

November 29, 2023

Camille Williams-Taylor
Director of Education and Secretary
Durham District School Board
400 Taunton Road East
Whitby, ON L1R 2K6 Canada

Sent by email: camille.williamstaylor@ddsb.ca

Dear Director Williams-Taylor,

Re: Open meeting complaint

My Office received a complaint which raised concerns that the Durham District School Board (the “School Board”) has required members of the public to provide their contact information and show identification in order to physically attend meetings of the Board of Trustees (the “Board”). The complaint also raised concerns that members of the public were temporarily prohibited from attending Board meetings in person. Finally, the complainant complained that they were denied physical entry to the Standing Committee’s June 5, 2023 meeting.

I am writing to share the outcome of my review of this complaint.

Ombudsman's role and authority

The Ombudsman is an independent and impartial Officer of the Ontario Legislature. Our Office has the authority to address complaints about public sector bodies, as well as services provided by children’s aid societies and residential licensees, and the provision of French language services under the *French Language Services Act*.

Since September 1, 2015, the Ontario Ombudsman has the 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.

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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*.¹

My Office has reviewed 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 municipal open meeting rules. While the open meeting requirements in the *Municipal Act* 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.

Ombudsman review

My Office reviewed the Durham District School Board's Consolidated By-Laws, its Code of Conduct for Public Meetings, relevant correspondence, meeting minutes and meeting recordings, and its website. We also spoke with the School Board's Director of Education and Secretary, the Associate Director of Corporate Services and Treasurer, and the Chair of the Board of Trustees at the time.

Sign-in procedures

The complaint raised concerns that the School Board has required members of the public to show identification and provide contact information to attend Board meetings in person.

The School Board told my Office that beginning in or around early 2023, increasingly concerning behaviours, including swearing, derogatory comments, and death threats, have been directed at its staff members and Board trustees. In response, the School Board has progressively increased its safety and security protocols.

¹ SO 2001, c 25.



Since May 1, 2023, in order to attend meetings in person, members of the public have been required to provide their name, telephone number or email address, and show photo identification. Individuals also have the option of observing meetings live on YouTube without the need to provide identifying information. The School Board's website was updated when this protocol was first implemented to state that all individuals attending meetings in person would be required to sign in and show photo identification, and that anyone who did not want to provide this information could observe meetings online.² We were told that this information was also posted on the doors outside of the meeting room.

Analysis

Under the *Education Act*³, all meetings of a board of trustees and a committee of the board must be open to the public, subject to prescribed exceptions.⁴ The Ontario Court of Appeal has affirmed that a school board has the authority to regulate its meetings to ensure "... decorous conduct by all attending the meeting" and to prevent behaviour that would "...detract from the effectiveness of the meeting and have an adverse effect on ... free and uninhibited discussion."⁵

Although decided in a different context, I have previously noted that municipalities must be careful about placing conditions on the public's ability to freely access and observe open meetings, since the intent of the open meeting provisions of the *Municipal Act* is to permit people to observe the political process.⁶ However, my Office has also found that the open meeting requirements in the *Municipal Act* do not preclude a municipal council from taking appropriate measures to preserve security and maintain the order of council meetings.⁷ Further, as I noted in my May 2017 report, *Counter Encounter: Investigation into a complaint about the Township of Red Rock*, an employer is justified in seeking to

² The School Board has since published a Code of Conduct for Public Meetings on its website, which includes this information: "Board Meetings", *Durham District School Board*, online: <<https://www.ddsb.ca/en/about-ddsb/board-meetings.aspx>>.

³ RSO 1990, c E.2.

⁴ s 207(1-2.1).

⁵ *Radio Chum 1050 Ltd et al v Board of Education for City of Toronto*, 1964 CanLII 609 (ON CA) at 1, online: <<https://canlii.ca/t/gwf61>>.

⁶ *Aberton (Township of) (Re)*, 2023 ONOMBUD 11 at para 27, online: <<https://canlii.ca/t/jz4gd>>.

⁷ *Ibid* at para 28; *London (City of) (Re)*, 2016 ONOMBUD 4 at para 51, online: <<https://canlii.ca/t/gt8dh>>.



protect its staff from harassment from members of the public, consistent with its obligations under the *Occupational Health and Safety Act*.⁸

The School Board told us that due to escalating concerns about harassment and violence, it has taken measures to preserve security and maintain order, such as implementing a policy that requires members of the public to sign in and show identification in order to attend meetings in person.

School boards have the authority to regulate their meetings to preserve safety and security and to maintain order, but must be careful about placing overly restrictive conditions on the public's ability to freely access and observe open meetings. In this case, members of the public can freely access and observe Board and committee meetings online without the need to provide any identifying information. I am satisfied that the School Board's security measures for in-person attendance at meetings are reasonable in the circumstances, given the safety concerns of the School Board.

Method of attendance

The complaint also raised concerns that the School Board temporarily prohibited members of the public from attending Board meetings in person.

As noted above, the School Board has progressively made more stringent its safety and security protocols due to increasingly concerning behaviours directed at staff members and Board trustees. At a regular Board of Trustees' meeting on May 15, 2023, the Board recessed the meeting twice and the public gallery was evacuated by security and police due to disruptive behaviour. The School Board has publicly stated that staff, students, and members of the public felt unsafe due to this disruptive behaviour.⁹

⁸ Ontario Ombudsman, *Counter Encounter: Investigation into a complaint about the Township of Red Rock* (May 2017) at para 59, online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/reports-on-investigations/2017/counter-encounter>>.

