



**COMMITTEE OF THE WHOLE  
REPORT 23-018**

**04 April 2023**

**REVISIONS TO P.073.GOV BOARD MEMBER CODE OF CONDUCT**

**Key Contact: Janice McCoy, Executive Officer, Ext: 8310**

**PURPOSE:**

1. To seek input on proposed revisions to P.073.GOV Board Member Code of Conduct.

**STRATEGIC LINKS:**

2. 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. Additionally, resuming the process of appointing an Integrity Commissioner, without a statutory obligation, signals the Board's commitment to ensuring its operations and decision-making are carried out to the highest possible ethical standards in alignment with the Culture of Social Responsibility pillar of the 2019-2023 Strategic Plan.

**CONTEXT:**

3. Under *Ontario Regulation 246/18, Members of School Boards—Code of Conduct* every school board is required to adopt a code of conduct that applies to members of the Board and to review it on or before May 15, 2023 and on every fourth year thereafter.

The last review of the policy under the Regulation occurred in 2019. At its meeting of 07 May 2019, the Board approved changes to P.073.GOV Board Member Code of Conduct which incorporated the role of an Integrity Commissioner into the process, pending the appointment of an Integrity Commissioner. To support this work, the Board expanded the role of the existing Ad Hoc Code of Conduct Committee to include the development of a new policy clarifying the role and appointment of an Integrity Commissioner. Policy P.141.GOV Integrity Commissioner, was approved in December 2019.

A selection committee was established in January 2020 to support the search and selection of an Integrity Commissioner through a request for proposal (RFP) process. The committee was able to complete the RFP process which resulted in the creation of a registry of qualified firms who provide services related to

integrity and ethics. Since no firm or individual was appointed as the Integrity Commissioner, the 2016 version of Policy P.073.GOV Board Member Code of Conduct remains on record in the repository and is used in practice.

This report seeks input on potential revisions to the 2019 version based on the practice of other districts with well-established codes of conduct and experience with the current code of conduct within the OCDSB to date. The report also proposes a potential path forward for appointing an interim Integrity Commissioner while the Board undertakes the process outlined in policy to identify and confirm a permanent Integrity Commissioner.

## KEY CONSIDERATIONS:

### 4. Comparative Analysis with Other School Boards

In the course of reviving the latest approved revisions to the trustees' code of conduct, staff conducted a comparative analysis with other school boards' codes of conduct, focusing on large boards who have appointed an Integrity Commissioner. The codes of conduct which appeared most relevant were those from the Toronto District School Board (TDSB), the Durham District School Board (DDSB) and the York Region District School Board (YRDSB). Other boards, including Peel District School Board, Waterloo Region District School Board and Thames Valley District School Board were also reviewed. Below is a chart that provides a comparative analysis between the codes of conduct at the OCDSB, the TDSB, DDSB and YRDSB:

Element	OCDSB <a href="#">CoC</a> and <a href="#">Integrity Commissioner</a>	<a href="#">TDSB</a>	<a href="#">DDSB</a>	<a href="#">YRDSB</a>
General Principles	✓	✓	✓	✓
Confidential Information	✓	✓. An addition of an option to consult with the appropriate staff, Director of Education, or the Integrity Commissioner where there is doubt about the confidentiality of information. (Section 6.2 g)	✓. An addition of an option to consult with the appropriate staff, Director of Education, or the Integrity Commissioner where there is doubt about the confidentiality of information. (Section 6.23)	✓. An addition of an option to consult with the appropriate staff or Director of Education where there is doubt about the confidentiality of information. (Section 6)
Gifts, Benefits and Hospitality	✓	✓. An elaborate list of acceptable gifts. (Section 6.3)	✓. An elaborate list of acceptable gifts (Section 6.31)	✓. An elaborate list of acceptable gifts (Section 6)
Use of Board Property, Services and Other Resources	✓	✓	✓	✓

