

Ontario Public School Boards' Association (OPSBA)
Response to Ministry's Proposed Provincial Provisions for
Trustee Codes of Conduct

June 29, 2010

OPSBA appreciates the opportunity to contribute to this current step of consultation on Trustee Code of conduct. The Association's response has, in great part, been previously communicated through our submissions to the Ministry's Governance Review Committee (GRC) and to the Legislative Standing Committee reviewing Bill 177, *Student Achievement and School Board Governance Act*.

OPSBA supports provincial guidance regarding a code of conduct and understands that a clear board supported process needs to be in place concerning sanctions and how they are imposed and enforced and by whom. This would help with an expected level of consistency from board to board. Such processes must also incorporate due regard for the elected role of trustees.

A number of school boards currently have Code of Ethics and Code of Conduct policies and we believe that these Codes contribute to confidence in public education and respect for the integrity of the trustees in the community.

The following comments are provided for your consideration.

Response to Introduction Section of the Consultation Paper

Generally, school boards make diligent efforts to resolve issues within the normal processes of the Board before they would become the subject of the kind of formal investigation and action contemplated in Section 218.3 of the *Education Act*.

As stated in our submission to the GRC, "trustees support the concept of an external third party who is not subject to political interest and who will step in once everything has been done at the local board level to resolve an alleged breach of conduct. This will respect the principle of finding of fact and consideration of appropriate consequences by a party that carries no political interest." We continue to support the Governance Review Committee's recommendation #20 that stated "Boards of trustees should be able to appoint an external neutral party to investigate alleged violations of the code of conduct or to hear appeals with respect to a sanction and to advise the board accordingly."

The approach advocated above should be an option for boards and supported by the Ministry if and when it is necessary to implement the provisions in Section 218.3. There should be consideration of the importance of requiring the board to conduct an investigation when one of its members brings forward the allegation of breach of conduct.

We also reiterate our earlier position that regarding First Nation trustees. While revised Regulation 462 deems First Nation trustees to be an elected member of the board, they also have a responsibility to the First Nation community that appointed them. If a First Nation trustee is the subject of an allegation of misconduct the First Nation community, and specifically the Chief(s) and Council(s) that appointed them should have a role in any decision that is made. There should be an understanding and written protocol between the First Nation government and the Board or Ministry with regard to any decision to remove any First Nation Trustee from the Board. There is a unique government to government aspect in this case.

Finally, we note that this code of conduct will not apply to student trustees as they are not members of the board. OPSBA supports the comments made by the Ontario Student Trustees' Association - L'Association des élèves conseillers et conseillères de l'Ontario.

These were:

- *OSTA-AECO supports the promotion of consistency regarding code of conduct across Ontario boards. It is clear that provincial guidance is necessary in order to achieve this goal along with an appropriate process for sanction implementation and enforcement.*
- *OSTA-AECO suggests that a student trustee code of conduct based on the adult trustee code of conduct be written in order to protect the integrity of the student trustee position. OSTA-AECO suggests that provincial guidance is necessary as not all school boards are aware of current student trustee provisions.*

OPSBA's Contribution to Resources Supporting Effective Code of Conduct

With the support of the Ministry, OPSBA is currently working with partner school board associations on a comprehensive professional development program for trustees which has a strong focus on good governance and will address leading principles necessary for an effective Code of Conduct.

In addition, following filing of this regulation, OPSBA will be providing to boards a template for a Trustee Code of Conduct as well as a step-by-step process for the Enforcement of Code of Conduct. In our template we will provide school boards with the option of choosing an external third party if the circumstances indicate that this would be the more appropriate route.

Proposed Provincial Provisions for Trustee Codes of Conduct

The following six principles are commonly found in trustee codes of conduct. The GRC noted they could be used to develop provincial standards. Each principle is followed by examples of related trustee responsibilities which could form the provincial provisions for trustee codes of conduct.

i. Integrity and dignity of office

- discharge one's duties loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the board;
- 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.

OPSBA COMMENTS:

OPSBA supports the inclusion of a principle addressing integrity and dignity of office. This is found in many of our member boards' current policies.