⁹ Camille Williams-Taylor, "May 2023 Director's Update from the Durham District School Board", *Durham District School Board* (19 May 2023), online: <<https://www.ddsb.ca/Modules/News/index.aspx?newsId=bbb6fa3f-8729-4b1d-a6d4-9f5cfc52ad57&feedId=9af71d9c-32c0-44a2-b019-e3a0eb84ffd2,23903367-d258-477e-b1e0-66c8a9299356>>.



Following this meeting, the School Board announced that members of the public could not attend meetings in person until it reviewed its safety protocols and implemented additional security measures. The School Board's website was updated to explain that members of the public could not attend meetings in person until it could complete this review, and stated that members of the public could instead observe meetings live online.

The Board and two of its committees held several meetings between May and August 2023 with no option for the public to observe them in person, although they could watch them live online. Prior to the start of the current school year, the School Board completed a review of its safety protocols and implemented additional security measures. Since September 5, 2023, the public has been able to attend Board meetings in person.

The School Board told my Office that it temporarily limited in-person attendance at meetings to ensure the safety and security of staff members, trustees, and members of the public, citing its legal obligations under the *Occupational Health and Safety Act*.¹⁰

Analysis

Section 6(1) of *O Reg 463/97, Electronic Meetings and Meeting Attendance* (the "Regulation"), under the *Education Act* states,

The meeting room of the board or of a committee of the board, as the case may be, shall be open to permit physical attendance by members of the public at every meeting of the board or of the committee of the board.

In March 2020, the *Regulation* was amended to create exceptions to this in-person requirement, none of which apply to the May to August 2023 meetings.¹¹

¹⁰ RSO 1990, c O.1.

¹¹ The *Regulation* states that these in-person requirements do not apply in circumstances where all of a school board's schools are closed pursuant to particular orders made by the Minister of Education, a medical officer of health, the Chief Medical Officer of Health, or the Lieutenant Governor in Council: ss 6.1(2) and 7.



My Office was told that despite increasing its safety and security protocols at in-person meetings in early 2023, disruptive behaviours continued to threaten the security and order of Board meetings. The School Board made the decision to temporarily limit in-person attendance at meetings until it could review its safety protocols and implement additional security measures.

My Office confirmed that members of the public were able to observe all affected meetings of the Board and its committees live online. My Office did not receive any complaints raising concerns that members of the public were not able to access these meetings online.

Following a review of its safety protocols and the implementation of additional security measures, the Board resumed in-person attendance at its meetings on September 5, 2023. I commend the steps that the School Board has taken to resume in-person public attendance at meetings, pursuant to the Regulation's in-person meeting requirements.

Notice of June 5, 2023 meeting

Further, the complainant raised concerns that they were denied entry to the meeting room for a meeting of the Standing Committee on June 5, 2023, even though the School Board's website stated that members of the public could attend in person.

The School Board's website contains a historic meeting calendar that states members of the public were able to watch this meeting live on YouTube or attend it in person.¹² However, the School Board confirmed that members of the public were not actually able to attend this meeting in person. We were told that due to an oversight, the School Board's online meeting calendar was not updated to reflect this, but that other pages on its website accurately reflected that members of the public were not able to attend any meetings in person between mid-May and August 2023. The School Board told my Office that members of the public were able to observe this meeting live online, and that the link to the meeting livestream was posted on the School Board's website and its Twitter/X account. My Office did not receive any complaints raising concerns that members of the public were not able to access this meeting online.

¹² "Standing Committee Meeting - This event has already occurred", *Durham District School Board*, online: <<https://calendar.ddsb.ca/meetings/Detail/2023-06-05-1900-Standing-Committee-Meeting>>.

Analysis

As I noted in my July 2019 report, *Lessons Not Learned*, a school board should provide public notice of its meetings, and this practice should be made explicit in its by-laws.¹³ In the municipal context, I have stated that municipalities should ensure that all meeting notices include accurate and up-to-date information about the time and location of the meeting.¹⁴ If this information changes, previously published notices should be amended.¹⁵

The School Board's Consolidated By-Laws state that the Director of Education or designate shall provide trustees with notice of certain meetings, but does not state that notice must be provided to the public.¹⁶ However, the School Board does provide public notice of Board and committee meetings on its online meeting calendar.¹⁷ In the interests of increasing the accountability and transparency of its meeting practices, the School Board should state in its by-laws how it provides public notice of meetings and to ensure that all meeting notices include accurate and up-to-date information.

Conclusion

The School Board has resumed in-person attendance at its meetings, and its website accurately explains that in order to attend meetings in person, individuals are required to sign in and show photo identification. I encourage the School Board to continue to review its meeting practices, and to ensure that it places as few conditions on the public's ability to freely access and observe open meetings as is safely possible.

¹³ 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) at paras 150, 151, and 153, online: <<https://www.ombudsman.on.ca/resources/reports.-cases-and-submissions/reports-on-investigations/2019/lessons-not-learned>>.

¹⁴ *Calvin (Municipality of) (Re)*, 2023 ONOMBUD 9 at para 29, online: <<https://canlii.ca/t/jxg32>>; *McKellar (Township of) (Re)*, 2023 ONOMBUD 3 at para 63, online: <<https://canlii.ca/t/jv6ck>>.

¹⁵ *Ibid.*

¹⁶ ss 5.5.6 and 5.5.10.

¹⁷ "Board Meetings", *Durham District School Board*, online: <<https://calendar.ddsb.ca/meetings>>.





J. Paul Dubé, Ombudsman

I would like to thank the School Board for its co-operation during my review. You have confirmed that this letter will be included as correspondence at an upcoming Board of Trustees meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Dubé', written over a horizontal line.

Paul Dubé
Ombudsman of Ontario

Cc: Christine Thatcher, Chair of the Board of Trustees,
via email: christine.thatcher@ddsb.ca

Cette lettre est aussi disponible en français

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