



## CHAPTER 4

### Legal Responsibilities and Liabilities

*Note: This chapter can provide only a basic introduction to the legal issues that affect trustees and school boards. The following information is not conveyed as legal advice and should not be acted on without first consulting legal counsel.*

School boards are responsible for local governance of the delivery of education services in Ontario. This is a vital service in our society and one that employs a great many people. It is not surprising then that school boards are subject to a wide range of legal obligations and responsibilities, arising from both legislation and common law (court rulings).

Certain provisions of Canada's Constitution are particularly relevant for school boards. These include: ss. 2 and 15 of the Canadian Charter of Rights and Freedoms; and, for Catholic schools, s. 93 of the Constitution Act 1867 and

s. 29 of the Charter; and, for French-language schools, s. 23 of the Charter.

#### Relevant Statutes

Ontario's *Education Act* is the primary statute governing elementary and secondary education in the province. Other statutes that significantly affect school board operations include:

- *Accessibility for Ontarians with Disabilities Act, 2005*
- *Anti-Racism Act, 2017*
- *Arbitration Act, 1991*
- *Assessment Act*
- *Broader Public Sector Accountability Act, 2010*
- *Broader Public Sector Executive Compensation Act, 2014*
- Canadian Anti-SPAM Legislation (S.C. 2010, c.23)
- *Child Care and Early Years Act, 2014*
- *Child, Youth and Family Services Act, 2017*
- *Controlled Drugs and Substances Act (Canada)*
- *Copyright Act (Canada)*
- Criminal Code (Part V - non-consensual distribution of intimate images)
- *Early Childhood Educators Act, 2007*

- *Education Quality and Accountability Office Act, 1996*
- *Employment Standards Act, 2000*
- *Expropriations Act*
- *Human Rights Code*
- *Immigration and Refugee Protection Act (Canada)*
- *Immunization of School Pupils Act*
- *Labour Relations Act, 1995*
- *Municipal Act, 2001/City of Toronto Act, 2006*
- *Municipal Conflict of Interest Act*
- *Municipal Elections Act, 1996*
- *Municipal Freedom of Information and Protection of Privacy Act*
- *Occupational Health and Safety Act*
- *Ombudsman Act*
- *Ontarians with Disabilities Act, 2001*
- *Ontario College of Teachers Act, 1996*
- *Pay Equity Act*
- *Planning Act*
- *Police Record Checks Reform Act, 2015*
- *Public Inquiries Act, Part II*
- *Ryan's Law (Ensuring Asthma Friendly Schools), 2015*
- *Sabrina's Law, 2005 (An Act to Protect Anaphylactic Pupils)*
- *School Boards Collective Bargaining Act, 2014*
- *Smoke-Free Ontario Act, 2017*
- *Statutory Powers Procedure Act*
- *Teaching Profession Act*
- *Trespass to Property Act*
- *Workplace Safety and Insurance Act, 1997*
- *Youth Criminal Justice Act (Canada).*







## Statutory Duties and Powers of School Boards

The *Education Act* sets out the duties and powers of school boards.

Sections 169.1 and 170 of the *Act* outline the duties of school boards in Ontario. Failure by a board to perform any one of these duties may result in that board's liability to third parties who are in some way damaged by the board's act or omission.

Sections 171 to 197 outline various powers that school boards may exercise. Failure by a board to exercise any of these powers may not create any liability. However, once a board undertakes any such power, it has a duty to

exercise reasonable care and skill in the performance of that power, and failure to do so could result in the board's liability to third parties to whom the duty of care extends for any damages sustained.

A school board may face liability if it inadvertently or intentionally acts beyond the scope of its legal authority. For example, a ratepayers' group may appeal to the court to quash a decision of a school board on the grounds that the board lacked jurisdiction.

## School Board Policies and Liability

To reduce the risk of liability, school boards should establish clear and

accessible policies, especially in certain critical areas:

- Accessibility
- Bullying prevention and intervention
- Child abuse prevention and intervention
- Concussion prevention, identification and management
- Equity and inclusive education
- Exclusions
- Field trips
- Human rights including religious accommodation
- Medicine administered to pupils by school staff
- Nutritional standards for food and beverages
- School dances
- School violence
- Student transportation provided by the board or school
- Supporting pupils with prevalent medical conditions (anaphylaxis, asthma, diabetes, and/or epilepsy)
- Suspensions, suspension appeals, expulsion hearings, and progressive discipline of students
- Trespass on property
- Use and possession of drugs and alcohol
- Workplace violence and workplace harassment

Board policies should be reinforced clearly by operational procedures

and standards at the board level and in each school.

### Standard of Care for Students

A school board and its employees or volunteers are expected to provide the same standard of care for students as would be provided by a reasonably careful or prudent parent in the circumstances. This is commonly referred to as the “Reasonably Prudent Parent Doctrine.” The duty of care is to protect the student from all reasonably foreseeable risks of harm. The precise degree of care

required in any given case will vary with the particular facts, which may include:

- The number of students being supervised at any given time
- The nature of the exercise or activity in progress
- The age of the students, and the degrees of skill and training they may have received in connection with such activities
- The competency and capacity of the students involved and teachers/supervisors

- The nature and condition of the equipment in use at the time.

### Negligence

Generally, if a student is injured, the school board will be found liable for that injury if the court determines that all of the following conditions apply:

- There was a duty of care owed by the school authorities to provide adequate supervision and protection of its students.
- The school authorities breached that duty of care by either failing to





supervise or protect the student or were otherwise negligent (intentionally or unintentionally).

- The student suffered actual damage or loss.
- The breach of that duty of care was the cause of the student's injury.

### Vicarious Liability

It is important to note that a school board may be considered vicariously liable for all acts of negligence performed by its employees and volunteers acting within the scope of their employment or authority. In the case of a principal or teacher, liability flows to the corporate board.

### Standard of Care Requirements for Principals and Teachers

In addition to the requirement of adhering to the common law standard of care of the careful or prudent parent, principals and teachers also have statutory duties under the *Education Act* [s. 264, s. 264.1 and s. 265] and Regulation 298: Operation of Schools - General. Principals' and teachers' performance of statutory duties must be monitored to determine whether their performance creates a standard of reasonable conduct. Violation of a statute is only evidence of negligence and does not necessarily prove negligence.

