



## **NOTICE OF MEETING**

### **Ad Hoc Code of Conduct Committee**

**Thursday, 07 March 2019  
Trustees' Committee Room  
3:00 pm**

#### **COMMITTEE MEMBERS**

Lynn Scott  
Trustee Zone 1

Christine Boothby  
Trustee, Zone 2

Donna Blackburn  
Trustee, Zone 3

Keith Penny  
Trustee, Zone 8

Sandra Schwarz  
Trustee, Zone 12

#### **STAFF:**

Michèle Giroux, Executive Officer, Corporate Services

#### **DISTRIBUTION:**

All Board Members  
Senior Administration

If you would like further information on this agenda please contact:

## **ABOUT THE AD HOC CODE OF CONDUCT COMMITTEE:**

The mandate of the Ad Hoc Code of Conduct Committee shall be to:

- review Policy P.073.GOV Board Member Code of Conduct;
- consider revisions to P.073.GOV, including incorporating revisions from the updated OPSBA code of conduct template;
- consider the role of an integrity commissioner with respect to the code of conduct; and
- provide comments and recommendations to the Board no later than 26 April 2019.

The Ad Hoc Committee members consist of the Chair of the Board (ex officio) and up to four trustees appointed or elected by the Board.



## Ad Hoc Code of Conduct Committee AGENDA

March 7, 2019, 3:00 pm - 5:00 pm

Trustees' Committee Room

133 Greenbank Road

Ottawa, Ontario

	Pages
1. Call to Order	
2. Election of Chair	
3. Approval of the Agenda	
4. Matters for Action/Discussion:	
4.1 Mandate of the Ad Hoc Code of Conduct Committee	2
4.2 Report 19-013 Review of Policy P.073.GOV Board Member Code of Conduct	4
4.2.a Policy P.073.GOV Board Member Code of Conduct	10
4.2.b OPSBA Template for School Board Member (Trustee) Code of Conduct	22
5. New Business -- Information and Inquiries	
6. Adjournment	





## **EXCERPT**

**BOARD, 26 FEBRUARY 2019**

### **7.7. Notice of Motion, Re: Establishment of an Ad Hoc Code of Conduct Committee**

**Moved by Trustee Jennekens, seconded by Trustee Boothby,**

- A. THAT an Ad Hoc Code of Conduct Committee be established in accordance with Section 9.6 of the Board's By-Laws and Standing Rules;**
- B. THAT the mandate of the Ad Hoc Code of Conduct Committee shall be to:
 
  - i. review Policy P.073.GOV Board Member Code of Conduct;**
  - ii. consider revisions to P.073.GOV, including incorporating revisions from the updated OPSBA code of conduct template;**
  - iii. consider the role of an integrity commissioner with respect to the code of conduct;**
  - iv. provide comments and recommendations to the Board no later than 26 April 2019; and****
- C. THAT the Ad Hoc Committee members consist of the Chair of the Board (ex officio) and up to four trustees appointed or elected by the Board.**

**Carried**

### **7.8 Election or Appointment of Members to the Ad Hoc Code of Conduct Committee**

**Moved by Trustee Lyra Evans, seconded by Trustee Hough,  
THAT Trustees Blackburn, Boothby, Schwartz, and Penny be appointed as members of the Ad Hoc Code of Conduct Committee.**

**Carried**





**COMMITTEE OF THE WHOLE (PUBLIC)  
Report No. 19-013**

**19 February 2019**

**Review of Policy P.073.GOV Board Member Code of Conduct**

**Key Contact: Michèle Giroux, Executive Officer, Corporate Services  
613-596-8211 ext. 8310**

**PURPOSE:**

1. To review Board Policy P.073.GOV Board Member Code of Conduct, as required by Ontario Regulation 246/18.

**CONTEXT:**

2. Ontario Regulation 246/18, Members of School Boards – Code of Conduct came into force under the *Education Act* on 12 April 2018. The Regulation requires every school board to adopt a code of conduct that applies to the members of the Board, and to review the code on or before 15 May 2019 and on or before May 15 in every fourth year thereafter.

The Regulation further states that when reviewing its code of conduct, the board shall determine whether any changes are required and, if so, to make the required changes. If no changes are required, a board is required to confirm the existing code of conduct by resolution of the board.

**KEY CONSIDERATIONS:**

3. P.073.GOV Board Member Code of Conduct  
On 28 April, 2015, the Board established an Ad Hoc Committee to draft a Board Member Code of Conduct policy. The Ad Hoc Committee held four meetings and used various tools and resources during its deliberations, including the Ontario Public School Boards Associations' (OPSBA) working draft template, dated 29 November 2011. Most of the substantive pieces of the OPSBA template were incorporated into the draft Code of Conduct and the Ad Hoc Committee made every effort to align its draft Code with legislative parameters and the OCDSB's By-laws and Standing Rules. The Ad Hoc Committee's recommended Code of Conduct was reviewed extensively by legal counsel and received Board approval on 26 April 2016 (Appendix A).

Since the policy was approved, seven complaints have been filed under the Code of Conduct. Six complaints were resolved through the informal complaints resolution process and one complaint resulted in a formal sanction by the Board. To date, all complaints filed have pertained to sections 3.15-3.21, Civil Behaviour.

4. OPSBA Code of Conduct Template

As noted above, the OCDSB's code of conduct relied heavily on a template developed by OPSBA for its members in 2012. On 31 January, OPSBA released an update to this template (Appendix B). Significant changes include:

<b>OPSBA Section</b>	<b>P.073.GOV Section</b>	<b>Change</b>
43	4.20	<p>Removing the discretion of the Chair and Vice chair to refuse to conduct a formal inquiry.</p> <p>Instead, in the case that the Chair and Vice chair are of the opinion that the complaint is out of time, trivial, frivolous, vexatious, not made in good faith, or that there are no grounds or insufficient grounds for a formal inquiry, the Chair and Vice Chair shall prepare a confidential report stating their opinion and rationale for their recommendation that a formal inquiry not be conducted. The recommendation is then voted on by the board of trustees (excluding the member who is alleged to have breached the Code).</p>
52	4.24 a)	<p>Adding a time provision of 90 calendar days to the completion of a formal inquiry. If a longer period of time is required to complete the inquiry, the reason for the extension shall be explained in the final report to the Board.</p>
54	4.25	<p>The 2012 template includes a section whereby the investigators shall provide a confidential draft copy of their report and the finding of fact to the Board member who is alleged to have breached the Code and the Board member who brought the complaint for their written comment and to ensure that no errors or omissions are contained within.</p> <p>The OPSBA template removes this clause in its entirety.</p>
55	4.26	<p>OPSBA recommends that the final report contain both the finding of facts <i>and</i> a recommendation or opinion as to whether the Code of Conduct has been breached.</p>



## 5. Integrity Commissioners

### *Legislative Authority*

Bill 68, *Modernizing Ontario's Municipal Election Act, 2017*, comes into force March 1, 2019. Bill 68 requires municipalities to establish codes of conduct for their respective members of council. Additionally, it will be mandatory for municipalities to appoint an Integrity Commissioner; this requirement does not extend to local school boards.

As set out in Bill 68, an Integrity Commissioner is an impartial and independent position which reports to council and is responsible for performing in an independent manner the advisory, investigative and educational functions assigned by the municipality with respect to any or all of the following:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.
2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards.
3. The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of council and of local boards.
4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.
7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act, 2017*, c. 10, Sched. 1, s. 19 (1).

The powers of an Integrity Commissioner will expand under Bill 68 such that Integrity Commissioners will be able to conduct independent inquiries, as per the Public Inquiries Act, into allegations of conflict of interest against council members under the Municipal Conflict of Interest Act and, when appropriate, bring proceedings before a court.

### *Integrity Commissioners – School Districts*

Although there is no similar legislative requirement for school boards to appoint an Integrity Commissioner, at least four Ontario district school boards have done so (Toronto District School Board, York Region District School Board, Durham District School Board, and Peel District School Board).

In the absence of legislative guidance, school boards have considerable discretion in how they structure the role and responsibilities of an Integrity Commissioner. However, the functions assigned to the role of Integrity Commissioner by boards of education generally follow the model reflected in the following description of the role developed by the Toronto District School Board (TDSB):

Advisory functions for individual members

The Integrity Commissioner provides confidential written and oral advice to individual Board Trustees in respect to situations they face in the exercise of their official duties, applicable to the Code of Conduct (which is required by the regulations related to the Education Act) and other by-laws and policies governing ethical behavior, including general comments about the Municipal Conflict of Interest Act. Such advice can be sought in a preventative manner in order to avoid the appearance of a conflict of interest, or to avoid engaging in activities which may amount to a conflict.

Advisory functions more broadly

Upon request by the Chair of the Board, the Integrity Commissioner provides opinions and reports to the Board on general issues of ethics and integrity and Board policies that may intersect with the application of Code of Conduct rules.

Investigative functions

Individuals who have complaints about potential breaches of the Codes of Conduct must forward the complaints to the Integrity Commissioner pursuant to the Board-approved Complaint Protocol for the Board Member Code of Conduct. Complaints can be dealt with through a formal or informal process. When carrying out a formal complaint investigation, the Commissioner can summon evidence and examine under oath.

Educational

The Integrity Commissioner provides educational programs to Board Trustees which include Board Trustee training sessions, one-on-one meetings, annual reporting and posting of directives, guidelines and best practices on the TDSB webpage of the Office of the Integrity Commissioner.

*Term and Status*

The appointment model is more varied and includes:

- school boards which have chosen to appoint an Integrity Commissioner for a five-year, non-renewable term;
- boards which have elected to engage an Integrity Commissioner as an employee (e.g., the York District School Board enacted a by-laws providing for the Integrity Commissioner to be hired in a hiring process overseen by a selection Committee appointed by the Board and led by the Chair of the Board or designate); and

- boards which have opted for the engagement of a contractor who is retained on an 'as required' basis to perform functions assigned to the role of Integrity Commissioner.

Integrity Commissioners do not hold a formal professional designation as such, but normally have at least ten years of senior-level management, legal or quasi-judicial experience.

Should the Board decide to undertake further consideration of the appointment of an Integrity Commissioner, a detailed examination of the role of the IC in other school districts would include the following:

- Scope of the role;
- Reporting relationship;
- Term;
- Costs; and
- Other considerations as directed by the board.

#### 6. Managing the Review Process and Timeline

Based on the discussion and debate at the Committee of the Whole on 19 February, we anticipate two possible scenarios:

- A. If minor revisions are required to P.073.GOV prior to confirmation, staff will present these at the Committee of the Whole on 2 April 2019 for further discussion and recommendation to the Board for final approval at the meeting of 23 April.
- B. If it is the will of the Committee of the Whole to undertake major revisions to P.073.GOV, including the possibility of appointing an Integrity Commissioner, staff recommends reconvening the Governance Task Force to undertake the work of revising the policy (Appendix C). Given the time constraints, it will be necessary to hold a nomination/appointment process at the meeting on 26 February.

### **RESOURCE IMPLICATIONS:**

7. Any costs associated with a review of the Board Member Code of Conduct policy will be managed within existing departmental budgets.

The total cost incurred associated with the Code of Conduct legal interpretation and facilitation supporting the resolution of complaints since 2016 is approximately \$70,000.

### **COMMUNICATION/CONSULTATION ISSUES:**

8. The scope of the review will determine the nature of any public communication or consultation.

## **STRATEGIC LINKS:**

9. The review and confirmation of the Board's policy on Board Member Code of Conduct is a legal responsibility and connects to the stewardship objectives outlined in the current strategic plan.

## **GUIDING QUESTIONS:**

10. The following questions are provided to support the discussion of this item by the Board:
  - Does the current policy reflect the Board's duty to establish a standard of conduct and a mechanism for managing inappropriate conduct for Board members in discharging their duties?
  - Are any changes required to the policy? Would the Board like to continue to align its Code of Conduct with the OPSBA recommendations?
  - Is the appointment of an Integrity Commissioner an appropriate measure for the needs of this Board?
  - What process, if any, does the Board want to use to undertake a review?

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Michele Giroux  
Executive Officer, Corporate Services

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Camille Williams-Taylor  
Director of Education and  
Secretary of the Board

## **APPENDICES**

Appendix A: OCDSB Policy P.073.GOV Board Member Code of Conduct

Appendix B: OPSBA School Board Member Code of Conduct Template with Revisions

Appendix C: OCDSB Governance Task Force Mandate




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## POLICY P.073.GOV

**TITLE: BOARD MEMBER CODE OF CONDUCT**

**Date issued: June 1999**  
**Revised: 26 April 2016**  
**Authorization: Board 10 May 1999**

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### 1.0 OBJECTIVE

To establish a standard of conduct and a mechanism for managing inappropriate conduct for Ottawa-Carleton District School Board members in discharging their duties as the legislative officers of the Board entrusted with the duty as fiduciaries to act at all times with the utmost good faith and respect in the best interests of the organization.

### 2.0 DEFINITION

In this policy,

- 2.1 **Board** means the Board of Trustees of the Ottawa-Carleton District School Board.
- 2.2 **Conflict of interest** exists when the decisions and/or actions of a trustee during the course of exercising his/her duties are affected by or perceived by another party or person to be affected by the trustee's personal, financial or business interest or the personal, financial or business interests of a relative, friend, and/or business associate of the trustee.
- 2.3 **District** means the Ottawa-Carleton District School Board.
- 2.4 **Fiduciary duty** means legal responsibility for what belongs to another, that is, trusteeship.
- 2.5 **Formal Review Process** means the process whereby a written, signed complaint of an alleged breach is formally investigated and a written response has been provided to the Board.
- 2.6 **Informal Review Process** means the process whereby the Chair of the Board meets with a trustee informally, and in private, to discuss an alleged breach and any remedial measures to correct the offending behaviour.
- 2.7 **Respect** means honouring oneself and others through words and actions, supporting diversity of beliefs, and treating the world and everything in it with dignity.

- 2.8 **Trustee** means a member of the Board elected or appointed in accordance with the *Municipal Elections Act* and the *Education Act*, and includes student trustees who are elected by the Student Senate and Students' President Council to represent the interests of students on the Board.

### 3.0 POLICY

#### Code of Conduct

- 3.1 The Board believes that the conduct of its members is integral to the quality of work, the reputation and the integrity of the Board of Trustees.
- 3.2 All members of the Board shall be governed equally by this code of conduct and are expected to uphold the letter and spirit of this Code of Conduct.
- 3.3 The Code of Conduct shall apply to members of the Board with respect to issues raised by, and amongst, members of the Board.

