



## **Title: Board Bylaws Review – Stage One (Part Two)**

**To:** Governance and Policy Committee

**Date:** 30 May 2018

**Report No.:** 05-18-3432

### **Strategic Directions**

- Build leadership within a culture of adaptability, openness and resilience

### **Recommendation**

It is recommended that the revision options to the Board Bylaws, as presented in Appendix A of this report, be considered and voted on separately by the Governance and Policy Committee.

### **Context**

At the January 10, 2018 Governance and Policy Committee (the “Committee”) meeting, staff received approval to proceed with an action plan and timelines for a review of the Board Bylaws.

On March 27, 2018, the Committee considered options for revisions to the Board Bylaws in the following areas:

- Seconder at Committee meetings;
- New Business/Late Additions at Board and Committee;
- Notice of Motion; and
- Speaking at Committee.

Subsequently, as a result of analysis of additional comments and suggestions provided by the Trustees at earlier phases of the Bylaws review, the following matters are being presented for the Committee’s consideration (please see Appendix A for details):

1. Definition of Committee of the Whole

2. Standing Committee Chair and Vice Chair Elections
3. Electronic Participation, Decorum and Quorum
4. Board Meeting Consent Agenda
5. Membership on the Audit Committee and the Finance, Budget and Enrolment Committee
6. House Committee Membership and Voting Privileges
7. Board Committee Structure

Following the Committee's directions and decisions regarding Appendix A, staff will develop a complete revised draft of the Board Bylaws, which will incorporate all previously approved revisions and corresponding editing changes. The revised draft will also include certain changes to the composition and structure of the document to improve its readability and clarity in accordance with the TDSB's plain language guideline, *Keeping it Simple: How to Write So Your Readers will Understand*.

### **Action Plan and Associated Timeline**

Subject to the Governance and Policy Committee's directions and subsequent Board approval, staff will present the revised draft Board Bylaws to the Governance and Policy Committee and then to the Board of Trustees for final approval during the 2018 fall cycle of meetings. It is proposed that the revised Board Bylaws will come into effect on December 1, 2018, to coincide with the election of the new Board members.

### **Resource Implications**

No additional resources will be required.

### **Communications Plan**

Subject to Board approval, the revised Bylaws will be communicated to the Trustees through the Director's Weekly Update and to staff through the System Leaders' Bulletin. The revised Board Bylaws will be posted on the TDSB's public website. Governance and Board Services staff will also include the revised Board Bylaws as part of the 2018-2022 Trustee Orientation Program and in ongoing professional development sessions for all Trustees, as required.

### **Related Board Policies and Procedure(s)**

- Delegation Procedure (PR718)

### **Appendices**

- Appendix A: Revisions to the Bylaws (for consideration)

### **From**

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## Appendix A

### REVISIONS TO THE BYLAWS

#### 1. Definition of Committee of the Whole

Committee of the Whole (COW) is a Committee that comprises all Board members, with full participation and voting privileges. A COW meeting may be held in open (public) or private (*in camera*) session.

#### **Background**

The Board Bylaws define COW as “a meeting of the Board of Trustees held *in camera*”.

The Delegation Procedure (PR718), approved by the Board on December 7, 2016, includes a definition that differs from the existing Board Bylaws. The COW is defined in the Delegation Procedure as “a committee with a membership composition that includes all trustees of the Board and is governed by meeting rules applicable to a committee of the Board”.

The following options, consistent with the best practices of school boards and other jurisdictions, are presented for Trustees’ consideration:

#### **Option 1: New Definition**

Revise definition of the Committee of the Whole, as follows:

Committee of the Whole is a Committee that comprises all Board members, with full participation and voting privileges. A Committee of the Whole meeting may be held in open (public) or private (*in camera*) session. (To be included in section 1.0, page 4)

#### **Option 2: Status Quo**

Retain the present definition of the Committee of the Whole:

Committee of the Whole means a meeting of the Board of Trustees held *in camera*. This is currently found in Section 1.0, page 4 of the TDSB’s Bylaws.

