

A Restorative Approach to Conducting Investigations

Seizing the Opportunity to Repair
Harm and Create Community

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Philadelphia Commission on Human Relations

- Enforces Philadelphia's civil rights and anti-discrimination law, the Fair Practices Ordinance
- Protected categories include:
 - Age;
 - Ancestry;
 - Color,
 - Disability;
 - Domestic or Sexual Violence Victim Status;
 - Ethnicity;
 - Familial Status;
 - Gender Identity;
 - Marital Status;
 - National Origin;
 - Race;
 - Religion;
 - Retaliation;
 - Sex;
 - Sexual Orientation

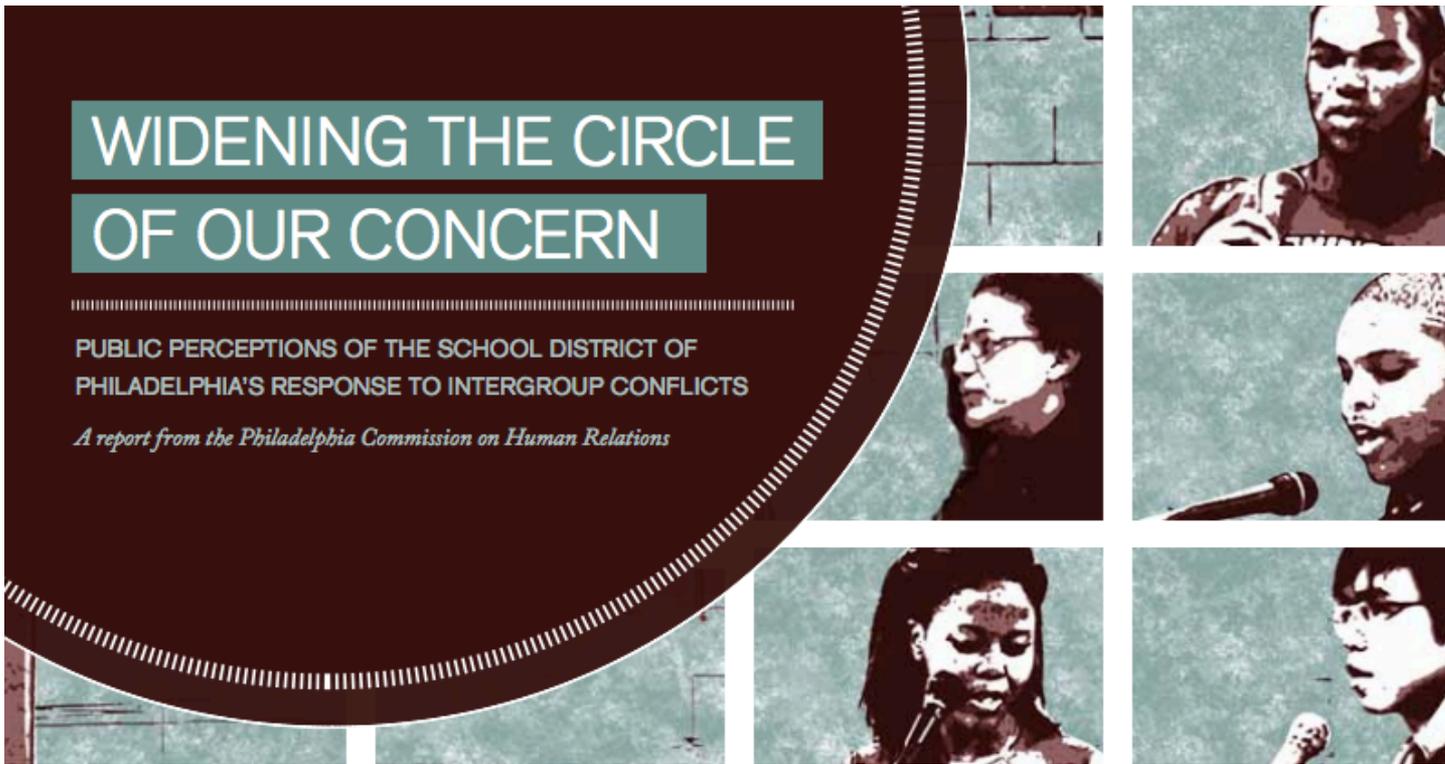
Philadelphia Commission on Human Relations

- Investigates and adjudicates complaints of discrimination in:
 - Employment
 - Public Accommodations
 - Housing and Real Property
- Community Relations
 - Outreach to promote positive intergroup relationships
 - Authority to conduct public hearings for educational purposes

WIDENING THE CIRCLE OF OUR CONCERN

PUBLIC PERCEPTIONS OF THE SCHOOL DISTRICT OF
PHILADELPHIA'S RESPONSE TO INTERGROUP CONFLICTS

A report from the Philadelphia Commission on Human Relations



Widening the Circle of Our Concern

Public Perceptions of the School District of Philadelphia's
Response to Intergroup Conflicts

