

## AVON MAITLAND DISTRICT SCHOOL BOARD

*We Will: Create Positive, Inclusive Learning Environments, and Maximize Outcomes for Students*

### DIRECTOR'S ACTION REPORT

**TO:** Regular Board Meeting – Tuesday, September 12, 2017

**AGENDA ITEM:** 5.3 a)

**SUBJECT:** Approval of Board Policy #5 re Board Members' Code of Conduct and Dissolution of the Ad Hoc Policy Committee

#### 1.0 Background

- 1.1 The revised Policy #5 was presented to the Board in Committee of the Whole, Open Session on June 27, 2017 for review. No additional edits have been received.
- 1.2 Attached is the revised Policy #5 for board approval.

#### 2.0 Recommendation

It is recommended that

the Avon Maitland District School Board approve the revised Policy #5 re Board Members' Code of Conduct.
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#### 3.0 Dissolution of the Ad Hoc Policy Committee

- 3.1 At the March 28, 2017 Regular Board meeting trustees approved a motion to establish an Ad Hoc Policy Committee to review Policy #5.
- 3.2 Following the recommendation to approve Policy #5, it is necessary to dissolve the Ad Hoc Policy Committee.

#### 4.0 Recommendation

It is recommended that

the Avon Maitland District School Board dissolve the Ad Hoc Policy Committee effective September 12, 2017.
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Dr. Lisa Walsh  
Director of Education and  
Secretary of the Board

# AVON MAITLAND DISTRICT SCHOOL BOARD

## BOARD POLICY #5

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### BOARD MEMBERS' CODE OF CONDUCT

**Legal References:** *Education Act: Sections 170-171 Duties and Powers of Boards; Section 207 (2) Closing of Meetings; Section 209 Board Member Declaration; Section 228 Seat Vacated by Conviction, Absence; Guideline—Ontario Schools Code of Conduct; Municipal Conflict of Interest Act; Municipal Freedom of Information and Protection of Privacy Act, Bill 177, OPSBA Code of Conduct Template*

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#### 1. Code of Conduct

Avon Maitland District School Board expects of itself and its members ethical and businesslike conduct. This commitment includes proper use of authority and respect in group and individual behaviour when acting as board members. The Board sets out the following expectations for the conduct of Board Members (Trustees):

#### 2. Integrity and Dignity of Office

- 2.1 Board Members shall discharge their duties loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the Avon Maitland District School Board in accordance with Board Policy 6: Role of the Trustee.
- 2.2 Each Board Member shall comply with Board policies, procedures, By-Laws, and Rules of Order.
- 2.3 All Members of the Board shall accept that authority rests with the Board, and that a Member has no individual authority other than that delegated by the Board. Board members shall not attempt to exercise or claim individual authority over the organization.
- 2.4 Each Member shall uphold the implementation of any Board resolution after it is passed by the Board (unless or until the resolution is rescinded or amended according to AMDSB's Rules of Order).

#### 3. Civil Behaviour

- 3.1 Board Members shall at all times act with decorum and shall be respectful of other members and members of staff, as well as the public.
- 3.2 During a meeting a member may comment on, or disagree with, a decision taken by the board. In expressing such comment or disagreement, a trustee may not make disparaging remarks about a trustee(s), or staff, nor speculate on the motives of a trustee or staff. It is incumbent upon all members, in the spirit of enriching the whole, to raise a point of order if there is a sense that another has behaved disrespectfully so that the matter can be dealt with immediately by the Chair.
- 3.3 Board Member interaction with the director of education and staff is encouraged; however, individual board members or groups of board members shall recognize that

Trustee authority is solely over the director of education and only through the corporate body.

- 3.4 The director of education is the sole authority over the staff of the board. Board members will voice no judgements of the director of education or staff performance except as that performance is assessed against explicit board policies by the official process as outlined in Policy #9. Any concerns about staff members must be addressed confidentially to the director through the Chair or the corporate body.
- 3.5 Board members' interaction with the public, media or other entities shall recognize the same limitation and the similar inability of any board member or board members to speak for the board. It is recommended that Trustees not speculate on actions or decisions of the board without specific reference to publicly published documents. Speculative questions from the public or the board shall be referred to the Chair or designated spokesperson. [Refer to Administrative Procedure 112]
- 3.6 Any member who resists the rules of the board, uses offensive language, disobeys the decision of the chair/acting chair or the board on points of order, or makes any disorderly noise or disturbance may by resolution of the board be ordered to leave for all or part of the remainder of the meeting. Such removal is to be recorded in the minutes of the meeting.