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## 2. Standing Committee Chair and Vice Chair Elections

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### Background

Standing Committee Chair and Vice Chair elections take place at the Board's annual organizational meeting.

The election process for Standing Committee Chair and Vice Chair positions currently includes the following steps:

- Following the election of the Chair and Vice Chair of the Board, members take a fifteen minute recess to discuss and informally develop consensus concerning the membership of Standing Committees.
- Members break into groups determined by the committee they choose. In the groups, Trustees can nominate themselves or be nominated by fellow members for the position(s) of Standing Committee Chair, Vice Chair and representative on the Planning and Priorities Committee. The members then determine by a show of hands or secret ballot one nominee for each position.
- The nominees are presented to the full Board for consideration and voting.

The above process is not outlined in the Bylaws.

The election of Board Chair and Vice Chair is a formal process that is conducted as part of the Board's annual Organizational Board Meeting. It includes nominations and self-nominations by members, brief speeches from nominees, followed by consideration and voting by the Board. The process for the election of Board Chair and Vice Chair is not outlined in detail in the Bylaws.

The following options, consistent with the best practices of school boards and other jurisdictions, are presented for Trustees' consideration:

#### **Option 1: Apply the same process that is used for election of Board Chair and Vice Chair to the election of Standing Committee Chair and Vice Chair**

Amend the current process for election of Standing Committee Chairs and Vice Chairs to make it consistent with the election of Board Chair and Vice Chair. Outline the process in the Board Bylaws. (Section 2.0, page 9)

#### **Option 2: Status Quo**

No amendments to the current process of how the Standing Committee Chairs and Vice Chairs are elected.

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### 3. Electronic Participation, Decorum and Quorum

#### Background

The *Education Act* includes rules regarding electronic participation and quorum at Board and Board Committee meetings. In addition to the governing legislation, parliamentary procedure, rules of order and meeting decorum are also established to ensure both efficient and effective meetings at Board and Committee.

The following options, consistent with the best practices of school boards and other jurisdictions, are presented for Trustees' consideration:

#### **Option 1: Add New Best Practice Provisions**

- a) Members participating in meetings either in person or electronically will inform the Chair of the Board or Committee before absenting themselves. (To be included in section 19, page 20)
- b) Members participating in meetings should make every effort to avoid disruptive behaviour by turning personal and electronic devices to a non-audible function, reducing all background noise, and refraining from private conversations. (To be included in section 19, page 21)
- c) Members are encouraged to abstain from conducting non-Board business in meetings. (To be included in section 19, page 21)

#### **Option 2: Status Quo**

Maintain current state where Chair manages electronic participation and/or decorum challenges informally and without any documented Bylaw provisions.

#### 4. Board Meeting Consent Agenda

#### Appendix A

##### Background

A consent agenda process allows a board to group several previously discussed agenda items together and adopt them all at once without further debate. The consent agenda generally includes items that have been considered previously at the Board Committee level.

In 2008, the Board approved a procedure for the consent agenda. The procedure is not incorporated in the Board Bylaws.

The following options, consistent with the best practices of school boards and other jurisdictions, are presented for Trustees' consideration:

##### **Option 1 – Add Definition and Procedure Regarding Board Meeting Consent Agenda into Bylaws**

Add definition of Consent Agenda, as follows:

*Consent Agenda* (or matters to be decided without discussion) refers to the portion of the Board agenda with items previously considered at the Board Committee level that are presented together and adopted at once without further debate. (To be included in Section 2.0, page 4)

Incorporate consent agenda procedure (based on January 30, 2008 decision of the Board) into Bylaws, as follows:

- a) Following receipt of the Board agenda, members are required to advise the Chair of the Board and the Director or designate, no later than 12 noon on the day of the meeting, or at least four hours in advance of the start of a meeting, whichever is earliest, if requesting separate discussion and vote on an item listed on the agenda. Support of four or more members of the Board is required for a matter to be discussed and voted on separately.
- b) At the beginning of the meeting, after approval of the agenda, unless support of four or more members of the Board is obtained to request separate discussion and vote on an item, all matters listed on the consent agenda will be presented as matters to be decided without discussion.

