

**FINAL REPORT OF THE EXTERNAL
INVESTIGATOR FOR THE HAMILTON-
WENTWORTH DISTRICT SCHOOL BOARD**

Re: Student Trustee Complaint of Breach of the Code of Conduct

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I. INTRODUCTION

Arleen Huggins, lawyer and partner with the law firm Koskie Minsky LLP, and Philip Graham, a Senior Associate with the same firm (collectively the "Investigator"), were retained by the Hamilton-Wentworth District School Board (the "HWDSB") to investigate allegations believed to be a potential violation of the HWDSB Trustee Code of Conduct (the "Code of Conduct").

While the Complainant does not specifically invoke the Code of Conduct or the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19 (the "*Code*"), the Investigator has concluded that the allegations made by the Complainant could, if proven, constitute a violation of the Code of Conduct and in some respects a potential violation of the *Code* and any other relevant legislation.

Section 7 of the Code of Conduct prohibits Trustees, as defined below, from engaging in conduct that would discredit or compromise the integrity of the HWDSB Board of Trustees (the "Board" or "Trustees"). Section 5(1) of the *Code* prohibits, *inter alia*, discrimination in employment on the grounds of race, ancestry, place of origin, colour and ethnic origin and religion.

Section 19 of the Code of Conduct provides that a formal inquiry of an allegation of a breach of the Code of Conduct may be undertaken by an outside consultant, if engaged. Section 27 of the Code of Conduct states that the final report will outline the findings of fact as determined by the investigator, a recommendation as to whether the Code of Conduct has been breached, and, if deemed appropriate, a recommendation regarding the imposition of any sanctions.

The Code of Conduct is silent as to the standard of proof applicable to allegations of breaches of the Code of Conduct. In the absence of an articulated standard of proof, the Investigator's findings are based on a balance of probabilities, which is the same standard used before human rights tribunals and the civil courts.

II. SUMMARY OF THE INVESTIGATION PROCEDURE

The Investigator was retained by HWDSB to conduct an objective and neutral investigation into the Complaint in accordance with the HWDSB Review Protocol (the "Investigation Protocol").

The Investigation Protocol, attached hereto as Schedule "A" to this Report, was provided to the Complainant, the Respondents and all witnesses, and each acknowledged receiving a copy and agreeing to the contents thereof prior to being interviewed by the Investigator.

In accordance with section 27 of the Code of Conduct, the Investigator was also retained to prepare a written Investigation Report (the "Report") following the conclusion of the investigation, detailing the:

1. nature of the Complaint;
2. the factual information collected;
3. the findings of fact; and
4. the Investigator's conclusions.

In accordance with the Investigation Protocol, interviews of the Complainant, the Respondents and such witnesses which, in the Investigator's view, were necessary, were conducted by the Investigator.

The interviews of the Complainant, Respondents and witnesses were conducted virtually over Zoom. Typewritten notes of each participant's interview were taken by the Investigator (or the Investigator's associate). Each of the participants were thereafter provided with a summary of their evidence by way of a typewritten statement (the "Interview Statement") as prepared by the Investigator, together with any follow-up questions for response, and each had an opportunity to review, amend (if corrections were required) and/or to provide additional information or documentation which they felt was necessary to supplement their evidence before signing and returning the Interview Statement to the Investigator, together with the additional documentation.

The Complaint, Trustee 4's Response, Trustee 1's Response, and the Interview Statements and any accompanying documents, were then used as the basis for the Investigator's findings and conclusions.

III. SUMMARY OF ALLEGATIONS

The Complainant's Background

The Complainant is a first-generation Canadian and identifies as Muslim. Her parents immigrated to Canada from Bangladesh. The Complainant graduated from Westmount Secondary School ("Westmount") in June 2020. The Complainant was and continues to be involved in a lot of anti-racism work and has a passion for this work due to her lived experiences. At Westmount, the Complainant was involved in an anti-racism focus group for racialized students, which led her to run for the position of Student Trustee. The

Complainant was elected to the Board by her peers for a one-year term that commenced on August 1, 2019.

On August 1, 2020, the day the Complainant's term as a Student Trustee ended, the Complainant published on Twitter a series of allegations of racism and oppression within the Board, based on her experience as a Student Trustee. On August 3, 2020, the Complainant, along with a community organization she is involved with called HWDSB Kids Need Help, held a press conference outside the HWDSB headquarters in regards to her Twitter allegations.

Background

The Respondents in this Investigation are Trustee 1, Trustee 2, Trustee 3, and Trustee 4 (collectively referred to as the "Respondents").

On August 1, 2020, the Complainant published a series of posts on her personal Twitter account broadly outlining her allegations. The next day, the Complainant held a press conference during which she provided further particulars (the "Press Conference"). The Complainant was interviewed by the Investigator in connection with same and her allegations as against the Respondents can be categorized as follows:

1. lack of Board governance and EDI training;
2. silencing of the Complainant;
3. racial gaslighting of the Complainant;
4. microaggressions against the Complainant; and
5. issues with Trustee 4

(collectively the "Complaint").

The Investigator provided each of the Respondents with a summary of the Complainant's allegations as against them specifically prior to their interviews.

On or about September 30, 2020, in advance of her interview with the Investigator, Trustee 4 filed a number of documents which she asserted were necessary to provide context around her anti-racism work in the education field, but no written response (the "Trustee 4 Response").

On October 20, 2020, in advance of her interview with the Investigator, Trustee 1 filed a written response to the Complaint, with attachments ("Trustee 1 Response") which she elected to adopt as

part of her final Interview Statement.

The other Respondents did not file written responses nor provide documentation in response to the Complaint, although they were permitted to do so.

Trustee 1's Response, Trustee 4 Response, and the Interview Statements were not provided to the Complainant; however a second interview with the Complainant was conducted after all of the interviews were completed, to make further inquiries of her where necessary in response to the evidence given by the Respondents.

IV. SUMMARY OF EVIDENCE

The Board of Trustees

Structure

During the 2019-2020 school year, the Board was composed of eleven Member Trustees and two Student Trustees. Member Trustees are publicly elected for four-year terms by the constituents of the various wards that make up the HWDSB, and Student Trustees are elected for one-year terms by their peers.

Role

The Board is responsible for policy-making and high-level governance of the HWDSB, whereas the Director of the Board and HWDSB staff are responsible for operationalizing the Board's policy decisions and for the day-to-day operations of the HWDSB.¹ The Board is also responsible for hiring the Director, reviewing the Director's performance appraisal, and ensuring that the Director and the Board are adhering to the *Education Act*, R.S.O. 1990, c. E.2 (the "*Education Act*").²

Committees

Pursuant to the Board's policy, every Member Trustee is mandated to sit on the Standing Committee and the Suspensions Appeals and Expulsion Hearings Committee. In addition to these mandated committees, Member Trustees may volunteer to sit on Special Committees and Community Advisory Committees for one-year terms. Member Trustees act as non-voting representatives on Community Advisory Committees (which are composed of and chaired by volunteer community members), and their role in these committee meetings is to listen to community voices and bring community recommendations back to the Board.

Student Trustees

The Student Trustees' role is to canvas student voices from across the HWDSB on issues that are or should be brought before the Board, and to represent student voice in Board meetings. To this end, Student Trustees co-chair the HWDSB's Student Senate, which is composed of students

¹ Hamilton-Wentworth District School Board, "Board of Trustees Handbook" (September 2018) at p 63) ["**Trustee Handbook**"].

² Trustee Handbook at p 63.

from each school across the HWDSB. Staff 4 assists Student Trustees in overseeing the Student Senate. Student Trustees are also supported by two mentors through an informal mentorship program – a "general mentor" and a "table mentor". The general mentor's role is to help the Student Trustees navigate the system and explain the Board's procedures. The table mentor's role is to sit beside Student Trustees during Board meetings and answer any questions or concerns they may have with respect to procedure, such as the appropriate time for asking a question. Staff 1 and Staff 4 also act as resources to address the Student Trustees' procedural questions or concerns.

Student Trustees' votes on motions are recorded, but not counted.³ Under the *Education Act*, students are not permitted to bring motions or amendments by themselves. In order to bring a motion, Student Trustees must secure the support of an elected trustee to move the motion on their behalf.⁴

Meetings

The Board typically holds two meetings per month. Under the *Education Act*, Member Trustees must attend at least three Board meetings per year.⁵ It is the Board's practice to hold an informal dinner, in a room adjacent to the boardroom, immediately before each Board meeting, but attendance at these dinners is optional and many Member Trustees do not attend due to work commitments.

In addition to the Board members, the following individuals are typically in attendance at every Board meeting: the Secretary of the Board, HWDSB senior management staff, HWDSB's communication officer, and a Staff Member whose role is to, *inter alia*, create the agenda for Board meetings, and provide the Board members with Board meeting materials and to provide information and clarity on the Board's governance rules to Trustees as a neutral third party, both during and outside of meetings.