#### **4. Respect for Confidentiality**

- 4.1 Members shall honour confidentiality regarding:
  - 4.1.1 Matters discussed at a closed meeting of a committee of a board, including a committee of the whole board
  - 4.1.2 Correspondence, reports and other information placed in confidence with Members
  - 4.1.3 Confidentiality extends to anyone not in the closed meeting or excluded from the distribution of the information for whatever reason. Members who believe they have been incorrectly excluded shall raise the question with the Board or Committee Chair who will be allowed discretion to correct the exclusion if deemed appropriate.
  - 4.1.4 A breach of this code, alleged or otherwise.
- 4.2 Members shall not divulge confidential information, including personal information about an identifiable individual or information subject to solicitor-client privilege that a Member becomes aware of because of his or her position, except when required by law or authorized by the Board to do so.

#### **5. Avoidance of personal advantage and conflict of interest**

- 5.1 Board Members shall avoid conflict of interest with respect to their fiduciary responsibility. Board Members 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. [See Section 5.1 in Policy No. 9 Board Governance By-laws.]
  - 5.1.1 A Member shall not use his or her 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 related or associated.
  - 5.1.2 No Member 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 Member when performing his or her duties to the Board.

5.1.3 No Member shall use confidential information for either personal gain or to the detriment of the Board.

## 6. Compliance with Legislation

- 6.1 Members shall comply with the provisions of the Education Act, Municipal Freedom of Information and Protection of Privacy Act, and any other relevant legislation.
- 6.2 Every Member shall respect the roles and duties of the individual Members, the Board of Members, the Director of Education and the Chair of the Board.

**Every Member of the Board shall uphold the letter and spirit of this Code of Conduct and assist fellow members to do the same.**

## 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 detailed in Appendix A.

**DATE:** ▶

**SIGNATURE:**

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**Please Print Name:**

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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 the contravention is to assist the Trustee in understanding his/her obligations under the Code.

In order to uphold the integrity of the whole board, it is incumbent upon a member noticing the misstep of another to bring it to their attention as soon as possible. Subsequently, if it is believed by both parties to be a learning opportunity, or is a subject of rumours, the essence of the misstep, without reference to the member who contravened the code, should be brought, through the Chair, to the whole board to enhance the learning of all.

### **Breach of Conduct**

#### **1. Identifying a Breach of the Code**

A member of a board who has reasonable grounds to believe that another member of the board has breached the board's code of conduct may bring forth the alleged breach to the attention of the Chair of the board. In the case 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. If the allegation is against both the Chair and Vice-Chair the forthbringer shall bring the complaint directly to the whole board in Closed Session. (see Policy #9, Section 2.3.2 re Special Meetings)

Any allegation of a breach of the Code must be brought forward as soon as possible but no later than twelve (12) 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 started after the expiration of six (6) months from the time the contravention is alleged to have occurred.

The board shall have available a list of pre-approved potential investigators and mediators selected through an approved competitive procurement process.

#### **2. Suspension of Inquiry**

If the investigator(s), at any time, have concerns that this matter is outside the purview of the board, the Chair shall immediately consult with the Board lawyer before continuing. Similarly if it is discovered that the subject-matter of this inquiry is being investigated by police, that a charge has been laid, or it is being dealt with in accordance with a procedure established under another *Act*, the inquiry shall be suspended until the police investigation, charge or matter under another *Act* has been finally disposed of. This shall be immediately reported to the rest of the Board of Trustees.

#### **3. Process for Investigation of Allegations of Breach of Conduct**

Any allegation of a breach of the Code of Conduct shall first be investigated using the *Informal* Complaint Procedure below. The whole process is absolutely confidential.

To invoke this process, the Trustee who alleges a breach of this Code will present, confidentially, to the Chair, except as described above if the allegation involves the Chair, a written, signed statement setting out the following: (i) the name of the Trustee who is alleged to have breached the Code; (ii) the date and details of how the breach came to the Trustee's attention and when the breach is alleged to have occurred; (iii) a general description of the alleged breach(es) of the Code; (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.

In order to maintain the integrity and transparency of the board, if a complaint originates from someone external to the board of trustees, the Chair will, in writing, expediently acknowledge receipt of the complaint. Once the process is complete, the complainant will be notified that the complaint has been addressed in a confidential process.

### 3.1 Informal Complaint Procedure

3.1.1 Upon receipt of the written allegation, or at his/her own initiative, the Chair, except if s/he is the subject of the allegation shall immediately create a sub-committee of 3 members which will include the Chair, the Vice-Chair and one other member selected at random from the HR committee pool. The selection process will be witnessed by the Recording Secretary of the Board. If the Chair and/or Vice-Chair are either the forth-bringer or the implicated member, the randomly selected number of members will be adjusted accordingly. Under no circumstances will this sub-committee include either the forth-bringer or the member alleged to have breached the Code. This sub-committee will privately review the details of the allegation. If, at any time in these procedures, the sub-committee is of the unanimous opinion that the allegation of the breach is trivial or vexatious or otherwise faulty the Chair shall bring this opinion to the attention of the board for further consideration.

