

**DELIVERED BY EMAIL**

December 19, 2022

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Halton District School Board

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Principal  
Oakville Trafalgar High School

Dear Mr. Ennis, Ms. Rocha and Ms. Cammisuli:

**Re: Halton District School Board (the “Board”), Oakville Trafalgar High School (“OTHS” or the “School”)**

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I am the solicitor for Mr. Scott Miller, Ms. Celina Close and Ms. Julia de Winter, parents of students at OTHS.

I write in respect of the ongoing disruption and threats of violence at OTHS, occasioned by the Board’s refusal to enforce an appropriate standard of teacher attire, and consult with OTHS School Council (“Council”) in accordance with its statutory obligations.

We believe the Board has contravened the *Education Act*, R.S.O. 1990, Chapter E.2 (“Act”), its associated regulations and its Code of Conduct.

My clients demand that appropriate action, as outlined below, be implemented forthwith.

**I. Background**

1. At the beginning of the school year, an OTHS teacher, Ms. Kayla Lemieux (“Ms. Lemieux”) attended their duties wearing unnaturally sized prosthetic breasts, a sheer blouse or shirt that displayed erect nipples and skin-tight shorts.

2. The Board appears to have refused to enforce any standards or expectations with respect to Ms. Lemieux's chosen work attire.
3. There should be no dispute that Ms. Lemieux's ongoing attendance at OTHS in her chosen attire has resulted, *inter alia*, in complaints from parents, concerns from students, protests and demonstrations, international media attention and anonymous threats of violence. There should also be no dispute that all these issues have been and will continue to be a distraction and are not in the best interests of the students.
4. The Board does not appear to have a specific, written dress code for its teachers.
5. However, the Board does have a student dress code effective June 2021, which articulates several "values and beliefs" including, *inter alia*:
  - a. Students have the right to express their self-identified gender;
  - b. Dress codes should prevent obscenity and/or pornography;
  - c. Dress codes should prevent students from wearing clothing that "makes visible genitals and nipples".
6. The Board also has a Code of Conduct (the "Code") applicable to all schools and persons within its jurisdiction.
7. While the Code does not provide for a standard of dress, it does set an expectation that its staff will "*communicate and monitor school dress code that supports the Board's Dress Code and Uniform Policy*".
8. On September 21, 2022, the Board passed a motion directing Mr. Ennis to prepare a report outlining considerations relevant to the implementation of a teacher dress code.
9. On October 27, 2022, a Council meeting was held in which numerous parents sought to express concerns regarding Ms. Lemieux's attire. Those concerns were not heard on the basis that they were inappropriate concerns for Council. Similar censures occurred at the Council meeting of November 24<sup>th</sup>, 2022.
10. On November 9, 2022, pursuant to a memorandum dated November 8, 2022, the Board dismissed further consideration of a teacher dress code, citing several factors relating to the Ontario *Labour Relations Act's* statutory freeze limitations on management rights to introduce policies in a unionized environment and human rights considerations.

11. The Board did not seek the input of any of its school councils before dismissing further consideration of a teacher dress code. It is evident in Mr. Taha's presentation of November 9, 2022 that the Board believes that the issue of teacher attire is exclusively an operational issue.
12. As we outline below, we believe that position is unreasonable and incorrect. Further, it is quite clear that the Board has not given appropriate regard to the interests of students or parents.

## **II. Application of Student Dress Code to Teachers**

In *Attis v. New Brunswick School District No. 15*, at paras. 43 and 44, the Supreme Court stated as follows with respect to the importance of teachers:

*"Teachers are inextricably linked to the integrity of the school system. Teachers occupy positions of trust and confidence, and exert considerable influence over their students as a result of their positions. The conduct of a teacher bears directly upon the community's perception of the ability of the teacher to fulfil such a position of trust and influence, and upon the community's confidence in the public school system as a whole".*

We have no doubt that the Board would agree with the above statement. Further, we trust that the Board will acknowledge that teachers should be held to a higher standard of conduct than students.

As outlined above, the student dress code, which was obviously drafted to comply with human rights legislation (e.g. gender expression), outlines a number of "values and beliefs".

All teachers, including Ms. Lemieux, surely, must abide by those values.

As the Supreme Court held in *Attis*:

*By their conduct, teachers as "medium" must be perceived to uphold the values, beliefs and knowledge sought to be transmitted by the school system. The conduct of a teacher is evaluated on the basis of his or her position, rather than whether the conduct occurs within the classroom or beyond. Teachers are seen by the community to be the medium for the educational message."*

It is my clients' view, and the view of most other OTHS parents, that Ms. Lemieux's chosen attire is not consistent with the values and beliefs reflected in the student dress code that obscenity, pornographic imagery and visible nipples have no place in a school environment.

As noted, it is an express provision of the Board's Code, created pursuant to section 302 of the Act, that teachers will aid in the enforcement of the student dress code by communicating it to students and monitoring it.

It is unreasonable and illogical to expect teachers to enforce the student dress code but not comply with it themselves.