##### **Option 2: Status Quo**

Keep the consent agenda process outside of the Board Bylaws which govern the proceedings of the Board. *Note: currently, members follow the process as outlined in Option 1 but are able to take items off the consent section of the agenda at the beginning of the Board Meeting This provides staff with insufficient time to prepare appropriate information or provide a comprehensive response.*

## **5. Membership on the Audit Committee and the Finance, Budget and Enrolment Committee**

### **Background**

A question was posed at the December 2017 Board meeting regarding the practice of allowing the Chair and Vice Chair of the Board to simultaneously serve as *ex-officio* members on the Board's Finance, Budget and Enrolment Committee (FBEC) and the Board's Audit Committee.

The issue is whether this practice is inconsistent with the Board's motion of December 1, 2016 which prohibits FBEC members from serving on the Audit Committee due to possible conflicts of interest. The motion reads as follows:

*"Whereas, there may be a conflict of responsibilities if a Board member serves on both the Audit Committee and another committee that considers financial matters;*

*Therefore be it resolved that members appointed to the Finance, Budget and Enrolment Committee be disqualified from being members of the statutory Audit Committee."*

Staff obtained legal advice confirming the following information:

- There is no provision in the *Education Act* or Regulations which disqualifies any member (including *ex-officio* members) of FBEC from simultaneously serving as a member of the Board's Audit Committee.
- The mandates of both Committees are separate and distinct and there is no conflict of responsibilities between them.

If a member of either Committee believes that they have a conflict of interest regarding a specific agenda item being discussed, there is a legal requirement to declare a conflict of interest, as outlined in the *Municipal Conflict of Interest Act* and the Board's Code of Conduct.

Accordingly, the following options, consistent with the best practices of school boards and other jurisdictions, are presented for Trustees' consideration:

### **Option 1: No Membership Conflict between Audit and FBEC Committees**

Discontinue the restriction and rescind the December 1, 2016 Board motion, as above, which restricts regular and *ex-officio* members of FBEC from simultaneously serving on the Board's Audit Committee. Include a provision which states that members can serve on either or both Committees.

### **Option 2: Status Quo**

Keep the restriction in place. Include a disqualification clause in the Bylaws which continues to disqualify regular and *ex-officio* members of the FBEC from simultaneously serving as members of the Board's Audit Committee.

## 6. House Committee Membership and Voting Privileges

## Appendix A

### Background

The House Committee was established on December 1, 2010 as a special committee reporting to the Board through the Planning and Priorities Permanent Committee. At that time, the Board decided that all Trustees could participate in House Committee meetings with full privileges of a Committee member. That decision contradicted the current Board Bylaws, section 32, under which a Trustee who is not a member of a Committee may attend a meeting of the Committee and may speak to a motion under consideration but cannot move a motion or vote on a matter.

In addition, the Board did not determine whether the Chair and Vice Chair of the Board are to be *ex-officio* members of the House Committee and may count towards quorum. The Bylaws currently allow the Chair and Vice Chair to be *ex officio* members of all Standing Committees and to vote and count toward quorum for those meetings. However, the Bylaws currently do not include a similar provision for special committees of the Board (including House Committee). Acknowledging this discrepancy, the Board directed staff to address the issue as part of the Bylaws review.

The current House Committee, with a membership of six (6) and mandate to “consider matters related to trustee and trustee services” has recently experienced issues related to attendance and quorum and does not have a sufficient amount of agenda items to meet on a regular basis.