#### Compliance with Legislation

- 3.4 Board members shall discharge their duties in accordance with the *Education Act* and any regulations, directives or guidelines thereunder, and comply with the *Municipal Freedom of Information and Protection of Privacy Act*, and any other relevant legislation.
- 3.5 Board members shall recognize that they are not immune from liability for illegal or negligent actions or for statements which may be considered libel or slander made in the course of a meeting or published (including publication by electronic means).

#### Integrity and Dignity of Office

- 3.6 Board members shall discharge their duties loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the Board.
- 3.7 Board members shall recognize that the expenditure of school board funds is a public trust and endeavour to see that the funds are expended efficiently, in the best interests of the students of the entire District.
- 3.8 Trustees, as leaders of the Board, must uphold the dignity of the office and conduct themselves in a professional manner, especially when representing the Board, attending Board events, or while on Board property.
- 3.9 Trustees shall ensure that their comments are issue-based and not personal, demeaning or disparaging with regard to Board staff or fellow Board members.

#### Avoidance of Personal Advantage and Conflict of Interest

- 3.10 Board members shall declare any direct or indirect pecuniary interest in a matter before the Board.
- 3.11 Board members shall not accept a gift, hospitality or benefits from any person or entity that has dealings with the Board if a reasonable person might conclude that the gift,

hospitality or benefit could influence the member when performing his or her duties to the Board.

- a) Notwithstanding the above, in limited circumstances where it would be impolite or otherwise socially inappropriate to refuse a gift of obvious value, the gift may be accepted on behalf of the Board and reported to the Chair or Vice-Chair, but may not be taken home for the trustee's home or personal use or enjoyment.
  - b) Acceptable gifts include holiday gifts such as fruit baskets or candy, inexpensive advertising and promotional materials such as pens or key chains, inexpensive awards to recognize service and accomplishment in civic, charitable, educational or religious organizations such as nominal gift certificates to book stores.
- 3.12 Board members shall not use the office of trustee or the resources of the District for personal gain, or to advance their interests or the interests of any family member or person or organization with whom or with which the member is associated.
  - 3.13 Board members shall not use their office to obtain employment with the District for themselves or a family member.
  - 3.14 Board members shall not use their office or any benefits derived therefrom for the purpose of seeking election or re-election to office.

#### Civil Behaviour

- 3.15 Board members shall not engage in conduct that would discredit or compromise the integrity of the Board during meetings of the Board or at any other time.
- 3.16 Board members shall not make allegations of misconduct and/or a breach of this Code of Conduct that are trivial, frivolous, vexatious, in bad faith or vindictive in nature against another member of the Board.
- 3.17 When expressing individual views, Board members shall respect the differing points of view of other Board members, staff, students and the public.
- 3.18 Board members shall, at all times, act with decorum and shall be respectful of other Board members, staff, students and the public.
- 3.19 All Board members shall endeavour to work with other Board members and staff of the Board in a spirit of respect, openness, courtesy, and co-operation.
- 3.20 All Board members shall have regard for, and model, the behavioral expectations referenced in Policy P.012.GOV, Board Governance, Policy P.125.SCO, School Board Code of Conduct, and Policy P.009.HS: Respectful Workplace (Harassment Prevention).
- 3.21 All members of the Board shall understand their responsibility for contributing to a respectful workplace, and make every reasonable effort to resolve issues arising as a result of friction, conflict or disagreement in a respectful and professional manner that contributes to a healthy and productive workplace.

### Respect for Confidentiality

- 3.22 Board members shall maintain the confidentiality of privileged information discussed in closed sessions.
- 3.23 Board members shall not use/disclose confidential information for any purpose, including for personal gain or to the detriment of the Board.
- 3.24 Board members shall not divulge confidential information, including personal information about an identifiable individual or information subject to solicitor-client privilege that a Board member becomes aware of because of his or her position, except when required by law or authorized by the Board to do so.
- 3.25 Board members shall ensure that any personal information collected, used or disclosed by him or her is done in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*.
- 3.26 A Board member's duty of confidentiality with respect to private and confidential financial, business and/or commercial information, personnel information, student information, and legal matters and opinions extends beyond their term as a trustee. Inappropriate use of confidential information may constitute a criminal breach of trust contrary to section 122 of the Criminal Code (Canada).

### Upholding Decisions

- 3.27 All Board members shall accept that authority rests with the Board, and that a Trustee has no individual authority other than that delegated by the Board.
- 3.28 Each Trustee shall uphold the implementation of any Board resolution after it is passed by the Board. A proper motion for reconsideration or rescission, if permitted by the Board's By-Laws and Standing Rules, can be brought by a Trustee.
- 3.29 A Trustee should be able to explain the rationale for a resolution passed by the Board. A Trustee may respectfully state his or her position on a resolution provided it does not in any way undermine the implementation of the resolution.
- 3.30 Each Trustee shall comply with Board policies, procedures, By-Laws and Standing Rules.
- 3.31 The Chair of the Board is the spokesperson to the public on behalf of the Board, unless otherwise determined by the Board. No other Trustee shall speak on behalf of the Board unless expressly authorized by the Chair of the Board or Board to do so. When individual Trustees express their opinions in public, they must make it clear that they are not speaking on behalf of the Board.

## **4.0 SPECIFIC DIRECTIVES**

### Role of the Chair/Presiding Officer

- 4.1 The Code of Conduct applies equally to all Board members including the Chair of the Board. In the case of an allegation of a breach of the Code by the Chair, wherever a process requires action by the Chair, it shall be modified to read Vice-Chair.



- 4.2 Each year, the Board shall appoint two trustees to serve as alternate trustees to be used when the circumstances warrant that one or both trustees are needed in place of the Chair and/or Vice-Chair of the Board to carry out any of the duties required under this Code of Conduct.
- 4.3 In no circumstance shall the trustee(s) who brought the complaint of a breach of the Code of Conduct or the trustee who is alleged to have breached the Code be involved in the management or administration of the review of the complaint.
- 4.4 Nothing in this Code prevents the Chair or Presiding Officer of any meeting of the Board or committee of the Board from exercising their power pursuant to s. 207(3) of the *Education Act* to expel or exclude from any meeting any person who has been guilty of improper conduct at the meeting. For greater certainty, this may be done at the sole discretion of the Chair or Presiding Officer, as the case may be, and without the necessity of a complaint or conducting an inquiry before an expulsion or exclusion from a meeting. The rationale for this provision is that a Chair or Presiding Officer must have the ability to control a meeting. Any Trustee who does not abide by a reasonable expulsion or exclusion from a meeting is deemed to have breached this Code.
- 4.5 Any trustee who does not abide by a reasonable expulsion or exclusion from a meeting shall be deemed to have breached this Code.
- 4.6 The Chair of the Board or Presiding Officer of any meeting of the Board or committee of the Board shall exercise his/her powers in a fair and impartial manner having due regard for every trustee's opinion or views.
- 4.7 The Chair of the Board or Presiding Officer shall follow the Board's By-Laws and Standing Rules. A breach of a rule of order should be dealt with at the meeting in question by a Trustee rising to a point of order or appealing a ruling of the Chair in accordance with any applicable rule of order. Once such a motion is dealt with by the Board of Trustees, all Trustees shall abide by that decision and no further action shall be undertaken pursuant to the enforcement of the Code of Conduct, except for persistent improper use of the applicable rules of order by the Chair or Presiding Officer.
- 4.8 Persistent improper use of the rules of order by the Chair or Presiding Officer is deemed to be a breach of this Code.
- 4.9 A Board member who believes that another Board member's behavior has been egregious, shall raise his or her concern with that Board member.
- 4.10 Where a conflict arises between Board members, opportunities for resolution should be sought, or may be presented, by the parties to the conflict in order to resolve the matter.

