

**BOARD (Public)
Report 20-064**

16 July 2020

Code of Conduct – Appeal of Breach and Sanctions Decisions

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PURPOSE:

1. To consider an appeal of the decision of the Board finding that Trustee Blackburn contravened the Board Member Code of Conduct policy; the decision of the Board imposing sanctions for the breach of the Code of Conduct; and to determine whether the decisions should be confirmed, varied or revoked.

CONTEXT:

2. On June 29, 2020, the Board determined that Trustee Blackburn breached sections 3.8, 3.15 and 3.18 of the policy and the fiduciary expectations for civil behaviour for trustees. The Board also imposed a series of sanctions, including censure and barring Trustee Blackburn attending the Board meeting at which the Board will consider the approval of the 2020-2021 Annual Budget, and from sitting on a number of committees of the Board for a six-month period.

On July 8, 2020, Trustee Blackburn appealed the Board's decisions in accordance with sections 4.41 – 4.48 of the of the policy (the "Appeal"). A copy of the Appeal is attached as Appendix A.

KEY CONSIDERATIONS:

3. Decision Making for Appeal Process
The appeal process set out in the policy provides the following process to be followed by the Board:
 - First, the Board must consider whether to confirm or revoke its determination of whether there has been a breach;
 - If the Board confirms its determination with respect to the breach, the Board must then consider whether to confirm, vary or revoke the sanction(s) imposed by the Board.

Any variation or revocation of the sanctions are deemed to be effective as of the date of the original determination by the Board. Both resolutions require a vote of 2/3 of the Board members elected or appointed.

4. Grounds Raised for Appeal

In her Appeal, Trustee Blackburn raises the following grounds for appeal:

- a) that the Board breached its duty of procedural fairness and the principles of natural justice;
 - b) that the investigation breached the Code of Conduct;
 - c) that the Special Meeting breached the Code of Conduct;
 - d) that Trustees violated the Code of Conduct in their deliberations; and
 - e) that the sanctions were disproportionate to the conduct complained of.
5. In considering the Appeal, the Board should not revisit the findings of fact set out in the report. The Code of Conduct policy does not contemplate the Board making distinct findings of fact separate from the findings of fact set out in the final report. Rather, the Board should review the process followed in obtaining the final report and consider whether the prescribed process set out in the Code of Conduct policy was followed. The Board should also consider whether it ensured it met its duty of procedural fairness to Trustee Blackburn and followed the principles of natural justice.
6. The duty of procedural fairness in the context of statutory decision making must be viewed within the statutory context within which its powers arise. In this case, the Education Act gives the power to enforce codes of conduct to Trustees, elected officials who are expected to be advocates for public education and for enhancing public confidence in public education. The Board's procedural fairness obligations should be viewed in that context.
7. The principles of natural justice require, at a minimum, that an individual who may have their rights or interests impacted by a decision maker has the right to know the case against them, the right to be heard and to respond to the case, and a right to have a decision free from bias.
8. The process prescribed by the Code of Conduct policy contemplates the bulk of these obligations arising within the context of the work of the third party investigator, in that the investigator would be expected to share sufficient information with Trustee Blackburn to provide her with the ability to fully respond. The Board should carefully review the submissions and determine whether any of the alleged irregularities and/or improper conduct set out in the Appeal with respect to the investigation would likely have substantively impacted the factual findings and the Board's interpretation of those findings and their application to the Code of Conduct.
9. The Board must also consider whether it complied with the Code of Conduct policy in the manner in which Trustees conducted its deliberations. In particular, Trustee Blackburn alleges that the Board failed to comply with the Code of Conduct in that Trustees considered findings other than those set out in the final report. If those comments during the deliberations were intended to identify

actual factual findings upon which individual Board members made decisions, this may be considered a breach of the Code of Conduct.

10. If the Board is of the view that the process set out in the Code of Conduct policy was followed, that the third party investigator gave Trustee Blackburn sufficient information to know the case against her and to respond to the evidence, and that the decision was free from bias or a reasonable apprehension of bias, it ought to be satisfied that it met its duty of fairness and the principles of natural justice. If not, the Board must consider whether the departures from natural justice are sufficient to invalidate its determination that there was a breach of the Code of Conduct policy.
11. The Appeal also raises the issue of the proportionality of the sanctions to the findings of fact. If the Board votes to confirm its determination that the Code of Conduct policy was breached, the Board should carefully review Trustee Blackburn's submissions with respect to sanctions and consider whether those sanctions are appropriate in the circumstances and should be confirmed, or whether the sanctions should be revoked or varied.
12. Participation in Decision-making
Participation in the decision making process for an appeal is much the same as the process for determining a breach and sanctions. The trustee who was found in breach of the Code may be present, but shall not participate and shall not vote on any resolution. Similarly, any member who recused themselves from the original decision-making process should recuse themselves from decision-making on the appeal.

Decisions regarding appeals also 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 trustees other than the subject of the complaint, 8 members must vote in favour in order for a motion to be carried.

RESOURCE IMPLICATIONS:

13. The resource implications associated with the appeal process are staff time and legal costs.

COMMUNICATION/CONSULTATION ISSUES:

14. This will be a public meeting and information about the meeting will be posted on the District website. Notification about the meeting has been provided to the parties directly involved.

RECOMMENDATION:

Note: The Board must determine whether it confirms or revokes the decision regarding the breach of the Board Member Code of Conduct and must consider

whether to confirm, vary or revoke the sanctions. This can be done in a two part motion and any motion must reference the reasons for the decision.

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

Attachments:

Appendix A: OCDSB – Trustee Donna Blackburn – Appeal Document

Appendix B: Letter of Support