All Board meetings are open to the public, but under the *Education Act* certain issues must be discussed in camera, such as property and staffing matters, and the disclosure of personal

³ *Education Act*, R.S.O. 1990, c E.2, s 55(2) [*"Education Act"*].

⁴ *Education Act*, s 55(4).

⁵ O Reg 463/97, s 6.1(1).

information in respect of a Trustee, employee, pupil, or parent who is the subject of a meeting.⁶ W5 stated that an in camera discussion will always be noted on the meeting agenda unless the topic is brought up from the floor, in which case an *ad hoc* in camera discussion can occur. W5 added that they cannot recall a single instance where an *ad hoc* in camera discussion has occurred.

The agenda for a Board meeting surfaces from discussions, reports, and recommendations at various committee meetings over the preceding weeks, which are then brought forward by Member Trustees as motions. There are two procedures for a Trustee to bring a motion. First, they may make a motion from the floor during a meeting, so long as the topic of the proposed motion relates to the agenda. Second, a Trustee may submit a written notice of motion to the Chair of the Board one week in advance of an upcoming meeting. However W7 and W10 indicated that there have been occasions when written notice of motions have been submitted late and accepted. Trustees are also permitted to propose amendments to motions during Board meetings. Before a motion or amendment is put to a vote, the Chair of the Board will provide each Trustee with an opportunity to speak to their position on the motion.

The Chair of the Board is responsible for directing the conduct of Board meetings.⁷ If Trustees have questions about a given matter, they must address their question to the Chair of the Board, who will then direct their question to the Secretary of the Board or the appropriate HWDSB staff member for a response. HWDSB staff members, including the Secretary of the Board, are not permitted to speak in Board meetings unless they are directly addressed by the Chair.

From a review of various Board meeting recordings, it is apparent that Trustees generally preface their questions to the Secretary of the Board or HWDSB staff with comments and/or statements. W1 stated that Trustees can also make suggestions to the Secretary of the Board or HWDSB staff, but that Trustees are not permitted to direct the Secretary of the Board or HWDSB staff on how to operationalize the policies set by the Board. Another witness stated that Trustees are limited to asking questions to the Secretary of the Board or HWDSB staff during meetings, and suggestions or directions must be brought forward as motions. However, they stated that in their experience it is common for Trustees to make informal suggestions at meetings and that these are typically implemented by the Secretary of the Board and

⁶ Trustee Handbook at p 22. See also *Education Act*, s 207(2).

⁷ Trustee Handbook at p 68.

HWDSB staff. W9 added that suggestions are permitted but must be encompassed within comments or statements.

W2 stated that Trustees are permitted to acknowledge other Trustees by name in their comments to indicate general agreement, but that directing a comment at a specific Trustee is considered impermissible cross-table talk. According to the Board's rules, Trustees are entitled to raise a point of privilege if they are specifically named in another Trustee's comment – whether it is positive or negative – but W2 stated that Trustees generally accept when they are named by other Trustees for the purposes of expressing agreement or concurrence.⁸ W2 clarified that Trustees are permitted to express respectful disagreement with the views of other Trustees, but that specifically naming other trustees is generally avoided when expressing disagreement.

V. FINDINGS

The Investigator's findings are based on a balance of probabilities, taking into account all of the available evidence at the time of preparing the Report, including the Investigator's assessment as to the credibility of the Complainant, the Respondents and any witnesses, bearing in mind the legal onus upon the Complainant to support the allegations on a balance of probabilities, meaning they are more probable than not.

1. Lack of Governance and EDI Training

Governance Training

When Member Trustees are first elected to the Board they are provided with a package of materials, which includes the HWDSB Board of Trustees Handbook containing the Board's governance by-laws and procedures, which they are expected to read and be familiar with. This is done on the honour system.

In addition to receipt of governance materials, at the beginning of 2018, all Member Trustees were offered optional governance training, as about half of the Board were newly-elected. This training was only offered once and was not repeated nor offered throughout the term, including when a first time Member Trustee joined the Board mid-term. However, many witnesses stated that the Board also provided Member Trustees with optional information sessions approximately

⁸ Trustee Handbook at p 12.

once a month on a wide range of topics, and that the Board's governance rules are occasionally covered in these sessions. Member Trustees also have the option of attending governance training provided by the Ontario Public School Board Association ("OPSBA"), which is facilitated by Michael Barrett, the former president of the OPSBA.

W2 stated that the optional information sessions are useful, but that it would be more helpful to provide incoming Member Trustees with hands-on practice bringing motions and completing various governance-related exercises.

It was apparent to the Investigator from speaking with the Member Trustees that attendance at the optional governance training was limited, despite the fact that many were new to the Board and some were new to sitting on a Board in general. Member Trustees had a difficult time recalling if or when they participated in governance training and what topics were covered. Some of the witnesses attributed their lack of participation in governance training to personal time constraints given their other full-time commitments, be it work or school, outside of the Board. As well, it was noted by some that the *Education Act* sets the minimum degree of Board participation as attending at least three Board meetings per term and sitting on the Standing Committee and the Suspensions Appeals and Expulsion Hearings Committee.⁹ As such, in their view, any additional meetings or tasks could not be made mandatory.

After the Complainant was elected as Student Trustee, she was invited to and attended a single mandatory orientation session at the HWDSB's Education Centre on June 5, 2019; this was the totality of her governance training during her term. According to Staff 1, the purpose of this session was to ensure that the Complainant knew the parameters of her role, and to assure her parents that she would be supported by HWDSB staff throughout her term as a Student Trustee. The PowerPoint presentation used by Staff 1 during this session indicates that the orientation addressed matters ranging from the role and responsibilities of a Student Trustee, Board meetings, information sessions, Student Senate, conferences, and the Trustee Code of Conduct.

While there is some dispute with the Complainant's allegation that she was not taught how to bring a motion, the Investigator accepts the Complainant's evidence on this point as the Trustee

⁹ O Reg 463/97, s 6.1(1); Trustee Handbook at p 62.

Handbook, which includes the Trustee Code of Conduct, does not outline how a Student Trustee brings a motion and Staff 1's training PowerPoint makes no reference to same.

Conclusion

Based upon the evidence of the Complainant, the Respondents and that of various witnesses, the Investigator finds that the Board provided limited governance training to its Trustees during the period in question. The Investigator also finds that Member Trustees' participation in the optional governance training sessions provided by the Board was limited.

As set out below, with respect to the Complainant's allegations regarding the October 28, 2019 and June 8, June 22, 2020 Board meetings, the lack of governance training was evident in the conduct of some of the Member Trustees and the Student Trustees, including the Complainant.

EDI Training

With respect to the provision of equity, diversity and inclusion ("EDI") training, it was universally the evidence of all those interviewed that the Board does not provide specific stand-alone anti-racism or EDI training to any Member Trustee or Student Trustee. Furthermore, the Board does not have any written policies with respect to EDI that are applicable to members of the Board. However, as a result of this Complaint, starting in September 2020 the Board began offering Member Trustees and Student Trustees optional anti-racism and anti-oppression ("ARAO") training.

The ARAO training is led by HWDSB's Human Rights and Staff 2, and is slated to occur every few weeks, with attendance by Member Trustees being on voluntary basis.

In 2019, staff created a three-year Equity Action Plan (the "Equity Plan") which, among other things, calls for a review of the Board's policies and procedures to identify and remove systemic barriers and discriminatory biases, for the provision of orientation to Trustees on the Board's commitment to equity, and for the provision of responsive equity learning opportunities to Trustees.¹⁰ W4 stated that under the Equity Plan, Trustees are supposed to adhere to anti-racism

¹⁰ Hamilton-Wentworth District School Board, "Equity Action Plan: 2019/20 – 2021/22" at p 8.

and equity standards, but that the Equity Plan is missing a lot of important equity content. In reviewing the Equity Plan, Trustee 1 stated that it needs to be updated.

Conclusion

Accordingly, the Investigator finds that the Board does not provide mandatory EDI training or have appropriate EDI policies in place to help Trustees to develop the tools necessary, both individually and as a collective, to discharge the mandate of the Equity Plan, which in itself requires updating.

2. Silencing the Complainant's Voice

The Complainant alleges that throughout her term as a Student Trustee, Trustee 1 commented during Board meetings that the Board appreciated the equity lens that the Complainant brought to the table. However, in reality, the Complainant alleges that her voice was not valued, and was silenced by Trustee 1 whenever she tried to raise an anti-racist lens to issues or advocate for racialized and marginalized students.

The Complainant's Equity Lens

The Complainant did not present any specific evidence in support of the first part of her allegation that Trustee 1 commented at Board meetings that the Board appreciated that the Complainant brought an equity lens to its meetings.

