

## FAQs – a legal perspective

### 1. Where does the board of trustees get its authority from?

#### Answer

The School Act. The board of trustees exercises its decision-making authority by passing motions. These motions must be made by the corporate board at a properly constituted meeting. No individual trustee – not even the chair – can make decisions for the board without the board’s permission.

School board decisions must be in accordance with the legislation which creates and regulates school boards.

The board of trustees:

- *may* do what the legislation says they *may* do
- *must* do what the legislation says they *must* do and
- *must not* do what the legislation says they *cannot* do or *does not* give them the authority to do.

School boards may exercise powers fairly implied in, or incidental to, the powers set out in the School Act as well as powers essential to the accomplishment of their expressed objects and purposes.

The board of trustees does not have any general authority. So a board of trustees cannot decide to offer post-secondary education in the province of Alberta.

### 2. What authority does the School Act grant to the board of trustees?

#### Answer

The board of trustees is granted many types of authority to fulfill its mandate to provide kindergarten to Grade 12 education within its jurisdiction. These powers relate to providing educational services.

The School Act distinguishes between a school board’s “duties” which are mandatory and its “powers” which are discretionary.

See Section 60(1) of the School Act for some of a school board’s mandatory “duties”.

A school board must:

- establish policies respecting the provision of educational services and programs
- maintain, repair, furnish and keep in good order all its real and personal property

See Sections 60(2) and 60(3) of the School Act for some of a school board’s discretionary “powers”.

A school board *may*:

- charge a parent of a student fees with respect to instructional supplies or materials
- make rules respecting activities sponsored or approved by the school board

### 3. Can and how does the board of trustees delegate authority?

#### Answer

The board of trustees may delegate any of its “duties” or “powers” with the exception of:

- making a bylaw,
- closing a school or school building,
- requisitioning funds from a municipality, and
- holding a hearing about a teacher transfer.

The school board may delegate the power to suspend or terminate a teacher – but only to the superintendent.

School boards may delegate other duties or powers to employees – particularly the superintendent; a committee of the board; a school council or a joint committee established under section 63 of the School Act.

The board may establish joint committees with regard to providing educational, managerial or other services with respect to the operation of schools. Subject to prior approval by the minister of education, a board may enter into an agreement with other boards for the joint construction, ownership, control, management, maintenance, operation or use of a school building or building to be used primarily by students, or with one or more other boards, persons or municipalities for the joint construction, ownership, control, management, maintenance, operation or use of a public work or building. Special rules regarding the operation of joint committees are set out under section 63 of the School Act.

When a school board establishes a committee, it should pass a motion describing the terms of reference under which the board is delegating authority to this committee or the board’s representative on a committee. The terms of delegation must be clear so the employee or committee understands its roles and responsibilities and whether it has final decision-making authority.

For example, if a school board delegates decisions about student expulsions to a committee, the board would have to empower that committee to make the final expulsion decision. On the other hand, if the school board were to establish a committee to consider transportation issues, this committee would not likely have final decision-making ability – only the ability to make recommendations to the school board.

When setting policy or rules, it is important the board ensure it has the legal authority to establish the proposed policy. The board needs to ensure it is acting within its jurisdiction, or the policy may be challenged and found unenforceable. Many school board policies reference School Act provisions (or other legislation) setting out the statutory grant of authority governing that particular policy. This helps to ensure that the question of whether the school board has the authority to make a given policy is considered and answered before the policy is introduced.

While the school board must establish policies regarding providing educational services and programs, many school boards consult with a variety of stakeholders as they develop policy to ensure the outcome meets the needs of the jurisdiction. School boards may focus on establishing governance policies and delegate to administration responsibility for implementing regulations or guidelines with respect to the jurisdiction's day-to-day operation and management.

By definition a policy is a general document. It is impossible to imagine every permutation of events that might be covered by policy – and accordingly most policy sets out guidelines and leaves the specifics to be determined on a case-by-case basis.

Choosing a policy model is a very important decision for a school board.

#### 4. What is a school board hearing?

##### Answer

School boards may be called on to adjudicate disputes with regard to:

- transferring, suspending or terminating a teacher or a teacher's administrative designation (sections 104-109 of the School Act)
- expelling a student (sections 24-25 of the School Act)
- providing access to, or issues about the accuracy or completeness of information in a school record (section 123(4) of the School Act)
- any board employee's decision that significantly affects the education of a student, including, placing a student in a special education program, school fee amounts, whether a particular student is deemed a resident student (sections 123-124 of the School Act), or whether the board will supervise a student's home education program for the student (section 29 of the School Act).

The School Act contains a "reasonableness" limitation on all actions taken by a school board.

The exercise of any right or the receipt of any benefit under this Act is subject to those limitations that are reasonable in each circumstance under which the right is being exercised or the benefit is being received.

This means that in all actions, including when it hears an appeal, the board must act in a reasonable fashion.

## 5. What if I know the person appealing a decision to the school board?

### Answer

Administrative law requires a school board to make its decisions impartially. A decision-maker must not have an actual or apprehended bias for or against a party before it.