The following options, consistent with the best practices of school boards and other jurisdictions, are presented for Trustees’ consideration:

### **Option 1: House Committee to observe same rules as other special committees**

- (i) That the following Board decision of December 1, 2010 be rescinded

*That all trustees be permitted to participate in House Committee meetings with the privileges of a member.*

- (ii) That quorum shall be a majority of members who are present at the meeting and qualified to vote.

- (iii) That membership of the House Committee **does not** include the Chair and Vice Chair of the Board (as *ex-officio* members).

### **Option 2: House Committee to observe same rules as other special Committees but allow the Chair and Vice Chair of the Board to count for quorum**

- (i) That the following Board decision of December 1, 2010 be rescinded:



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*That all trustees be permitted to participate in House Committee meetings with the privileges of a member.*

- (ii) That quorum shall be a majority of members (currently six) who are present at the meeting and qualified to vote.
- (iii) That membership of the House Committee **includes** the Chair and Vice Chair of the Board (as *ex-officio* members) with voting privileges.

**Option 3: Dissolve House Committee; Refer Matters to Planning & Priorities Committee**

That the House Committee be discharged and matters for its consideration be referred to the Planning and Priorities Committee or the most appropriate Committee in accordance with its mandate.

That the mandate for the Planning and Priorities Committee be amended accordingly.

**Option 4: Status Quo**

Make no changes. Maintain House Committee and its membership and quorum rules in accordance with the December 1, 2010 Board decision:

*That all trustees be permitted to participate in House Committee meetings with the privileges of a member.*

## 7. Board Committee Structure

## Appendix A

### Background

An organization's committee structure varies according to the governance model it chooses with consideration being given to informed decision-making and efficiency of Board/Council business, Committee membership, quorum requirements, and meeting attendance expectations.

Committees facilitate the decision-making process of the Board of Trustees. Committees are fundamental for debate and public input on issues within the Committee's mandate and areas of responsibility and expertise.

The Board's current committee structure includes three Standing Committees (Finance, Budget and Enrolment Committee, Program and School Services Committee, and Governance and Policy Committee) and one Permanent Committee (Planning and Priorities Committee). The membership varies from 6-7 Trustees for Standing Committees to 11 Trustees for the Permanent Committee. Trustees cannot be members of more than one Standing Committee (except for *ex-officio* members – Board Chair and Vice Chair) in accordance with the current Bylaws [Section 10.8].

Trustees recently expressed an interest in reviewing the Board's committee structure. The Board currently considers recommendations from three Standing Committees (which separately comprise only a small fraction of the entire Board membership) and from the Planning and Priorities Committee. A suggestion was made to engage more trustees in discussion and debate at the Committee level to support the decision-making process at Board.

The following options, consistent with the best practices of school boards and other jurisdictions, are presented for Trustees' consideration:

#### **Option 1: Committee of the Whole Model**

Introduce a Committee of the Whole (COW) model where all Standing Committees and the Permanent Committee would be replaced with a COW meeting. Under this model, the COW meetings would comprise all members of the Board, and quorum would be 12 members.

#### **Option 2: Enhanced Standing Committees Model (15 Member Committees)**

Maintain 3 Standing Committees, but increase membership to up to fifteen (15) members for each Standing Committee, where members will now sit on two (2) Standing Committees. Quorum for these Standing Committees would be 8 members of the Board.

The Planning and Priorities Committee provisions in the Bylaws would remain unchanged.

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**Option 3: Planning and Priorities Committee to become Committee of the Whole**

Maintain 3 Standing Committees model but replace the Permanent Committee (Planning and Priorities Committee) with a Committee of the Whole meeting to include all Trustees as members with full participation and voting privileges. Quorum for Planning and Priorities Committee would be 12 members of the Board.

**Option 4 - Status Quo: Standing Committees Model**

Maintain 3 Standing Committees model with approximately six (6) to seven (7) members on each Committee, where no member can sit on more than one (1) Committee (Bylaws *section 10.8*). Retain the current Permanent Committee.

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