#### Identifying a Breach of the Code

- 4.11 A Board member who has reasonable grounds to believe that another Board member has breached the Board's Code of Conduct may bring the alleged breach to the attention of the Board through the Chair of the Board.

- 4.12 Any allegation of a breach of the Code must be brought to the attention of the Chair of the Board no later than six (6) weeks after the alleged breach comes to the knowledge of the trustee reporting the alleged breach. Notwithstanding the foregoing, in no circumstance shall a review of an alleged breach of the Code be initiated after the expiration of six (6) months from the time the contravention is alleged to have occurred.
- 4.13 There are two methods for conducting an investigation of an allegation of a breach of the Code of Conduct:
- i. Informal Review Process; or
  - ii. Formal Review Process.
- 4.14 It is expected that whenever possible, allegations of a breach of the Code of Conduct by a trustee shall be investigated using the Informal Review Process. It is recognized that from time to time a contravention of the Code may occur that is trivial, or committed through inadvertence, or an error of judgment made in good faith. In the spirit of collegiality and the best interests of the Board, the first purpose of alerting a trustee to a breach of the Code is to assist the trustee in understanding his/her obligations under the Code. Only serious and/or recurring breaches of the Code by a trustee should be investigated following the Formal Review Process.

#### Informal Review Process

- 4.15 The Chair of the Board, on his/her own initiative, or at the request of a trustee of the Board (without the necessity of providing a formal written complaint) who alleges a breach of the Code has occurred, may meet informally with a trustee of the Board who is alleged to have breached the Code, to discuss the alleged breach. The purpose of the meeting is to bring the allegation of the breach to the attention of the trustee and to discuss possible remedial measures to correct the offending behaviour. The informal review process is conducted in private.
- 4.16 As a remedy, the parties may agree to a remedial measure that is appropriate to the nature of alleged breach, for example, an apology.
- 4.17 If the Chair of the Board and the trustee alleged to have breached this Code cannot agree on a remedy, a formal complaint may be brought against the trustee alleged to have breached this Code and that complaint will be dealt with in accordance with the Formal Review Process below.

#### Formal Review Process

- 4.18 A Trustee who has reasonable grounds to believe that another trustee of the Board has breached the Board's Code of Conduct may bring the breach to the attention of the Board by first providing to the Chair of the Board, a written, signed complaint setting out the following:
- a) the name of the trustee who is alleged to have breached the Code;
  - b) a statement of fact about the alleged breach of the Code;
  - c) information as to when the breach came to the trustee's attention;
  - d) the grounds for the belief by the trustee that a breach of the Code has occurred;
- and

- e) the names and contact information of any witnesses to the breach or any other persons who have relevant information regarding the alleged breach.

If a written complaint is filed with the Chair of the Board then a Formal Review shall be undertaken, unless the complainant subsequently withdraws the complaint or agrees that the complaint may be dealt with in accordance with the Informal Review Process.

- 4.19 The Chair of the Board shall provide to all trustees of the Board a confidential copy of the complaint within ten (10) days of receiving it. The complaint, any response to the complaint and the investigation of the complaint shall be confidential until it is before the Board of Trustees for a decision as to whether or not the Trustee has breached this Code.

#### Refusal to Conduct Formal Review

- 4.20 If the Chair and Vice-Chair of the Board are of the opinion that the complaint is:
- a) out of time;
  - b) trivial, frivolous, vexatious;
  - c) not made in good faith; or
  - d) there are no grounds or insufficient grounds for a formal review, a formal review shall not be conducted.

A confidential report stating the reasons for not conducting a formal review shall be provided to all trustees of the Board.

If the Chair and Vice-Chair of the Board cannot agree on the above then a full formal review shall be conducted.

- 4.21 If an allegation of a breach of the Code of Conduct, on its face, is with respect to the non-compliance of a Board policy with a separate and more specific complaints resolution procedure, the allegation shall be processed under that procedure.

#### Steps of Formal Review

- 4.22 If a formal review of an allegation of a breach of the Code of Conduct is undertaken, it shall be done by:
- a) The Chair and Vice-Chair of the Board, if appropriate (see Section 4.1); or
  - b) Any two of the Chair, Vice-Chair and the alternate trustees (see Sections 4.2 and 4.3); or
  - c) An outside consultant chosen by the Chair and Vice-Chair.
- 4.23 The Chair and Vice-Chair shall determine if the formal review will be undertaken by an outside consultant.
- 4.24 Regardless of who undertakes the formal review, it shall be undertaken using the following steps:
- a) Procedural fairness and the rules of natural justice shall govern the formal review. The formal review will be conducted in private and, to the extent possible, protecting the confidentiality of the parties involved.

- b) The formal review may involve both written and oral statements by any witnesses, the trustee bringing the complaint and the trustee who is alleged to have breached the Code of Conduct.
  - c) The trustee who is alleged to have breached the Code of Conduct shall receive details of the allegation and have an opportunity to respond to the allegations both in a private meeting with the person(s) undertaking the formal review and in writing.
  - d) It is expected that the formal review will be conducted within a reasonable period of time which will depend on the circumstances of the case. The trustee who is alleged to have breached the Code of Conduct shall provide a written response to the allegations within 10 days of receiving the written allegation, or such extended period of time as the investigators deem appropriate in the circumstance.
  - e) If the trustee who is alleged to have breached the Code of Conduct refuses to participate in the formal review, the formal review will continue in his/her absence.
- 4.25 Once the formal review is complete, the investigators shall provide a confidential draft copy of their report containing the findings of fact to the trustee who is alleged to have breached the Code of Conduct and the trustee who brought the complaint for their written comment to the investigator(s). The purpose of providing the draft report to the parties is to ensure no errors of fact are contained in it. The two trustees shall have up to ten (10) days (or such greater period of time as deemed appropriate by the investigators) from the receipt of the draft report to provide a written response.
- 4.26 The final report of the investigators shall outline the finding of facts, but not contain a recommendation or opinion as to whether the Code of Conduct has been breached. This will be determined by the Board of Trustees as a whole.
- 4.27 If the Chair and Vice-Chair of the Board when conducting the formal review cannot agree on the final finding of facts, it shall be referred to an outside investigator to complete the formal review.

#### Suspension of Formal Review

- 4.28 If the investigators, when conducting the formal review, discover that the subject-matter of the formal inquiry is being investigated by police, that a charge has been laid, or is being dealt with in accordance with a procedure established under another *Act*, the formal review shall be suspended until the police investigation, charge or matter under another *Act* has been finally disposed of. This shall be reported to the rest of the Board of trustees.

#### Decision

- 4.29 The final report shall be delivered to the Board of Trustees, and a decision by the Board of Trustees shall be made as soon as practical after receipt of the final report by the Board.
- 4.30 The Board shall consider only the findings in the final report when voting on the decision and sanction. No trustee shall undertake his/her own investigation of the matter.