Trustee 1 stated that she never made any comments to this effect. Similarly, with the exception of W9, none of the witnesses could recall Trustee 1 or any other Trustee commenting that the Complainant brought a valuable equity lens to the Board. However, W9 recalled that Trustee 3 told them during a conversation outside a Board meeting that she thought the Complainant brought an equity lens to her comments.

Trustee 1 stated that she recalls several instances where the Complainant referred to anti-racism in her comments around issues of bullying and police in schools and that in each instance the Complainant's comments were well-received and had a powerful impact on Trustees around the table, including Trustee 1.

Several witnesses, when asked specifically to do so, characterized the Complainant's comments during Board meetings as having an equity lens, and stated that the Complainant was generally focused on equity. W4 stated that the Complainant was always meticulous about applying an

anti-oppression and anti-racism lens to her questioning, and that her analysis of Board policies in meetings was always intersectional. W10 stated that it was refreshing to have a Student Trustee who raised equity issues in Board meetings. Conversely, W3 stated that previous Student Trustees have always been passionate about advocating for minorities and marginalized students, and that it would not have been remarkable for the Complainant to bring an equity lens because the Board often sees Student Trustees bringing such a lens to the table.

Conclusion

Based upon the various interviews conducted, while there is insufficient evidence of precisely when Trustee 1 made the alleged comments that the Board appreciated the Complainant's equity lens, given Trustee 1's own evidence, and similar evidence gathered from other witnesses, regarding the nature of the Complainant's comments being from an equity lens being welcomed by the Board, on a balance of probabilities it is probable that Trustee 1 made this comment at least once, even if in passing.

Silencing the Complainant's Equity Voice

The Complainant also alleges that Trustee 1 silenced her equity voice by telling her that if she ever wanted to raise oppression or racism lens issues, she should approach it more like the other Student Trustee, who gives people the benefit of the doubt and is not as aggressive. It is also alleged that Trustee 1 would privately attempt to get the Complainant to drop her objections to what the Complainant perceived to be racist actions and inactions. These conversations allegedly occurred in private as between Trustee 1 and the Complainant only and are denied by Trustee 1.

The Complainant's allegations that in practice Trustee 1 did not truly support her equity lens and tried to silence her for raising an anti-racist lens and advocating for racialized and marginalized students, is based upon three primary instances: the October 28, 2019 Board meeting; the June 8, 2020 Board meeting and the events leading up to the June 22, 2020 Board meeting; and the Complainant's participation in a media interview.

a. October 28, 2019: Safe Schools Panel Board Meeting

The Complainant's allegation

With respect to the Safe Schools Panel Board meeting, the Complainant alleges that Trustee 1 silenced her in respect of the nature of the comments she could deliver at the meeting on October 28, 2019.

The primary agenda item at the October 28, 2019 Board meeting was a discussion on the establishment of the Safe Schools: Bullying Prevention & Intervention Review Panel (the "Safe Schools Panel"). The Safe Schools Panel was intended to be in response to the death of a HWDSB student. The Board meeting, as usual, was open to the public and, given the circumstances, there was a large media presence anticipated and in fact in attendance on the night of the Board meeting.

Specifically, the Complainant alleges that in the days prior to the Board meeting Trustee 1 directed her to submit to her a copy of what the Complainant planned to say at the meeting. The Complainant did this. Upon review of the Complainant's statement by Trustee 1, it is alleged that Trustee 1 contacted the Complainant by telephone and advised her that she could not share her lived experiences with bullying as a racialized person, as her comments would create concern within the public and stir up unrest.

Furthermore, the Complainant alleges that Trustee 1 advised her that she could not make any statements at the Board meeting but instead could ask questions of the Secretary of the Board during the meeting, and directed that her questions be reviewed by the Complainant's general mentor beforehand. The Complainant alleges that Trustee 1 did not impose the same standard of scrutiny and parameters with respect to participation in the meeting on the other Student Trustee or any of the Member Trustees. Furthermore, the Complainant alleges that Trustee 1 did not stop other Trustees from sharing personal experiences during the Board meeting.

The Respondent's response

Trustee 1's evidence is that the meeting was anticipated to be intense and attended by the deceased student's parents and there would be a large media presence. Trustee 1 stated that Staff 1 advised her to contact both Student Trustees to check-in and offer support in advance of the meeting. Trustee 1 further indicated that Staff 1 specifically directed her to highlight to each Student Trustee the Board's governance rule that Trustees should keep

their comments issue-based and to clarify that this meeting was not the space to share personal experiences.

To Trustee 1's knowledge there had not been an issue in the past with comments not being issue-based at Board meetings, but she did not find Staff 1's request unusual. Trustee 1 evidence is that during her calls, she directed the Student Trustees with respect to the proper procedures for the Board meeting and encouraged them to utilize their general mentor and herself as a resource, if needed. Trustee 1 states that she did not in fact ask the general mentor to undertake a review of the questions but only offered the general mentor's services as a suggestion.

Trustee 1 advises that during her call with the Complainant she advised her of the requirement to keep her comments issue-based. Trustee 1 also took the opportunity to clarify that the appropriate space to share personal experiences would be directly to the Safe Schools Panel, if constituted; and reminded the Student Trustees that their general mentor and herself were available as resources prior to the meeting.

Trustee 1 advises that during her calls, the Complainant shared that she had specific ideas about garnering student voice and ensuring that the diversity of HWDSB's 50,000 students was reflected in the Safe Schools Panel's consultation process and that she wanted to bring these forward at this Board meeting. Trustee 1 stated that she advised the Complainant that the appropriate avenue to share her ideas on garnering student voice was directly to the Safe School Panel, once constituted.

Trustee 1 admits that she asked the Complainant to think about how her suggestions regarding the definition of bullying could be turned into questions to be posed to the Secretary of the Board, which the Complainant did.

In Trustee 1's view, the purpose of the Board meeting was to ask questions for clarification about the report that was before the Board, speak for or against the motion that the Board establish the Safe Schools Panel, and to give the Secretary of the Board high-level direction with respect to same.

Trustee 1 advised the Investigator that while she does not know why Staff 1 directed her to caution the Student Trustees with respect to keeping their comments issue-based, as Chair

she felt that the Complainant required additional guidance because at the time of this Board meeting she had only filled the position of Student Trustee for one month, and therefore would not have been as familiar with the governance rules or Board procedure compared to the other Trustees. She further noted that the other Student Trustee had been in the position for thirteen months, and therefore would have had the benefit of having experience in the boardroom and with governance rules.

Furthermore, Trustee 1's evidence, contrary to that of the Complainant, is that she contacted the other Student Trustee as well and provided him with the same caution to keep his comments issue-based and offered support, notwithstanding his tenure.

Trustee 1 also stated that because of the sensitive nature of the meeting, she also contacted all of the Member Trustees in advance of this meeting to check-in with them, see if they had any questions and to offer her support. However, Trustee 1's evidence is that she did not think it necessary to and did not remind the Member Trustees that they ought to keep their comments issue-based and not personal, as she stated she had done with the Student Trustees, because in her view they were more experienced with the governance procedures as compared to the Student Trustees.

She also asserts that when contacting all Member Trustees, she asked them to consider relaying their questions in advance either to the Secretary of the Board or to her in order to ensure that staff was best prepared with information and details to answer those questions. She recalls that all Member Trustees got back to her with either questions or general comments about the Safe Schools Panel. Trustee 1 advises that this practice is not governed by any official Board rule, but it is standard practice of goodwill between Trustees and staff that ensures timely and effective communication and avoids staff having to report back at a subsequent meeting.

Trustee 1 maintains that in her capacity as Chair, she frequently offers and receives requests for support from Trustees with respect to articulating questions and motions, and that her interaction with the Complainant in this instance was consistent with her interactions with all Trustees.

Trustee 1 denies that she told the Complainant that the statement she intended to deliver at the Board meeting about her lived experiences would create concern within the public and stir up unrest.

While it was Trustee 1's evidence that all Trustees are prohibited from sharing personal experiences during Board meetings, she noted that during the October 28, 2019 meeting, she did not caution or interrupt two Member Trustees who referenced personal experiences with bullying in the school system. Trustee 1 explained that she did not caution or interrupt these Member Trustees because their references were historic, did not relate to any current Board pupil or staff, and she did not want to interrupt the flow of a highly sensitive discussion.

In addition, Trustee 1 alleged that Section 207(2)(b) of the *Education Act* contains strict privacy rules that prohibit current students from sharing personal experiences during public Board meetings, and therefore Student Trustees can only share personal experiences during in camera discussions.¹¹ Accordingly, Trustee 1 stated that while the two Member Trustees' comments were technically prohibited by the Board's governance rules, they were not in violation of the *Education Act*.

