

DATE: May 3 , 2021

TO: Bylaws Review Ad hoc Committee

FROM: Suzanne Craig, Integrity Commissioner, Toronto District School Board

RE: Integrity Commissioner Preliminary Review of TDSB Bylaws

The TDSB Bylaws (the “Bylaws”) are the written rules that govern the actions of the Trustees of the Board in the decision-making role. The Bylaws include matters such as, the purpose, membership on committees and subcommittees, Chair and Vice-Chair responsibilities, how meetings should be conducted, how often meetings will be held, types of motions and voting procedures.

The rules of the Bylaws should govern the way Trustees of the Board are required to conduct meetings, setting out how Trustees carry out their statutory roles and responsibilities as elected officials appointed to Committees and at Board. The Bylaws are essential in assisting the Board map out decision-making activities in fulfillment of the Board’s purpose through the practical day-to-day details of how it will go about advancing its democratic decision-making. The Bylaws also serve as the legal guidelines for decision-making activities of the Board, and it is for this reason that the rules should be clearly written and fairly and consistently applied.

In order for the TDSB Bylaws to effectively provide for the Board’s internal governance processes while being consistent with the key principles of the Board Member Code of Conduct (the “Code”), as well as the letter and spirit of the Education Act, the rules contained therein should have defined terms with consistent meaning and application.

The Bylaws should:

- be clear enough so they can be easily understood by Board members.
- include sufficient detail to create clear, fair decision-making processes without bias.
- should contain general directions that will cover the situations faced by Trustees in meeting and detailed descriptions of committee procedure.

The following are the preliminary findings on a first review of the current Bylaws:

Definitions:

The “Definitions” appear to be sufficiently detailed to provide an understanding of terms of importance.

Roles and Responsibilities:

This section sets out the role of Board and Committee Chair and Vice- Chair. Section 3.4.2 (b) states that the Director or Vice-Chair establishes agendas for Board meetings, in consultation with the Board’s Director or designate. It is unclear whether this function is shared by the Chair/Vice-Chair and Director. It is also unclear what process is followed, if any, with reference to what matters will be placed on the agenda (i.e. is this a staff initiative with recommendation to the Chair and/or Director?).

Section 2.4 of the Bylaws provides very little guidance on the role of a Committee Chair in terms of setting the agenda for Committee meetings.

This section sets out that the Director, the Secretary of the Board or designate will determine the times and location for the meetings of the Board and Committee. It is unclear which officer sets the times for meetings and whether this is in consultation with the Secretary of the Board or if this is a function and role of the Secretary of the Board who consults with the Director.

Committee Structure and Composition:

Section 4.1.2 states that the Board may establish by resolution any committee it deems appropriate[...]. The Board must approve terms of reference of all Committees. It is unclear that this decision-making/approval role of the Board is clearly understood by all Trustees.

Section 4.2.1 states that the Board may dissolve any Committee at the Organizational Meeting, or by resolution at any time as required, subject to applicable legislation. Section 4.3.1 states that Committees are not decision-making bodies and may only make recommendations to the Board for consideration and final approval. However, it appears that some decisions have been made by Committees and/or some Trustees believe that Committees have decision-making authority. It is unclear whether the Committee brings forward to Board, a resolution to dissolve a Committee, or if the Board as decision-maker may do so directly. It is unclear whether this provision is understood by all Trustees.

Section 4.4.7 states that the Board may appoint Trustees to serve on other agencies, boards and commissions, including those external to the Board, as it deems necessary

or when requested, if supported by the Board and consistent with legislation. It is unclear whether all Trustees understand what process is in place to appoint Trustees to agencies, boards and commissioners.

Section 4.8.1 states that the Board may establish a Special Committee consisting of Trustees to make recommendations to the Board on any matter. It is unclear whether there is a minimum or maximum number of Trustees that is set out in the Bylaws to make up a Special Committee. It is unclear whether all Trustees understand that depending on the number of Trustees on a Special Committee, the recommendations may de facto be a decision of the majority of the Board.

