

**ADDENDUM TO THE
YORK REGION DISTRICT SCHOOL BOARD
OPERATIONAL BY-LAW**

COMPLAINT PROTOCOL FOR THE TRUSTEE CODE OF CONDUCT

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COMPLAINT PROTOCOL FOR THE TRUSTEE CODE OF CONDUCT

SECTION 1: Objective

The Board has established a Trustee Code of Conduct (**Code**) to govern the conduct of Trustees and to provide transparency, accountability, and public confidence in its governance of the York Region District School Board.

This Complaint Protocol for the Trustee Code of Conduct (**Protocol**) describes how complaints concerning alleged breaches of the YRDSB Trustee Code of Conduct are reported, investigated and resolved.

SECTION 2: Definitions

Board

The Board of Trustees of the York Region District School Board (YRDSB).

Complaint Form

A formal document that must be completed in order to initiate a Formal Inquiry by the Integrity Commissioner under the Trustee Code of Conduct. The form shall include any documentation necessary to support the complaint.

Informal Resolution Process

A collaborative process whereby a Trustee or Community Member informally brings a concern or allegation of a breach of the Trustee Code of Conduct (“the Code”) to the attention of a Trustee who is alleged to have breached the Code with the purpose of repairing and restoring relationships and discussing possible remedial measures to correct the offending behavior.

Formal Inquiry

Includes an investigation.

Integrity Commissioner

Individual who is appointed by the Board of Trustees in accordance with Part 5, Accountability Framework of the York Region District School Board Operational By-Law.

Community Member

Any member of the York Region District School Board community including, but not limited to parents/guardians, students, staff, advisory committee members, community partners and members of the public.

Trustee (Board member)

An individual who is elected, acclaimed or appointed to the office of trustee or member of the Board pursuant to the provisions of the Municipal Elections Act and the Education Act.

SECTION 3: Application

The Protocol outlines a number of ways by which concerns related to the conduct of Trustees are addressed. The formal complaint process is aligned with the Section 218.3(2), *Enforcement of Code of Conduct*, of the [Education Act](#).

As permitted by Ontario Regulation 43/10, Provincial Interest in Education dated January 26, 2017, [Minister's Direction #8](#) to the York Region District School Board dated April 11, 2017 required the Board to establish an Office of the Integrity Commissioner. The Integrity Commissioner supports the Board of Trustees in addressing complaints against a trustee.

The Code and Protocol apply to Trustees who have made the Declaration and filed it as outlined in Sections 209(1)(2)(4) of the *Education Act* and only while they hold their seat. The Code and Protocol apply to student trustees once they are elected or appointed to the Board of Trustees and only while they hold their seat.

Conduct by a Trustee outside of the above timeframe will not be the subject of a complaint under the Code and will not be investigated pursuant to the Protocol.

SECTION 4: Limitations

Timelines

1. Any allegation of a breach of the Code must be brought forward no later than six (6) weeks after the breach comes to the knowledge of the Trustee or Community Member who is identifying an alleged breach. Notwithstanding the foregoing, in no circumstances shall a complaint be made after the expiration of six (6) months from the time the contravention is alleged to have occurred.

Municipal Election Period

2. In a municipal election year, formal complaints about the conduct of a sitting Trustee who is seeking re-election to any office shall not be brought during the period commencing after the Civic Holiday Monday in August and ending when a new Board is deemed organized under Section 6 of the *Municipal Elections Act*. The limitation period for bringing a complaint shall be extended as necessary. 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 Informal Resolution Process may be enacted during this period, without the participation of the Integrity Commissioner.

During this period, any open formal complaint investigation(s) shall be suspended and only continued if the Trustee accused of a breach of the Code is re-elected or acclaimed.

Anonymity

3. Anonymous complaints will not be accepted or investigated.

Statutory Powers Procedure Act

4. The [Statutory Powers Procedure Act](#) does not apply to anything done regarding the enforcement of the Code. No formal trial-type hearing will be conducted.

Removal from Office or Suspension of Honorarium

5. Notwithstanding any changes to the Education Act, the Board has no power to remove a trustee from their elected seat or suspend their honorarium for a breach of the Code.

SECTION 5: Enforcement of the Code

1. A Trustee or Community Member who has reasonable grounds to believe that a Trustee of the Board has breached the Code may bring the alleged breach to the attention of the Board.
2. Any allegation of a breach of the Code shall be investigated as outlined in the Informal Resolution Process or Formal Inquiry Process.
3. Only serious and/or reoccurring breaches of the Code should be investigated as outlined in the Formal Inquiry Process. It is expected that whenever possible, allegations of a breach of the Code shall be investigated following the Informal Resolution Process. 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 York Region District School Board, the first purpose of alerting a Trustee to a breach of the Code is to assist the Trustee in understanding their obligations under the Code.

SECTION 6: Informal Resolution Process

Trustees and Community Members are encouraged to use informal means to address alleged breaches of the Code. The purpose of the informal resolution process is to repair relationships and bring the allegation of the breach directly to the attention of the Trustee who is alleged to have breached the Code and to discuss possible remedial measures to correct the offending behavior. The Informal Resolution Process is conducted in private and to remain confidential.

The following steps should be undertaken to facilitate a conversation between parties in order to come to an informal resolution.

1. Trustees and Community Members who have reasonable grounds to believe that a Trustee has contravened the Code are encouraged to personally outreach to the Trustee to advise them of the section(s) of the Code they believe the has been contravened with an explanation as to why. It is best practice to keep a written record of the incident(s) including date(s), time(s), location(s), the name(s) of witnesses and any other relevant information related to the matter for future reference.
2. With agreement of all parties, the Chair of the Board or the Integrity Commissioner may be contacted to support the process or facilitate mediation.
3. As part of the Informal Resolution Process, the Trustee and complainant may discuss remedial measures including, but not limited to an apology and/or a commitment to attend professional development or training. Agreed upon remedial measures shall remain confidential between the parties.
4. If the complainant is not satisfied with the outcome of the Informal Resolution Process, they may initiate a formal Inquiry as outlined below.

SECTION 7: Initiating a Formal Inquiry

1. A Trustee who has reasonable grounds to believe that a Trustee has breached the Code may bring the breach to the attention of the Board by filing a written complaint with the Integrity Commissioner. Trustees are also required to complete the Trustee Code of Conduct Complaint Form. All submissions must be signed by the complainant and set out the following information:
 - a) the name of the Trustee who is alleged to have breached the Code;
 - b) the alleged breach or breaches of the Code;
 - c) information as to when the breach came to the complainant's attention;

- d) the grounds for the belief by the complainant that a breach of the Code has occurred; and
 - e) the names and contact information of the complainant and any witnesses to the breach or any other persons who have relevant information regarding the alleged breach.
2. A Community Member who has reasonable grounds to believe that a Trustee has breached the Code may bring the breach to the attention of the Board by making an oral or written complaint to the Integrity Commissioner. The Trustee Code of Conduct Complaint Form is not required to be completed by a Community Member. The Integrity Commissioner shall confirm the complainant is a Community Member of the York Region District School Board.

Initial Assessment of Complaint by Integrity Commissioner

3. The Integrity Commissioner shall perform an initial assessment to determine if the matter is:
- a) related to non-compliance of the Code;
 - b) more appropriately dealt with by other legislation; and
 - c) more in the nature of positions or views of a Trustee on matters to be determined by the Board, including votes cast as opposed to behaviour outlined under the Trustee Code of Conduct.
4. The Integrity Commissioner shall notify a complainant, in writing and with rationale, if the complaint does not relate to non-compliance of the Code and indicate that the matter will not be investigated by the Integrity Commissioner within 15 business days.
5. For matters covered by other legislation, the Integrity Commissioner may advise the complainant as follows:
- a) if the complaint is an allegation of a criminal nature consistent with the Criminal Code of Canada, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police force;
 - b) if the complaint is with respect to non-compliance with the Municipal Conflict of Interest Act, the complainant shall be advised to review the matter with the complainant's own legal counsel;
 - c) if the complaint is with respect to non-compliance with the Municipal Freedom of Information and Protection of Privacy Act, the complainant shall be advised that the matter will first be referred for review to the Information Access and Privacy Office of the York Region District School Board; or
 - d) in other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to consider, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

6. If the Integrity Commissioner is of the opinion that the individual making the complaint is not acting in the public interest, the Integrity Commissioner shall not conduct an investigation, or, if during an Inquiry it becomes apparent the complainant is not acting in the public interest, the Integrity Commissioner shall terminate the Inquiry. The complainant and trustee alleged to have breached the Code will be advised in writing of this decision with reasons.
7. In assessing whether a complainant is acting in the public interest, the Integrity Commissioner shall consider:
 - a) whether the complainant is advancing a concern, issue or complaint that is consistent with the purpose of the Code, and in the circumstance of a complaint commenced by a Community Member, more in the nature of a private interest; and
 - b) whether 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.

SECTION 8: Formal Inquiry Process

If a Formal Inquiry of an allegation of a breach of the Code is undertaken, it shall be done by the Integrity Commissioner. Where appropriate, the Board will be advised that a Formal Inquiry of a complaint is being undertaken.

If the Integrity Commissioner determines that they would be biased or have a conflict of interest regarding the subject matter of the complaint to be investigated, Corporate Secretariat and Trustee Services will work with the Board to select an independent outside investigator to conduct the Inquiry.

Regardless of who undertakes the Formal Inquiry, the following steps shall be followed.