- 4.31 The determination of a breach of the Code of Conduct and the imposition of a sanction must be done by resolution of the Board at a meeting of the Board, and the vote on the resolution shall be open to the public. The resolution and the reasons for the decision shall be recorded in the minutes of the meeting. Both resolutions shall be decided by a vote of at least 2/3 of the Trustees of the Board elected or appointed.
- 4.32 Despite s. 207 (1) of the *Education Act*, the part of the meeting of the Board during which a breach or alleged breach of the Board's Code of Conduct is considered may be closed to the public when the breach or alleged breach involves any of the matters described in clauses 207(2) (a) to (e) being:
- a) the security of the property of the Board;
  - b) the disclosure of 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 his or her parent or guardian;
  - c) the acquisition or disposal of a school site;
  - d) decisions in respect of negotiations with employees of the Board; or
  - e) litigation affecting the Board.
- 4.33 The trustee who is alleged to have breached the Code of Conduct:
- a) may be present during the deliberations;
  - b) shall not participate in the deliberations;
  - c) shall not be required to answer any questions at that meeting; and
  - d) shall not vote on a resolution to determine whether or not there is a breach or the imposition of a sanction.
- 4.34 The trustee who filed the complaint may vote on the resolution to determine whether or not there is a breach and/or the imposition of a sanction.
- 4.35 The trustee who is alleged to have breached the Code shall not, in any way, after the final report is completed, influence the vote on the decision of breach or sanction, except to appeal after the decisions have been made.

### Sanctions

- 4.36 If the Board determines that there has been no breach of the Code of Conduct or that a contravention occurred, although the trustee took all reasonable measures to prevent it, or that a contravention occurred that was trivial, or committed through inadvertence, or an error of judgment made in good faith, no sanction shall be imposed.
- 4.37 If the Board determines that a Board member has breached this Code of Conduct, the Board may impose one or more of the following sanctions:
- a) censure of the Board member;
  - b) barring the Board member from attending all or part of a meeting of the Board or a meeting of a committee of the Board; or
  - c) barring the Board member from sitting on one or more committees of the Board, for the period of time specified by the Board, not to exceed six months.

- 4.38 The Board shall not impose a sanction that is more onerous than the above but may impose one that is less onerous such as a warning. The Board has no power to declare the trustee's seat vacant.
- 4.39 A Board member who is barred from attending all or part of a meeting of the Board or a meeting of a committee of the Board is not entitled to receive any materials that relate to that meeting or that part of the meeting and that are not available to the members of the public.
- 4.40 A sanction barring a trustee from attending all or part of a meeting shall be deemed to be authorization for the trustee to be absent from the meeting, and therefore, not in violation of the *Education Act* regarding absences from meetings.

#### Appeal

- 4.41 If a Board determines that a Board member has breached this Code of Conduct, the Board shall:
- a) give the Board member written notice of the determination and of any sanction imposed by the Board;
  - b) the notice shall inform the Board member that he or she may make written submissions to the Board in respect of the determination or sanction by the date specified in the notice that is at least 14 days after the notice has been received by the Board member; and
  - c) consider any submissions made by the Board member and shall confirm or revoke the determination within 14 days after the submissions are received from the Board member.
- 4.42 If the Board revokes a determination any sanction imposed by the Board is also revoked.
- 4.43 If the Board confirms a determination that a Board member has breached this Code of Conduct, the Board shall, within the 14 days above, confirm, vary or revoke the sanction(s) imposed by the Board.
- 4.44 If a sanction is varied or revoked, the variation or revocation shall be deemed to be effective as of the date the original determination was made by the Board.
- 4.45 The Board decisions to confirm or revoke a determination or confirm, vary or revoke a sanction shall be done by resolution at a meeting of the Board and the vote on the resolution shall be open to the public. Both resolutions shall be decided by a vote of at least 2/3 of the Board members elected or appointed.
- 4.46 The Board shall provide to the Trustee alleged to have breached the Code of Conduct written notice of the decision to confirm or revoke the determination together with reasons for the decision and written notice of any decision to confirm, vary or revoke a sanction. The Board member alleged to have breached the Code of Conduct shall not vote on those resolutions. The Board member who brought the complaint may vote.

- 4.47 The Board member who is alleged to have breached the Code of Conduct may be present during the deliberations regarding the above but may not participate in the deliberations and shall not be required to answer any questions at that meeting.
- 4.48 If appropriate, the original sanction may be stayed pending consideration of the appeal by the Board of the determination or sanction.

#### Administrative Matters

- 4.49 The Board shall do the following things by resolution at a meeting of the Board, and the vote on the resolution shall be open to the public:
- a) Make a determination that a Board member has breached this Code of Conduct;
  - b) Impose a sanction on a Board member for a breach of this Code of Conduct;
  - c) Confirm or revoke a determination regarding a Board member's breach of this Code of Conduct; and
  - d) Confirm, vary or revoke a sanction after confirming or revoking a determination regarding a Board member's breach of this Code of Conduct.
- 4.50 The meeting may be closed to the public if the breach or alleged breach involves:
- a) The security of the property of the Board;
  - b) The disclosure of 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 his or her parent or guardian;
  - c) The acquisition or disposal of a school site;
  - d) Decisions in respect of negotiations with employees of the Board; or
  - e) Litigation affecting the Board.
- 4.51 A Board member who is alleged to have breached this Code of Conduct shall not vote on any of the resolutions listed above with regard to the alleged breach(s).
- 4.52 In an election year, a Code of Conduct complaint respecting a trustee who is seeking re-election shall not be initiated during the period 1 September and ending after the first Board meeting following the election. If the trustee who is the subject of the complaint is not re-elected, no review shall be undertaken. The limitation period for bringing a complaint shall be extended as necessary.
- 4.53 The Statutory Powers Procedure Act does not apply to any of the enforcement provisions under section 218.3 of the *Education Act*. No formal trial-type hearing will be conducted.
- 4.54 Nothing in this Code of Conduct prevents a Board member's breach of the *Municipal Conflict of Interest Act* from being dealt with in accordance with that Act.

## **5.0 REFERENCE DOCUMENTS**

The *Education Act* of Ontario and Regulations under the *Education Act*  
*Municipal Conflict of Interest Act*, 1996

*Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M56  
School Board Handbook, Ontario Public School Boards' Association (OPSBA), 1998  
OCDSB By-laws and Standing Rules,  
Board Policy P.012.GOV: Board Governance  
Board Policy P.025.GOV: Board Member Conflict of Interest  
Board Policy P.125.SCO, School Board Code of Conduct  
P.009.HS: Respectful Workplace (Harassment Prevention)  
Board Procedure PR.625.HR: Corporate Code of Conduct for Business Relationships



## SCHOOL BOARD MEMBER (TRUSTEE) CODE OF CONDUCT

[NAME OF SCHOOL BOARD]

Please note that the provisions in bold type in the Code of Conduct below are the 2012 Ministry of Education's anticipated wording at the time for the Regulation that never passed. The provisions not in bold type are OPSBA's suggested additional provisions.

Recent changes to Ontario Regulation 246/18: Member of School Boards – Code of Conduct were filed to require all school boards to adopt a code of conduct for Trustees by no later than May 15, 2019. In addition, all Trustee codes of conduct must now be made available to the public. If a school board already has a Trustee code of conduct, it must review it by May 15, 2019, and every school board must review its Trustee code of conduct by May 15 every fourth year thereafter. The Board review shall determine if changes to the code are required and make those changes or, if no changes are required, confirm the existing code of conduct.

The statements in bold under the Enforcement of Code of Conduct provisions are requirements under the *Education Act*.