Election Campaign Work	✓ (P.122.GOV)	✓	✓	✓
Improper Use Of Influence	✓	✓	✓	✓
Conduct Regarding Current and Prospective Employment	✗. Absent	✓. Current or prospect employment may not affect the trustee's performance of duties to the TDSB. (Section 6.7)	✓ Current or prospect employment may not affect the trustee's performance of duties to the DDSB. (Section 6.40)	✓. Current or prospect employment may not affect the trustee's performance of duties to the YRDSB (Section 10)
Conduct Respecting Staff Members	✓. Broadly addressed in Sections 3.9, 3.17,3.18 and 3.19	✓	✓	✓
Discreditable Conduct	✓	✓. (Section 6.10)	✓	✓
Opening the complaint process to staff and other members of the public	✗	✓	✓	✓. Application available <a href="#">here</a>
Reprisal and Obstruction	✗. Absent in both policies	✓. 6.12	✓. 6.53 - 6.54	✓
Acting on the advice of the I.C.	✗. Absent in both policies	✓. 6.13 (b)	✓. 6.55 - 6.66	✓
Remedial actions following I.C. investigations	✗. Absent. However, legal counsel advised that the language provided in section 4.39 allows the Board to impose less onerous sanctions.	✓. 6.14	✓. less onerous sanctions include issuing a warning or a requirement to complete professional development courses at the expense of the Board.	✓. less onerous sanctions include issuing a warning or a requirement to complete professional development courses at the expense of the Board.

5. Potential Areas of Revision or Addition

Based on the review of other Districts, the governing regulation and experience managing the current policy, staff has identified several potential areas for revisions to address the identified gaps. These have been summarized below, for discussion and consideration by the Committee of the Whole.

- a) Conduct Respecting Staff Members: While the current policy makes several references to staff in setting out expectations for trustee conduct, it differs from other codes in not addressing conduct toward staff in a discrete section of the code. Establishing a separate section in the code setting out expectations of Board members in terms of conduct toward staff may be helpful in terms of highlighting the important relationship between the Board and staff members engaged to serve the Board as a whole as well as clarifying the boundaries of decorum in those relationships. As an alternative, the Board may also consider making changes to Policy P.019.HR Respectful Workplace (Harassment Prevention) which could address this gap.
- b) Access to Complaints Process: There is currently no avenue for members of the public, or employees, to bring forward complaints related to trustee conduct which may breach the code or another Board policy. As indicated above, other districts, particularly those where an Integrity Commissioner has been appointed, include a mechanism for complaints to come forward from members of the public and individual staff members. While the expansion of access to the process could mean an increased number of complaints coming forward, the Integrity Commissioner is vested with the authority and discretion to discern whether complaints are being brought forward in good faith and whether they merit review. A review and update of Policy P.129.GOV Complaints Resolution may also be a way to remedy this omission.
- c) Compliance with Legislation: This section currently only refers to the *Education Act*, the *Municipal Freedom of Information and Protection of Privacy Act*, and references other legislation generally. Highlighting other legislation, specifically the *Criminal Code of Canada*, *Occupational Health and Safety Act*, the *Ombudsman Act*, and the *Ontario Human Rights Code*, would help emphasize that the Code of Conduct is a part of a suite of governance tools that aid in defining the conduct of the trustees in their role. Moreover, the tenets of the *Ontario Human Rights Code* are enshrined in the District's commitment to promoting, preserving, and protecting human rights through its commitment statement.
- d) Expanded Role of Integrity Commissioner: A related issue to the one discussed in (b) is vesting the Integrity Commissioner with authority to review complaints that arise under other Board policies which apply to trustees but where there is currently a gap in defining how concerns involving trustees would be managed. This would include complaints arising under the Human Rights Policy, the Complaints Policy, and the Respectful Workplace Policy.
- e) Prohibition against Obstruction and Reprisals: There is currently no provision in the policy which explicitly prohibits reprisal against complainants or any individual who participates in an investigation. This type of provision is common in complaints based processes and is viewed as an important element in ensuring the integrity of the process. Similarly, there is no specific bar against efforts to obstruct a review or investigation being undertaken by the Integrity Commissioner. Any actions which are found to be reprisals or efforts to obstruct the process by members of the board would be viewed as a breach of the code;

