

DATE: February 17, 2015
TO: Board of Trustees
FROM: Darrel Robertson, Superintendent of Schools
SUBJECT: Caucus Committee
ORIGINATOR: Dr. Sandra Stoddard, Executive Director Governance and Strategic Support Services
REFERENCE: [Trustees' Handbook](#) Section 5.4 – Caucus Committee
[School Act](#)

ISSUE

The Caucus Committee requested that changes be made to Section 5.4 of the [Trustees' Handbook](#) in order to give the Caucus Committee final decision-making power over certain matters, yet constrain that power so that it is used only when absolutely necessary.

RECOMMENDATION

That a resolution be approved directing that Section 5.4 of the Trustees' Handbook be revised as outlined in Attachment I in order to give the Caucus Committee final decision-making power on certain types of matters, and yet constrain that power so it is used only when absolutely necessary.

BACKGROUND

The Caucus Committee requested information from the Administration regarding the following questions:

1. What is permissible to decide at Caucus Committee?
2. What is the purpose of acting out of Caucus Committee?
3. Is there a better method of moving forward? What other options are available to the Board (e.g. walking the report onto the afternoon board agenda)?

The Administration answered the questions as follows:

1. *What is permissible to decide at Caucus Committee?*

There are two ways that the Board can meet *in camera*. The first is pursuant to Section 70(3) of the *School Act*, which allows a majority of trustees present at a meeting to pass a resolution to exclude the public if that majority of trustees is of the opinion that it is in the public interest to consider that matter in private. There is no power to actually decide to pass a resolution in this *in-camera* meeting, other than a resolution to revert to public board. It is, therefore, of limited use and has been used infrequently by the Board.

The second way in which the Board can meet *in camera* is to delegate Board power to a Committee of the Board. Section 61(1) of the *School Act* authorizes, among other things, a board to pass a resolution delegating authority to a committee of the Board. This delegation allows the committee “to do any act or thing or exercise any power that the Board may or is required to do or exercise subject to the directions and limitations set out in the resolution.” The only exceptions are

that the Board cannot delegate the power to make a bylaw, the power to close a school, or to hold a teacher transfer hearing.

As stated above, the Board has utilized Section 61(1) to delegate powers to the Caucus Committee. Section 5.4 of the *Trustees' Handbook* states that “The Board holds *in-camera* meetings to deal with land, labour and legal matters.” The use of the phrase “deal with” suggests that a final decision on such matters is allowable. However, Section 5.4 goes on to make it clear that the Board has delegated to the Caucus Committee only the power to discuss and/or develop recommendations to the Board on a list of matters. This is an extremely limited delegation of power, essentially leaving the Board unable to make any final decision in Caucus Committee. In other words, the broad sweep of Section 61 of the *School Act* has hardly been utilized. While there are court decisions that would suggest that the Board would have to be circumspect in what it delegated for final decision to Caucus Committee, it is clear that the provision has been utilized with great reluctance. The Board could delegate real decision-making power to the Caucus Committee, but has chosen not to.

2. *What is the purpose of acting out of Caucus?*

As is evident from the above, since the Board has not delegated any real decision-making power to Caucus Committee, the Board cannot legally give direction to the Administration to take any action that would require that a binding decision of the Board had already been made. “Confirming” the action at a public board meeting is, therefore, not appropriate, since no legal decision was made in the first place. So acting out of Caucus Committee would be valid only when the Board has asked the Administration to do something that is not dependent on a binding decision of the Board. Acting out of Caucus Committee in any other context simply does not make sense.

3. *Is there a better method of moving forward? What other options are available to the Board?*

There are three possible resolutions the Board could pass in public to deal with the problem of acting out of Caucus Committee. They are as follows:

a. Delegate real decision making power to the Caucus Committee

The Board could delegate the power to the Caucus Committee to make final decisions on matters dealing with land, labour and legal matters, and any other matter that was of a sensitive and confidential nature. Decisions made in this way would then be reported to public board only as information and would not require the Board to pass a motion other than the motion to accept the information. This delegation of power could be underutilized, in the sense that most such matters were still sent to Board, but when the matter was time-sensitive, a final decision could be made in Caucus Committee and then the Administration could properly be authorized to act out of Caucus Committee, since a final decision of the Board had been made.

b. Delegate to the Caucus Committee the power to make final decisions on any matter that required a decision before the next public board meeting.

Such a resolution would have to be carefully crafted, but it is possible to give the Caucus Committee the power and flexibility to make final decisions when time demanded quick action. Again, acting out of Caucus Committee would then be legally possible.

- c. Pass a motion in Caucus Committee waving notice of a public board meeting, and then convene a public board meeting.

This mechanism was used by the Board for many years when the Board used to convene teacher termination hearings, student expulsion hearings, and hearings to determine whether or not students would be sponsored to external organizations such as Elves. The Board would hold a hearing *in camera*, then exclude everyone but legal counsel in order to discuss and make a tentative decision *in camera*, and then vote to waive notice of a public board meeting, and immediately convene a public board meeting to pass a binding resolution.

The Caucus Committee was presented with information to the effect that Point 1.a. of Section 5.4 of the Trustees' Handbook could be revised to delegate actual decision-making power to the Caucus Committee, and that one of the following three options could also be added to impose limits on that delegation:

Option 1 - The Caucus Committee shall not make a decision binding the Board unless a motion is passed in Caucus approving such action.

Option 2 - The Caucus Committee shall use its final decision-making authority only after a motion is passed in Caucus Committee approving the making of a decision on a particular matter.

Option 3 - The delegation of decision-making authority to the Caucus Committee is subject to the following limitations:

- a. it shall be used only for matters that must be kept confidential or are time-sensitive; and
- b. to the extent possible, decisions made by the Caucus Committee shall be reported to the Board in a public meeting.

The Caucus Committee gave feedback to the Administration regarding the changes that could be made to the Trustees' Handbook in order to delegate decision-making power to the Caucus Committee, while imposing appropriate limitations on this power.

RELATED FACTS

The Caucus Committee gave feedback to the Administration regarding the changes that could be made to the Trustees' Manual in order to delegate decision-making power to the Caucus Committee, while imposing appropriate limitations on this power.

OPTIONS CONSIDERED

Pursuant to the feedback of the Caucus Committee, the following options have been considered:

1. Approve the recommendation.
2. Do not approve the recommendation. The Trustees' Handbook would not be amended, and instead the current practice of waiving notice of motion for a public meeting, and convening a public meeting without notice when there is an exigent need to pass a resolution of the Board would be maintained.

CONSIDERATIONS & ANALYSIS

There are both legal and political considerations involved in the decision to delegate authority to the Caucus Committee. The analysis begins with Section 70(1) of the *School Act*, which reads as follows:

70(1) The meetings of a board shall be held in public and no person shall be excluded from them except for improper conduct.

Such rules, usually referred to as open meetings rules, are common throughout North America. They have been interpreted strictly by the courts in the United States, where some courts have said that a majority of trustees cannot even have an informal lunch together because the quorum makes it a *de facto* board meeting, notwithstanding the intention otherwise, and thus the public must have access to the meeting.

Canadian courts have been less stringent, but have still uniformly recognized the fundamental importance of the transparency afforded by having meetings of public bodies take place in public view. One example of this is the 1998 case of *City of Yellowknife Property Owners Assn. v. Yellowknife (City)* [1998] N.W.T.J. No. 74, in which the Northwest Territories Supreme Court was asked to consider whether the Yellowknife City Council was in violation of a statutory open meetings rule by regularly meeting *in camera* with the City Mayor to receive briefings on civic matters and to give general guidance to the city administration. The Court held that the meetings were in fact City Council meetings, and thus unlawful because of the exclusion of the public. Since the legislation considered by the Court was strikingly similar to section 70 of the *School Act*, the decision cannot be ignored, even though it is not strictly binding in Alberta.