OPSBA agrees that trustees are fiscally accountable for the effective and efficient use of allocated funding. However, we would like to re-state that boards can only oversee the expenditures of school board funds that are given to them by the Provincial Government. Boards continue to struggle to fully fund some of their programs which they have in place for the best interest of their students. We, therefore, continue to request a full review of the funding formula.

ii. Avoidance of personal advantage and conflict of interest

- refrain from accepting 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 member when performing his or her duties to the board;
- refrain from using the office to advance the member's interests or the interests of any family member or person or organization with whom or with which the member is associated;
- refrain from using the office to obtain employment with the board for the member or a family member.

OPSBA COMMENTS:

We support the inclusion of these examples in a provincial provision. Again, these are commonly found in current policies for code of conduct and code of ethics.

OPSBA has regularly provided information and professional development opportunities for its members around the issue of Conflict of Interest; these cover both

identification of matters that constitute pecuniary interest and the requirements for declaring a conflict of interest.

iii. Compliance with legislation

- discharge duties in accordance with the *Education Act* and comply with the *Municipal Conflict of Interest Act*;
- uphold the letter and spirit of the code of conduct.

OPSBA COMMENTS:

We recommend including an addition to the end of the first bullet to include “and any other relevant legislation.” It should be noted that many of our member boards include reference to the Municipal Freedom of Information and Protection of Privacy Act as an additional piece of legislation with which trustees are required to be compliant.

iv. Civil behaviour

- refrain from engaging in conduct during meetings of the board and at all other times that would discredit or compromise the integrity of the board;
- refrain from advancing allegations of misconduct that are frivolous, vexatious or vindictive in nature against another member of the board.

OPSBA COMMENTS:

These examples complement those identified in Principle 1 – Integrity and Dignity of Office. However, OPSBA suggests that the first example be reworded to convey a more positive tone, i.e., “actively support conduct during meetings of the board and at all other times that upholds the public credibility and integrity of the board.”

We understand that these provisions apply to all trustees, including the chair, and require trustees to conduct themselves in a manner that allows due regard for every member’s opinions and to comply with the rules of order as established by their individual board’s bylaws.

We believe that trustees are committed to public education and take the lead in advocating and endorsing actions that promote and enhance public education.

We anticipate that exercise of these provisions would apply to serious breaches or violations of either the Provincial Code of Conduct and/or the individual Board’s Code of Conduct.

v. Respect for confidentiality

- keep confidential any information disclosed or discussed at a meeting of the board, or part of a meeting of the board, that was closed to the public, unless required to divulge such information by law;

- refrain from using confidential information for either personal gain or to the detriment of the board.

OPSBA COMMENTS:

OPSBA supports the inclusion of these examples in the minimum provincial provisions.

vi. Upholding decisions

- accept that authority rests with the board and that a trustee has no individual authority other than that delegated by the board;
- uphold the implementation of any board resolution after it is passed by the board;
- comply with board policies and procedures;
- refrain from speaking on behalf of the board unless authorized to do so.

OPSBA COMMENTS:

OPSBA supports the second example as it matches the wording found in the section 218.1 Duties of Board Members in the recently passed Bill 177, Student Achievement and School Board Governance Act.

In the third example we would recommend including the board's rules of order along with board policies and procedures in the provisions with which trustees are required to comply.

With regard to the fourth example, we would recommend the provision provide clarity around who is authorized to speak on behalf of the board and match Bill 177 language. OPSBA recommends that this example be changed to use more positive language and become "acknowledge and recognize that the chair of the board is the spokesperson unless otherwise determined by the board." This aligns better with Section 218.4 of the Act which provides that it is the duty of a board chair to, "act as spokesperson to the public on behalf of the board, unless otherwise determined by the board."

Questions for Discussion

1. Do you agree that these provisions should be included in a code of conduct for school board members?

Yes, these provisions should be included in a provincial minimum for a code of conduct policy.

2. Should any of these be removed from consideration?

We do not see any of these that need to be removed.

3. Are there others that should be added to this list?

Please see our attached Appendix – Example Code of Conduct from OPSBA on Good Governance: A Resource Guide March 2008.

OPSBA CONCLUSION

We have noted that four of the six principles identified in the consultation paper include the term “refrain” when stating a trustee responsibility. We strongly suggest that any final regulation include positive terminology and actions for trustee responsibilities.

Through their existing policies our member boards have demonstrated their commitment to the value of a Code of Conduct. We welcome the measure of consistency that minimum provincial guidelines offer and thank you for the opportunity to contribute to this process.

Appendix

Example Code of Conduct from OPSBS on Good Governance: A Resource Guide March 2008.

Example 1:

As a member of the XXX District School Board,

I will ensure that students are considered first, as the basis for all decision-making.