- f) Restorative Actions: Given the potential for code of conduct matters to be acrimonious and stressful, and the potential impact they can have on the overall function of the Board as a whole, it may be beneficial to provide for restorative actions to be taken following the resolution of a code of conduct matter, or at such other times as the Chair or other members of the Board deem appropriate. These could include measures such as individual access to professional counselling for complainants or others, facilitated or guided discussions or other team building activities intended to foster Board cohesion following the resolution of a complaint process;
- g) Acting on Advice from the Integrity Commissioner: In the course of fulfilling their responsibilities under the code, individual trustees may, on occasion, seek the advice of the Integrity Commissioner on a particular matter. The policy does not currently address before the Board as a potential breach, as long as the member disclosed all information to the Integrity Commissioner prior to the latter's advice being provided.
- h) Evaluation and Review Process: The regulation requires that the policy be reviewed at least every four years. This requirement is not currently set out anywhere in the policy. A separate section could be added requiring that the policy be updated as required, but reviewed at least every four years, beginning in May 2023.

In addition to the above-noted areas for consideration, staff have also contemplated whether the separate policy, P.141.GOV Integrity Commissioner, could be incorporated into the Code of Conduct policy, rather than continue with two separate policies.

A number of other possible amendments and additions have been identified with a view to ensuring the expectations are clear and comprehensive. Other revisions noted for the policy include:

- a) migrating the policy to the new policy template;
- b) clarifying what is meant by confidential information, either through the inclusion of a definition or in the body of the policy;
- c) clarifying Board members' obligations in relation to employment or prospective employment generally, beyond using influence to gain employment with the District;
- d) include language confirming that the policy applies to student trustees;
- e) clarify and confirm the application of the code to social media and other forms of communication;
- f) expand on the list of what gifts are acceptable and related circumstances;
- g) adding a requirement for trustees to communicate their acknowledgement and understanding of the code with their signature.

## 6. The Appointment of an Integrity Commissioner

As indicated above, an Integrity Commissioner has not been appointed by the Board. As a result, the condition precedent for the revised policy to take effect has not been met. Assuming the Board continues to be supportive of the Integrity Commissioner model, it will be important to move forward with appointing a Commissioner as soon as possible.

6. Next Steps

Following the discussion at Committee of the Whole (COW) with regard to the areas identified within this report, staff will undertake to draft revisions to the policy which will be circulated to trustees and shared with the public, through the Board's website, for feedback, until April 26, 2023. Staff will identify any additional revisions required as a result of the feedback and incorporate those into a revised draft, to be circulated at least one week prior to the Committee of the Whole meeting. A special Board meeting will be scheduled on or shortly following the May 9, 2023 COW in order to approve the revised policy in advance of the May 15, 2023 deadline in the Regulation.

## **RESOURCE IMPLICATIONS:**

7. The costs associated with the selection and appointment of an Integrity Commissioner were identified as part of the approval of the revised policy in 2019. Although an Integrity Commissioner was not appointed, there have been and will continue to be costs associated with engaging the services of external Integrity Advisors, or other parties, as and when required to support matters arising under the Code of Conduct.

## **COMMUNICATION/CONSULTATION ISSUES:**

8. As indicated above, the review is being undertaken to meet legislative requirements. Although there is no obligation in the regulation that the Board consult with members of the public or other parties with respect to the nature of the proposed revisions, in accordance with the District's approach for Tier 2 policy revisions, there will be an opportunity for limited consultation. This includes an opportunity for feedback by the Human Rights and Equity Advisor, and legal counsel, as well as an opportunity for the public to provide feedback on a revised draft. The revised draft of P.073.GOV Board Member Code of Conduct will be posted to the consultations page of the website and other social media platforms to solicit public feedback from April 11 to April 25, 2023.

## **GUIDING QUESTIONS**

9. The following guiding questions are provided to assist with the discussion:
- a) For each of the proposed areas of revision, will the change that is contemplated accomplish one or more of the following: improve public confidence in the code of conduct and its implementation, clarify standards of conduct for trustees, improve the readability or clarity of the policy, improve Board effectiveness?
  - b) Are there other revisions to the Code of Conduct that have not been identified in the report?
  - c) Does the process outlined for the appointment of an Integrity Commissioner make sense? Are there other options that should be considered in the short and longer term?

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Janice McCoy  
Executive Officer

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Michele Giroux  
Director of Education and  
Secretary of the Board

## APPENDICES

Appendix A - Clean Copy of P.073.GOV Board Member Code of Conduct with the  
revisions approved on 07 May 2019