

POLICY 132 ADDRESSING BREACHES OF THE CODE OF CONDUCT

The *School Act* states that the rights, powers, duties, and liabilities of the Board rest only with the legally constituted Board as a whole, not with committees of the Board or with individual Trustees. Members of the Board exercise their privileges and responsibilities as a matter of public trust, and only when the Board is officially in session.

Failure by Trustees to conduct themselves in compliance with Policy 130 Trustee Code of Conduct (the “Code”) may be brought as an allegation by a Trustee or Trustees and may result in the Board imposing sanctions. Matters of conduct may only be brought forward by members of the Board of Education and are addressed as an internal and confidential process.

1. Alleged Breaches of the Code of Conduct

- 1.1. Allegations of breaches of the Code may arise in many diverse circumstances and it is not possible to exhaustively specify in advance what conduct constitutes a breach of this Code.
- 1.2. Disciplinary proceedings concerning Trustees are serious matters that are not undertaken lightly. As Trustees are democratically elected, such proceedings must not be utilized as a response to legitimate policy disagreements.
- 1.3. Notwithstanding the above, the following are provided as examples of conduct that could be subject to sanction or to proceedings, where (a) Trustee(s):
 - 1.3.1. disclose(s) confidential business of the Board or information subject to solicitor-client privilege outside of an in-camera Board meeting, unless required to divulge such information by law or authorized by the Board to do so;
 - 1.3.2. violate(s) the law, or advocates for the violation of a law;
 - 1.3.3. violate(s) expected standards of parliamentary decorum, or is / are otherwise disruptive in meetings contributing to work of the Board;
 - 1.3.4. oppose(s) or obstruct(s) the implementation of Board decisions, policies, and positions;
 - 1.3.5. fail(s) to uphold policies of the Board, and/ or applicable legislation and regulations, including, but not limited to, the Criminal Code, Freedom of Information and Protection of Privacy Act, Human Rights Code, *School Act*, and Workers’ Compensation Act;
 - 1.3.6. fail(s) to disclose a conflict of interest or acts in a conflict of interest;
 - 1.3.7. harass(es) or otherwise engage(s) in misconduct in relation to School District staff;
 - 1.3.8. engage(s) in personal or dehumanizing attacks on individuals or groups through digital communication; or
 - 1.3.9. act(s) in a way that exposes the Board to potential liability.

2. Complaint Process

- 2.1. Any Trustee, the Superintendent, or the Secretary Treasurer who has reasonable grounds to believe that another Trustee has breached this Code may bring an alleged breach (“Complaint”) to the attention of the Chair of the Board or designate.
- 2.2. Where an allegation is made against the Chair, or where the Chair is the complainant, all other references to Chair in this Policy shall be deemed to read “Vice Chair.”
- 2.3. An allegation of a breach of the Code must be brought to the attention of the Chair-Vice-Chair Committee within 30 calendar days after the breach happens. There may be exceptional circumstances which allow for an extension of the 30-day timeline.
- 2.4. The Chair-Vice-Chair Committee may ask the Trustee to first seek resolution by Informal Resolution Measures, whenever possible, including seeking resolution in a cooperative fashion marked by mutual respect and seeking to understand with an openness to growth and improvement.
- 2.5. Failing resolution through the informal process, the parties will engage the Chair-Vice Chair Committee to gain resolution.
- 2.6. The Chair and Vice Chair will work to resolve the matter with the intent to satisfy all the individuals involved.
- 2.7. Informal measures may not be appropriate for reasons which may include the nature of the issue of concern or the way it has come to a Trustee’s attention.
- 2.8. If resolution through the Informal Measures Process is not possible, the Formal Complaint Process, outlined below, will be followed.
- 2.9. All serious or reoccurring breaches of the Code by a Trustee should be addressed following the Formal Complaint Process.

3. Formal Complaint Process

- 3.1. The Formal Complaint Form shall be completed and signed by the Complainant advancing it, and it shall contain:
 - 3.1.1. the name of the Trustee who is alleged to have breached the Code;
 - 3.1.2. the alleged breach or breaches of the Code;
 - 3.1.3. when the breach came to the Complainant's attention;
 - 3.1.4. the grounds for the belief by the Complainant that a breach of the Code has occurred; and,
 - 3.1.5. the names and contact information of any witnesses to the breach or any other persons who have relevant information regarding the alleged breach.
- 3.2. A Complainant may withdraw the Complaint, but if, in the opinion of the Chair, the interests of the Board so require, the Chair may proceed with the consideration of the Complaint in accordance with this Policy, notwithstanding the withdrawal.

4. Notification

- 4.1. The Chair will forward a summary of the complaint to all Trustees, including the alleged breaching Trustee, the Superintendent, and the Secretary Treasurer, within 10 business days of receiving it.
- 4.2. The filing, notification, content and nature of the complaint shall be deemed to be strictly confidential, public disclosure outside of the board shall be deemed to be a violation of the Code.