### Personal Liability of Trustees

Generally, with the exception of subsections 198(4), 230.12(3) [Part VIII], 253(6), and 257.45(3) of the *Education Act*, trustees will not be found personally liable for their inadvertent acts and omissions as trustees, as long as they act within the scope of their authority. Personal liability of trustees may also arise under the *Municipal Conflict of Interest Act* or the *Municipal Elections Act, 1996* with regard to campaign finances.

Trustees have been held personally liable where their actions either were considered to be in willful disregard of the provisions of the governing legislation or were not performed honestly, conscientiously, or in good faith.

Subsection 198(4) of the *Education Act* establishes that a trustee of a board is personally liable if a school board, of which he or she is a member, refuses or neglects to take proper insurance on the treasurer, or other persons to whom it entrusts board money, if any of the money is lost because the board did not obtain insurance. A trustee is not liable if he or she can prove that he or she made reasonable efforts to obtain such insurance. The

lost monies may be recovered by the school board, or by any ratepayer, assessed for the support of the schools under the jurisdiction of the board, who sues personally and on behalf of all other such ratepayers.

Subsection 253(6) of the *Education Act* provides that any trustee who refuses or neglects to provide to an auditor of the school board access to the records of the school board, information, or an explanation as required by subsection 253(5), is guilty of an offence and, on conviction, is liable to a fine of not more than \$200.

However, no trustee is liable if the trustee proves that he or she has made reasonable efforts to provide the access or the information or the explanation.

The *Act* also stipulates that a trustee who sits or votes at any meeting of the board after becoming disqualified from sitting is guilty of an offence and on conviction is liable to a fine of not more than \$200 [213(1)]. This applies to every such meeting the trustee sits or votes at. A similar penalty applies to a trustee who knowingly signs a false report [213(2)], wilfully makes a false statement in a

declaration made under the *Act* [211] or who disrupts, endeavours to disturb or interrupt a meeting with the intent to prevent the discussion of any matter or passing of any motion at a meeting of a board, or a committee of the board, including a committee of the whole board, after having been expelled or excluded from the meeting [212(2)].

### Finance

One of the most significant responsibilities of the board of trustees is to set the







board's budget each year. While the Ministry of Education provides the grants used to support their local education system, trustees must work with the dollars provided and, in accordance with statutory requirements, develop a budget that best suits the programs and services offered in their communities. In order to set policies and approve the final budget, all trustees must understand Part IX of the *Education Act*. This sets out complex rules on the funding of education, and on the borrowing and investment activities of school boards.

The *Education Act* requires that boards set only balanced budgets [s. 231]. The penalties for failing to do so, which can be severe, are laid out in

Division D of Part IX of the *Education Act*. Division D permits the Minister of Education to appoint an investigator (auditor) to investigate the financial affairs of a school board under certain circumstances. These are:

- Financial statements indicate that the board operated in a deficit
- Failure to submit or comply with a financial recovery plan as ordered by the Minister
- Failure to pay any debentures
- Defaulting on debts or other financial liabilities
- The Minister has concerns about the board's ability to meet its financial obligations.

Ultimately, Division D permits the Minister to issue orders, directions, and decisions relating to the affairs of the board, and even to assume complete control over all the board's affairs, except for denominational matters in the case of Catholic boards, and linguistic matters in the case of French-language boards.

Subsection 257.45(3) provides that a trustee is personally liable if all of the following conditions apply:

- The board is subject to an order under subsection 257.31(2) or (3) (Division D)
- The board uses any of its funds contrary to the Minister's orders
- The trustee voted for that use of funds.

A trustee who voted to use funds in a way that contravenes an order is jointly and severally liable for the amount used, and those funds may be recovered through a court action.

## Compliance with Board Obligations

The *Education Act* also contains provisions for the use of ministerial ordered investigations into non-financial matters [Part VIII, Compliance with Board Obligations]. The Minister of Education has the authority to direct an investigation into

general school board operations, including program and curriculum matters, class size, trustee compensation, items that promote provincial interest in education, and spending [s. 230].

Such an investigation could result in a finding of non-compliance and lead to either the Minister issuing a direction to the board to address the non-compliance (or the likelihood of non-compliance), or in the ministry taking control of the board's affairs; this could involve the appointment of a supervisor.

Where the Minister has issued a direction, and he or she is of the opinion that the board has failed to comply with a direction, the Lieutenant Governor in Council can grant a vesting order giving the Minister control over the administration of all board affairs except for denominational matters in the case of Catholic boards, and linguistic matters in the case of French-language boards. The Minister would maintain control until the board is in compliance.

As is the case with s. 257.45(3) described previously, under s. 230.12(3) any trustee who votes to use funds in a way that contravenes an order is jointly and severally liable for the amount used, and may face court action for recovery of the funds.

### Provincial Interest Regulation

In accordance with Ontario Regulation 43/10: Provincial Interest in Education the Minister may provide for a review of the performance of a school board, if the







Minister has concerns regarding the performance of a school board with respect to the following areas:

- Academic achievement of students
- Student health and safety
- Good governance of the school board
- Performance of the board and of the director of education in carrying out their responsibilities under the *Education Act*
- Level of parent involvement.

The review process would result in a report to the Minister. The board would be consulted about this report, which could result in the Minister making recommendations to the board to address concerns

that have been reviewed. The Minister would likely not consider board supervision pursuant to section 230, unless a school board refuses to or does not fully participate in a review process, or refuses to give full and fair consideration to recommended changes arising out of the review.

