (4<sup>th</sup> edition)- The Canadian Multifaith Federation (CMF)</i></a> <a href="#"><i>Policy on Preventing Discrimination based on Creed (2015) – Ontario Human Rights Commission (OHRC)</i></a> <a href="#"><i>Health and Physical Education Curriculum Gr 1-8 - Strand D</i></a>
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### 1. Purpose

- 1.1 The Waterloo Region District School Board (WRDSB) acknowledges each individual's right to follow or not to follow religious beliefs and practices free from discriminatory or harassing behaviours based on creed or religion. The Board is committed to taking all reasonable steps to provide religious accommodations to staff and to students.
- 1.2 The WRDSB understands that staff and students with diverse faith and creed beliefs need a safe and respectful environment to succeed academically. The WRDSB supports academic achievement by eliminating discrimination and harassment related to creed. The policy requires continuous integration and evaluation of new knowledge and innovative approaches. The WRDSB believes that the process of accommodation and partnership with members of its community will help build an environment of mutual respect and understanding.
- 1.3 The WRDSB will not provide accommodations for curriculum and lessons that build a climate of inclusion and safety, including discussions about any of the protected human rights under the *Ontario Human Rights Code*. This applies to all classroom discussions and school activities about inclusion during the school year. An exception may be provided for Strand D of the Health and Physical Education Curriculum in grades 1-8.

## 2. Definitions

- 2.1** Accommodation: The WRDSB defines creed-based accommodation as the obligation to meet the diverse needs of individuals or groups when their sincerely held beliefs conflict with a WRDSB requirement, qualification or practice in accordance with the *Ontario Human Rights Code (the Code)*, to the point of undue hardship.
- 2.2** Creed: Under *the Code*, creed includes, but is not necessarily limited to, "religious creed" or "religion. Creed must be a factor in a person's treatment for it to be discrimination based on creed. *The Code* prohibition on discrimination because of "creed" extends to situations where:
- The person who is the target of such behaviour is atheist or agnostic
  - Neither the person discriminated against nor the person discriminating follows a creed
  - A person is targeted and treated unequally because of their "perceived creed," or because of their association with an individual or group with a particular creed (or lack thereof).
- (Policy on preventing discrimination based on creed, Ontario Human Rights Commission, 2015, pg.27)
- 2.3** Undue Hardship: Organizations covered by *the Code* have a duty to accommodate to the point of undue hardship. Accommodation need not be provided if it causes undue or excessive hardship. However, some degree of hardship is acceptable. *The Code* lists only three considerations when assessing whether an accommodation would cause undue hardship:
- Cost
  - Outside sources of funding, if any
  - Health and safety requirements, if any.

In many cases, it will not be costly to accommodate someone's creed. Accommodation may involve making policies, rules and requirements more flexible. While making these more flexible may involve some administrative inconvenience, inconvenience by itself is not a factor for assessing undue hardship. To rely on an undue hardship defense, an organization will have to show that an accommodation in fact causes undue hardship. It is not up to the person with a creed-related need to prove that the accommodation can be put in place without undue hardship.

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

- 2.4** Competing Rights: A request for accommodation may turn out to be a "competing human rights" situation. This complicates the normal approach to resolving a human rights dispute where only one side claims a human rights violation. In some cases, only one party is making a human rights claim, but the claim conflicts with the human rights of another party or parties.

Organizations and institutions operating in Ontario have a legal duty to take steps to prevent and respond to situations involving competing rights.

In dealing with competing rights claims, the Supreme Court of Canada has confirmed that there is no hierarchy of Charter rights. All have equal status and no right is more important than the others. Related to this is the principle that no right is absolute. Every right is inherently limited by the rights and freedom of others. Therefore, if rights do come into conflict, Charter principles require a "reconciliation" that fully respects the importance of both sets of rights so that each is realized to the greatest extent possible.

(Policy on preventing discrimination based on creed, Ontario Human Rights Commission, 2015, pg.73-74)

- 2.5** Inclusive design (design with everyone in mind): ~~that~~ removes barriers up front is a preferred approach to removing barriers after they become apparent, or making “one-off” accommodations. The one-off approach assumes that existing structures are fine or only need slight modifications to make them acceptable. The Supreme Court of Canada has affirmed organizations’ obligations to be aware of differences between individuals and groups, including based on creed, and wherever possible to build in concepts of equality into standards, rules or requirements. The duty to accommodate is about more than providing the most appropriate accommodation in the circumstances (the substantive component). It is also about engaging in a meaningful, good-faith process to assess needs and find appropriate solutions (the procedural component). Failing to carry out either component appropriately may be discriminatory.

(Policy on preventing discrimination based on creed, Ontario Human Rights Commission, 2015, pg.5)

### **3. Application**

- 3.1 The WRDSB acknowledges the presence of students and staff without religious affiliations who study and work in the school system. The WRDSB assures these members that religious and creed accommodation guidelines and procedures will not interfere with or compromise their rights and privileges.
- 3.2 It should also be noted that respect for faith and creed diversity is considered to be a shared responsibility. While the WRDSB works to ensure that students and staff are able to observe the tenets of their belief systems in school environments free from discrimination, it is also the responsibility of the students and community to help the schools by highlighting and providing understanding of the needs of creed-based and secular communities.
- 3.3 The WRDSB does not support the primacy of one creed, faith, religious or secular belief over another.
- 3.4 For many students in WRDSB schools, there are areas where the practice of religion or creed may result in a request for accommodation on the part of the school and/or WRDSB. These areas may include, but are not limited to:
- 3.4.1 Observance of major religious holy days and celebrations
  - 3.4.2 Prayer and rituals
  - 3.4.3 Dietary requirements and fasting
  - 3.4.4 Religious attire
  - 3.4.5 Participation in school curriculum, co-curricular and extra-curricular activities
- 3.5 For many staff in Waterloo Region schools, there are areas where the practice of religion or creed may result in a request for accommodation on the part of the school and/or WRDSB. These areas may include, but are not limited to:
- 3.5.1 Observance of major religious holy days and celebrations
  - 3.5.2 Prayer and rituals
  - 3.5.3 Dietary requirements and fasting
  - 3.5.4 Religious attire

#### 4. Duty to Accommodate

- 4.1 The *Ontario Human Rights Commission's (OHRC) Policy on Preventing Discrimination based on Creed (2015)* states that accommodation "...is considered appropriate if it results in equal opportunity to enjoy the same level of benefits and privileges experienced by others, or if it is proposed or adopted to achieve equal opportunity, and meets the individual's creed-related needs."
- 4.2 The WRDSB has a duty to accommodate both obligatory and voluntary expressions of faith and creed, as long as they are sincerely held. It is the creed-based, "religious or spiritual essence of an action, not any mandatory or perceived-as-mandatory nature of its observance, that attracts protection."
- 4.3 Sincerity of belief should generally be accepted in good faith unless there are evident reasons for believing otherwise. Where warranted, inquiry into a person's sincerity of belief should be as limited as possible. An inquiry only needs to establish that an asserted creed belief "is in good faith, neither fictitious nor capricious, and that it is not an artifice." In many cases, this will be unnecessary or relatively easy to show. However, in other cases, evidence may be required, usually from the person asserting the right, to establish that a person's claim is sincere.
- (Policy on preventing discrimination based on creed, Ontario Human Rights Commission, 2015, pg.62)
- 4.4 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.