5. Recommendation Against Proceeding

The Chair may recommend not to proceed with the complaint if, in the opinion of the Chair, it is out of time, trivial, frivolous, vexatious or not made in good faith, or if there are no grounds or insufficient grounds to proceed. The Board shall vote on the recommendation.

6. Investigation

In some circumstances, the Board may engage an independent investigator to review the Complaint. The investigator shall prepare a confidential report that will be provided to all members of the Board.

7. Procedural Fairness

- 7.1. The Chair at any meeting considering a Complaint shall exercise their powers in a fair and impartial manner, showing due regard for every Trustee's opinion or viewpoint and ensuring that the conduct of the proceeding is fair to the Respondent Trustee.
- 7.2. In the interests of procedural fairness, the Respondent Trustee must be given the opportunity to address the allegations.
- 7.3. The Chair must ensure that all members of the Board have the same information and documentation concerning the matter.
- 7.4. Refusal to participate does not constitute a lack of due process.

8. Code of Conduct Hearing Procedure

- 8.1. If the Board decides to hold a Code of Conduct hearing, the Respondent Trustee will be provided a minimum of 14 calendar days' notice of the hearing.
- 8.2. The Complainant and the Respondent Trustee may present their written or oral evidence to the Board and may be asked questions of clarification by the other Trustees.
- 8.3. Where an independent investigation has occurred, the investigator's report shall be placed before the Board.
- 8.4. The Respondent Trustee may be represented by counsel or another representative, at their own expense, unless the Board determines otherwise, provided that counsel or the representative agree to maintain the confidentiality of the proceedings. The Board may

have counsel assist the Board with matters of procedure, law, and in respect of its deliberations.

- 8.5. Witnesses will not be called, and cross examination will not be permitted at any meeting concerning a Complaint.
- 8.6. The Board must consider the following:
 - 8.6.1. Whether the allegations of misconduct occurred;
 - 8.6.2. If the Board is satisfied according to the civil standard of the balance of probabilities (a 51% likelihood of occurrence) that misconduct did occur, whether any disciplinary action is justified;
 - 8.6.3. If some disciplinary action is justified, the Board must then determine what form of disciplinary action would be fair and reasonable.
- 8.7. The Board will endeavor to resolve any Complaint within 90 calendar days of receipt of Complaint.
- 8.8. The process may be deferred if the matter is subject to investigation by the police or under any applicable legislation.

9. Sanctions

- 9.1. The Board may determine that no sanction be imposed for reasons which may include the following:
 - 9.1.1. although a contravention occurred, the Trustee took all reasonable measures to prevent it;
 - 9.1.2. that the contravention was trivial or committed through inadvertence or an error of judgment made in good faith.
- 9.2. Where a sanction is to be imposed, the Board will determine, by resolution, the appropriate sanction.
- 9.3. Sanctions for a violation of the Code should be imposed in a remedial and restorative manner, should reflect the seriousness of the breach, and may consider input from the Respondent.
- 9.4. Sanctions against the offending Trustee may include, but are not limited to:
 - 9.3.1. a letter of apology written by offending Trustee;
 - 9.3.2. participation in a restorative justice process;
 - 9.3.3. participation in specific training, coaching, or counselling as directed by the Board
 - 9.3.4. a letter of censure issued to the offending Trustee;
 - 9.3.5. removal from some or all Board of Education committees or other appointments of the Board, for a period of time;
 - 9.3.6. removal from in-camera meetings for a specified period of time during the current Board's term of office; or

9.3.7. other sanctions the Board considers appropriate for the circumstances.

- 9.5. A Trustee who is barred from attending all or a part of a meeting or meetings of the Board, or a meeting or meetings of a Committee of the Board, is not entitled to receive any materials that relate to that meeting or that part of the meeting that are not available to members of the public.

10. Publication of Decision

- 10.1. All details of the complaint, discussion and resolution are in-camera.
- 10.2. The Board may, by resolution, issue a statement that may include sanctions or the substance of the Complaint.
- 10.3. Personal privacy of any affected third party will be protected in accordance with the Freedom of Information and Protection of Privacy Act.

11. Privileges of Presiding Officer Preserved

Nothing in this Policy prevents the Board from exercising its power, pursuant to Section 70 of the *School Act*, to expel or exclude from any meeting any Trustee who has been guilty of improper conduct at the meeting, without the necessity of a complaint or conducting an investigation or other inquiry, before expulsion or exclusion from a meeting.

12. Appeal of Decision

Trustees who have been sanctioned or have had other measures imposed upon them by the Board under this Policy can appeal those decisions through the legal system, at their own expense.

Addressing Breaches of the Code of Conduct Flowchart:

