



J. Paul Dubé, Ombudsman

BY E-MAIL

December 17, 2024

Vicki Houston
Director of Education
Greater Essex County District School Board
451 Park Street West, P.O. Box 210
Windsor, ON N9A 6K1

Dear Director Houston:

Re: Open meeting complaint

My Office received a complaint regarding the June 25, 2024 special meeting held by the Greater Essex County District School Board. The complaint alleged that the School Board conducted a portion of this public meeting in private in a different location after it announced that the meeting would be rescheduled due to disruptions from public attendees. The complaint raised concerns that the School Board did not provide the public with notice of the mid-meeting location change.

I am writing to share the outcome of my review of this complaint. My Office has determined that this meeting did not violate the openness requirements in the *Education Act*.

Ombudsman's role and authority

The Ontario Ombudsman has oversight of hundreds of public sector bodies, including provincial government organizations, municipalities, and publicly funded universities. Since September 1, 2015, my Office has the authority to review and investigate complaints about the administrative conduct of school boards, including complaints concerning meetings held by a board of trustees or a committee of a board. You can read my previous decisions on, and interpretations of, the *Education Act's* open meeting rules here: www.ombudsman.on.ca/what-we-do/topics/education/investigations-and-reviews-school-board-meetings.

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The Ombudsman's mandate also includes reviewing complaints about the services provided by children's aid societies and residential licensees, and the provision of French language services under the *French Language Services Act*. Read more about the bodies within our jurisdiction here: www.ombudsman.on.ca/have-a-complaint/who-we-oversee.

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 investigated hundreds of closed meetings since 2008. To assist municipal councils, staff, and the public, we have developed an online digest of municipal closed meeting cases. This searchable repository was created to provide easy access to the Ombudsman's decisions on, and interpretations of, the open meeting rules. While the open meeting requirements in the *Municipal Act, 2001* differ from those in the *Education Act*², 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 spoke with the Director of Education, the Chair of the School Board, and the Executive Assistant to the Director of Education. We also reviewed material relating to the meeting, including the meeting agenda, minutes, audio recording of the meeting, and media reports about the meeting. Lastly, we reviewed relevant portions of the School Board's governance by-laws and the School Board's Board Meeting Safety Protocol.

Background

In June of 2023, in response to increasing disruptions from members of the public at its meetings, the School Board temporarily prohibited members of the public from physically attending its meetings. Instead, the public was able to access meetings electronically. My Office reviewed that decision and determined it was reasonable in the

¹ SO 2001, c 25.

² RSO 1990, c E.2.

circumstances.³ Upon resuming in-person meetings, the School Board adopted a Board Meeting Safety Protocol, which details steps the School Board should take in instances of disruption or safety concerns. These include advising public attendees that they may be removed from the meeting if they are disruptive, calling a recess if disruptions continue and directing trustees and staff to move into the committee room, and calling 911 if necessary.

June 25, 2024 meeting

The School Board held a special meeting in the boardroom of its administrative office building on June 25, 2024 beginning at 4:30 p.m. Notice for the meeting was provided virtually through an online calendar system on the School Board's website. The calendar notice does not indicate a specific room, but the agenda for the meeting stated, "Board Room."

The purpose of the meeting was to address code of conduct complaints made against a trustee of the School Board. Shortly after the meeting was called to order, the trustees encountered disruptions from the approximately 30 to 40 public attendees. These disruptions, including one audience member loudly participating in a media interview during the meeting, interfered with the School Board's ability to conduct business.

Consistent with the Board Meeting Safety Protocol, the Chair of the Board of Trustees cautioned the audience several times not to disrupt the proceedings and reminded the attendees of her authority under the *Education Act* to have disruptive persons removed. As a final warning, the Chair cautioned the gallery that if there was another disruption, the attendees would be asked to leave. Despite these warnings, the disruptions continued to escalate. In response, the Chair called a recess. The Chair did not state whether the meeting was adjourned, cancelled, or would be rescheduled.

Most of the School Board trustees and staff entered the nearby committee room at 5:10 p.m. The committee room is reachable from the boardroom through a short, adjoining hallway, and is where the School Board typically hosts its committee meetings that are open to the public. The committee room can be accessed via two doors: One that is privately accessed by the School Board trustees and staff from the side of boardroom where they are seated, and another that is publicly accessible through an adjoining

³ See, for example: Letter from the Ontario Ombudsman to Greater Essex County District School Board (14 June 2024), online: <<https://www.ombudsman.on.ca/what-we-do/topics/education/investigations-and-reviews-school-board-meetings/greater-essex-county-district-school-board-en>>.

hallway. The committee room contains empty chairs for members of the public attending.