The Alberta Court of Appeal has divided “bias” into three different categories:

- an opinion about the subject matter so strong so as to produce fixed and unalterable conclusions;
- any pecuniary bias, however slight;
- personal bias, due to association with a party or hostility to a party, to the extent there is a real likelihood of bias or an appearance that justice cannot be done in the circumstances.

Trustees must not breach the duty to avoid “bias” as defined by the Alberta Court of Appeal.

A bias may arise where a trustee is related to a party or is a business partner of a party, or the trustee or his family or his employer have a financial stake in the outcome of a hearing. Bias may also arise if a trustee *appears* to align himself or herself with or against one party.

The test for bias is:

Would a reasonable person, knowing all of the facts, believe there is a “reasonable apprehension of bias”.

If you are in doubt about potential bias, disclose the potential bias to the parties and seek their consent for you to continue to hear the appeal. If the parties do not consent, the school board can hear arguments about whether you should be removed from the panel and the board will vote on that issue before hearing the appeal. Alternatively, you can remove yourself voluntarily and have the rest of the board hear the appeal.

## 6. Are there formalities we must observe at board meetings?

### Answer

The school board may only make a decision or establish a policy at a properly constituted meeting of the board which means:

- The board must achieve quorum. If a meeting or hearing doesn't have a quorum of the board, the trustees present may not simply have a staff member or some member of the public fill in for the missing board member.
- Only the trustees attending the board meeting may vote on any matter.  
**Note:** In 2009 the School Act was amended to allow trustees to participate in a school board meeting by electronic means. In the case of a quasi-judicial hearing, a trustee should be physically present.
- The board chair presides over board meetings.

School boards may adopt rules of procedure such as Robert's Rules to govern how business is to be conducted at board meetings.

## 7. Are school board meetings and hearings open to the public?

### Answer

*School board meetings:*

Most school board meetings are public. However, the board of trustees is not required to hold a hearing or a meeting in public, or to discuss in public every item which may come before it.

Section 70(3) of the School Act sets out when a board may hold a meeting of the board in private: when a majority of the trustees 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". Matters typically dealt with in private include personnel matters, real estate matters and legal advice. The Freedom of Information and Protection of Privacy Act also prevents the board from discussing some matters in public. (See Question 8 for more information).

While the board may deliberate and make a decision in private, it must then make a motion to return to the public meeting; and make a motion in public reflecting the decision it made in private. This motion should be worded so it doesn't inappropriately reveal personal information about individuals or other private information.



### *Hearings:*

Most appeal hearings will be private. This includes hearings about a student expulsion or any personnel matters. These are generally dealt with in private because personal information about the affected person will be discussed during the hearing and it is not appropriate to carry out that discussion in public.

The Freedom of Information and Protection of Privacy Act also prevents the board from discussing some matters in public. (See Question 8 for more information)

Again while the board may deliberate and make a decision in private, it must make a motion to return to the public meeting, and make a motion in public reflecting the decision it made in private. This motion must be worded so that it doesn't inappropriately reveal personal information about individuals or other private information.

## **8. What, if any, information must be kept confidential?**

### **Answer**

According to the Freedom of Information and Protection of Privacy Act (FOIP) a trustee must keep all personal information and any records that contain personal information about an individual confidential.

All information a trustee receives regarding the school board's mandate and functions are considered records under the control of the school board. Employee information, student information or information in letters to the school board must be kept confidential and may only be released in accordance with FOIP. Each school board has a FOIP officer who is familiar with the legislation. Each school board has policy regarding retention and destruction of records in keeping with FOIP regulations.

Information received by individual trustees in their capacity as trustees must also be processed and treated in accordance with FOIP. Many school boards have policies in this regard. Follow these policies to avoid inadvertently disclosing third party information that may initially come to you as an individual trustee.

Trustees take an oath of office requiring them to act in the best interests of the corporation (school board). Information trustees receive in confidence must be respected and not disclosed to members of the public or taken advantage of for personal gain. To take financial advantage of information received as a trustee is a disqualifying event under the School Act, and a trustee who does so could be required to account for profits made on the basis of information that came to the knowledge of the trustee while acting in a fiduciary position.

Similarly, a trustee should not disclose confidential deliberations relating to school board business to anyone including family, friends, constituents and the public.

As noted in Question 7 above, while school board meetings are held in public, the board is able to meet in camera (in private) in certain circumstances.

Under the FOIP Act, a school board must be able to demonstrate that it was in-camera to deal with the following matters:

- security of property,
- personal information of an individual, including an employee of a public body,
- a proposed or pending acquisition or disposition of property by the school board,
- labour relations or employee negotiations,
- a law enforcement matter,
- litigation or potential litigation, including matters before administrative tribunals affecting the school board, or
- the consideration of a request for access for information under the FOIP Act, if the school board is itself designated as the head of the local public body for the purposes of the FOIP Act.

According to FOIP rules, no other subject is to be considered in private. School boards must be careful about what they choose to address in-camera if they wish to rely upon the exemptions from disclosure as set out under the FOIP Act.