Accordingly, the student dress code must apply to teachers.

### III. **Statutory Rights and Obligations**

#### **a) Council's Entitlement to Advise on Any Matter**

At the core of my clients' concerns is the Board's failure to communicate regarding Ms. Lemieux's attire, its censure of parents and its refusal to meaningfully address their valid concerns.

A review of the broad advisory role of school councils, enshrined in statute, is appropriate.

Section 2(1) of Regulation 612/00 to the *Act* sets out the purpose of school councils as follows:

*"...through the active participation of parents, to improve pupil achievement and to enhance the accountability of the education system to parents".*

Section 2(2) of the Regulations provides that the council's "*primary means of achieving its purpose is by making recommendations in accordance with this Regulation to the principal of the school and the board that established the council*".

Section 2 does not limit the scope of school council's participation. Instead, it broadly defines it.

To be sure, section 20 of Regulation 612/00 makes it clear that "*a school council may make recommendations to the principal of the school or to the board that established the council on any matter*".

The Board is not entitled to disregard those recommendations.

Under section 21 of Regulation 612/00, the Board has a mandatory obligation to "*consider each recommendation made to the board by the council and shall advise the council of the action taken in response to the recommendation*".

Further, section 11(18) of Regulation 298 to the *Act* provides that "*the principal of a school shall consider each recommendation made to the principal by the school council and shall advise the council of the action taken in response to the recommendation*".

Simply, and clearly, the manner in which a teacher dresses relates to both pupil achievement and the accountability of the education system to parents. The Board is, despite its position to date, accountable to the parents to explain its acceptance of Ms. Lemieux's attire.

Respectfully, Mr. Taha's repeated interjections on October 27, 2022 to prevent parents from discussing Ms. Lemieux's attire and the enforcement of an appropriate teacher dress standard at the School was improper and outside the scope of his authority.

## **b) Council's Role in Board and Local Policy Formulation**

The Board's Code was made pursuant to section 302(1) of the Act.

That provision imposes a mandatory obligation on the Board to implement a code of conduct governing the conduct of all persons within its schools:

"Every board shall establish policies and guidelines with respect to the conduct of persons in schools within the board's jurisdiction and the policies and guidelines must address such matters and include such requirements as the Minister may specify."

Section 19 (1) of Regulation 612/00 under the *Education Act, School Councils and Parent Involvement Committees* imposes a positive obligation on the Board to solicit the views of school councils in respect of the amendment of policies under Section 302(1).

In addition, Section 303(1) permits the Board to direct the principal of a school to establish a "local code of conduct governing the behaviour of all persons in the school".

Section 11(19) of Regulation 298 under the Act, *Operation of Schools-General*, imposes a positive and mandatory obligation on the principal to solicit the views of school council with respect to the establishment or amendment of school policies.

At no time did the Board or Ms. Cammisuli solicit the views of school council in respect of amending the Code or the implementation of a local code of conduct that would address teacher attire. As noted, the Board, through Mr. Taha, repeatedly blocked any discussion of appropriate teacher attire. There is no evidence that Mr. Taha or Mr. Ennis gave any consideration to the views of parents, or the requirements of the Act, in deciding to dismiss further consideration of a teacher dress standard.

School council clearly has a say in the establishment of dress codes or the amendment of the existing Code with respect to teacher attire and the Board must consult it. The failure of the Board of Trustees to require Mr. Ennis to consult with parents about its views on teacher dress codes was a clear violation of the above cited provisions of the Act and renders the Board's decision refusing to enquire further, a nullity.

## **IV. Demand for Compliance and Communication**

Taking the above into account, my clients demand that the Board do the following:

- 1) Confirm whether or not, and the manner in which, the student dress code applies to teachers;
- 2) To the extent that it does apply, to confirm that Ms. Lemieux will be expected to adhere to it;
- 3) If, in the Board's view, it does not apply, to provide reasons for that position. Further, to explain the basis for the Board's refusal to require Ms. Lemieux to adhere to its "values and beliefs";

- 4) Confirm that it will cease and desist from interfering with Council's rights pursuant to section 20 of Regulation 612/00 to make recommendations concerning *any matter*, including teacher attire, generally, and Ms. Lemieux's chosen attire;
- 5) Confirm that the Board's decision refusing to enquire further into a teacher dress standard is a nullity;
- 6) Comply with Section 19(1) of Regulation 612/00 and solicit the views of school councils in the jurisdiction with respect to the amendment of the Code to address expectations concerning teacher attire. Alternatively, pursuant to Section 11(19) of Regulation 298, direct Ms. Cammisuli to solicit the views of school council with respect to the establishment of a local policy concerning teacher attire.

We look forward to your response to the above by December 22, 2022.

My clients reserve their rights to pursue all forms of legal action concerning this matter, including judicial review.

Yours very truly,

**BANDHU LAW PROFESSIONAL CORPORATION**

Per:   
Rishi Bandhu

Copy to:

The Honourable Stephen Lecce, Minister of Education

Parents of Oakville Trafalgar High School