The Investigator's findings and the evidence

On October 25, 2019, Trustee 1 sent an email to a number of people at HWDSB, including all Trustees and Staff 1, advising them that as she anticipated a full press gallery at the upcoming Board meeting, she wanted to review any questions they may have and ensure that they felt supported going into the meeting.

As evidenced by emails and text messages, Trustee 1 spoke with both Student Trustees on or about October 25, 2020 (she also spoke with the Complainant again by telephone on October 28th prior to the meeting), and not just the Complainant. The Investigator finds that Trustee 1 contacted both Student Trustees to discuss their intended comments for the meeting and remind them that those comments should be issue-based and not personal. However, the Investigator finds that only the Complainant was asked to have her questions submitted for review in advance of the meeting and told that she would have to revise the content of what she intended to say about the Safe Schools Panel issue.

The other Student Trustee stated that in his view the purpose of Trustee 1's call was to check-in and make sure he was comfortable before the meeting, and to canvas what he was planning on saying at the meeting in order to ensure his comments were not out of order. As he had not

¹¹ *Education Act*, s 207(2)(b).

prepared any written submissions at the time of their call, he provided Trustee 1 with a rough outline of what he planned to say, including that he would be taking a student representation lens and calling for a full review. In the course of their discussion, Trustee 1 reminded him that his comments ought to be on topic and not out of order. He later sent Trustee 1 a written copy of his intended remarks. He also recalls that Trustee 1 asked him to connect with his mentor before the meeting to talk about how the meeting would go and what to expect. However, he did not in fact get the chance to connect with his mentor beforehand. This Student Trustee also stated that he does not recall Trustee 1 asking him to submit his questions to her in advance of the meeting and stated that he had never been asked or required to do so on any occasions. The Student Trustee stated that to be so required would be against the Board's governance rules because the Chair does not have the power to censor a Trustee or require a Trustee to do anything unless it is the will of the entire Board.

The Investigator further finds that Trustee 1 also spoke with some Member Trustees in advance of this meeting but not all, as she claimed. Four Member Trustees indicated that they had no contact or attempted contact from Trustee 1 leading-up to this Board meeting. Furthermore, five Member Trustees noted that while they were contacted by Trustee 1 about what they intended to say at the meeting, they were not asked to submit questions in advance as Trustee 1 claims she did. Finally, none of the Trustees agreed that it was standard Board practice to submit questions to the Secretary of the Board in advance of meetings, as alleged by Trustee 1.

W9, as with many other Trustees, stated that during the public portions of Board meetings, Trustees are permitted to both ask questions and make suggestions, but the suggestions must be encompassed within comments or statements. Trustee 1 concedes that she advised the Complainant that her ideas on garnering student voice were better suited to be put forward to the Safe Schools Panel than at the meeting. Furthermore, the Investigator finds that other Trustees not only shared personal experiences, but also provided direction and suggestions during the Board meeting. These suggestions, however, were made in a manner consistent with W9's evidence that they must be encompassed within comments or statements. Trustee 1 did not provide this direction to the Complainant but simply directed her to refrain from sharing her suggestions at the Board meeting. The Investigator finds that Trustee 1 failed to advise the Complainant on how she could incorporate her suggestions on garnering student voice into her statement, but rather directed her to reserve her ideas for the Safe Schools Panel. The video recording of the October meeting discloses that the Complainant ultimately suggested that the

Safe Schools Panel acknowledge the importance of student voice, and asked the Secretary of the Board to what extent student voice would be reflected and integrated into the panel's work. The Secretary of the Board answered that the Safe Schools Panel would be consulting with the Student Senate, which Trustee 1 advises occurred at a later date.

With respect to reviewing the Student Trustees comments and questions before a Board meeting, some witnesses stated that unless a Student Trustee asks for support, it is not a standard practice of the Board to review Student Trustee's questions and/or comments ahead of meetings. W5 and W7 stated that besides ensuring that their comments are relevant to the agenda, there are no restrictions around what a Student Trustee can or cannot say during Board meetings. W1 stated that they are not aware of any requirement that Student Trustees must submit their comments or questions to Trustee 1 or otherwise ahead of Board meetings.

However, some Trustees indicated that it had been Trustee 1's practice to also connect with them before Board meeting to discuss upcoming agenda items and to gather their views with respect to same. In response to this practice and the collection of comments and questions in advance of meetings, Trustees had varying views.

For example, W11 acknowledged that the Complainant's complaints about being censored by Trustee 1 and the Board were valid. W11 recalls that on another occasions Trustee 1 did ask to see the comments the Complainant had prepared to deliver at the public Board meeting and vet them. However, W11 states that it was their understanding that this was a common practice that Trustee 1 applied to all Member Trustees and Student Trustees equally. W11 recalled that on another occasion she put forward a motion and Trustee 1 required them to submit their comments to her in advance and they discussed and edited the comments before that meeting.

W12 was not aware that the Board or Trustee 1 has a practice of vetting the comments that Trustees have prepared to deliver at public Board meetings and was never subjected to this. W12 stated that it would be typical for a Student Trustee to make both prepared and off-the-cuff statements at public Board meetings, and that they are encouraged to do so by the Board.

W10 stated that they have never been asked to submit their questions in advance of any Board meeting, and that if Trustee 1 had asked them to do so they would not have complied because there is no rule requiring it and it is not a normal Board practice. Similarly, to W13's knowledge, Trustees are not supposed to receive instructions from Trustee 1 or any other Trustee about the

comments they intend to deliver at Board meetings. Although W13 has never had their comments reviewed by Trustee 1 before a Board meeting, W13 does recall Trustee 1 advising Trustees that she is always available to answer any questions they may have ahead of a Board meeting.

W8 echoed W9's comments, and added that it would be inappropriate to do so because the agenda at Board meetings should flow from Trustees to the HWDSB staff, not the other way around. W1 said that it was not common Board practice for Trustees to submit their questions to the Secretary of the Board in advance of meetings.

W10 felt that Trustee 1 had created a culture at the Board whereby it is common for Trustee 1 to reach out to Trustees before meetings to offer help with forming their questions, and that during Board meetings Trustee 1 has a habit of taking Trustees' questions and either rewording, sanitizing, or even partially answering the question before putting it to the Secretary of the Board. W10 stated that they felt uncomfortable with this practice.

Conversely, some of the Member Trustees stated that Trustees occasionally submit particularly challenging questions to HWDSB staff ahead of meetings, so as not to catch staff unprepared to answer their questions. W4 stated that while this practice is not typical, it is occasionally done where a Trustee feels the Secretary of the Board's answer would be served by having advance notice of a difficult question.

W2's evidence was that while they did not submit any questions to Trustee 1 in advance of this meeting, Trustees occasionally will submit particularly challenging questions to HWDSB staff ahead of meetings, so as not to catch staff unprepared to answer their questions. However, there is no Board policy requiring Trustees to submit questions in advance.

W6 stated that they were not asked by Trustee 1 to submit their questions in advance of this meeting, but it is a best practice for Trustees to submit "hardball" questions ahead of meetings. W6 recalls that Trustee 1 contacted them before this Board meeting to get a sense of what their position would be and to answer any questions they had due to her anticipation that the meeting would be contentious and feature a heavy media presence. W6 added that they understood how Trustee 1's practice of connecting with Trustees before meetings may be perceived by some as "vetting", but that it is merely a good faith attempt on Trustee 1's part to clarify the scope of the

agenda and prevent misinformation going into meetings. However, W6 stated that Trustee 1 did not try to influence the content of their comments during their conversation before the meeting.

Trustee 1's evidence that she was more detailed in her communications with the Student Trustees, and specifically the Complainant because of her short tenure on the Board, is not accepted by the Investigator. The Complainant's general mentor's evidence, which is accepted, was that as she had previously provided guidance to the Complainant in connection with her first Board meeting that she did not feel additional support in that regard was needed or warranted in connection with this particular meeting. It is the mentor's view that by the end of October 2019 the Complainant had sufficient experience to understand the Board's rules and what was expected of her at Board meetings.

The general evidence of all Trustees was that there was a lack of sufficient governance training at the Board level; that they were unaware of any rule not to share personal experiences; and that they often shared personal experiences in Board meetings. Furthermore, that one Member Trustee had been on the Board for the same length of time as the Complainant, and had no prior board experience, but was not given the same level of direction and oversight as the Complainant received from Trustee 1, is not supportive of Trustee 1's reasoning for why she was so detailed in her discussions with the Complainant.