### Conduct of Trustees

The *Education Act* establishes the duties of individual trustees [s. 218.1]. This section provides that a trustee shall:

- Carry out his or her responsibilities in a manner that assists the board in fulfilling its duties under the *Act*, the regulations and guidelines issued under the *Act* including but not limited to the

board's duties under section 169.1

- Attend and participate in meetings of the board including meetings of board committees of which he or she is a member
- Consult with parents, students and supporters of the board on the board's multi-year plan under clause 169.1(1)(f)
- Bring concerns of parents, students and supporters of the board to the attention of the board
- Uphold the implementation of any board resolution after it is passed by the board
- Entrust the day-to-day management of the board to its staff through the board's director of education
- Maintain focus on student achievement and well-being
- Comply with the board's code of conduct.

### Trustee Code of Conduct

The *Education Act* authorizes boards to adopt a code of conduct for trustees [s. 218.2] and provides an enforcement mechanism for boards to enforce their code of conduct at the local level [s. 218.3].

All school boards must adopt a publicly available code of



conduct for trustees on or before May 15, 2019. If a school board had a trustee code of conduct prior to when the Regulation came into force on April 16, 2018, then the board must review its code of conduct on or before May 15, 2019. Every board must review its trustee code of conduct on or before May 15 in every fourth year thereafter.

When a board reviews its code of conduct, it must comply with the following requirements:

- Determine whether any changes are required to the code of conduct

- If changes are required, make the required changes
- If no changes are required, confirm the existing code of conduct.

All boards must pass a board resolution setting out the course of action determined above. Ontario Regulation 246/18: Members of School Boards – Code of Conduct provides additional information.

### **Enforcement of Code of Conduct**

A trustee who has reasonable grounds to believe that

another trustee has breached the board's code of conduct may bring the alleged breach to the attention of the board of trustees. Boards must inquire into any reasonable allegation of a code of conduct violation brought to the board's attention. Boards may hire a neutral third-party investigator, including an integrity commissioner, to investigate the complaint and recommend possible sanction(s) if necessary.

If a board of trustees determines that a trustee has breached the board's code of conduct, the board of trustees may impose one



or more of the following sanctions:

- Censure the trustee
- Bar the trustee from attending all or part of a meeting of the board or meeting of a committee of the board
- Bar the trustee from sitting on one or more committees of the board, for the period of time specified by the board.

### Duties of Board Chair

The *Education Act* also sets out the following additional duties of the chair of a school board:

- Preside over meetings of the board
- Conduct the meetings in accordance with the board's procedures and

practices for the conduct of board meetings

- Establish agendas for board meetings, in consultation with the board's director of education or the supervisory officer acting as the board's director of education
- Ensure that members of the board have the information needed for informed discussion of the agenda items
- Act as spokesperson to the public on behalf of the board, unless otherwise determined by the board
- Convey the decisions of the board to the board's director of education or the supervisory officer acting as the board's director of education

- Provide leadership to the board in maintaining the board's focus on the multi-year plan
- Provide leadership to the board in maintaining the board's focus on the board's mission and vision
- Assume such other responsibilities as may be specified by the board.

### Duties of Director of Education

Trustees should be aware of the director of education's duties under the *Education Act*. In particular, subsection 283.1(1) requires a director of education, immediately upon discovery, to bring to the attention of the board of trustees any act or omission by the board that, in the opinion of the director of education, may result in, or has resulted in, a contravention of the *Education Act*, or any policy, guidelines or regulation made under the *Act*.

Trustees should note as well that if a board of trustees does not respond in a satisfactory manner when an act or omission is brought to its attention, a director of education has a duty to advise the Deputy Minister of Education of the act or omission.



## Confidentiality and Privacy

### The Municipal Freedom of Information and Protection of Privacy Act

School boards are subject to the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).

This *Act* provides that every person has a right of access to recorded information in the custody, or under the control, of a school board unless the information falls within one of the limited and specific exemptions listed in the *Act*.

In addition, the *Act* protects the privacy of individuals with respect to personal information, as defined in MFIPPA, that is held by school boards, and provides those individuals with a right of access to their information. MFIPPA governs the collection, use, and disclosure of personal information by boards. Of necessity, school boards have large volumes of personal information pertaining to both employees and students. All school board officials and employees, including trustees, should familiarize themselves with the basic provisions of MFIPPA to prevent inadvertent violation of the statute. Any person found guilty of wilfully contravening the *Act*, as

set out in section 48, or of altering, concealing or destroying a record, or cause any other person to do so, with the intention of denying a right under MFIPPA to access the record or the information contained in the record is liable to a fine not exceeding \$5,000.

Every school board may designate, in writing, an individual trustee or a committee of trustees to act as “head” of the school board for the purposes of MFIPPA. In the absence of such a designate, the school board is the “head.” The head usually delegates its powers or duties under the *Act* to officers of the school board who carry out the day-to-day management of the matters covered by MFIPPA.

### Confidentiality of Student Records

The *Education Act* requires the principal of a school to establish and maintain an Ontario Student Record (OSR) for each student enrolled in the school. The contents of that record are specified in Ministry of Education guidelines.

In addition to the protection of confidentiality of the OSR offered by MFIPPA, section 266 of the *Education Act* establishes that the OSR information is privileged for the information and use of

supervisory officers, principals, teachers and early childhood educators of the school for the improvement of instruction of the student, and should not be disclosed to anyone else, including a court of law, except in certain limited circumstances.

Each student of a board is assigned an Ontario Education Number (OEN). This number is the key identifier on the OSR. It follows the student throughout his or her elementary and secondary education, making it easier to keep reliable records on the movement and progress of individual students while also protecting their privacy. The OEN is used on:

- Student records (the OSR and other related forms)
- Applications for enrolment into specific programs, schools, or institutions
- Provincial assessments, tests, and evaluations of the student's achievement.

The data gathered through the use of OENs allows the Ministry to evaluate the implementation of new initiatives, identify areas that require improvement, analyze trends and identify future needs.

## The Youth Criminal Justice Act

The *Youth Criminal Justice Act* (YCJA) applies to persons between the ages of 12 to 17 inclusive. The YCJA establishes that no person shall publish by any means the name of any young person or child, or any information that could identify such person as the offender, victim, or witness concerning an offence committed, or alleged to have been committed, by a young person. This includes any report concerning the hearing, adjudication, disposition, or appeal with respect to such an offence.