I will render all decisions based on available facts and my independent judgment, taking into consideration all opinions presented to the Board of Trustees. I will not surrender my judgment to individuals or to special interest groups.

As a school board member, I am a Trustee, and as such will act with integrity and in such a manner that maintains the dignity of the office of a school board member.

I will express my individual opinions on issues under consideration by the Board of Trustees. I will respect the differing points of view of colleagues, staff, students and the public.

I will maintain confidentiality of privileged information discussed in closed sessions.

Once the Board of Trustees has voted, I will be bound by the majority decision. I will be prepared to explain the rationale for the decision and ensure that it is understood, implemented and monitored. If I wish to explain a minority decision, I will do so in this context.

I will refuse direct or indirect hospitality, economic expressions of gratitude and/or gifts other than those of a nominal value which would be reasonably accepted as a courtesy in a business relationship from individuals, agencies or organizations doing business with the school board.

I will declare any pecuniary conflict of interest (direct, indirect or deemed).

I will carefully review all information packages in preparation for discussion at all scheduled meetings of the Board of Trustees, or its committees.

I will base my actions on unimpeachable conduct, acting at all times with utmost good faith with my fiduciary duty.

I will recognize that the expenditure of school funds is a public trust, and I will endeavour to see that the funds are expended efficiently in the best interests of students.

I will endeavor to participate in trustee development opportunities to enhance my ability to fulfill my obligations as a school board member.

I will represent my constituents (including people who do not have children in the school system) at the Board table.

I will work with other trustees in a spirit of respect, openness, courtesy, cooperation, and proper decorum, in spite of differences that may arise during debate.

I will play a lead role in promoting partnerships with the community to enhance programs and services for students.

I will advise parents and community members that their first contact for complaints and concerns regarding classroom practice shall be with the teacher or school principal. If unresolved, then complaints can be referred to a manager, superintendent, director or designate.

I will adhere to the school board's communications policy when questioned or contacted by the media on school board matters.

Example #2

XXX District School Board is (mission statement goes here)

The principles that guide all of our activities are:

Integrity

As an elected Board of Trustees representing communities throughout XX region, members are expected to act with the highest standards of professional integrity, thus enhancing the public reputation of XXX District School Board. Members are expected to act with self-control, tolerance and understanding, carrying out their responsibilities with attention, care and courtesy. Members are expected to support the policies and objectives of the XX District School Board in a collaborative, holistic, student-centred, cooperative, sustained and supportive approach to XXX District School Board activities.

Impartiality and Independence

School board members are expected to carry out their duties 'without fear or favour'. XXX District School Board is engaged in the education of tomorrow's citizens and models effective local government. As such, it will not favour one group of stakeholders over another. XXX District School Board is not affiliated with any organized political body and shall conduct its business accordingly.

Accountability

XXX District School Board members are accountable to their constituents for demonstrating responsiveness when carrying out District School Board business. They

are accountable to their peers in demonstrating professional integrity and in carrying out school board duties.

Leadership

XXX District School Board members are committed to the effective provision of public education and should take the lead in advocating and endorsing actions that promote and enhance public education.

Responsiveness

XXX District School Board members should respond to parents and community members with courtesy and sensitivity and in a timely manner. XXX District School Board members should advise parents and community members that their first contact for complaints and concerns regarding classroom practice shall be with the teacher or school principal. If unresolved, then complaints can be referred to a manager, superintendent, director or designate. XXX District School Board members should not seek to impose preferred solutions on parents and community members, but should facilitate the interaction between the parent and the appropriate school board staff with sensitivity to both parties.

Honesty

XXX District School Board members should be honest and trustworthy in carrying out school board activities. Members should also raise any possible conflicts of interest between acting on behalf of the XXX District School board and acting in any other capacity.

Transparency

XXX District School Board is interested in demonstrating good practice, and as such, all activities should be transparent and effectively communicated to all interested parties. XXX District School Board activities should be open to scrutiny. Legitimate evaluation practices should be encouraged.

Confidentiality

XXX District School Board members shall maintain confidentiality of privileged information discussed in closed sessions, as per the *Education Act*.

Legality

XXX District School Board members will carry out their responsibilities in accordance with relevant statute, regulations and board policy.

Respect

XXX District School Board members should respect the rules of order during meetings of the Board of Trustees. Similarly, the views of all stakeholders, including students, should be respected.