



BOARD (PUBLIC)
Report 20-043

29 June 2020

Code of Conduct Breach Determination

Key Contact: Michele Giroux, Executive Officer, Corporate Services, (613) 596-8211 ext. 8310

PURPOSE:

1. To consider a complaint under the Code of Conduct against Trustee Donna Blackburn and determine whether there has been a contravention of the Code; and, if necessary, determine what action, if any, the Board might take.

CONTEXT:

2. The school district has a Board Member Code of Conduct policy which establishes standards of practice and behavior for the Board of Trustees. In April 2020, a complaint was filed alleging Trustee Blackburn had failed to comply with the civil behavior sections of the Code. Chair Scott and Vice-Chair Penny reviewed the complaint against the policy and determined that a formal review of the complaint would begin, using a third party investigator. An investigator was retained and has completed the review and submitted a report to the Board. Under the policy, the investigator must submit a report of the finding of facts which does not include a determination of whether the Code has been breached nor does it provide any recommendations. The Board must review the finding of facts and determine whether the Code has been breached. Should the Board determine that there has been a breach of the Code of Conduct, the Board shall then consider what sanctions, if any, shall be applied.

KEY CONSIDERATIONS:

3. Public Delegation and Submission of Code Complaint
On March 31, 2020 two delegations addressed the Board of Trustees at a public Board meeting to express concerns about an incident which occurred in a city park on March 27, 2020 between a Black youth and Trustee Donna Blackburn. Reports about the incident were posted on social media, including the Trustee's social media account. Trustee Christine Boothby filed a formal complaint with the Chair on April 1, 2020. The complaint alleged that Trustee Blackburn's behavior related to the alleged incident was inconsistent with the Civil Behaviour expectations established in sections 3.8, 3.15 and 3.18 of the Board Member Code of Conduct policy. A copy of the complaint was distributed to trustees in accordance with section 4.19 of the policy (P.073.GOV).

4. Third Party Investigator Retained

An independent third party investigator was retained by the District to investigate the complaint. The investigator was provided with a copy of the Board Member Code of Conduct policy, the complaint, and the written submissions of the delegations, media reports and relevant Board governance policies. The investigator met with staff and legal counsel and was asked to undertake an investigation in accordance with the provisions of the policy. Under section 4.24 of the policy, the investigation 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.*

5. Investigator's Report

The policy requires the investigator to provide a confidential draft copy of the report to the trustee who filed the complaint and the trustee who is alleged to have breached the Code. Both Trustees Boothby and Blackburn received the draft report and had an opportunity to provide comment to the investigator.

The investigator submitted the final report to the District on Thursday, June 25, 2020. The final report was shared with the Board on Friday, June 26, 2020. A copy of the investigator's report is attached as Appendix A to this report. In accordance with section 4.26 of the policy, the final report of the investigator is a finding of facts and does not contain a recommendation or opinion as to whether the Code of Conduct has been breached.

6. Process for Determining a Breach

The Board is required to review the report, and as soon as practical, make a decision as to whether the Code has been breached. Under section 4.30, "The Board shall consider only the findings in the final report when voting on the

decision and sanction.” The Board decision is made by way of resolution of the Board at a public meeting of the Board.

Staff and legal counsel will be in attendance at the meeting to assist the Board in understanding its administrative and legislative responsibilities in this regard.

7. Participation in Decision-making

In terms of participation in the process, all parties to the complaint had equal opportunity to provide facts to the investigator – through interview or in writing. In addition, both the complainant and the subject of the complaint had the opportunity to review and comment on the investigator’s report before the final report was prepared.

The Code of Conduct policy, section 4.33, provides the following restrictions on participation in the decision-making:

“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.”

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.”

Except for the trustee who is alleged to have contravened the Code, all members of the Board may vote on decisions regarding Code of Conduct. The trustee who filed the complaint is entitled to vote.

Decisions made under the Code of Conduct policy require a vote of at least 2/3 of the Trustees of the Board elected or appointed. At the OCDSB this means that of the 11 members voting, 8 members must vote in favour in order for a motion to be carried. This is not adjusted for absences - meaning that if only 7 members were present, no motion could be carried. Similarly, if all 11 members eligible to vote were present, and 3 members abstained from voting, no motion could be carried.

8. Factors in Breach Decisions

The Board must consider whether a breach of the Code of Conduct policy has occurred. In making this decision, the Board must focus their deliberation on this particular complaint using the investigator’s report as the statement of facts.

Section 4.30 of the policy provides that *“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.”*

In order to ensure clarity in decision-making, any motion put forward regarding a breach should be structured as follows:

Upon review of the facts as documented in the investigator's final report dated (insert date) regarding a Code of Conduct complaint filed by (insert name) in relation to (insert name), the Board finds:

THAT Trustee _____ has breached Sections 3.8, 3.15 and 3.18 of Policy P.073, Board Member Code of Conduct, in relation to

This structure ensures clarity of decision-making whether the motion is carried or fails.

In the event the Board decides the Code has been breached, it must then determine what sanctions, if any, shall be imposed. That is a separate decision making process which is detailed in Report 20-060.

COMMUNICATION/CONSULTATION ISSUES:

9. There has been considerable public discussion on this incident which has included an online petition, numerous email and letters to the Board, concerns filed with the Minister of Education, multiple media stories/coverage and social media campaigns. The community has clearly expressed frustration and concern with the process, the length of the investigation and the need for the Board to take action.
10. The Board heard from two delegations prior to the submission of the formal complaint. Once the complaint was filed, the Board continued to receive requests for delegations to Board meetings on this matter. While the Board did not hear additional delegations, one of the individuals who submitted a delegation request was interviewed by the investigator.

RESOURCE IMPLICATIONS:

11. There are three primary areas of cost associated with a Code of Conduct complaint; legal fees, investigation costs, and staff time. The costs and time associated with this complaint are higher than what would usually be expected in a code of conduct complaint. This can be attributed to several factors including the sensitivity of the subject matter, the fact that several parties had engaged legal representation, and the amount of community interest which generated a number of additional discussions with legal counsel.

The investigation costs and legal fees are funded through the legal services budget and are estimated to be between \$20,000 and \$50,000. In terms of staff time, it is estimated that the administration of this complaint and related community concerns involved between 50 and 100 hours of work.

SUMMARY:

12. The Board must consider the finding of facts and make decisions based on the following questions:
- With respect to the Code of Conduct complaint dated April 1, 2020 and based on the final report of the investigator, did Trustee Blackburn contravene the Code of Conduct?

RECOMMENDATION:

Upon review of the facts as documented in the investigator's final report dated June 25, 2020 regarding a Code of Conduct complaint filed by Trustee Boothby in relation to Trustee Blackburn, the Board finds:

THAT Trustee Blackburn *(insert HAS or HAS NOT)* breached Sections 3.8, 3.15 and 3.18 of Policy P.073, Board Member Code of Conduct, in relation to an incident which occurred on March 27, 2020.

Michele Giroux
Executive Officer, Corporate Services

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

Attachments:

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



TITLE: BOARD MEMBER CODE OF CONDUCT

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

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