

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:
