



Ombudsman Report

**Investigation into a complaint about a meeting
held by the Chair's Council
of the Near North District School Board
on December 22, 2023**

**Paul Dubé
Ombudsman of Ontario**

May 2025

Complaint

- 1 My Office received a complaint relating to a closed meeting held by the Chair's Council of the Near North District School Board (the "School Board") on December 22, 2023.
- 2 The complaint alleged that the Chair's Council held meetings that did not comply with the *Education Act* (the "Act"). The complaint further alleged that the Chair's Council was a committee of the Board of Trustees, and that it did not provide notice of its meetings, distribute meeting agendas, or record minutes of its meetings contrary to the Act and the School Board's governance by-laws. The complaint also raised concerns that the Chair's Council was not properly established by a resolution of the Board of Trustees.
- 3 My investigation determined that the gathering of the Chair's Council on December 22, 2023, was an electronic *in camera* meeting of a committee of the Board of Trustees. I further determined that the Chair's Council failed to record minutes of the meeting, and failed to ensure that a member of the Chair's Council attend the meeting in person contrary to O Reg 463/97, *Electronic Meetings and Meeting Attendance*, under the Act, and the School Board's governance by-laws. However, the Chair's Council's discussion of the Director of Education's employment contract during this *in camera* session fit within the Act's open meeting exceptions.
- 4 While the Act does not require the Chair's Council to provide public notice of a closed session or to pass a resolution to enter a closed session, the School Board should consider adopting these procedures as best practices to enhance transparency and accountability to the public.

Ombudsman jurisdiction

- 5 The Ontario Ombudsman has authority to carry out impartial and independent reviews and investigations of complaints concerning the administrative conduct of school boards, including complaints concerning meetings held by a board of trustees or a committee of a board of trustees.
- 6 In addition, my Office is the closed meeting investigator for more than half of Ontario's 444 municipalities. As the province's default closed meeting investigator, my Office is responsible for determining whether a municipality has complied with the open meeting requirements outlined in the *Municipal Act, 2001*.

- 7 My Office has investigated hundreds of closed meetings since 2008. To assist municipal councils, staff, and the public, we have developed an online digest of closed meeting cases. This searchable repository was created to provide easy access to the Ombudsman's decisions on, and interpretations of, the open meeting rules. While the open meeting requirements in the *Municipal Act, 2001* differ from those in the *Education Act*, school boards can consult the digest to inform their discussions and decisions on whether certain matters can or should be discussed in closed session, as well as issues related to open meeting procedures. Summaries of the Ombudsman's previous decisions can be found in the digest: www.ombudsman.on.ca/digest.
- 8 My Office has previously investigated closed meetings held by the Near North District School Board. In *Lessons Not Learned* I made 14 recommendations, all of which were accepted by the Board of Trustees, including that "the board should ensure that in future, a quorum of trustees does not meet outside of a formal meeting to advance school board business."¹

Investigative process

- 9 On May 22, 2024, my Office advised the School Board of our intent to investigate this complaint.
- 10 My Office reviewed meeting materials that referenced the Chair's Council, the School Board's Governance Manual², which contains the School Board's by-laws, policies, and administrative guidelines, as well as email correspondence. My Office also reviewed documents relating to the Chair's Council's meeting on December 22, 2023, including the itinerary and materials considered during the meeting.
- 11 My Office interviewed the Director of Education (the "Director"), four trustees who were part of the Chair's Council, and one other trustee. The individual who was Chair of the Board of Trustees at the time of the meeting on December 22, 2023 resigned in April 2024 and was not interviewed for this investigation.
- 12 My Office received full co-operation in this matter.

¹ Ontario Ombudsman, *Lessons Not Learned: Transparency of Near North District School Board's decision to close Widdifield Secondary School after the 2016-2017 Pupil Accommodation Review process* (July 2019), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/reports-on-investigations/2019/lessons-not-learned>>.

² Near North District School Board, *Governance Manual* (22 June 2022), online: <<https://www.nearnorthschools.ca/wp-content/uploads/2022/10/2022-10-11-Approved-Governance-Manual-1.pdf>>.

Arranging the Chair's Council meeting

- 13 During a public meeting held by the Board of Trustees on October 10, 2023, the Chair provided an oral report and said she would be striking a Chair's Council to review the Director's employment contract. During a public meeting held by the Board of Trustees on December 12, 2023, the Chair again referred to assembling a Chair's Council but did not provide details of the date or location of the Chair's Council meeting.
- 14 On December 19, 2023, the Director's Executive Assistant emailed four trustees copying the Chair and the Director. The email requested their schedules to gather as a Chair's Council. According to the email, the gathering's focus would be to review items that did not directly fit within the confines of an established committee, but that would benefit from discussion in advance of the full involvement of the Board of Trustees.
- 15 The Executive Assistant sent a follow-up email to the same people on December 20, 2023, confirming the meeting would be held virtually on December 22, 2023. No physical location was provided. On December 21, 2023, the Chair emailed the four trustees only, attaching a meeting itinerary, an annotated copy of the Director's proposed employment contract, and a summary of material changes to the contract. The Chair's email also noted the electronic meeting link was attached to the calendar invite.
- 16 According to the meeting itinerary, introductions and a review of the composition of the Chair's Council would be first, before moving on to consideration of the Director's performance appraisal. Afterwards, there would be a presentation of the updated employment contract and a review of the change summary document, followed by timelines for next steps.
- 17 In advance of the December 22, 2023 meeting, the Director provided comments and requested changes on a draft of his employment contract to be discussed at the meeting.

December 22, 2023 Chair's Council meeting

- 18 The Chair's Council met virtually at 10:00 a.m. on December 22, 2023. The Chair and four other trustees attended this meeting. As five out of the nine trustees were members of the Chair's Council, its gathering on December 22, 2023, consisted of a quorum of the Board of Trustees. Some trustees recalled the meeting lasting around 20 minutes while one trustee recalled it lasting an hour. Two of the trustees recalled a sixth trustee attending the meeting; however, this trustee told my Office

that they did not attend, and they were not included in the scheduling email. No other staff attended, and no minutes were taken.

- 19 The Chair's Council discussed renewing the Director's employment contract, which was set to expire in the new year, and the changes requested by the Director. The trustees told my Office they went through the contract and made some minor changes, mostly for grammatical reasons. However, our review showed that the revisions also included changes to substantive clauses of the contract.
- 20 The current Chair, who was a trustee and a member of the Chair's Council at the time of the meetings under review, told my Office that those in attendance discussed wanting the other trustees who were not present to see the employment contract with these additional changes. They agreed to present the contract to all the trustees at the next Board of Trustees meeting with a recommendation that it be approved.

Approval of the Director's employment contract by the Board of Trustees

- 21 The Board of Trustees held a regular meeting on January 9, 2024. The day before this meeting, the Director's Executive Assistant emailed all the trustees the annotated copy of the employment contract that included the changes made by the Chair's Council during its December 22, 2023 meeting. The email stated, "This document is a recommendation by the Chair's Council to the Board [of Trustees] for approval at the private session."
- 22 The Board of Trustees passed a resolution during its meeting on January 9, 2024 to "approve the extension of the Director of Education's contract."

Analysis

Open meeting requirements in the *Education Act*

- 23 Under the Act, boards of trustees are required to meet in public unless the meeting comes within one of the exceptions to this openness requirement. Specifically, the Act provides that:

Subject to [the open meeting exceptions], the meetings of a board and the meetings of a committee of the board, including a committee of the whole board, shall be open to the public, and no person shall

be excluded from a meeting that is open to the public except for improper conduct.³

- 24** The Act does not contain a definition of “meeting” or “committee.” It also does not explicitly require that notice be provided to the public for meetings of the board. Rather, notice must be provided to board or committee members along with a meeting agenda prepared by the board chair.⁴ In most circumstances, boards must meet in person, and the Act requires every school board to develop an electronic meetings policy.⁵ The policy must provide for certain representatives to be physically present in the board’s meeting room, and for the room to be open to members of the public to attend.
- 25** Committees of the board of trustees (but not the board itself) are exempted from the requirement to meet in public if they are discussing one of six topics, including:
- the security of board property;
 - disclosure of personal or financial information;
 - the acquisition of a school site;
 - negotiations with employees;
 - litigation affecting the board;
 - or an ongoing Ombudsman investigation.⁶

There is no legislative requirement that trustees pass a resolution prior to discussing these topics in private, nor is there a requirement to provide a general description of the subject matter to be discussed in closed session.

- 26** Minutes must be recorded for all meetings of the board.⁷ The School Board’s Governance Manual also requires minutes to be recorded for all meetings, including committee meetings.⁸

Was the Chair’s Council gathering on December 22, 2023 a “meeting”?

- 27** The Act’s openness requirements apply to “meetings,” but the Act does not define this term.

³ *Education Act*, RSO 1990, c E2, s 207(1).

⁴ *Ibid*, s 218.4(c) and (d).

⁵ O Reg 463/97, *Electronic Meetings and Meeting Attendance*.

⁶ *Education Act*, RSO 1990, c E2, s 207(2).

⁷ *Ibid*, s 198(1).

⁸ Near North District School Board, *Governance Manual* (22 June 2022) at 10 and 15, online: <<https://www.nearnorthschools.ca/wp-content/uploads/2022/10/2022-10-11-Approved-Governance-Manual-1.pdf>>.

- 28 Ontario courts have incidentally considered this issue and, in two cases, suggest that “meetings” include discussions where the “heart of the decision-making” occurs.⁹
- 29 My Office has also previously considered what constitutes a meeting under the *Education Act*. In *Lessons not Learned*, we found that “meetings of school board trustees are in many ways analogous to those of municipal councils and should attract the same need for transparency to legitimize decision-making.” The *Municipal Act*’s open meeting requirements contain many similarities to those in the *Education Act*. However, the *Municipal Act* also contains a specific definition of meeting, which requires that a quorum is present and materially advancing business or decision-making.
- 30 This definition is consistent with the guidance provided by Ontario courts and my Office’s previous interpretation, and provides a clear test for determining whether or not the *Education Act*’s openness requirements apply. My Office will rely on these criteria in assessing whether a gathering of school board trustees constitutes a “meeting” subject to the *Education Act*’s open meeting requirements.
- 31 Applied here, both requirements for a “meeting” were satisfied by the Chair’s Council gathering on December 22, 2023. A quorum of both the Board of Trustees and of the Chair’s Council members was present, and the trustees materially advanced the School Board’s business regarding an employment contract. Specifically, the Chair’s Council discussed and made additional changes to the draft contract, including substantive changes to key provisions. The version of the contract that was approved by the Chair’s Council was then recommended for approval at a meeting of the full Board of Trustees. As the Director’s contract was the business of the School Board, reviewing and proposing amendments to it materially advanced the School Board’s decision-making.

Was the Chair’s Council a “committee”?

- 32 The Act does not provide a general definition of the term “committee,” but it provides guidance on what may be considered a committee. For example, the Act prescribes certain committees and further empowers school boards to “establish committees composed of members of the board to make recommendations to the board in respect of education, finance, personnel and property.”¹⁰

⁹ *Huron East (Municipality) v. Avon Maitland District School Board*, 2002 CarswellOnt 2185, [2002] O.J. No. 2697; *Aitken v. Lambton Kent District School Board*, 2002 CarswellOnt 2577, [2002] O.J. No. 3026.

¹⁰ *Education Act*, RSO 1990, c E2, s 171(1).

- 33 The trustees my Office interviewed, as well as the Director, told us there was no resolution to establish the Chair's Council and that it was not a committee of the Board of Trustees. One trustee later acknowledged that the Chair's Council was a body reporting back to the Board of Trustees through the Chair, and so it was a committee. Another trustee also later acknowledged that the Chair's Council may have been an ad hoc committee, but it was operating at a very preliminary stage as they had held no other meetings up to that point in time.
- 34 Based on interviews and the evidence available, I find that the Chair's Council functioned as a committee. It reviewed the Director's employment contract and provided the entire Board of Trustees with advice on the proposed amendments to the contract. These activities are in line with the *Education Act*'s list of functions for committees, such as "mak[ing] recommendations to the board in respect of ... personnel."¹¹
- 35 All committee meetings are required to be open to the public unless the discussion falls within one of the exceptions in the *Education Act*.¹² At the December 22, 2023 meeting, the Chair's Council discussed ongoing employment contract negotiations with the Director, including specific terms that were being considered. This fits within the open meeting exception for discussions "regarding negotiations with employees of the board."¹³

Other open meeting practices

Minutes

- 36 By-law 103 of the School Board's Governance Manual requires the Board of Trustees to keep minutes in accordance with sections 170, 198(1)(a) and 207(4) of the *Education Act*. Under by-law 103, minutes must include:
- The meeting date, time, place, and attendance;
 - The signature of the Secretary and Chair of the Board of Trustees;
 - Official actions of the Board of Trustees that are decided by consensus or formal vote; and
 - Statements for the record upon request by an individual Board of Trustees member.

¹¹ *Education Act*, RSO 1990, c E2, s 171(1).

¹² *Ibid*, s 207.

¹³ *Ibid*, s 207(2)(d).

- 37 The Chair's Council failed to record minutes of its December 22, 2023 meeting. Keeping complete and accurate minutes of closed session meetings ensures that members of the public feel confident that matters dealt with in closed session are appropriate for *in camera* discussion and that the requirements of the *Education Act* and School Board by-laws have been followed. Complete and accurate minutes of closed meetings also greatly assist my Office when it conducts an investigation.