Section 4.10 requires clarification on whether there will be a minimum number of the members appointed to CACs who will be Trustees and how many of the membership may be public volunteers.

Board and Committee Meetings – Rules and Procedures

Section 5.2.1 states that the Chair (or Vice-Chair in the Chair's absence) may cancel a Board or Committee meeting in consultation with the Director or designate. It is unclear if reasons must be given and if there are notice provisions that accompany this action of cancelling a meeting. Sections 5.5.3, 5.5.4 and 5.5.5 set out the rules for Notice of Special Meeting. While there are provisions that require that notice of a special meeting must be communicated at least 24 hours in advance of the meeting along with the agenda, it is unclear whether all Trustees understand that this process does not require consultation with other Trustees.

Section 5.3 is entitled Open (Public) Sessions. This section has been amended to reflect the new circumstances of virtual meetings created by the in-person gathering restrictions of Covid-19.

Section 5.3.4 states that no person will engage in conduct that is negative, critical, or derogatory towards any other person, or engage in any behaviour that is disruptive to the meeting. Where a member of the public engages in such conduct, the Chair may advise the person to cease such behaviour, or the person may be required to leave the meeting.

The Chair of a meeting, requires a certain degree of autonomy to ensure that a meeting is conducted in accordance with the Bylaws and as specifically stated therein, to oversee order and behaviour of members and attendees at the meeting. However, in addition to the Bylaw rules, the Code sets out in sections 6.8 and 6.10 that Trustees shall conduct themselves with decorum at Board and Committee meetings. The inclusion of this provision in the Code allows the Integrity Commissioner to have concurrent jurisdiction with the Chair of the Board or Committee, to receive Code

complaints regarding matters of decorum at meetings. While the Chair has jurisdiction to make ruling on the decorum at a meeting, this jurisdiction does not remove the Integrity Commissioner's jurisdiction to review the conduct of a Trustee at a later date following the receipt of a Code complaint and determine if it rises to the level of a failure to conduct oneself according to sections 6.8 and 6.10 the Code.

Section 5.4.4 states that the Director or designate will maintain a complete record of the decisions made, including recorded votes where applicable. As I stated in the TDSB 2019-20 Annual Report, as a result of my participation in informal complaints, I identified and reported that there is a need for the Office of the Integrity Commissioner to rely on accurate information in respect of closed meeting discussions. It is for this reason, that with a view to facilitating accuracy of Code investigations, I included in the report, a recommendation that the Board consider including in the Bylaws, a provision that verbatim meeting minutes will be taken and or closed meetings will be recorded.

Attendance at Meetings:

Section 6.11 of the Code is entitled Failure to Adhere to Board Policies and Procedures requires Trustees to observe the terms of all policies and procedures. All Trustees should be aware of the fact that attendance at meetings, as well as all sections of the Bylaws, is captured in rule 6.11 of the Code

Agenda:

It is unclear if all Trustees are familiar with this section of the Bylaws. It is also unclear if the Agenda is set at Executive Committee pursuant to section 5.12.1 of the Bylaws. It is unclear whether there is a process that allows individual Trustees to request items be included on the agenda of Board and Committee meetings and if so, what process will be followed.

Debate:

Section 5.13.5 of the Bylaws states that no member will interrupt another member who has the floor, except for the Chair presiding over a meeting or a member for the purpose of stating a point of order or question or personal privilege. It is unclear whether all Trustees understand what a point of order or question or point of personal privilege is and what the process is (i.e. if a Trustee raises/puts forward a point of order, must the Chair acknowledge them, must the Trustee wait to speak, may other Trustees speak). Sections 5.15.30-5.15.46 are detailed. It is unclear whether all Trustee understand these provisions.



memorandum

Motions:

It is unclear whether all Trustees understand what procedure is to be followed under sections 5.15.15 – Motions of Precedence – Not Debatable and section 5.15.16 – Refusal to Accept a Motion.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Suzanne Craig', written in a cursive style.

Suzanne Craig
Integrity Commissioner
Toronto District School Board