The comments in square brackets represent alternative concepts or language that a board may wish to adopt instead of the suggested concept.

### PURPOSE

1. A Trustee position is an elected position which carries with it the understanding that the electorate will decide at election time its support for the effectiveness of a Trustee. At the same time, it is important to recognize the public trust and responsibility the collective body carries and that this trust and responsibility is honoured through determining and enforcing norms of acceptable behaviour.
2. A code of conduct policy contributes to confidence in public education and respect for the integrity of Trustees in the community. It deals with acceptable and respectful behaviours.
3. [A Board may wish to insert their Mission, Vision and/or Values statements.]

### APPLICATION

4. This Code of Conduct and the Enforcement Procedures apply to all Trustees of the Board, including the Chair of the Board **and student trustees**.

## CODE OF CONDUCT

### *Integrity and Dignity of Office*

5. **Trustees of the Board shall discharge their duties loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the Board.**
6. **Trustees of the Board shall recognize that the expenditure of school board funds is a public trust and endeavour to see that the funds are expended efficiently, in the best interests of the students.**
7. Trustees, as leaders of the Board, must uphold the dignity of the office and conduct themselves in a professional manner, especially when attending Board events, or while on Board property.
8. Trustees shall ensure that their comments are issue-based and not personal, demeaning or disparaging with regard to Board staff or fellow Board members.
9. Trustees shall endeavour to participate in trustee development opportunities to enhance their ability to fulfill their obligations.

### *Avoidance of personal advantage and conflict of interest*

10. **No Trustee shall accept a gift from any person or entity that has dealings with the Board if a reasonable person might conclude that the gift could influence the Trustee when performing his or her duties to the Board.** However, this does not, for example, preclude a Trustee from accepting a free ticket or admission to a charitable event or professional development event. [If a Board has a policy regarding Trustees receiving gifts, it should be referred to here]
11. **A Trustee shall not use his or her office to advance the Trustee's interests or the interests of any family member or person or organization with whom or with which the Trustee is related or associated.**
12. **No Trustee shall use his or her office to obtain employment with the Board for the Trustee or a family member.**

### *Compliance with Legislation*

13. **A Trustee of the Board shall discharge his or her duties in accordance with the *Education Act* and any regulations, directives or guidelines thereunder and comply with the *Municipal Freedom of Information and Protection of Privacy Act*, and any other relevant legislation.** [Please note that the Ministry of Education's proposed provincial provisions to be included in a Regulation includes "and comply with the *Municipal Conflict of Interest Act*." Before the Regulation is passed, OPSBA hopes to discuss with the Ministry deleting the reference to the *Municipal Conflict of Interest Act* for the following reason. If compliance with

the *Municipal Conflict of Interest Act* remains as part a part of a Trustee Code of Conduct, and an allegation is made that a Trustee has breached that *Act*, then it would require a Board to make a legal determination and finding as to whether or not a Trustee has breached that *Act*. This finding could seriously prejudice a Trustee in a subsequent court application brought by a ratepayer pursuant to that *Act*. Because the *Municipal Conflict of Interest Act* has an enforcement procedure, any allegation of a breach of that *Act* should be dealt with only under that *Act*.]

14. **Every Trustee of the Board shall uphold the letter and spirit of this Code of Conduct.**

15. Every Trustee shall respect and understand the roles and duties of the individual Trustees, Board of Trustees, the Director of Education and the Chair of the Board.

#### *Civil Behaviour*

16. **No Trustee shall engage in conduct during meetings of the Board or committees of the Board, and at all other times that would discredit or compromise the integrity of the Board.**

17. **A Trustee of the Board shall not advance allegations of misconduct and/or a breach of this Code of Conduct that are trivial, frivolous, vexatious, made in bad faith or vindictive in nature against another Trustee of the Board.**

18. When expressing individual views, Trustees shall respect the differing points of view of other Trustees on the Board, staff, students and the public.

19. Trustees shall at all times act with decorum and shall be respectful of other Trustees of the Board, staff, students and the public.

20. All Trustees of the Board shall endeavour to work with other Trustees of the Board and staff of the Board in a spirit of respect, openness, courtesy, and co-operation.

#### *Respect for Confidentiality*

21. **Every Trustee shall keep confidential any information disclosed or discussed at a meeting of the Board or committee of the Board, or part of a meeting of the Board or committee of the Board, that was closed to the public, and keep confidential the substance of deliberations of a meeting closed to the public, unless required to divulge such information by law or authorized by the Board to do so.**

22. **No Trustee shall use confidential information for either personal gain or to the detriment of the Board.**

23. Trustees shall not divulge confidential information, including personal information about an identifiable individual or information subject to solicitor-client privilege that a Trustee

becomes aware of because of his or her position, except when required by law or authorized by the Board to do so.

### *Upholding decisions*

24. **All Trustees of the Board shall accept that authority rests with the Board, and that a Trustee has no individual authority other than that delegated by the Board.**

25. **Each Trustee shall uphold the implementation of any Board resolution after it is passed by the Board.** A proper motion for reconsideration or rescission, if permitted by the Board's Rules of Order, can be brought by a Trustee.

26. A Trustee should be able to explain the rationale for a resolution passed by the Board. A Trustee may respectfully state his or her position on a resolution provided it does not in any way undermine the implementation of the resolution.

27. **Each Trustee shall comply with Board policies, procedures, By-Laws, and Rules of Order.**

28. **The Chair of the Board is the spokesperson to the public on behalf of the Board, unless otherwise determined by the Board. No other Trustee shall speak on behalf of the Board unless expressly authorized by the Chair of the Board or Board to do so.** When individual Trustees express their opinions in public, they must make it clear that they are not speaking on behalf of the Board.

## **ENFORCEMENT OF CODE OF CONDUCT**

### *Identifying a Breach of the Code*

29. **A Trustee who has reasonable grounds to believe that a Trustee of the Board has breached the Board's Code of Conduct may bring the alleged breach to the attention of the Board.** This is done through the Chair of the Board [or committee of the board. If a committee of the board is used then either in this section or the By-Laws of the Board should describe composition of committee, how it is appointed, etc.].

30. Any allegation of a breach of the Code must be brought to the attention of the Chair of the Board [or committee of the board] no later than six (6) weeks after the breach comes to the knowledge of the Trustee reporting the breach. Notwithstanding the foregoing, in no circumstance shall an inquiry into a breach of the Code be undertaken after the expiration of six (6) months from the time the contravention is alleged to have occurred.

31. Any allegation of a breach of the Code of Conduct shall be investigated following the *Informal* or *Formal* Complaint Procedures below, as the case may be.

32. It is expected that whenever possible, allegations of a breach of the Code of Conduct by a Trustee shall be investigated following the Informal Complaint Procedure. It is recognized that

from time to time a contravention of the Code may occur that is trivial, or committed through inadvertence, or an error of judgment made in good faith. In the spirit of collegiality and the best interests of the Board, the first purpose of alerting a Trustee to a breach of the Code is to assist the Trustee in understanding his/her obligations under the Code. Only serious and/or reoccurring breaches of the Code by a Trustee should be investigated following the *Formal Complaint Procedure*.

### ***Chair/Presiding Officer***

33. The Code of Conduct applies equally to the Chair of the Board. In the case of an allegation of a breach of the Code by the Chair, wherever a process requires action by the Chair, it shall be modified to read the Vice-Chair of the Board.