3.1.2 The sub-committee will meet informally with a Trustee 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.

The remedial measures may include, for example,

3.1.2.1 a warning

3.1.2.2 an apology,

3.1.2.3 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*.

3.1.3 If a satisfactory conclusion is reached, the Chair of the sub-committee shall bring the matter before the board. By a simple majority, the board will determine whether the resolution is appropriate or whether further investigation/measures are required.. This can be done in a Closed meeting if it involves confidential information or could be deemed to be damaging to the reputation of any members or to the Board {Ref: Reg. 207 (2) (a) to (e)}

### **Failure of the Informal Procedure**

- 3.1.4 If the sub-committee and the Trustee alleged to have breached this Code do not all agree on a resolution, then the Chair shall bring the matter before the board. The board shall determine, by a simple majority, whether to move to the Formal Procedure, attempt mediation, or dismiss the matter.
- 3.1.5 If referred to mediation, once complete, the results of the mediation will be reported to the board. If, by a simple majority, the board deems the mediation a success the Formal Inquiry shall not take place and the matter will be considered concluded. If deemed unsuccessful, the board shall determine whether to proceed with the Formal Procedure.
- 3.1.6 Exception: In an election year for Trustees, a formal 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.

### **3.2 Formal Complaint Procedure**

- 3.2.1 If the Formal Complaint Procedure is invoked, the Board shall decide by simple majority whether to have the sub-committee further investigate or retain a pre-approved external investigator. Subsequently, all enquiries and/or further information shall be directed solely to the investigator(s) and details of the investigation shall be confidential to the investigator(s) until the investigator's report is before the Board of Trustees for a decision as to whether or not the Trustee has breached this Code.
- 3.2.2 The Chair shall send a written notification to the member(s) alleged to have breached the code informing him/her that a Formal Procedure has been invoked..
- 3.2.3 In no circumstance shall the Trustee who brought forth the allegation of a breach of the Code of Conduct be involved in conducting the Formal Inquiry into the complaint.

## **4 Refusal to Conduct Formal Inquiry**

If, at any point in this process, a two-thirds majority of the Board is of the opinion that the complaint is out of time, trivial, frivolous or that there are no grounds or insufficient grounds for a formal inquiry, then the Formal Inquiry shall not take place and the matter will be considered concluded. {Ref Policy 9 sec: 5.3.4.c.ii}

However, if the complainant is a trustee and a two-thirds majority deems that the complaint is sufficiently vexatious, the board may consider the allegation a breach in itself and consider sanctions against the complainant trustee as detailed in Section 7.1 below.

## **5 Steps of Formal Inquiry**

Procedural fairness and the rules of natural justice shall govern the formal inquiry. The formal inquiry will be conducted in private and confidentiality shall be maintained at all times. In the case of an external complainant, the complainant, having previously been informed that an

investigation has been undertaken, will subsequently receive a confirmation letter once the process is complete.

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. Potential external investigators will have provided estimated time-frames during the procurement process and then, once retained for the investigation, the board will be notified of expected variations and kept continually apprised of anticipated completion times.

Once an Inquiry is invoked, all communications regarding the investigation must be directed solely to the Investigator (as defined in 2.2.1 above). Any communications directed to, or further information learned by other Trustees shall be forwarded solely to the Investigator. No particulars that are part of the investigation shall be shared with anyone other than the Investigator until the final report is presented.

The Trustee who is alleged to have breached the Code of Conduct is encouraged to provide a written response to the facts of the allegations within 10 days of the decision to move to a formal enquiry, or such extended period of time as the investigator(s) deem appropriate in the circumstance.

If the Trustee who is alleged to have breached the Code of Conduct refuses to participate in the formal inquiry, or does not respond in a timely manner, the formal inquiry will continue in his/her absence.

## 5.1 The Investigation

- 5.1.1 The Designated Investigator (as defined in 2.2.1 above) has the sole authority to investigate. No Trustee shall undertake their own investigation of the matter and neither the Trustee who brought the allegation nor the Trustee alleged to have breached the code shall partake in the investigation.
- 5.1.2 The formal inquiry may involve both written and oral statements by any witnesses, the Trustee bringing forth the complaint, and the Trustee who is alleged to have breached the Code of Conduct. The investigation will be restricted to the events referred to in the written complaint and guided by but not limited to the specifics therein. However, unrelated incidents shall not be pursued or reported.
- 5.1.3 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.