In support of her position that Student Trustees are prohibited from sharing personal experiences during Board meetings, Trustee 1 directed the Investigator to section 207(2)(b) of the *Education Act*. The Investigator notes that at the time of her discussion with the Complainant, Trustee 1 did not directly cite or rely upon this provision in advising the Complainant that her comments at the Board meeting ought not to be personal and that the proper forum in which to share her personal experiences was to the Safe School Panel once it was constituted. Further, contrary to Trustee 1's allegation, Section 207(2)(b) does not in any respect contain privacy rules that prohibit current students, or Board members, from sharing personal experiences during public Board meetings. Section 207 provides for when a Board or committee meeting may or shall be open or closed to the public. Section 207 states as follows:

"Access to Meetings and Records

Open meetings of boards

207 (1) Subject to subsections (2) and (2.1), the meetings of a board and the meetings of a committee of the board, including a committee of the whole board,

shall be open to the public, and no person shall be excluded from a meeting that is open to the public except for improper conduct. R.S.O. 1990, c. E.2, s. 207 (1); 2014, c. 13, Sched. 9, s. 19 (1).

Closing of certain committee meetings

(2) A meeting of a committee of a board, including a committee of the whole board, **may** be closed to the public when the subject-matter under consideration involves,

- (a) the security of the property of the board;
- (b) **the disclosure of intimate, personal or financial information in respect of a member of the board or committee, an employee or prospective employee of the board or a pupil or his or her parent or guardian;** [emphasis added]
- (c) the acquisition or disposal of a school site;
- (d) decisions in respect of negotiations with employees of the board; or
- (e) litigation affecting the board. R.S.O. 1990, c. E.2, s. 207 (2).

Closing of meetings re certain investigations

(2.1) A meeting of a board or of a committee of a board, including a committee of the whole board, shall be closed to the public when the subject-matter under consideration involves an ongoing investigation under the Ombudsman Act respecting the board. 2014, c. 13, Sched. 9, s. 19 (2).

Exclusion of persons

(3) The presiding officer may expel or exclude from any meeting any person who has been guilty of improper conduct at the meeting. R.S.O. 1990, c. E.2, s. 207 (3).

Inspection of books and accounts

(4) Any person may, at all reasonable hours, at the head office of the board inspect the minute book, the audited annual financial report and the current accounts of a board, and, upon the written request of any person and upon the payment to the board at the rate of 25 cents for every 100 words or at such lower rate as the board may fix, the secretary shall furnish copies of them or extracts therefrom certified under the secretary's hand. R.S.O. 1990, c. E.2, s. 207 (4)."

The language in section 207(2)(b) is permissive rather than mandatory. It provides the Board with the option to move a discussion in camera where the subject matter of the discussion is "a member of the board or committee, an employee or prospective employee of the board or a pupil or his or her parent or guardian" and concerns matters of an "intimate, personal or financial"

nature. This interpretation is consistent with that of the Ontario Information and Privacy Commissioner.¹² In the Investigator's view this section does not preclude Trustees from sharing personal experiences during Board meetings *per se* but applies where the Trustee is actually the subject matter of discussion before the Board.

The Investigator found that none of the witnesses were aware of any Board governance rule prohibiting Trustees from sharing personal experiences, or the experiences of their constituents, during the open part of Board meetings. In fact, many witnesses stated that it was a common practice for Trustees to share personal experiences during meetings in order to persuade the Board on a given issue, and that Trustees have the choice to express their own personal view or the broader view of their constituents in Board meetings. According to W1, Trustees tend to keep their comments general as opposed to telling specific stories because their role is to represent all constituents and not just individuals.

W2 stated that the Board has a policy that requires keeping their comments issue-based, but that this policy does not prohibit Trustees from sharing personal experiences as long as they are relevant to the topic being discussed. W6 echoed W2, adding that Trustee 1 does not usually stop Trustees from sharing personal experiences during Board meetings but occasionally interjects to remind Trustees to keep their comments on topic. This was consistent with Trustee 1's conduct, as admitted, in that she did not caution or interrupt two Member Trustees for sharing their personal experiences with bullying during the Safe Schools Panel Board meeting.

Contrary to Trustee 1's evidence, Staff 1 denied directing Trustee 1 to contact the Student Trustees in advance of this Board meeting, and in particular Staff 1 denied advising Trustee 1 to direct the Student Trustees to keep their comments issue-based and not personal. Staff 1's evidence, further, was that she was unaware that Trustee 1 had reached out to the Complainant to inquire about the contents of her intended remarks for the Board meeting.

¹² See *Keewatin-Patricia District School Board, Re*, 2000 CarswellOnt 9929 at para 34 and *Kawartha Pine Ridge District School Board, Re*, 1999 CarswellOnt 7843 at paras 36-37; see also *Toronto Catholic District School Board, Re*, 2010 CarswellOnt 18847 (Ont IPC) at para 29.

The evidence indicates that the lead-up to this meeting was stressful for all involved and in particular for Trustee 1 as Chair of the Board. W4 recalled that the Secretary of the Board and Trustee 1 were nervous about how the Board's response to the student's passing would be perceived by the public and the media, and that accordingly there was a lot of "hand-holding" by Trustee 1 with all the Trustees ahead of the meeting to ensure that their comments and questions would be sensitive to the topic of bullying.

The Investigator finds that Trustee 1 approached the lead-up to this meeting with a degree of extra caution, including, as she admits, ensuring that the Complainant's comments were focused on the issue and were not personal. In light of the foregoing, the Investigator finds on a balance of probabilities that upon hearing that the Complainant's comments included personal experiences, Trustee 1 directed her to remove them. Furthermore, there is no evidence to find that the reason for Trustee 1's directive was because the Complainant was an inexperienced Board member or that Trustee 1 provided the same caution to the other Student Trustee as alleged. Accordingly, the Investigator finds that on a balance of probabilities, given the consistent evidence that Trustee 1 was anxious about the meeting and the public attention it was getting to the point of "handholding" some of the Trustees, that she asked the Complainant not to share her race based experiences, as alleged.

Furthermore, Trustee 1 advised the Investigator that while she offered to the Complainant the services of her general mentor, she did not communicate this to the general mentor, which the latter confirmed. The general mentor advises that the role of Staff 1 is an important resource for Student Trustees if they have any questions, along with that of Staff 4 both of whom are responsible for supervising the Student Trustees. The Investigator was further advised that any dialogue the general mentor had with respect to the Student Trustees was always directed by either Staff 1 or Staff 4. The general mentor advises that Trustee 1 had instructed her to look over the Complainant's speaking notes in preparation for her very first public Board meeting. The general mentor recalls feeling that it was not Trustee 1's role to direct her on how to deal with the Student Trustees and accordingly she raised this issue with Staff 1 and Staff 4.

Conclusion

Even if it were a widely accepted practice that Trustees are not to share personal experiences during Board meetings, which does not appear to be the case, and must keep their comments

issue-based, for the foregoing reasons, the Investigator finds that Trustee 1's application of such a rule was not applied consistently or uniformly across all Trustees. The Investigator finds that Trustee 1's decision to only caution the Complainant in advance of the Board meeting about refraining from sharing her personal experiences resulted in a two-tiered standard, as between the Complainant and all other Trustees, and censorship of the Complainant.

The Investigator finds that on a balance of probabilities, Trustee 1 was not in fact directed by Staff 1 to contact the Student Trustees, as she alleges, but did so independently in order to ascertain, as she did with the other Trustees, what their intended comments were and to direct them with respect to same on points that she found to be problematic. Whether this was an intentional direction or a mere suggestion is not clear. There is insufficient evidence to suggest that it was required in order for the Complainant to participate in the discussion at the Board meeting. However, given the dynamic of the relationship between the Chair of the Board and a Student Trustee, who also is newly minted, together with Trustee 1's singular conduct in requesting that the Complainant refrain from making any comments about her personal experiences about being bullied as a racialized individual; not make a statement on the Safe Schools Panel issue, being that student voices should be garnered and that diversity of students should be reflected in the Safe Schools Panel consultation process; and requesting that the Complainant's questions be reviewed by her general mentor, Trustee 1's behaviour had the foreseeability of doing, and did, cause the Complainant to feel silenced and constrained in what she could and could not say at the meeting.

In light of the foregoing, the Investigator finds that the Complainant was singled out by Trustee 1 in respect of requesting that she provide her questions and comments to Trustee 1 for her review prior to the October 28, 2019 Board meeting. The Investigator finds that on a balance of probabilities the effect of Trustee 1's action in ascertaining in advance what the Complainant's comments would be at the meeting; directing her to change or modify her comments to remove her personal experiences; and asking that she submit her questions to her or the general mentor in advance of the meeting, had the effect of silencing the Complainant.

b. June 8, 2020: Motion to Terminate the HWDSB's Police Liaison Program

The Complaint's allegations

The Complainant alleges that on June 15, 2020, prior to the June 22, 2020 Board Meeting, she attempted to submit to Trustee 1 a motion for the termination of the Police Liaison Program (the

"Program"). The Complainant further alleges that she advised Trustee 1 of the name of the Member Trustee that would be putting the motion forward on her behalf. The Complainant states Trustee 1 subsequently advised her that the motion was not tabled because she did not know which Member Trustee was putting the motion forward on behalf of the Complainant and because the Complainant had submitted it approximately two hours after the deadline for new motions, although the Complainant was not made aware in advance of the precise time proposed motions were due.