The upshot of this and other court decisions is that an open-meetings rule is not to be lightly disregarded. Section 70(3) of the *School Act* allows only one exception to the open meetings rule. It provides as follows:

70(3) Notwithstanding subsection (1), when a majority of the trustees present at a meeting of the board are of the opinion that it is in the public interest to hold the meeting or a part of the meeting in private for the purpose of considering any matter, the board may by resolution exclude any person from the meeting.

This section of the *School Act* is procedurally prescriptive. The decision to go *in camera* must be made publicly by board resolution declaring that the board considers it in the public interest to exclude the public from the board's consideration of a matter that has arisen in the course of a publicly convened board meeting. No other method of convening an *in camera* meeting of the board is permitted. Both scheduled and *ad hoc* secret meetings violate the procedural requirements of section 70(3). It is also noteworthy that the board cannot make any decision on any matter during such an *in camera* board meeting:

70(4) When a meeting is held in private, the board does not have the power to pass a bylaw or resolution at that meeting apart from the resolution necessary to revert to an open meeting.

Notwithstanding section 70, Alberta school boards can effectively reduce the scope of the open meetings rule by delegating powers to committees of the board pursuant to section 61 of the *School Act*. However, in light of the court decisions emphasizing the importance of transparency, it is obvious that an attempt by a school board to escape from the procedural restrictions of section 70 by

sweeping delegation of power to a board committee would be vulnerable both to adverse public criticism and likely successful court action. Thus, the recommended resolution is focused on limiting the proposed delegation to instances of necessity.

NEXT STEPS

Should the Board pass the recommended resolution, the Administration will amend the Trustees' Handbook in accordance with Attachment I.

ATTACHMENTS & APPENDICES

ATTACHMENT I - [Trustees'Handbook](#) - Caucus Committee – Section 5.4

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Trustees'Handbook - Caucus Committee – Section 5.4

Committee of the Whole (in-camera)

Purpose

The Board values transparency and accountability and believes that, to the greatest extent possible, its decision making should be conducted in public. There are, however, specific instances when the public interest is best served by private discussion in "in-camera" sessions.

The Board holds in-camera meetings to deal with land, labour and legal matters. The Board also gathers privately for professional development, reviewing the functioning of the Board, and for strategic planning purposes. The requirement for confidentiality of in-camera materials and proceedings is fundamental to protect individual privacy and the District's fiduciary and strategic interests. For this reason, all in-camera meetings are closed to the public and news media.

All recommendations from the Caucus Committee must be approved at a public board meeting prior to being enacted or implemented.

Expectations

1. In accordance with Section 61 of the *School Act*, the Board delegates to the Caucus Committee the following powers:
 - a. ~~Discussing and/or developing recommendations to Board on matters pertaining to:~~
 - a. **Discussing, making decisions, giving direction to the Administration, and/or developing recommendations to Board on matters pertaining to:**
 - the personal or proprietary information of an identifiable individual or group, including staff, students and parents;
 - labour relations and employee negotiations;
 - a proposed or pending acquisition or disposition of property;
 - law enforcement matters, litigation or potential litigation, including matters before administrative tribunals affecting the District;
 - the security of the property of the District;
 - the terms and conditions of a contract with the Superintendent of Schools in accordance with Section 113 of the *School Act*.
 - b. Reviewing the functioning of the Board.
 - c. Developing advocacy plans to other levels of government and strategic planning activities.
 - c. Engaging in professional development.

2. The first order of business for a Caucus Committee meeting shall be approval of the agenda and confirmation of the items as appropriate for discussion in-camera.
 3. All matters requiring Board decision arising from discussions in Caucus Committee shall be reported to a public board meeting for Board approval. Recommendation reports to Board shall contain sufficient background information to explain the recommendation and implications of the decision to be made with due consideration to protection of personal or proprietary information.
- 4. The delegation of decision-making authority to the Caucus Committee is subject to the following limitations:**
- a. **it shall be used only for matters that must be kept confidential or are time-sensitive; and**
 - b. **decisions made by the Caucus Committee shall be reported to the Board in a public meeting.**
5. All agenda items and supporting materials on which motions and recommendations are based, and the substance of deliberations shall remain confidential, except when:
 - the Board of Trustees determines that the information should be submitted to a public meeting;
 - the Board of Trustees specifically authorizes its public release, or when legally required to release such information;
 - a motion of the Board of Trustees is required to release this information to any persons other than to the Board of Trustees, employees or agents of the Board who require such information to carry out their duties on behalf of the District.
 6. The Caucus Committee may appoint a subcommittee of Trustees, or administrators, or other individuals to act on its behalf.

Quorum

The membership of the Caucus Committee is the full Board. A quorum is the majority of the Committee members. A quorum of the Caucus Committee consists of five (5) Trustees.

Rules of Order

- The Vice-Chair of the Board will serve as the Caucus Committee Chair, presiding at every meeting and will vote on all questions submitted. In the Chair's absence the Board Chair will preside. In the absence of the Board Chair, the members present will appoint one of their members to be Chair.
- The rules of the Board will be observed.
- The Committee submits its recommendations to the Board.

Confidentiality

All materials submitted and the substance of discussions held in Caucus Committee shall be treated as confidential by all Trustees and Administration in attendance.

Agendas

The preparation of the agenda for a Caucus Committee is the responsibility of the Superintendent of Schools or designate.

A draft agenda is posted on the Board Intranet Site (BIS) eight (8) days prior to the Board or Caucus meeting for all Trustees to review. Trustees who wish to have an item added to the agenda are to contact the Board or Caucus Chair with their request.

The Caucus Chair will provide changes and approval to the Executive Director Governance and Strategic Support Services prior to including in the Caucus information packages by end of day on the Wednesday preceding the board meeting.

Format of Agendas

- A. Roll Call
- B. Approval of the Agenda
- C. Communications from the Board Chair
- D. Communications from the Superintendent of Schools
- E. Minutes
- F. Reports
 - (From Board Committee, Representatives and Trustee Motions and Superintendent of Schools)
 - Recommendation
 - Feedback
 - Information
 - Delegation or External Presentation (time-specific)
- G. Other Committee, Board Representative and Trustee Reports
- H. Trustees and Board Requests for Information
- I. Notices of Motion
- J. Meeting Dates
- K. Adjournment

Delivery of Agendas

- Material for Caucus meetings will be posted on the Board Intranet Site (BIS) at least three days in advance of the meeting.
- The Caucus Committee will approve the meeting agendas at each meeting in the event there are changes or emergent items requiring discussion.
- Agenda materials that are not dealt with at a meeting will be added to the next meeting agenda.

Time and Location

- Caucus Committee meetings will be held on an as-needed basis at the call of the Caucus Committee Chair in the Board Conference Room. The first Tuesday morning of each month will be reserved for such meetings.
- Notices of meetings will be provided in the same manner as for regular board meetings unless, by consent of all the Trustees, notice is waived.
- These meetings are closed to the public and media; however, all recommendations arising from the meeting will be brought to the public board meeting for decision.
- In circumstances where immediate decisions are required for time sensitive matters, a motion to “act out of Caucus” will need to be carried prior to enactment of the recommendation. The decision will still be communicated at the public meeting through a report from the Caucus Committee.

Adjournment

The Caucus Committee will remain in session no later than 12:00 noon unless otherwise determined by a majority vote of members present.

Minutes

- The minutes of the Caucus Committee will contain motions, recommendations and questions that require administrative follow up.
- The minutes of Caucus Committee are accessible to Trustees on request; however, a motion of the Caucus Committee is required prior to providing a Trustee the minutes of a Caucus Committee meeting if that Trustee was not a member of the Caucus Committee at the time of the meeting.
- The minutes of the Caucus Committee are approved by the Caucus Committee at the next regular meeting of the Caucus Committee.