Once the formal inquiry is complete, the investigator(s) shall provide a confidential draft copy of their report containing the findings of fact to the Trustee(s) alleged to have breached the Code of Conduct and the Trustee who brought forth the complaint for their written comment to the investigator(s). The sole purpose of providing the draft report to the parties is to ensure no errors of fact are contained in it. It is not to elicit further information.

These parties identified in the paragraph above shall then have ten (10) days (or such reasonable period of time as deemed appropriate by the investigator(s)) from the receipt of the draft report to provide a written response.

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

## 6.0 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.

- 6.1 Despite subsection 207 (1) of the *Act*, (...*the meetings of a board... shall be open to the public*) the part of a 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 subject-matter under consideration involves, ... (b) the disclosure of intimate, personal or financial information in respect of a member of the board" or involves any of the other matters described in clauses 207 (2) (a) to (e) of the *Act*.
- 6.2 The board shall do the following things by resolution at a meeting of the board, and the vote on the resolution shall be open to the public:
- 6.2.1 make a determination that a member has breached the board's code of conduct
  - 6.2.2 impose a sanction under paragraph 7.1
  - 6.2.3 confirm or revoke a determination under paragraph 7.1
  - 6.2.4 confirm, vary or revoke a sanction under paragraph 7.1
- 6.3 A member who is alleged to have breached the board's code of conduct shall not vote on a resolution to do any of the things described above.
- 6.4 The passage of a resolution to do any of the things described above shall be recorded in the minutes of the meeting.
- 6.5 Resolutions shall be decided by a vote of at least 2/3 of the Trustees of the Board present and voting. {Ref: Policy 9 Sec: 5.3.4.c.vi}
- 6.6 The Statutory Powers Procedure Act does not apply to anything done under this section.

## 7.0 Enforcement of Code of Conduct/Consequences of Misconduct

- 7.1 If the board determines that the member has breached the board's code of conduct, the board will, in a subsequent motion, and by simple majority, impose none, one, or a combination of the following sanctions:
- 7.1.1 remedial measures such as described in section 3.1.2 above;
  - 7.1.2 a verbal warning;
  - 7.1.3 a letter outlining the breach or concern;
  - 7.1.4 a public censure of member;
  - 7.1.5 barring the member from sitting on one or more committees of the board, for the period of time specified by the board.
- 7.2 For greater certainty, the imposition of a sanction barring a member from attending all or part of a meeting of the board shall be deemed to be authorization for the member to be absent from the meeting.

- 7.3 A member of a board 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.
- 7.4 In respect of a trustee's failure to comply with the duty of confidentiality as stated above, the following additional sanctions may be pursued by the board:
  - 7.4.1 The board may pursue available legal avenues where a trustee has breached his/her duty of confidentiality. The board will not compensate a trustee for legal costs incurred in response to any action pursued.
  - 7.4.2 Barring the member from attending all or part of a meeting of the board or a meeting of a committee of the board.

## **8.0 Appeal of Breach of Conduct**

- 8.1 If the board determines that a member has breached the board's code of conduct:
  - 8.1.1 The board shall give the member written notice of the determination and of any sanction imposed by the board.
  - 8.1.2 The notice shall inform the member that he or she may make written submissions to the board in respect of the determination or sanction by a date specified in the notice that is at least 14 (fourteen) days after the notice is received by the member.
  - 8.1.3 If the submission requests reconsideration, the board shall consider any submissions made by the member in accordance with 8.1.1. the board shall meet within 14 (fourteen) days after the submissions are received. The board shall, by a two-thirds majority, confirm or revoke the determination {Ref: Policy 9 Sec: 5.3.4.c.ii}
  - 8.1.4 If the board revokes a determination under clause 8.1.3 any sanction imposed by the board is revoked.
  - 8.1.5 If the board confirms a determination under clause 8.1.3, the board shall, by a simple majority, confirm, vary or revoke the sanction.
  - 8.1.6 If a sanction is varied or revoked under 8.1.4 or 8.1.5, the variation or revocation shall be deemed to be effective as of the date of the original determination was made under 6.2.

## **9.0 Going Forward**

In recognition that a code of conduct investigation can be a stressful and sometimes painful process for all involved, in the 12 weeks following resolution, remedial processes may be requested with optional participation such as:

- 9.1 Two hours with a certified counselor. (For absolute privacy, this can be arranged through the procurement department) or Human Resource Services
- 9.2 A group debriefing with a qualified leader
- 9.3 A trustee team-building exercise
- 9.4 Or another avenue approved by the board