The Complainant also alleges that in the past Trustee 1 accepted and tabled a motion that was submitted late. It is further alleged that Trustee 1 raised technical issues with the presentation of the motion and advised the Complainant that she ought to have been more like her counterpart with respect to submissions, which the Complainant understood to mean being less confrontational and outspoken about issues of anti-Black racism concerning the Program. The Complainant also alleges that on a past occasion Trustee 1 told her to be less confrontational in discussing the Program and to respect the Board, as a member, and that more time was needed before deciding to terminate the Program.

The Respondent's response

At the Board meeting of June 8, 2020, Trustees were debating a motion to conduct a review of the Program. An amendment to the main motion was made from the floor to suspend the Program while it was being reviewed; the amendment failed. At some point during the meeting, the Complainant sent Trustee 1 a text message requesting to make an amendment to the motion. Trustee 1 alleges that as she had not been previously notified by the Complainant that she intended to make an amendment, she asked her what the amendment was and then asked the Complainant to read her amendment to the Board. The Complainant's amendment was to, *inter alia*, terminate the Program.

Upon hearing the Complainant's amendment, Trustee 1 advises that she ruled that it was not an amendment but rather a new motion. She then alleges that she subsequently requested governance guidance from Staff 1 and asked if the Complainant's "new" motion could be brought forward in the June 8, 2020 meeting if the main motion failed, or if the Complainant's motion would have to be brought at the next Board meeting. She advised that Staff 1 clarified that the motion would need to be provided to the Board as a written notice of motion at the next board meeting on June 22, 2020. It is Trustee 1's position that during

the June 8th meeting, the Complainant was provided with clear direction on the record by both Staff 1 and herself that a Member Trustee would be required to move the motion. Trustee 1 also indicates that she suggested to the Complainant twice to contact Staff 1 the next day to put together the written notice of motion, which the Complainant indicated she understood.

The Investigator's findings and the evidence

The Board discussed the Program at two consecutive Board meetings that took place on June 8, 2020 and June 22, 2020. W6, as with other witnesses, recalled that issues around the Program were first raised in a February 2020 report by HWDSB staff, but that these issues did not become a priority until June 2020, following national and global protests against police brutality and anti-Black racism, as triggered by the murder of George Floyd in the United States.

While the Complainant was seen as generally being well prepared and having an equity lens to her comments during Board meetings, it was observed by most Board members that she became increasingly vocal on this particular issue during the June 8th and June 22nd meetings.

It is undisputed that written notices of motion are due from Trustees to Trustee 1 the week before the Board meeting the motion is to be tabled. Prior to the Board meeting on June 8, 2020, and well in advance of the deadline for submitting motions, W4 informed Trustee 1 of their intention to submit a motion to review the Program. However, according to Trustee 1, she asked W4 not to bring her motion and rather to wait until the Board had a chance to review the report on the Equity Plan (the "Equity Report") – which included a review of the Program – that was scheduled to be brought by HWDSB staff at the June 22nd meeting.

W2 advised that the following day, W4 expressed to her discomfort at having been told by Trustee 1 not to bring the motion. W2 recalls discussing with Trustee 1 and Staff 1 that Trustee 1 should not have directed W4 either way, and that W4 had the right as a Trustee to bring the motion as it was prepared to be submitted before the deadline for doing so. Trustee 1 conceded and ultimately reversed her decision for this reason and allowed W4 to submit her motion to review the Program on June 3, 2020, even though it was a couple of days after the deadline. Trustee 1 then notified each of the Trustees that the motion would be added to the agenda. The Trustees were not informed of the basis for the late addition, but some had differing

understandings as to why the motion was being added, none of which included being aware that W4 had been wrongly directed by Trustee 1 not to bring the review motion.

On June 8, 2020, prior to the Board meeting, W6 received a text message from an organizer with HWDSB Kids Need Help, asking to arrange a telephone call between them; the two were acquaintances. Although, Trustee 1's evidence is that she only learned about this text message after June 16, 2020, a review of W6's text messages illustrates otherwise. Prior to speaking with this organizer, W6 texted Trustee 1 on June 8th and advised her of the organizer's text message, to which Trustee 1 replied "I would just listen. No comments."

W6 spoke with the organizer that afternoon, who informed them that the Complainant was intending to propose a motion at the June 8th meeting to terminate the Program and that a Member Trustee, whom she named, would be moving it on the Complainant's behalf. However, the organizer was inquiring if W6 would be willing to second the motion. W6 stated they felt it was inappropriate to discuss internal Board matters with the organizer and was surprised that the Complainant had not made the request herself (the Complainant advised as she did not know how to bring the amendment and the organizer offered to speak with W6 about it, as she knew him). Accordingly, W6 kept the call brief before ending it. W6 then texted Trustee 1 afterwards to notify her about this call, including advising her of which Member Trustee would be supporting the Complainant's motion to terminate the Program.

W6 later informed Trustee 1 by text that they had spoken to the Member Trustee who was to support the Complainant's termination motion and was advised that it was not happening. W6 then stated that if anything it might be a friendly amendment to W4's motion, but that they would "deal with it then and no action was required". Trustee 1 texted W6 in reply "I'm guessing they are going to ask that the program be paused while it's under review – are you supporting that?"

Shortly thereafter, the Complainant texted W6, asking to speak with them. Unable to have a call at the moment, the two exchanged text messages instead. W6 confirmed for the Complainant that they intended to second W4's motion to review the Program and that she, the Complainant, could then move to amend the motion to terminate the Program and it would be up to W4 to accept or reject the friendly amendment.

At some point between when W4 submitted their review motion and the commencement of the Board meeting on June 8th, it was decided amongst a number of Trustees that not only did the

Program need be reviewed, as called for by W4's motion, but that in the interim the Program should be suspended or terminated. Within the cohort of Trustees, including W4, who wanted to amend the motion, there was divided support for either a proposal to suspend or terminate.

W9 stated that while normally it is good governance to give the other Trustees notice of when one is planning to make an amendment to a motion on the agenda, it is not required. The other Student Trustee advised the Investigator that they brought a friendly amendment from the floor at that meeting to suspend the Program and had not previously advised any Trustee of their intention to do so, and that it just naturally arose from the dialogue of the discussion around W4's motion. There was no objection to the Student Trustee proceeding in this manner and they were not called out of order by Trustee 1 or anyone else for tabling an amendment without prior notice.

During the meeting, as a result of a clear lack of understanding of the governance rules with respect to motions brought forward by Student Trustees, Staff 1 advised the Board that Student Trustees require a Member Trustee to both move a motion on their behalf from the floor and second the motion. As the meeting was occurring by teleconference rather than in person, in order to get the motion on the floor Trustee 1 randomly selected two Trustees to move and second the other Student Trustee's amendment to W4's main motion to suspend the Program pending the review. Trustee 1 indicated to the Trustees on at least two occasions that as a result of the meeting being held virtually, her randomly selecting a Trustee as a "mover" and "seconder" did not mean they supported the motion but was simply being done for the purpose of getting the motion on the floor. Further confusion occurred regarding the manner in which the amendment was to be dealt with either before or after discussion and a vote on the main motion, and Staff 1 was called upon again for guidance. Ultimately, the amendment failed and the main motion to review the Program was passed by the Board.

At some point during the Board's discussion of the amendment, Trustee 1 and Staff 1 each received a text message from the Complainant requesting to make an amendment to the main motion.

Trustee 1 and Staff 1 were asked to produce all of their text messages with respect to the June Board meetings and the issue of the vote on the Program. Trustee 1 produced one brief text conversation between herself and the Complainant on June 8, 2020 and one

conversation between herself and Staff 1 on June 15, 2020, starting at 8:52 pm and ending at 9:12 pm. Staff 1, conversely, produced nearly daily text exchanges between herself and Trustee 1 between June 8 and June 24, 2020 and between herself and the Complainant on June 8th. Specifically, Staff 1's text message history with Trustee 1 on June 15th runs from 9:24 am to 9:16 pm. The Complainant's phone was issued by the Board and returned to the Board; as such she has no access to her text message history.