These steps were consistent with the School Board's Board Meeting Safety Protocol, which dictates that the trustees and staff move into the committee room upon calling a recess due to a disruption. Also consistent with the School Board's safety protocol, the School Board subsequently called police for assistance in managing the audience. Five police officers arrived and called for more officers due to the size of the audience. The police officers spoke to the audience, and subsequently reported to the trustees and staff that attendees refused to leave. The police expressed concerns about the matter escalating further and recommended that the trustees and staff not return to the boardroom.

The trustees and staff chose to complete the rest of the special meeting in the committee room and officially reconvened at 5:40 p.m. The School Board did not make a formal announcement of the room change. One trustee, who was subject to the conduct complaints being reviewed at the special meeting, opted to remain in the boardroom with the audience after being invited to the reconvened meeting in the committee room.

The publicly accessible door to the committee room remained open throughout the reconvened meeting. My Office was told that multiple attendees approached the open door and listened to portions of the reconvened meeting but that none of the audience members asked or attempted to enter the committee room. My Office was advised that members of the public would have been permitted to enter, had they sought to do so. The committee room was not equipped to livestream the reconvened meeting, but the meeting was audio recorded and uploaded online the next afternoon.

The meeting concluded at 6:17 p.m. Several trustees and staff were then escorted to their cars by police officers due to safety concerns. My Office was told that one trustee arrived at their vehicle to find multiple attendees waiting, attempting to confront them.

Those my Office spoke to said they were concerned that the School Board would encounter the same issues and disruptive behaviour had the rest of the meeting been adjourned to a later date.

Analysis

Section 207 of the *Education Act* requires that all meetings of a board of trustees and a committee of the board be open to the public, subject to prescribed exceptions. Section

6(1) of O Reg 463/97, *Electronic Meetings and Meeting Attendance*, under the *Education Act* provides that:

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. [Emphasis added]

The openness requirement of the *Education Act* is typically satisfied by allowing members of the public to physically attend school board meetings. In this case, the room where the meeting was reconvened did allow for physical attendance. The committee room is typically used to host School Board committee meetings that are open to the public; it contained empty chairs for any members of the public in attendance and the publicly accessible door was left open to permit members of the public to enter.

However, in this case, no official notice was given of the location of the reconvened meeting. My Office has previously emphasized the importance of providing both timely and accurate notice in the context of school board meetings in an effort to ensure greater transparency.⁴ A failure to provide notice that a meeting is reconvening in a different room decreases the transparency and accountability of those meetings. Notice should generally be given when there is a change in venue or room, to ensure that members of the public interested in attending have the information necessary to do so.

While the room change was not officially announced, evidence suggests that those in attendance would have likely been aware of the change in meeting location, and some even chose to listen in on the further proceedings. Furthermore, the School Board encountered exceptional circumstances, based on safety concerns, that may have affected its ability to provide official notice of the change in location.

⁴ 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>; and Letter from the Ontario Ombudsman to Durham District School Board (29 November 2023), online: <<https://www.ombudsman.on.ca/what-we-do/topics/education/investigations-and-reviews-school-board-meetings/durham-district-school-board>>; Letter from the Ontario Ombudsman to Niagara Catholic District School Board (13 March 2024), online: <<https://www.ombudsman.on.ca/what-we-do/topics/education/investigations-and-reviews-school-board-meetings/niagara-catholic-district-school-board-review-of-meetings-on-june-7-20,-2023>>.

My Office acknowledges the significant stress and negative impact that these safety concerns have had on the School Board trustees and staff, and that the School Board was faced with a difficult and unsafe situation. In the circumstances, my Office has determined the reconvened meeting on June 25, 2024 complied with the open meeting requirements within the *Education Act*.

In the face of increasing security concerns faced by the School Board, it may wish to revise its safety protocol to specifically address how to respond if a meeting disruption cannot be resolved because individuals refuse to leave, or in circumstances where it is necessary to reconvene a meeting in a different room. This clarity will help ensure transparency in the event the School Board faces similar disruptions in the future.

Conclusion

I am satisfied that the reconvened meeting held by the School Board on June 25, 2024 complied with the open meeting requirements set out in the *Education Act*, and that the School Board acted reasonably in exceptional circumstances. However, the School Board may wish to expand its safety protocol to provide further instruction for exceptional circumstances, to ensure transparency and accountability at public meetings.

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,



Paul Dubé
Ombudsman of Ontario

Cc: Gale Simko-Hatfield, Chair, Board of Trustees

Cette lettre est aussi disponible en français