Electronic meetings

- 38 O Reg 463/97, *Electronic Meetings and Meeting Attendance* requires school boards to develop and implement a policy providing for the use of electronic meetings.¹⁴ The regulation prescribes, among other things, that the chair of a committee of the board of trustees or their designate attend meetings in person.¹⁵
- 39 The School Board's Governance Manual also requires the Chair of the committee or their designate to be physically present at the meeting site.¹⁶
- 40 Members of the Chair's Council met virtually on December 22, 2023, and neither the Chair nor their designate was physically present in a meeting room. This contravened O Reg 463/97, and section 9 of by-law 121 in the School Board's Governance Manual.

Notice

- 41 The Chair's Council did not provide public notice of its *in camera* meeting on December 22, 2023. It also did not provide notice to other trustees who were not part of the Chair's Council. While this is not a requirement for closed meetings under the *Education Act*, my Office has previously emphasized the importance of providing both timely and accurate notice in the context of school board meetings to ensure greater transparency.¹⁷ A failure to provide notice decreases the transparency and accountability of those meetings. I encourage the Board of Trustees to consider providing notice of all meetings.

¹⁴ s 5(2).

¹⁵ s 6(1).

¹⁶ *Supra* note 2 at section 9 of by-law 121.

¹⁷ *Supra* note 1 at paras 150, 151, and 153; Letter from the Ontario Ombudsman to Durham District School Board (29 November 2023), online: <<https://www.ombudsman.on.ca/what-we-do/topics/education/investigations-and-reviews-school-board-meetings/durham-district-school-board>>; and Letter from the Ontario Ombudsman to Niagara Catholic District School Board (13 March 2024), online: <<https://www.ombudsman.on.ca/what-we-do/topics/education/investigations-and-reviews-school-board-meetings/niagara-catholic-district-school-board-review-of-meetings-on-june-7-20,-2023>>.

Resolution to proceed *in camera*

- 42 The Chair's Council did not pass a resolution to go into closed session on December 22, 2023. The *Education Act* does not require these types of resolutions, but failing to pass a resolution to proceed *in camera* undermines transparency by making it difficult for the public to determine if a session is properly closed to the public.
- 43 The Board of Trustees should consider adopting the best practice of passing a resolution to proceed *in camera* to optimize transparency and accountability to the public.

Opinion

- 44 It is my opinion that the Chair's Council of the Near North District School Board is a committee of the Board of Trustees, and it met *in camera* on December 22, 2023, to discuss proposed amendments to the Director of Education's employment contract. This discussion fit within the *Education Act*'s open meeting exceptions. The Chair's Council also provided notice to its members and distributed a proposed agenda in accordance with the Act.
- 45 However, I find that the Chair's Council failed to record minutes of this meeting in contravention of the School Board's Governance Manual. This meeting was also held electronically, without the Chair or their designate attending in person, which does not comply with the requirements in O Reg 463/97, *Electronic Meetings and Meeting Attendance* and section 9 of by-law 121 in the School Board's Governance Manual. It is my opinion that the Near North District School Board's actions were wrong under sections 21(1)(b) and (d) of the *Ombudsman Act*.
- 46 I make the following recommendations to assist the Near North District School Board in fulfilling its obligations under the *Education Act* and enhancing the transparency of its meetings:

Recommendation 1

All members of the Board of Trustees of the Near North District School Board should be vigilant in adhering to their individual and collective obligation to ensure that the Board complies with its responsibilities under the *Education Act* and the Board's Governance Manual and by-laws.

Recommendation 2

The Near North District School Board should clearly define the nature of any councils or similar advisory bodies that it creates to ensure that the Board adheres to the open meeting requirements under the *Education Act* and the Board's Governance Manual and by-laws.

Recommendation 3

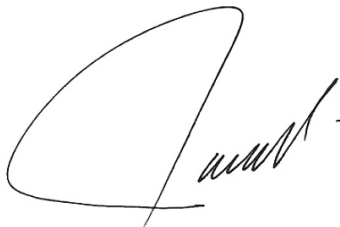
The Near North District School Board should ensure that it records minutes of all its meetings in accordance with the *Education Act*, ss. 170(4), 198(1)(a) and by-law 103 in its Governance Manual.

Recommendation 4

The Near North District School Board should ensure that its meetings are held in compliance with O Reg 463/97, *Electronic Meetings and Meeting Attendance*, under the *Education Act* and section 9 of by-law 121 in the Board's Governance Manual.

Report

- 47 The Near North District School Board was given the opportunity to review a preliminary version of this report and provide comments to my Office. All comments received were considered in the preparation of this final report.
- 48 This report will be published on my Office's website in accordance with section 21(6) of the *Ombudsman Act*.



Paul Dubé
Ombudsman of Ontario

Ce rapport est aussi disponible en français