The *Act* provides an exception to the non-disclosure of the identity of the young offender where the young person has received an adult sentence. The *Act* also allows for disclosure where a Youth Court judge has ordered such disclosure, or where the provincial director, a youth worker, a peace officer, or any other person engaged in the provision of services to a young person determines that it is necessary to disclose the identity of the young offender to a representative of a school board or school to ensure the safety of staff, students, or other persons, to facilitate rehabilitation of the

young person, or to ensure compliance with a court order.

The representative of the school board or school who receives this information may subsequently disclose that information to other persons, only as is necessary to ensure the safety of staff, students, or other persons.

Any person to whom this information has been disclosed must:

- Keep the information separate from any other record of the young person to whom the information is related (including the OSR)
- Ensure that no other person has access to the information
- Destroy the information when the information is no longer required for the purpose for which it was disclosed.

This means that school board officials must be very careful not to identify any young person or child connected with an offence to anyone – including students, parents of other students, the community, or the media – except as specifically authorized by the *Youth Criminal Justice Act* or a court.

## Safe and Accepting Schools

Safe and Accepting Schools is based on the principle that a safe, inclusive and positive learning environment is essential for student achievement and well-being and promotes positive student behavior. The strategy focuses on:

- Clarifying the standards of behavior for the school community
- Requiring every school board employee to play a role in promoting positive student behavior to improve school climate and to support victims
- Preventing inappropriate behavior
- Providing early and ongoing intervention
- Using progressive discipline to address inappropriate behavior with appropriate consequences and supports including early and ongoing intervention
- Supporting engagement on the part of parents and community agencies in schools.

## Behaviour and Discipline

The *Education Act* sets out specific obligations for school boards with respect to behaviour, discipline and safety of students. The provincial Code of Conduct sets the standard of behaviour for all persons in schools. The *Act* clearly identifies:

- Activities that must be considered for suspension or expulsion of a student
- Who has the authority to suspend or expel a student
- The mitigating factors and other factors to be

taken into account when considering suspension or expulsion decisions.

### Conducting a Suspension Appeal/Expulsion Hearing

The *Education Act* states [s. 302(6)] that a board shall establish policies and guidelines governing appeals of a decision to suspend a pupil, principals' investigations to determine whether to recommend that a pupil be expelled, and expulsion hearings. The *Act* also requires that the policies and guidelines address such

matters and include such requirements as specified by the Minister.

The board may authorize a committee of at least three members of the board to exercise and perform powers and duties on behalf of the board and may impose conditions and restrictions on the committee.

### Suspension

The following persons may appeal, to the board, a principal's decision to suspend a pupil:

- The pupil's parent or guardian, unless the pupil







is at least 18 years old, or is 16 or 17 years old and has withdrawn from parental control

- The pupil, if the pupil is at least 18 years old, or is 16 or 17 years old and has withdrawn from parental control
- Such other persons as may be specified by board policy.

Every board shall designate a supervisory officer for the purposes of receiving notices of intention to appeal a suspension. The board shall hear and determine the appeal of a suspension, and the decision of a board on an appeal is final.

Appeals of suspensions are conducted by the board in

accordance with the board's developed procedures.

## Expulsion

If a principal recommends to the board that a pupil be expelled, the board shall hold an expulsion hearing and, for that purpose, the board has powers and duties as specified by board policy.

It is the board that decides to expel pupils and whether the pupils are expelled from their school only or from all schools of the board. In making this decision, the board must consider any applicable mitigating or other factors, the submissions and views of all parties to the hearing, and any written response to the principal's report to the board recommending expulsion.

The parties to the expulsion hearing are:

- The principal
- The pupil's parent or guardian, unless the pupil is at least 18 years old, or is 16 or 17 years old and has withdrawn from parental control
- The pupil, if the pupil is at least 18 years old, or is 16 or 17 years old and has withdrawn from parental control
- Such other persons as may be specified by board policy.

If the pupil is not a party to the expulsion hearing, the pupil still has the right to be present and make a statement on his or her own behalf. The board's decision to expel may be appealed to a designated tribunal. The Child and Family Services Review Board is designated to hear appeals of board decisions to expel pupils.

Trustees who serve on the board or the suspension appeal and/or expulsion hearing committees of the board must remember that they are serving in a quasi-judicial capacity. Members of the committee or board should seek legal advice before the hearing to ensure that they conduct the appeal/hearing properly, follow all rules of procedural fairness, and meet their legal obligations to protect

both board employees and students.

Boards are required to provide programs for students on long-term suspension and for students expelled from all schools of the board. A long-term suspension is a suspension for a term of from six to 20 school days.

The *Education Act* requires all board employees to report serious student incidents that must be considered for suspension or expulsion, to the principal. It also requires principals to contact parents of victims who have been harmed as the result of such incidents and requires school staff who work directly with students to respond to inappropriate and disrespectful student behaviour.

School boards are required to have policies and guidelines on bullying prevention and intervention (including cyber-bullying), to create safe and inclusive schools, support and maintain a positive school climate that is inclusive and accepting of all students, and to take measures to prevent and address inappropriate behavior in schools.

This includes:

- The requirement for principals to suspend and consider recommending expulsion for bullying if

the student was previously suspended for bullying and the student's continued presence in the school creates an unacceptable risk to the safety of another person.

- The requirement for principals to suspend and consider recommending expulsion for incidents that are motivated by bias, prejudice or hate.
- The requirement for school boards to educate teachers and staff about bullying prevention and strategies, to provide programs, interventions and supports for pupils who have been bullied, witnessed incidents of bullying or who have engaged in bullying, and put on Bullying Awareness and Prevention Week, which begins on the third Sunday in November of each year.
- The requirement for boards to support students who want to establish and lead activities and organizations that: promote a safe and inclusive learning environment; acceptance of and respect for others; and, the creation of a positive school climate.

The *Education Act* requires school boards to ensure that "promoting a positive school climate" and "promoting the

prevention of bullying" is incorporated into the aims of the multi-year plan. As such, boards are required to monitor and evaluate the effectiveness of these policies, review the multi-year plan annually, and make the plan available to supporters and employees of the board.

See Ontario Regulation 472/07: Behaviour, Discipline and Safety of Pupils for additional information.

For more on Safe and Accepting Schools, see: [www.edu.gov.on.ca/eng/teachers/safeschools.html](http://www.edu.gov.on.ca/eng/teachers/safeschools.html)

## Child Abuse and Duty to Report

Every person who performs professional or official duties with respect to a child should be familiar with the duty to report a child who is or who may be in need of protection. This is required under the *Child, Youth and Family Services Act, 2017*. For the purposes of this *Act*, a child means a person younger than the age of 18. The duty to report is mandatory for children who are less than 16 years of age and persons *may* report children who are 16 and 17 years of age who are or may be in need of protection.

## Student Protection

*The Ontario College of Teachers Act, 1996* (OCTA) contains broad definitions of sexual abuse and sexual misconduct and includes sexual abuse of a student and sexual misconduct as part of the definition of professional misconduct with respect to a member of the Ontario College of Teachers. Paragraph 12.1 of subsection 170 (1) of the *Education Act* requires a school board to ensure that a teacher perform no duties involving contact with pupils if that teacher has been charged with or convicted of an offence under the *Criminal Code* involving sexual conduct with minors, or any other offence under the *Criminal Code* which, in the board's opinion, puts pupils at risk. A board is also required to report this to the College under s. 43.3 (1) of the OCTA.

Further, under the OCTA, a school board is required to report to the College when a member's employment is terminated, suspended or when a member's duties are restricted for reasons of professional misconduct. This reporting requirement also applies if the employer intended to terminate, suspend or impose restrictions on the member's duties for reasons

of professional misconduct but the employer did not do so because the member resigned, or if the member resigns during an investigation into allegations of an act or omission by a member that would, if proven, have resulted in any of these actions. A school board must also report to the College if it is of the opinion that a member's conduct should be reviewed by a committee of the College.

Proposed changes to both the *Ontario College of Teachers Act, 1996* and the *Early Childhood Educators Act, 2007* will require a member's certificate of registration to be revoked when the member is found guilty of an act of professional misconduct consisting of, or including, specified acts of sexual abuse of a student/child or a prohibited act involving child pornography.

The *Acts* will also require mandatory suspension of a member's certificate when the member is found guilty of any act of professional misconduct consisting of, or including, acts of sexual abuse of a student/child that do not result in mandatory revocation of the member's certificate of registration.

The *Acts* allow the Colleges' Councils or Executive Committees to make an interim order to suspend or

impose terms, conditions or limitations on a member's certificate of registration at the investigation stage if the actions or conduct of the member exposes or is likely to expose students or children to harm or injury.

Further, once the provisions are proclaimed as of January 1, 2020, the *Acts* will require the Colleges to establish and administer new programs to provide funding for counselling/therapy for students/children who were subject to alleged sexual abuse or an act of child pornography by a member.

## Criminal Background Reference Checks

Ontario Regulation 521/01: Collection of Personal Information provides school boards with another tool to promote a safe school environment. The regulation requires that school boards collect personal criminal history from all service providers who have direct and regular contact with students and employees.

## Health and Safety

To provide a safe and suitable learning and working environment for school staff and students, it is critical that classroom practice and the learning environment comply





with relevant federal, provincial and municipal health and safety legislation and by-laws, including:

- *Workplace Safety and Insurance Act, 1997*
- Workplace Hazardous Materials Information System (WHMIS)
- *Occupational Health and Safety Act*

Ministry of Labour (MOL) inspectors conduct health and safety inspections in schools to raise awareness of workplace health and safety hazards and to promote compliance with

the *Occupational Health and Safety Act* (OHSA) and its regulations.

Policy/Program Memorandum 76A provides direction to school boards regarding coverage under the *Workplace Safety and Insurance Act, 1997* for students in work education or experiential learning programs. The Ministry of Education provides coverage for students participating in such programs, where the student is considered a worker. Coverage for these students is provided by the ministry, but school boards, with the assistance of

placement employers, must ensure that the requirements of the Workplace Safety and Insurance Board are properly adhered to both prior to and during the work placements.

Additional information is available at: [www.edu.gov.on.ca/eng/policyfunding/workplace.html](http://www.edu.gov.on.ca/eng/policyfunding/workplace.html)

## Exclusions

Pursuant to the *Education Act* [s. 265(1)], subject to an appeal to the board, a principal has a duty to refuse to admit to the school or classroom a person (including a student) whose presence



would, in the principal's judgment, be detrimental to the physical or mental well-being of the pupils.

An exclusion appeal is heard by the board of trustees in accordance with any appeal process established by a school board. A board's decision will either uphold or quash the exclusion and such a decision is final.

## Protecting Pupils with Prevalent Medical Conditions

By September 1, 2018, all school boards should have policies in place to support students in school who have asthma, diabetes, epilepsy and/or who are at risk for

anaphylaxis [see Policy/ Program Memorandum (PPM) 161]. This is an expanded requirement to what is mandated under *Sabrina's Law, An Act to Protect Anaphylactic Pupils*, 2005, which helps to protect pupils with life-threatening allergies and to create a safe and healthy school environment, and *Ryan's Law (Ensuring Asthma Friendly Schools)*, 2015, which seeks to protect pupils with asthma.

The identified prevalent medical conditions may be life-threatening and it is essential for school board staff, including principals, teachers and other staff who have direct contact with students at risk for any of these conditions throughout the school day

to be aware of the issues they face and are equipped to respond appropriately in the event of an emergency.

School boards must have a Plan of Care form that must contain certain information as prescribed in PPM 161.

While parents of children with prevalent medical conditions are expected to actively participate with school staff in supporting the management of their child's medical conditions, inform the school of same and co-create their child's Plan of Care, and students are expected to support the development and implementation of their Plan of Care if capable of doing so, school boards also have specific obligations. School boards must provide resources and annual training on prevalent medical conditions, develop strategies to reduce risks for students, expectations for safe storage and disposal of medication and supplies and permit students to carry their medication and supplies as outlined in their Plan of Care. School boards must also outline how school staff should respond to medical incidents and/or medical emergencies.

Employees of a board may be preauthorized to

administer medication or supervise a pupil while the pupil takes medication in response to an anaphylactic reaction or asthma exacerbation, if the school has the consent of the parent, guardian or pupil, and specifically for anaphylactic reaction, if the school has up-to-date treatment information. If an employee has reason to believe that a pupil is experiencing an anaphylactic reaction or asthma exacerbation, the employee may administer an epinephrine auto-injector or other medication that is prescribed, even if there is no preauthorization to do so.

The *Good Samaritan Act, 2001* protects individuals, including employees, from liability with respect to voluntary emergency medical or first-aid services and provides that individuals will not be liable for damages as a result of the individual's negligence in acting or failing to act, unless the damages are the result of the person's gross negligence. Both *Sabrina's Law* and *Ryan's Law* contain provisions limiting the liability of individuals responding to or neglecting to respond to an emergency relating to anaphylaxis or asthma.

## School Food and Beverage Policy

As outlined in the School Food and Beverage Policy, school boards are required to ensure that food and beverages sold on school premises for school purposes meet the requirements set out in PPM 150.

The nutrition standards apply to food and beverages sold at the school (e.g. cafeterias, vending machines, tuck shops), through all programs (e.g. catered lunch programs), and at all events (e.g. bake sales, sports events).

The nutrition standards do not apply to food and beverages that are:

- Offered in schools to students at no cost
- Brought from home or purchased off school premises and are not for resale in schools
- Available for purchase during field trips off school premises
- Sold in schools for non-school purposes (e.g. sold by an outside organization that is using the gymnasium after school hours for a non-school-related event)
- Sold for fundraising activities that occur off school premises
- Sold in staff rooms.

The following requirements must also be met:

- School boards must comply with Ontario Regulation 200/08: Trans Fat Standards, and any other applicable regulations made under the *Education Act*.
- Principals must take into consideration strategies developed under the school board's policy on anaphylaxis to reduce the risk of exposure to anaphylactic causative agents.
- Food and beverages must be prepared, served, and stored in accordance with Regulation 562: Food Premises, as amended, made under the *Health Protection and Promotion Act*.
- School boards must ensure that students have access to drinking water during the school day.
- The diversity of students and staff must be taken into consideration in order to accommodate religious and/or cultural needs.

The school principal may designate up to 10 days (or fewer, as determined by the school board) during the school year as special event days on which food and beverages sold in schools would be exempt from the nutrition standards outlined in PPM 150. The school



principal must consult with the school council prior to designating a day as a special event day. School principals are encouraged to consult with their students in making these decisions.

School boards are responsible for monitoring the implementation of the policy memorandum. Additional information is available at: [www.edu.gov.on.ca/eng/healthyschools/policy.html](http://www.edu.gov.on.ca/eng/healthyschools/policy.html).

## Supervised Alternative Learning

School boards are required by regulation to establish a Supervised Alternative Learning Committee, which is to include a trustee. The board's committee approves applications for students ages 14 to 17 to be excused from attendance at school to participate in Supervised Alternative Learning. This may include employment, credit courses, life skills courses, training or other studies/activities that the committee deems suitable for the student. Regular monitoring of the student is required. The intent is for the student to retain a link to the board and to continue learning when other strategies have not proven effective. Ontario Regulation 374/10: Supervised Alternative Learning and Other Excusals from Attendance at Schools

provides additional information.

## Human Rights and Equity

Research shows that an equitable and inclusive education system is fundamental to achieving high levels of student achievement and well-being. Ontario is recognized nationally and internationally for its efforts to build and sustain an equitable and inclusive education system. Currently, all district school boards in Ontario have policies in place to support equity and inclusion as well as guidelines for religious accommodation.

## Ontario Human Rights Code

The Code outlines 17 prohibited grounds of discrimination. School boards are responsible to prevent discrimination and harassment, and where such claims are made, to respond appropriately and in a timely manner. Under the Code and court decisions that have interpreted its provisions, boards must provide work and learning environments that are free from discrimination and harassment.

## Anti-Racism Act

The *Anti-Racism Act* aims to identify and combat systemic racism in policies, programs and services, thus building a fair society where everyone has access to equal opportunity.

One of the ways boards can determine where systemic racism may exist is through the collection of race-based data. District school boards are authorized to collect race and race-related data in compliance with the Anti-Racism Data Standards effective May 1, 2018. All district school boards will be required to collect this data by January 1, 2023. Ontario Regulation 267/18: General provides additional information.

## Equity and Inclusive Education

Ontario's Equity and Inclusive Education Strategy envisions an equitable and inclusive education system in Ontario where all students, parents, school staff and members of the school community are safe, welcomed and respected in schools, and where every student is supported and inspired to succeed in a culture of high expectations for learning.

The Strategy aims to help the education community identify and remove discriminatory

biases and systemic barriers in order to support the achievement and well-being of all students. The Strategy builds on successful ministry, school board and school policies and practices. Policy/Program Memorandum 119 (Developing and Implementing Equity and Inclusive Education Policies in Ontario Schools) and the Equity and Inclusive Education in Ontario Schools: Guidelines for Policy Development and Implementation further outline school board expectations for implementing the Strategy.

Pursuant to the *Education Act*, every board is now required to have an equity and inclusive education policy [s. 29.1].

In 2017, Ontario also launched the Education Equity Action Plan, which built on the Strategy, bringing a new focus and resources to accelerate the Strategy, with a goal of identifying and eliminating discriminatory practices, systemic barriers and biases from schools and classrooms. The Action Plan is a three-year strategy that began in the 2017-2018 school year. To help implement the Action Plan, the ministry

created the Education Equity Secretariat to work on new policies, resources and program options. Trustees are expected to help bring the Action Plan to life.

Additional information is available at: [www.edu.gov.on.ca/eng/about/action\\_plan.html](http://www.edu.gov.on.ca/eng/about/action_plan.html)

## Positive Learning Environments

The *Education Act* [s.169.1] requires all district school boards to provide safe, inclusive, and positive learning environments for all students. The *Education*





*Act* [S. 303.1] also requires boards to support students to lead activities and organizations that promote gender equity, anti-racism, awareness, understanding and respect for people with disabilities and people of all sexual orientations, and gender identities.

## Canadian Charter of Rights and Freedoms

District school board policies and guidelines on religious accommodation are implemented within the context of the Canadian Charter of Rights and Freedoms, Ontario Human Rights Code and *Education Act* and its regulations and policies.

The Ontario Court of Appeal ruled in 1988 that one religion must not be given a position of primacy in public schools and that the content of opening or closing exercises must reflect the multicultural realities and traditions of Ontario society.

## School Councils

The *Education Act* requires each school board to establish a school council for each school operated by the board [s. 170(1)17.1].

School councils are advisory bodies whose purpose is to improve student achievement and enhance the accountability of the education system to parents. This purpose is set out in Ontario Regulation 612/00: School Councils and Parent

Involvement Committees. This regulation also describes the composition of school councils and the process for the election of members, the role and responsibilities of the school council, and operational matters relating to the school council. In addition, the Ministry of Education publishes a guide for members of school councils, which is available at: <http://www.edu.gov.on.ca/eng/general/elemsec/council/>.

The role and responsibilities of the principal, as a member of and as a support to the school council, are described in Regulation 298: Operation of Schools – General. This regulation, along with 612/00, address three key areas pertaining to school councils: the purpose of school councils, membership and operational matters, and the obligation of boards and principals to consult with school councils on certain matters.

## Parent Involvement Committee

The regulation requires every school board to establish a Parent Involvement Committee (PIC) and sets out provisions for the composition and functions of the PIC.

The purpose of the PIC is to support, encourage and



enhance parent involvement at the board level in order to improve student achievement and well-being. The PIC is a parent-led committee that is an important advisory body to the board.

### **Ombudsman Act**

The Ontario Ombudsman has the ability to investigate any decision or recommendation made or act done or omitted in the course of the administration of a school board, which includes decisions made by a board of trustees, and decisions

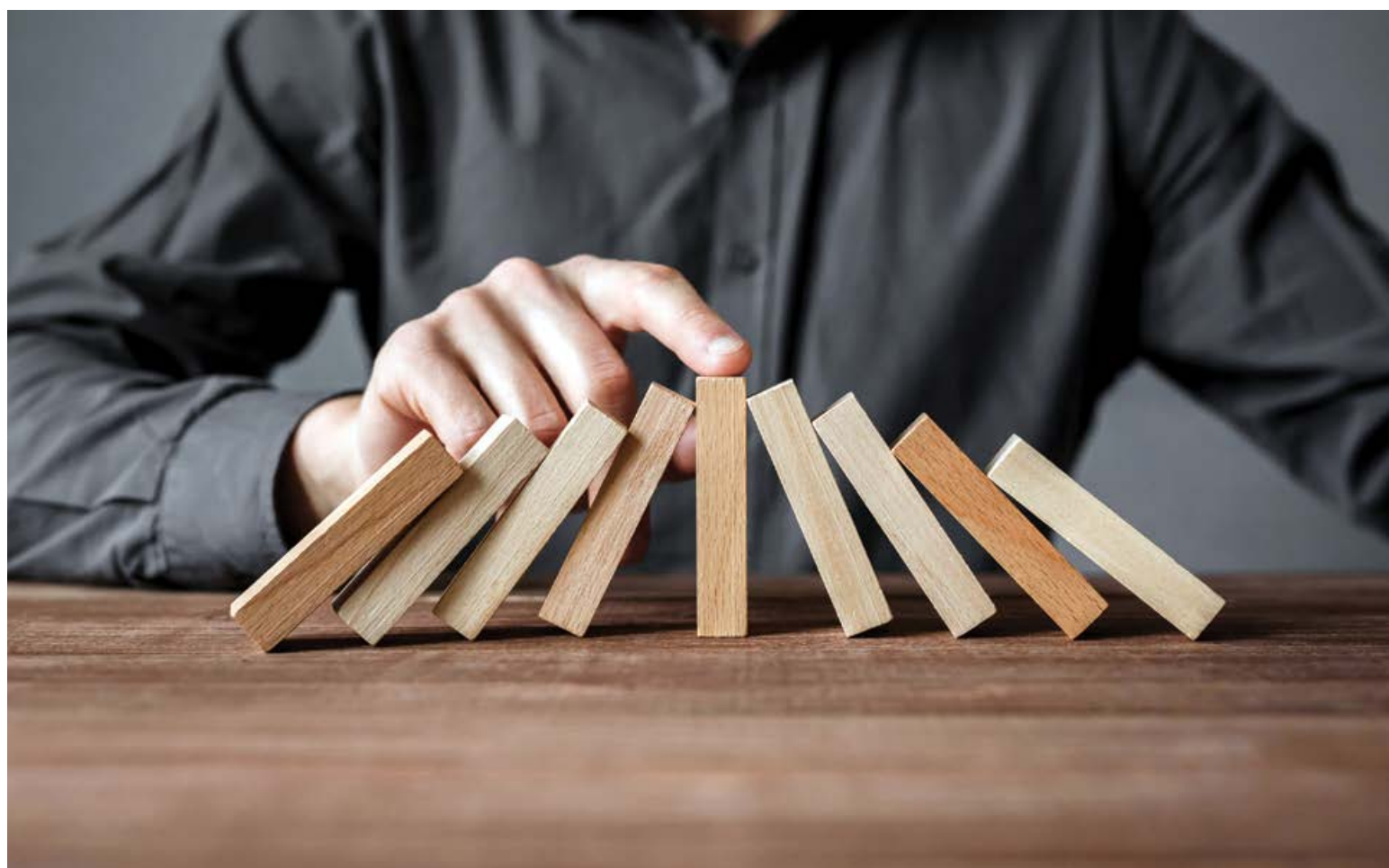
that are final and which may not be appealed. Any person affected by a decision may make the request to investigate or the Ombudsman may initiate an investigation. An investigation cannot commence until all rights of appeal or application of a hearing or a review have been exercised or have otherwise expired.

The report of the Ombudsman as a result of the investigation will include the Ombudsman's opinion(s) and recommendation(s) on

what should be done, reasons therefore and a request for the school board to advise as to the steps that will be taken in response to the report. The report will also be made public.

### **Conflict of Interest**

The main purpose of the *Municipal Conflict of Interest Act* (MCIA) is to protect the public interest by ensuring that public officials do not improperly take advantage of their positions of trust to seek personal gain. The Act applies to all members of local councils, committees, and boards, including school





boards, either elected or appointed. The *Act* also applies to members of advisory committees and other committees established under the *Education Act*.

## Pecuniary Interest

Conflict-of-interest legislation is concerned only with pecuniary, or financial, interests. The *Municipal Conflict of Interest Act* refers to three kinds of pecuniary interest: direct, indirect, and deemed. The following are examples of each:

- A trustee would have a direct interest if the board was considering buying property that the trustee owns.
- A trustee would have an indirect interest if the trustee is a senior officer

of a company bidding for a board contract.

- A trustee would have a deemed interest if the trustee's spouse, child, or parent owns a company that is bidding for a board contract.

## Declaring a Conflict

A member who identifies a direct, indirect, or deemed conflict of interest in a matter and is present at a meeting of the board or committee of the board at which the matter is the subject of consideration, must declare the conflict before any discussion of the matter begins. Specifically, the member must follow these steps:

- Publicly declare the conflict of interest, state

the general nature of the interest, and have the declaration recorded in the minutes

- Effective March 1, 2019, file a written statement of the interest and its general nature with the secretary of the committee or board
- Do not vote on any question in respect of the matter
- Do not take part in the discussion of the matter
- Do not attempt in any way, whether before, during or after the meeting, to influence the voting on any question in respect of the matter
- When a committee of the board, including a committee of the whole board, is in closed session, leave the room for as long as the matter is under consideration, and have the fact that he or she left the room recorded in the minutes. At the next meeting that is open to the public, the declaration of interest shall be recorded in the minutes but not the general nature of that interest.

If a member is absent from a meeting during which that member would have been placed in a conflict of interest, at the next meeting attended by the member, the member must disclose the interest and otherwise

refrain from discussing, influencing, or voting on the matter. If there are any doubts about a possible conflict of interest, trustees should seek legal advice.

## Influence

Effective March 1, 2019, a member who has a pecuniary interest, direct or indirect, in any matter that is being considered by an officer or employee of the school board (or by a person or body to which the school board has delegated a power or duty) the member shall not use his or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter.

## Registry

Effective March 1, 2019, every school board shall establish and maintain a registry available for public inspection in which shall be kept a copy of each statement of interest filed and a copy of each declaration of interest recorded.

A member who considers a pecuniary interest in a matter to be “so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member” or “in common with electors

generally” need not declare it or avoid influencing staff’s decision or recommendation regarding the matter.

The decision to declare a conflict of interest or avoid influencing a staff member is the personal responsibility of the trustee. The board cannot force a member to declare a conflict or leave the room. If a trustee is in doubt, however, he or she should consider declaring a conflict and/or seeking legal advice.

## Contravention of the Provisions

Effective March 1, 2019, an elector entitled to vote at the board elections or a person demonstrably acting in the public interest may apply to a judge of the Ontario Superior Court of Justice for a determination as to whether a member or a former member failed to declare a conflict of interest, file the written statement of interest or leave the meeting where necessary; or the member participated in the vote or discussion or attempted to influence the vote; such a person may also bring an application before a judge of the Ontario Superior Court of Justice for a determination as to whether a member or former member who had a pecuniary interest in a matter being considered by an officer or employee of

the board used his or her office in any way to attempt to influence any decision or recommendation.

Effective March 1, 2019, where a judge finds that a member or former member contravened the *Municipal Conflict of Interest Act*, they will now have more discretion when imposing sanctions for a breach of the *Act* and vacating a member’s seat is no longer mandatory.

As of March 1, 2019, a judge will be able to exercise discretion after considering, among other things, whether the member or former member took reasonable measures to prevent the contravention or committed the contravention through inadvertence or by reason of an error in judgment made in good faith.

As of March 1, 2019, the sanctions that may be imposed are a reprimand; suspension of the remuneration paid to the member for a period of up to 90 days; declaration of the member’s seat vacant; disqualify the member or former member from being a member during a period of not more than seven years after the date of the order; or if the contravention resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss





or, if the party's identity is not readily ascertainable, to the board.

Until February 28, 2019, where a judge finds that a member has contravened their disclosure obligations under the *Municipal Conflict of Interest Act*, the judge must declare the member's seat vacant, unless the error was the result of inadvertence or an error in judgement. The judge also has the discretion to disqualify the member from office for up to seven years and to require the member to make restitution if the contravention has resulted in personal financial gain. If the judge finds that the contravention occurred inadvertently or because of a bona fide error in

judgement, the member will not be disqualified from the board or have their seat declared vacant. However, the member may still be required to make restitution.

A breach of the *Municipal Conflict of Interest Act* by a member or former member does not of itself invalidate any decision or proceeding in respect of a matter that is the subject of the breach. However, if a member or former member failed to comply with the *Act*, the board may declare the proceedings to be void before the second anniversary of the date of the passing of the by-law or resolution authorizing the matter, unless this would adversely affect the rights of an innocent third party.

School boards may obtain insurance to protect trustees who are found by a court not to have contravened the *Municipal Conflict of Interest Act*. This insurance might cover costs or expenses incurred in successfully defending against a proceeding under the *Act*.

## Audit Committee

The *Education Act* requires that every district school board in the province establish an Audit Committee. The Audit Committee is composed of both trustees and non-trustee members appointed by the school board in accordance with its by-law on the selection process. School board staff are not permitted to be a member of the committee. The purpose of the Audit Committee is to provide oversight of the school board's financial reporting and controls and risk management. Ontario Regulation 361/10: Audit Committees describes the composition, functions, powers, and duties of an audit committee.