In reviewing the text messages between Staff 1, Trustee 1 and the Complainant, and the audio recording of the meeting, the Investigator finds as follows: on June 8, 2020 at 7:57 pm the Complainant texted Staff 1 and advised her that when she was called upon to give her thoughts with respect to the main motion, she was going to suggest an amendment to W4's motion (this was in addition to the other Student Trustee's proposed amendment, which was already on the floor, to suspend the Program while it was under review). The Complainant further advised Staff 1 of the names of three Member Trustees who indicated that they would support her amendment. While Staff 1's evidence is that she advised the Complainant that she would notify Trustee 1 of the proposed amendment, there is no indication of this in any of the text message exchanges produced to the Investigator and the Complainant has no recollection of being so advised. Based on the available text messages, Staff 1 did not respond before it was the Complainant's turn to speak. However when called upon to speak with respect to W4's motion and the proposed amendment on the floor, the Complainant did in fact indicate that she wanted to go even further and see the Program terminated all together. However, the Complainant's comments were not addressed by either Trustee 1 or Staff 1 and discussion simply proceeded to the next Trustee in line around the horseshoe.

At 9:31 pm, the Complainant texted Trustee 1: "Hi Trustee 1, Am I still able to bring forward my amendment?" Trustee 1 has not produced any of the communications that occurred before this text message, if any, but given the Complainant's text it's the Investigator's finding that there was some prior communication between the Complainant and Trustee 1 about a possible amendment either over text message, through Staff 1, by way of the Complainant's comments on the floor, or otherwise. Trustee 1 responded "Sorry what was it?", to which the Complainant responded "it was for the termination of the program – not suspension". Trustee 1 then replied "Who is this? The Complainant?" to which the Complainant said "yes haha". No subsequent texts were produced by Trustee 1 to the Investigator.

Trustee 1 indicated during her interview that she had not been previously notified by the Complainant of her intention to make an amendment, and therefore that is why she texted the Complainant and asked her what the amendment was about.

The Complainant at that time indicated to the Board that her amendment was to terminate the Program all together, to which a Member Trustee indicated that they would support the motion. In response, Staff 1 asked the Complainant to first read her amendment out loud before a mover was selected.

The Complainant's amendment was lengthy and comprehensive, and contained five proposals:

1. To fully terminate the Program;
2. To refrain from involving police in student-related school-based incidents requiring disciplinary action;
3. To compile, investigate and publicly release documentation of past, present, and future student-related interactions with the Hamilton Police Services ("HPS") through adoption of intersectional data collection, including race, gender, disability and other marginalized identities;
4. To implement a student-centred, community-based alternative to disciplinary action, with a focus on independent community partnerships and highly racialized intersectional schools; and
5. To further expand the HWDSB's principles of restorative justice and put in place practices and policies to allow for the creation of an independent review and complaint body that examines and holds the Board accountable to the new processes created.

Trustee 1 denied the amendment. Staff 1 advised the Investigator that the decision to deny the Complainant's amendment was solely made by Trustee 1 and specifically that Trustee 1 did not seek her advice or opinion regarding the matter.

Staff 1 advised that it was her understanding of Trustee 1's reasoning that an amendment is usually just a short tweak to a motion, whereas the Complainant's amendment to cancel the Program entirely was a new issue and therefore was not an amendment but a new motion. Trustee 1's evidence was that it was her decision to deny the motion once she heard it, as she felt it was a new motion.

However, during or immediately after the Complainant read out her proposed amendment and before Trustee 1's denied same, at 9:37 pm Staff 1 texted Trustee 1 and said "That's not an amendment", to which Trustee 1 immediately replied "Why?" Staff 1 then texted: "Whole other motion. How does it go with the review" and Trustee 1 replied at 9:38 pm "OK". Staff 1 also texted the Complainant at 9:38 pm for the first time in response

to her text message sent at 7:58 pm; Staff 1's text message read: "Please send that entire motion to me please", to which the Complainant said: "Will email it over". The Complainant advises that she emailed the motion to Staff 1 on June 15th after she spent time making revisions.

Upon hearing the Complainant's motion, and after consulting with Staff 1 via text message, Trustee 1 advised the Complainant that her amendment was in fact a new motion and not an amendment to the main motion; the Complainant indicated her agreement.

Trustee 1 then inquired of Staff 1, in the meeting, if the Complainant's motion could then be brought as a new motion after the matter on the table was dealt with or if it would have to be brought back as a written notice of motion; Staff 1 advised that it needed to be a written notice of motion, and Trustee 1 adopted that position.

The Investigator notes that a review of the text messages between Trustee 1 and Staff 1 illustrates that it was not uncommon for the two to utilize each other in order to achieve certain objectives, and specifically, Trustee 1 advises Staff 1 that she needed Staff 1 to explain certain procedural steps to the Board in order to support Trustee 1's decisions.

W5 and W6, among others, advised that there are two ways in which a Trustee may make a motion; either from the floor during a meeting so long as the topic of the motion relates to the agenda or they may submit a written notice of motion to Trustee 1 in advance of the meeting. W6 felt that the Complainant and the Trustee Member moving the main motion to review lacked experience in bringing a motion (as it was their first time) and did not know they could do so from the floor. W5 indicated that they felt Trustee 1 might have indicated that a written notice of motion was required because there appeared to be no Member Trustee in support of the Complainant's motion.

The Investigator finds that Trustee 1, based upon Staff 1's direction, erroneously advised the Complainant that she had to bring her motion by way of written notice of motion instead of being able to do so from the floor on June 8th. Before deciding that the motion ought to be brought back in writing, Trustee 1 did not provide an opportunity for any Member Trustee to indicate an intention to be a mover, she did not request a mover, nor did she voluntarily

ascribe a mover and a seconder, as she indicated would be her practice earlier in the evening when she did so in order to get the other Student Trustee's amendment to the floor.

Various witnesses indicated that they understood, as did Trustee 1 and Staff 1, that the Complainant had the support of at least one Member Trustee to move her motion forward. That Member Trustee advised the Investigator that they were in fact in support of the Complainant's motion and had vocalized same at the Board meeting prior to the Complainant reading her motion out loud and prior to Trustee 1's decision.

The Investigator notes that one of the reasons for which Trustee 1 initially dissuaded W4 from bringing her motion to review the Program was because she wanted to wait until the Board's staff had brought back their report on the Program at the June 22nd meeting before taking any action. It therefore seems reasonable that in the face of a motion to terminate the Program altogether, absent the benefit of the staff's report, Trustee 1 was hesitant to allow the Complainant's desire to terminate the Program to go forward for a vote, whether as an amendment or as a motion.

Staff 1 then advised the Complainant through Trustee 1 that she would need to work with a Member Trustee, as a mover, but that the Complainant could submit the written notice of motion at the next Board meeting on June 22, 2020. Trustee 1 confirmed all of this and indicated to the Complainant that she should work with Staff 1 to get her motion together, that she would need a mover and that it sounded like she had one. No further directions were provided to the Complainant at this Board meeting regarding how to bring her motion.

Trustee 1 stated that she called the Complainant the next day and asked if she had connected with Staff 1 and found a Member Trustee to support her motion. According to Trustee 1, the Complainant replied that she had not yet reached out to Staff 1, but that she had secured the support of a Member Trustee, but did not provide a name. Trustee 1 stated that she suggested to the Complainant that it sounded as if a certain Member Trustee, whom she named, would be willing to move the motion on the Complainant's behalf, and the Complainant agreed but did not indicate whether she was in fact working with that Member Trustee at that point.

The Complainant advises that she spoke to Trustee 1 at length after the June 8th meeting and before she submitted her notice of motion. The Complainant stated that they discussed that she, the Complainant, was hearing from a lot of community members and students about the harm

that the Program had caused, and that she wanted to bring forward a motion to terminate the Program based on this feedback. The Complainant recalls outlining to Trustee 1 the ways in which the Program was harmful to racialized students and why it needed to be terminated immediately.

In response, the Complainant recalls Trustee 1 saying that she was fine with the Complainant bringing such a motion, but that regardless of the fact that the Program had harmed racialized youth, the Board needed to take more time to listen to all community members and think about effective alternatives to the Program that could accommodate all interests. The Complainant also recalls Trustee 1 pointing out that some communities within the HWDSB actually wanted more police presence in schools and that police officers had done a lot for students. She recalls Trustee 1 saying that she thought there were ways in which the Board could terminate the Program that would not make the issue just about racialized students.

The Complainant recalls telling Trustee 1 during this conversation about the fact that the Member Trustee who supported her motion at the June 8th meeting had agreed to put the motion forward on her behalf, and that another named Member Trustee had agreed to second the motion. The Complainant states that Trustee 1 did not offer any guidance on how she should go about submitting her motion during this conversation, nor was she ever informed that there was a deadline of 4 pm for submitting written notices of motion or directed to any information regarding the deadline.

W4 recalled checking in with the Complainant by text several times after the June 8th meeting to offer help in drafting the motion, and that the Complainant replied that she was still working on the motion and would let W4 know if she needed any help. W10 also recalled reaching out to the Complainant after the June 8th meeting to offer their support. W4 stated that they did not see the Complainant's written notice of motion until after it was submitted by the Complainant

The Investigator finds that on a balance of probabilities that the Complainant advised or confirmed for Trustee 1 after the June 8th meeting the name of the Member Trustee who would be supporting her motion to terminate the Program.