1. Once the initial assessment of the complaint has been completed, and it has been determined that the complaint relates to a non-compliance of the Code and the complainant is acting in the public interest, the Complaint Form and any reformulation will be provided to the Trustee alleged to have breached the Code within 15 business days of receipt by the Integrity Commissioner.

The Integrity Commissioner may reformulate the complaint to ensure that it accurately identifies and formulates an alleged breach or breaches of the Code.

2. The Trustee alleged to have breached the Code shall provide the Integrity Commissioner with a written response to the allegations within 10 business days of receiving the Complaint Form or such period of time as the Integrity Commissioner deems appropriate in exceptional circumstances.

3. At any time following receipt and review of the Complaint Form, or at any time during the Formal Inquiry, where the Integrity Commissioner believes there is an opportunity to successfully resolve the matter without a formal investigation, and both the complainant and the Trustee alleged to have breached the Code agree, an informal resolution may be pursued.
4. Procedural fairness shall govern the Formal Inquiry. The Formal Inquiry will be conducted in private.
5. If necessary, after reviewing the Complaint Form, for the purposes of investigation or resolution of the matter, the Integrity Commissioner may;
 - speak with anyone relevant to the complaint, and/or
 - be permitted access to Board documents or electronic materials and/or York Region District School Board property.
6. The Formal inquiry may involve both written and/or oral statements by any witnesses, persons with relevant information to the complaint, the complainant or the Trustee alleged to have breached the Code.
7. The Trustee who is alleged to have breached the Code shall have an opportunity to respond to the allegations both in a private meeting with the Integrity Commissioner and in writing.
8. If the Trustee who is alleged to have breached the Code refuses to participate in the Formal Inquiry, the Formal Inquiry will proceed in their absence.
9. The Integrity Commissioner may make interim reports to the Board, where necessary, and as required to address any instances of interference, obstruction, delay or retaliation against persons providing information to the Integrity Commissioner encountered during the Inquiry. Any such instances by a Trustee shall be a breach of the Code.
10. The final written report of the Integrity Commissioner shall outline the finding of facts and a recommendation and/or opinion as to whether or not the Code was breached with rationale. This shall be completed within 90 calendar days after the complaint was filed unless the Integrity Commissioner determines that a longer period of time is required to complete the final report and the reason is explained in the final report. The Board and the complainant shall be advised of the need for the extension of time with an expected date of delivery of the report.
11. The name(s) of the complainant and the Trustee alleged to have breached the Code will be in the final report. The names of witnesses or other persons associated with the investigation may not be disclosed to the Trustee alleged to have breached the Code or in the final report.

12. If the alleged breach of the Code involves any matters or information for which a meeting may be closed pursuant to Subsection 207 (2), *Closing of certain committee meetings*, of the *Education Act* or the information may be exempt from disclosure pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*, any final public version of the report may redact or anonymize that information from the final report. The redaction may also apply to the version of the report provided to a Community Member complainant.

Suspension of Formal Inquiry

13. If, during the course of the formal investigation, the Integrity Commissioner discovers that the subject-matter is being investigated by police, that a charge has been laid, or the subject matter 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 in confidence to the Board.

SECTION 9: Confidentiality

1. Unless otherwise required by law, York Region District School Board By-Law, policy or procedure, or as disclosed in a public report by the Integrity Commissioner to the Board; the complaint, response to the complaint, Inquiry into a complaint (whether informally or formally) and the terms of any settlement of a complaint, shall be kept confidential by all persons involved in the matter, including but not limited to;
 - the complainant,
 - Trustees,
 - witnesses,
 - the Integrity Commissioner, and
 - staff.
2. During the course of an Inquiry, any breach of confidentiality and/or actions that undermine the integrity of process including, but not limited to, publicly discussing details of any Inquiry, including on social media, may result in termination of an Inquiry and/or the Board may decide to summarily dismiss a complaint.

SECTION 10: Board Decision

1. The final report of the Integrity Commissioner shall be delivered to the Board through Corporate Secretariat and Trustee Services.
2. A decision by the Board as to whether or not the Code has been breached and the sanction, if any, shall be made as soon as practical after receipt of the final report by the Board.

3. The final report or the redacted version of the report, if appropriate, will be delivered to a Community Member complainant at the same time as it is made public.
4. The Integrity Commissioner may participate in the meeting at which the Board will be considering the final report to answer questions.
5. Trustees shall consider only the findings in the final report and as supplemented by the Integrity Commissioner at a meeting of Trustees when voting on the decision and sanction. No Trustee shall undertake their own investigation of the matter, including questioning the complainant, the Trustee who is alleged to have breached the Code or any witnesses or persons participating in the Inquiry.
6. If the Board determines that there has been no breach of the Code or that a contravention occurred, although the Trustee alleged to have breached the Code 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. The Integrity Commissioner may provide an opinion in the final report on these matters.
7. The determination of a breach of the Code and the imposition of a sanction with respect to a complaint investigated in accordance with the Formal Inquiry Process must be done by resolution of the Board at a public meeting.