34. Each year two alternate Trustees [alternate committee of the board] shall be chosen by the Board to be used when the circumstance warrant that one or both Trustees are needed in place of the Chair and/or Vice- Chair of the Board [committee of the board] to carry out any of the duties required under this Code of Conduct and Enforcement. In no circumstance shall the Trustee who brought the complaint of a breach of the Code of Conduct be involved in conducting any Formal Inquiry into the complaint.

35. Nothing in this Code prevents the Chair or Presiding Officer of any meeting of the Board or committee of the Board from exercising their power pursuant to s. 207(3) of the *Education Act* to *expel or exclude from any meeting any person who has been guilty of improper conduct at the meeting*. For greater certainty, this may be done at the sole discretion of the Chair or Presiding Officer, as the case may be, and without the necessity of a complaint or conducting an inquiry before an expulsion or exclusion from a meeting. The rationale for this provision is that a Chair or Presiding Officer must have the ability to control a meeting. Any Trustee who does not abide by a reasonable expulsion or exclusion from a meeting is deemed to have breached this Code.

36. The Chair of the Board or Presiding Officer of any meeting of the Board or committee of the Board shall exercise their powers in a fair and impartial manner having due regard for every Trustee's opinion or views.

37. The Chair of the Board or Presiding Officer shall follow the special rules of order of the Board and/or the adopted Rules of Order and meeting procedures contained in any Policy or By-Law of the Board. A breach of a rule of order should be dealt with at the meeting in question by a Trustee rising to a point of order or appealing a ruling of the Chair in accordance with any applicable rule of order. Once such a motion is dealt with by the Board of Trustees, all Trustees shall abide by that decision and no further action shall be undertaken pursuant to the *Enforcement of the Code of Conduct*, except for persistent improper use of the applicable rules of order by the Chair or Presiding Officer.

### ***Informal Complaint Procedure***

38. The Chair of the Board [committee of the board], on his/her [its] own initiative, or at the request of a Trustee of the Board (without the necessity of providing a formal written complaint)

who alleges a breach of the Code has occurred, may meet informally with a Trustee of the Board who is alleged to have breached the Code, to discuss the breach. The purpose of the meeting is to bring the allegation of the breach to the attention of the Trustee and to discuss remedial measures to correct the offending behaviour. The Informal Complaint Procedure is conducted in private.

39. The remedial measures may include, for example, a warning, an apology, and/or the requirement of the Trustee to engage in the successful completion of professional development training such as that offered by the Ontario Education Services Corporation *Professional Development Program for School Board Trustees*. If the Chair of the Board [committee of the board] and the Trustee alleged to have breached this Code cannot agree on a remedy, then a formal complaint may be brought against the Trustee alleged to have breached this Code and that complaint will be dealt with in accordance with the Formal Complaint Procedure below.

### ***Formal Complaint Procedure***

40. A Trustee who has reasonable grounds to believe that another Trustee of the Board has breached the Board's Code of Conduct may bring the breach to the attention of the Board by first providing to the Chair of the Board [committee of the board], a written, signed complaint setting out the following: (i) the name of the Trustee who is alleged to have breached the Code; (ii) the alleged breach or breaches of the Code; (iii) information as to when the breach came to the Trustee's attention; (iv) the grounds for the belief by the Trustee that a breach of the Code has occurred; and (v) the names and contact information of any witnesses to the breach or any other persons who have relevant information regarding the alleged breach. Except as provided below, if a written complaint is filed with the Chair of the Board [committee of the board] then a formal inquiry shall be undertaken, unless the complainant subsequently withdraws the complaint or agrees that the complaint may be dealt with in accordance with the Informal Complaint Procedure.

41. In an election year for Trustees, a code of conduct complaint respecting a Trustee who is seeking re-election shall not be brought during the period commencing two months prior to election day and ending after the first Board meeting after the new term of office of the Board commences. If the Trustee accused of a breach of the Code is not re-elected, no inquiry into the alleged breach of the Code by that Trustee shall be undertaken. The limitation period for bringing a complaint shall be extended as necessary.

42. The Chair of the Board [committee of the board] shall provide to all Trustees of the Board a confidential copy of the complaint within ten (10) days of receiving it. The complaint, any response to the complaint and the investigation of the complaint shall be confidential until it is before the Board of Trustees for a decision as to whether or not the Trustee has breached this Code.

### ***Refusal to Conduct Formal Inquiry***

43. If the Chair and Vice-Chair of the Board [committee of the board or outside consultant] are of the opinion that the complaint is out of time, trivial, frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for a formal inquiry, a formal

~~inquiry shall not be conducted and they shall prepare a confidential report to all the Trustees of the Board stating their opinion and the rationale for it. reasons for not doing so shall be provided to all Trustees of the Board. [Or could amend to require the decision to be by the whole board of trustees]~~ The Trustee who is alleged to have breached the Code of Conduct shall not vote on the resolution. If the opinion is adopted by the Board of Trustees a formal inquiry shall not be conducted.

44. If the Chair and Vice-Chair of the Board cannot agree on the above then a full formal inquiry shall be conducted. [Delete this paragraph if decision made by a committee of the board, outside consultant or whole board of trustees]

45. If an allegation of a breach of the Code of Conduct on its face is with respect to the non-compliance with a more specific Board Policy with a separate complaint procedure, the allegation shall be processed under that procedure.

### *Steps of Formal Inquiry*

46. If a formal inquiry of an allegation of a breach of the Code of Conduct is undertaken, it shall be done by the Chair and Vice-Chair of the Board [committee of the board or outside consultant], if appropriate, or any two of the Chair, Vice-Chair and the alternate Trustees, or an outside consultant chosen by the Chair and Vice-Chair [the whole board of trustees]. [If a board decides to use a committee of the board or an outside consultant then this section will have to be amended accordingly.]

47. Regardless of who undertakes the formal inquiry the following steps shall be followed.

48. **The *Statutory Powers Procedure Act* does not apply to anything done regarding the Enforcement of this Code of Conduct.** No formal trial-type hearing will be conducted.

49. Procedural fairness and the rules of natural justice shall govern the formal inquiry. The formal inquiry will be conducted in private.

50. The formal inquiry may involve both written and oral statements by any witnesses, the Trustee bringing the complaint and the Trustee who is alleged to have breached the Code of Conduct.

51. The Trustee who is alleged to have breached the Code of Conduct shall have an opportunity to respond to the allegations both in a private meeting with the person(s) undertaking the formal inquiry and in writing.

52. It is expected that the formal inquiry will be conducted within a reasonable period of time which will depend on the circumstances of the case 90 calendar days of the receipt of the written response to the complaint. If a longer period of time is required to complete the inquiry, the reason for the extension shall be explained in the final report to the Board. The Trustee who is alleged to have breached the Code of Conduct shall provide a written response to the allegations

within 10 days of receiving the written allegation, or such extended period of the time as the investigators deem appropriate in the circumstance.

53. If the Trustee who is alleged to have breached the Code of Conduct refuses to participate in the formal inquiry, the formal inquiry will continue in his/her absence.