A report from the Philadelphia Commission on Human Relations

www.wideningthecircle.org

AHMAD, ZAFFARESE & SMYLER, LLC

- Personal Injury
- Family Law
- Criminal Defense
- Employment Law
- ERISA/Employee Benefits Litigation
- Workers' Compensation
- Debt Collection
- Public Finance



AHMAD, ZAFFARESE & SMYLER, LLC

- Commercial Litigation
- Employment Law
- ERISA/Employee Benefits Litigation
- Employment Discrimination and Harassment
- Harassment and Bullying in Schools
- Local Agency Law/
Administrative Law Hearings



Civil Rights and Anti-Discrimination Laws

- Employment
 - Title VII of the Civil Rights Act of 1964
 - Pennsylvania Human Relations Act
 - Philadelphia Fair Practices Ordinance
 - Age Discrimination in Employment Act
 - Americans with Disabilities Act



A Shield to Liability

- Defense to a claim of discrimination:
 - The employer exercised reasonable care to prevent and correct promptly and harassing behavior, and
 - The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise

Retaliation

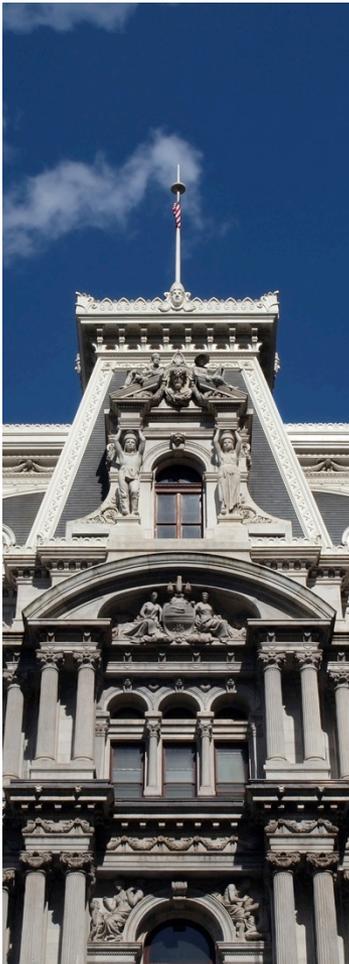
- It is illegal to fire, demote, harass, or otherwise retaliate against against people because they
 - filed a charge of discrimination,
 - complained to their employer or other covered entity about discrimination on the job, or
 - participated in an employment discrimination proceeding (such as an investigation or lawsuit)

Workplace Policies and Procedures

- Anti-discrimination policies
- Complaint mechanism with prompt investigative procedures
- Training
 - Employees on employer's anti-discrimination policies and complaint procedures
 - Managers
 - Investigators

Investigations in Schools

- Employment laws are applicable to schools
- Federal laws
 - Sex Discrimination – Title IX of the Education Amendments of 1972
 - Race & National Origin Discrimination – Title VI of the Civil Rights Act of 1964
 - Disability Discrimination – Section 504 of the Rehabilitation Act of 1974 and Title II of Americans with Disabilities Act of 1990
- State and Local Laws
- School or District Policies



Obligations on Schools

- If a school knows (or reasonably should know) about harassment that creates a hostile environment, the school must take immediate action to:
 - eliminate the harassment,
 - prevent its recurrence, and
 - address its effects
- Notice of Nondiscrimination
- Grievance Procedure
- Training

Essential Elements of an Investigation

- The Right Investigator
- Interim or Temporary Corrective Action Before the Investigation
- Collecting and Reviewing Relevant Documents
- Conducting Effective Interviews
- The Written Report
- Permanent Corrective Action

- Engagement
- Explanation
- Expectation
Clarity

Fair Process

“[I]ndividuals are most likely to trust and cooperate freely with systems – whether they themselves win or lose by those systems – when fair process is observed.”

(W. Chan Kim & Renee Mauborgne, Harvard Business Review, July-August 1997)

What Doesn't Work

- A policy and complaint mechanism that are not reasonably effective in practice
- Training that is inadequate
- Unreasonably delay in starting the investigation
- Lack of clarity as to the path for reporting harassment and discrimination



Motivating Employers to Adopt Restorative

- Avoiding litigation
- Avoiding punitive damages
- Establishing litigation defenses
- Managing risk
- Repairing harm
- Creating community

Restorative Practices Continuum



Size and Scope of Investigations Exist Along a Similar Continuum

A Restorative Approach

- Affective Statements
- Affective Questions
- Restorative Questions
- Restorative Conferencing
- Professional Learning Groups
- Harassment Trainings
 - Social Discipline Window
 - Compass of Shame
 - Fair Process
- Leadership Training
 - Authority With Grace

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