A recorded vote is required on any motion(s). Any resolution(s) shall be decided by a vote of at least 2/3 of Trustees who are present and voting.

The results of the vote and reason(s) for the Board's decision will be recorded in the minutes.

8. Despite Section 207 (1) of the Education Act, the part of the meeting of the Board during which a breach or alleged breach of the Code 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:
 - the security of the property of the board;
 - 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;
 - the acquisition or disposal of a school site;
 - decisions in respect of negotiations with employees of the board; or
 - litigation affecting the board.
9. The Trustee who is alleged to have breached the Code 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 the resolutions.

10. The Trustee who is alleged to have breached the Code may be present during the deliberations regarding the above, but shall not participate in the deliberations or be required to answer any questions.
11. The Trustee who is alleged to have breached the Code shall not in any way, after the final report is completed, influence the vote on the decision of breach or sanction, except as permitted during the reconsideration set out below after the Board has made their decision(s).

SECTION 11: Sanctions

1. If the Board determines that the Trustee has breached the Code, the Board may impose one or more of the following sanctions:
 - a) Censuring 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 Trustee from sitting on one or more committees of the Board, for the period of time specified by the Board.
2. 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 requirement to complete specified professional development at the expense of the York Region District School Board.
3. 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.
4. 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.

SECTION 12: Reconsideration of the Board's Decision

1. If the Board determines that a Trustee has breached the Code, 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) ensure the notice informs the Trustee that they 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.
2. If the Board revokes a determination, any sanction imposed by the Board is revoked.
3. If the Board confirms a determination, the Board shall, within the fourteen (14) days above, confirm, vary or revoke the sanction.
4. 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.
5. The Board's decision(s) 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.
6. The Board shall provide to the Trustee alleged to have breached the Code 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.
7. The Trustee alleged to have breached the Code may be present during the deliberations regarding the above, but shall not participate in the deliberations or be required to answer any questions and shall not vote on the resolutions. The Trustee who brought the initial complaint may vote.
8. If appropriate, the original sanction may be stayed pending the reconsideration by the Board of the determination or sanction.

SECTION 13: Payment of Costs

1. Subject to Sections 13(5) and (6) hereof, a Trustee who is the subject of a formal complaint under this Protocol shall be reimbursed for actual and reasonable legal fees and related expenses incurred or owing ("Costs") up to a maximum of \$5,000.
2. In the case of an application under the Judicial Review Procedure Act for judicial review of actions or decisions by the Board, Trustees or Integrity Commissioner regarding a formal complaint made pursuant to this Protocol as against a Trustee:
 - a) where a Trustee made the judicial review application and the application was successful, the Trustee is eligible for reimbursement by the York Region District School Board of their Costs in connection with a judicial review application, less any Costs awarded by the court, up to a maximum of \$20,000; and/or

- b) a Trustee may apply for reimbursement of the Costs of intervention in a judicial review application where the Trustee's interests are at stake, up to a maximum of \$20,000.
3. The Board may consider the reimbursement of Costs above the limit in Sections 13(1) and 13(2) on a case-by-case basis.
 4. Costs may be provided to a Trustee who is the subject of a formal complaint under this Protocol in advance of an investigation of the formal complaint, if the Integrity Commissioner is of the opinion that the use of a lawyer or paralegal by the Trustee would facilitate the carrying out of the investigation. Section 13(6) does not apply to the advance Costs paid under this subsection.
 5. Costs shall only be reimbursed in paragraphs 1 above to the Trustee:
 - a) if the Integrity Commissioner settles the matter without a decision of the Board and concludes the complainant was not acting in the public interest within the meaning of this Protocol, or that there has been no contravention of the Code by the Trustee, or that if there was a contravention it was trivial, or committed through inadvertence, or an error of judgment made in good faith or the Trustee took all reasonable measures to prevent it; and the Integrity Commissioner's conclusion is not overturned on judicial review; or
 - b) where the Board receives the Integrity Commissioner's report on a breach of the Code and determines there was no breach or that there was a breach, but the Trustee took all reasonable measures to prevent it, or that contravention occurred that was trivial, or committed through inadvertence, or an error of judgment made in good faith and the Board's decision is not overturned on judicial review.
 6. Any award of Costs shall be contingent on a report to the Board with input from the Integrity Commissioner and Corporate Counsel, as required.

SECTION 14: Related Documents

York Region District School Board Operational By-Law
Appendix F: York Region District School Board Trustee Code of Conduct
York Region District School Board Code of Conduct Formal Complaint Form

History

Approved: November 28, 2017

Revised: July 9, 2019