~~54. Once the formal inquiry is complete, the investigators shall provide a confidential draft copy of their report containing the findings of fact to the Trustee who is alleged to have breached the Code of Conduct and the Trustee who brought the complaint for their written comment to the investigator (s). The purpose of providing the draft report to the parties is to ensure no errors of fact are contained in it. The two Trustees shall have ten (10) days (or such reasonable period of time as deemed appropriate by the investigators) from the receipt of the draft report to provide a written response.~~

~~55. The final report shall outline the finding of facts, but not contain and a recommendation or opinion as to whether the Code of Conduct has been breached. This will be determined by the Board of Trustees as a whole.~~

56. If the Chair and Vice-Chair of the Board when conducting the formal inquiry cannot agree on the final finding of facts, it shall be referred to an outside investigator to complete the formal inquiry. [This paragraph would be deleted if inquiry only done by a committee or outside consultant]

### *Suspension of Formal Inquiry*

57. If the investigators, when conducting the formal inquiry, discover that the subject-matter of the formal inquiry is being investigated by police, that a charge has been laid, or is being dealt with in accordance with a procedure established under another Act, the formal inquiry shall be suspended until the police investigation, charge or matter under another Act has been finally disposed of. This shall be reported to the rest of the Board of Trustees.

### *Decision*

58. The final report shall be delivered to the Board of Trustees, and a decision by the Board of Trustees as to whether or not the Code of Conduct has been breached and the sanction, if any, for the breach shall be made as soon as practical after receipt of the final report by the Board.

59. Trustees shall consider only the findings in the final report when voting on the decision and sanction. No Trustee shall undertake their own investigation of the matter.

60. If the Board of Trustees determine that there has been no breach of the Code of Conduct or that a contravention occurred, although the Trustee took all reasonable measures to prevent it, or that a contravention occurred that was trivial, or committed through inadvertence, or an error of judgment made in good faith, no sanction shall be imposed.



61. **The determination of a breach of the Code of Conduct and the imposition of a sanction** with respect to a complaint investigated in accordance with the Formal Complaint Procedure **must be done by resolution of the Board at a meeting of the Board, and the vote on the resolution shall be open to the public. The resolutions shall be recorded in the minutes of the meeting.** The reasons for the decision shall be recorded in the minutes of the meeting. Both resolutions shall be decided by a vote of at least 2/3 of the Trustees of the Board present and voting.

62. **Despite s. 207 (1) of the *Education Act*, the part of the meeting of the Board during which a breach or alleged breach of the Board's Code of Conduct is considered may be closed to the public when the breach or alleged breach involves any of the matters described in clauses 207(2) (a) to (e) being:**

- (a) **the security of the property of the board;**
- (b) **the disclosure of 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 his or her parent or guardian;**
- (c) **the acquisition or disposal of a school site;**
- (d) **decisions in respect of negotiations with employees of the board; or**
- (e) **litigation affecting the board.**

63. **The Trustee who is alleged to have breached the Code of Conduct shall not vote on a resolution to determine whether or not there is a breach or the imposition of a sanction.** The Trustee who brought the complaint to the attention of the Board may vote on those resolutions.

64. The Trustee who is alleged to have breached the Code of Conduct may be present during the deliberations regarding the above but shall not participate in the deliberations, and shall not be required to answer any questions at that meeting.

65. The Trustee who is alleged to have breached the Code of Conduct shall not in any way, after the final report is completed, influence the vote on the decision of breach or sanction, except as permitted below after these decisions have been made.

### **Sanctions**

[School Boards that have First Nation Trustees appointed to their board should have regard for Ontario Regulation 462/97 *First Nations Representation on Boards*. This Regulation provides that appointed First Nation Trustees are deemed to be elected members of the board. While this means that a Trustee Code of Conduct and the Enforcement provisions would apply equally to First Nation Trustees, school boards should have regard for the fact that the Regulation expressly provides that First Nation Trustees represent the interests of the First Nation students of that

school board. School boards should consider taking this fact into consideration when imposing any sanction for a breach of the Code of Conduct by a First Nation's Trustee. For example, the Board should consider this fact when considering a sanction of barring a First Nation's Trustee from a board or committee meeting. If a matter to be considered at a meeting engages the interest of First Nation students then is a sanction to exclude a First Nation's Trustee from that meeting appropriate? As a result, school boards with First Nation Trustees may consider adding a provision to their Trustee Code of Conduct that provides for a consideration of the role of a First Nation's Trustee when imposing any sanction for a breach of the Code of Conduct. **Note: Terminology varies across the province with some boards using First Nations Trustees, Indigenous Trustees, or a Trustee to Represent the Interests of Indigenous Students]**

**66. If the Board determines that the Trustee has breached the Board's Code of Conduct, the Board may impose one or more of the following sanctions:**

- (a) **Censure of the Trustee.**
- (b) **Barring the Trustee from attending all or part of a meeting of the Board or a meeting of a committee of the Board.**
- (c) **Barring the member from sitting on one or more committees of the Board, for the period of time specified by the Board.**

67. The Board shall not impose a sanction which is more onerous than the above but may impose one that is less onerous such as a warning or a requirement that the Trustee successfully complete specified professional development courses at the expense of the Board. The Board has no power to declare the Trustee's seat vacant.

**68. A Trustee who is barred from attending all or part of a meeting of the Board or a meeting of a committee of the Board is not entitled to receive any materials that relate to that meeting or that part of the meeting and that are not available to members of the public.**

69. **The imposition of a sanction barring a Trustee from attending all or part of a meeting of the Board shall be deemed to be authorization for the Trustee to be absent from the meeting** and therefore, not in violation of the *Education Act* regarding absences from meetings.

### ***Reconsideration***

**70. If the Board determines that a Trustee has breached the Board's Code of Conduct the Board shall,**

- (a) **give the Trustee written notice of the determination, the reasons for the decision and any sanction imposed by the Board;**

- (b) **the notice shall inform the Trustee that he or she may make written submissions to the Board in respect of the determination or sanction by the date specified in the notice that is at least fourteen (14) days after the notice is received by the Trustee; and**
- (c) **consider any submissions made by the Trustee and shall confirm or revoke the determination or sanction within 14 days after the submissions are received.**

71. **If the Board revokes a determination, any sanction imposed by the Board is revoked.**

72. **If the Board confirms a determination, the Board shall, within the fourteen (14) days above, confirm, vary or revoke the sanction.**

73. **If a sanction is varied or revoked, the variation or revocation shall be deemed to be effective as of the date the original determination was made.**

74. **The Board decisions to confirm or revoke a determination or confirm, vary or revoke a sanction shall be done by resolution at a meeting of the Board and the vote on the resolution shall be open to the public.** Both resolutions shall be decided by a vote of at least 2/3 of the Trustees present and voting. **The resolutions shall be recorded in the minutes of the meeting** together with the reasons for confirming or revoking a determination. The Board shall provide to the Trustee alleged to have breached the Code of Conduct written notice of the decision to confirm or revoke the determination together with reasons for the decision and written notice of any decision to confirm, vary or revoke a sanction. **The Trustee alleged to have breached the Code of Conduct shall not vote on those resolutions.** The Trustee who brought the complaint may vote.

75. The Trustee who is alleged to have breached the Code of Conduct may be present during the deliberations regarding the above but may not participate in the deliberations and shall not be required to answer any questions at that meeting.

76. If appropriate, the original sanction may be stayed pending the reconsideration by the Board of the determination or sanction.

#### **ACKNOWLEDGEMENT AND UNDERTAKING**

I confirm that I have read, understand and agree to abide by the Board's Code of Conduct and the Enforcement Procedures.

**DATE:** ►

**SIGNATURE:** \_\_\_\_\_

**Please Print Name:** \_\_\_\_\_