

## Policy Manual – Trustees

### T.03 – Trustee Code of Conduct - PROCEDURES

---

#### PROCEDURES AND ENFORCEMENT OF THE TRUSTEE CODE OF CONDUCT

A Trustee of the HWCDSB, 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 Chairperson of the Board.

Such an allegation of a breach of the Code must be brought to the attention of the Chairperson of the Board no later than six (6) weeks after the breach comes to the knowledge of the Trustee reporting the breach.

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 of Conduct may occur that is committed inadvertently, or an error of judgment made in good faith. In the spirit of collegiality and the best interests of the Board, the 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*.

The Code of Conduct applies equally to the Chairperson of the Board. In the case of an allegation of a breach of the Code by the Chairperson, wherever a process requires action by the Chairperson, it shall be modified to read the Vice-Chairperson of the Board.

Nothing in this Code prevents the Chairperson of any meeting of the Board or committee of the Board from exercising his/her authority 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 Chairperson without the necessity of a complaint or conducting an inquiry before an expulsion or exclusion from a meeting. Any Trustee who does not abide by a reasonable expulsion or exclusion from a meeting is deemed to have breached this Code.

#### INFORMAL COMPLAINT PROCEDURE

The Chairperson of the Board on his/her initiative, or at the request of a Trustee of the Board 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 resolve the concern. The *Informal Complaint Procedure* is conducted in private. The Chairperson of the Board may invite the Director of Education to attend the meeting.

#### FORMAL COMPLAINT PROCEDURE

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 Chairperson 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 Chairperson 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.

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.

The Chairperson 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.

If the Chairperson and/or the Vice-Chairperson of the Board 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, such an inquiry shall not be conducted and a confidential report stating the reasons for not doing so shall be provided to all Trustees of the Board.

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

If a formal inquiry of an allegation of a breach of the Code of Conduct is undertaken, it shall be done by the Chairperson of the Board with the assistance of the Director of Education. Should the Chairperson be the respondent to the complaint, or unable to conduct the investigation, the Vice-Chairperson and Director of Education will conduct the inquiry. In all other cases in which the Chairperson/Vice-Chairperson is unable to conduct the inquiry, the Director of Education will select two (2) other trustees to assist with the inquiry.

The following steps shall be followed in the event of a formal inquiry:

- i. 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;
- ii. Procedural fairness and the rules of natural justice shall govern the formal inquiry. The formal inquiry will be conducted in private;
- iii. 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;
- iv. 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;
- v. 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. 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.

- vi. 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;
- vii. 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;
- viii. The final report 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
- ix. 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

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.

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.

If the Board of Trustees 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 inadvertently, or an error of judgment made in good faith, no sanction shall be imposed.

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.

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.

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.

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.

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

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.

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.

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.

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

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) 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.

If the Board revokes a determination, any sanction imposed by the Board is revoked.

If the Board confirms a determination, the Board shall, within the fourteen (14) days above, confirm, vary or revoke the sanction.

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.

The Board's decision 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.

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.

If appropriate, the original sanction may be stayed pending the reconsideration by the Board of the determination or sanction.