At the June 8th meeting, there was vocal support from a Member Trustee for the Complainant's motion, which the Complainant knew about (as did Trustee 1), and the Investigator heard from other Member Trustees that they too were in support of the Complainant's motion. Therefore, it

is unlikely that a reasonable person, when asked who would be supporting the motion, as Trustee 1 states she did, would fail to provide that information knowing that a Member Trustee was required.

Alternatively, if the Complainant was not asked by Trustee 1 who would be supporting her motion, the Investigator finds that the inquiry was not made intentionally either because Trustee 1 already knew the Complainant had the support of the Member Trustee, who indicated as much at the June 8th meeting, or she did not wish to assist or mentor the Complainant in how to properly bring her motion.

With respect to Trustee 1's direction that the Complainant work with Staff 1 the next day to prepare her notice of motion, the Investigator finds that on a balance of probabilities this was a directive and not a suggestion, as Staff 1 asserted in her interview. The Investigator finds as such on the basis of the power imbalance between the Complainant and Trustee 1, and because of the degree of emphasis upon which Trustee 1 placed in the days following the June 8th meeting to either inquire of the Complainant, or encourage her, to be in touch with Staff 1, as well as to work directly with a Member Trustee to prepare her motion.

The Complainant submitted her written notice of motion to Staff 1 by email at 5:52 pm on June 15th. Staff 1 recalled that after reading through the motion she noted that it was being submitted by the Complainant but she could not ascertain which Member Trustee would be moving the motion on the Complainant's behalf.

Staff 1 further alleges that she called Trustee 1 to inform her of same and inquire if Trustee 1 was aware of which Member Trustee was planning on supporting the Complainant's motion so that they could adjust her motion to reflect this information, and Trustee 1 replied that she did not know. Staff 1 also stated that Trustee 1 asked her whether the Complainant's written notice of motion had been submitted late, which Staff 1 confirmed.

Staff 1 does not recall giving their opinion to Trustee 1 as to whether the Complainant's motion should be accepted, nor recommending to Trustee 1 that the Complainant's motion should not be accepted because it was submitted late.

Trustee 1's evidence differs slightly. Trustee 1 alleges that on June 15, 2020, she was notified by Staff 1 over text message that she received a written notice of motion from the Complainant at 5:52 pm and that it did not include a reference to which Member Trustee would be acting as mover. Further, Trustee 1 states that Staff 1 highlighted the rule in the Board's by-laws that requires a notice of motion to be received by 4 pm on the date one week prior to the Board meeting the matter is to be tabled at. Further, Trustee 1 asserts that she texted Staff 1 back and advised her that she was not as bothered by the notice of motion being late but that the Complainant did not work with a certain named Member Trustee, and that had she done so she would have been aware of the rules. In Trustee 1's view, this exchange confirms that she had not been informed as to whether the Complainant had a Member Trustee to sponsor her motion.

Trustee 1 and Staff 1 then conferred with Vice Chair of the Board (the "Vice Chair") regarding the Complainant's notice of motion and whether or not it should be accepted. The Vice Chair had not seen the motion and was advised by Trustee 1 and Staff 1 that the motion was submitted late and the Complainant did not have a Member Trustee to sponsor the motion. Also, the Vice-Chair was advised by Trustee 1 and Staff 1 that the Complainant had been provided with ample direction by Staff 1 and Trustee 1, who stated that in addition to the information provided to the Complainant at the June 8th meeting, Trustee 1 also reviewed the procedural requirements with the Complainant afterwards. The Vice Chair also stated that she knew that the Complainant had not contacted the Member Trustee who at the June 8th meeting indicated their support of the Complainant's motion (the Vice Chair's evidence on this point is inconsistent with that of the Member Trustee). In addition, the Vice Chair stated (based on her knowledge of the motion from the June 8th meeting) that there was already a substantially similar motion to terminate the Program on the agenda for the June 22nd meeting through the recommendation of the HREA Committee. The Vice Chair stated for the foregoing reasons, it was her opinion that the Complainant's motion should not be accepted. The Vice Chair further stated that Trustee 1 and Staff 1 ultimately decided not to allow the Complainant's motion for largely the same reasons.

Trustee 1 stated that on June 16th she also spoke about the Complainant's motion with the Secretary of the Board, who informed her that the motion was in contradiction to the *Education Act* as it called

for the termination of a protocol that was mandated by the Ministry of Education.¹³ The Secretary of the Board confirmed this, recalling that at some point between the June 8th and June 22nd meetings he stated to Trustee 1 that a motion to sever all ties with the Hamilton Police Services ("HPS") would not be possible because of the Safe Schools legislation, which required the Board to partner with the HPS.

On June 16, 2020, Trustee 1 states that she called the Complainant and stated that after consulting with the Secretary of the Board, Staff 1 and the Vice Chair, she decided to not allow the written notice of motion to proceed to Board due to three concerns: 1) The motion was in violation of the *Education Act*, as set out above; 2) The motion did not have a mover; and 3) The motion was not submitted within the timelines. During the phone call, Trustee 1 highlighted that time was not her top concern out of the three. Finally, Trustee 1 stated that the issue of termination of the Program would still be debated during the June 22, 2020 Board meeting, as the HREA Committee was bringing forward a similar motion.

Section 55(4) of the *Education Act* states that a Student Trustee is not entitled to move a motion.¹⁴ However, there is no specific rule requiring the Student Trustee to list in their notice of motion the name of the Member Trustee moving their motion. Despite Trustee 1's assertion that the Complainant was made aware of the need to have a Member Trustee move her motion at the June 8th meeting and during her training at the start of her term, the Investigator finds that clear direction was not in fact provided to the Complainant at any time prior to the June 8, 2020 Board Meeting, that the moving Member Trustee's name had to be specified in the notice of motion and as stated, is not a legal requirement. Furthermore, the Investigator finds that both Staff 1 and Trustee 1 knew, or had sufficient information from which to ascertain, which Member Trustee did or would have moved the Complainant's motion.

Furthermore, the Trustee Handbook provides the following direction for submitting notices of motion: "To submit a matter for consideration, a written notice of motion must be received by the Secretary of the Board before 4 p.m. on the same day of the week one week prior to the meeting, for example notices of motion for a Monday meeting must be received by 4 p.m. on the previous

¹³ Ministry of Education and Ministry of Community Safety and Correctional Services, "Provincial Model for a Local Police/School Board Protocol: 2015".

¹⁴ *Education Act* s. 55(4)

Monday."¹⁵ However, at no point during the June 8th Board meeting was the Complainant advised of a specific time by which her motion had to be submitted. As well, Trustee 1 has offered no evidence to support that she communicated details regarding the 4 pm deadline to the Complainant at any time. As well, the Complainant had never brought a motion before. In any event, by Trustee 1's own admission she was not concerned with the late filing of the motion but the fact that she was supposedly unaware of, *inter alia*, who the Member Trustee would be sponsoring the motion.

The Investigator does not accept that Trustee 1's text exchange with Staff 1 on June 15th evidences that she was unaware of which Member Trustee would be sponsoring the motion. To the contrary, in the text exchange, Trustee 1 specifically names the Member Trustee who she believed the Complainant would have worked with to put her motion together. Furthermore, that Member Trustee, along with Trustee 1 and Staff 1, and others, advised that they, the Member Trustee, were quite vocal at the June 8th meeting that they would support the Complainant's motion; Trustee 1 reaffirmed this to the Complainant on their call on or about June 9, 2020.

Further, at 5:38 pm Trustee 1 texted Staff 1 inquiring if they had heard from the Complainant; to which Staff 1 replied "Nope. You're not chasing them are you?" Trustee 1 replied: "God no. I just wanted to know if we are good :). The deadline was today at 4pm correct?" Staff 1 responded "yes" and Trustee 1 texted "Then they're done."

Staff 1 explained to the Investigator that the term "them" was in reference to the sponsoring Member Trustee and the Complainant because Trustee 1 and her both believed the two were working together on the motion, and stated that Trustee 1 knew who "them" referred to because she did not ask for clarification but instead responded, "God No".

Accordingly, I find on a balance of probabilities that Trustee 1 knew before she decided to deny the Complainant's motion that the Complainant had a sponsor for her written notice of motion.

Staff 1 also texted Trustee 1 "I get you're between a rock and a hard place". Staff 1 advised the Investigator that her comment was in reference to the fact that

¹⁵ Trustee Handbook at p 25.

Trustee 1 had previously shared with her that a Member Trustee had contacted her to express her displeasure that Trustee 1 was shutting down the Student Trustee voice. As such, Staff 1 meant that Trustee 1 was in a difficult position with respect to her decision on whether to accept the Complainant's motion despite its procedural defects in light of the Member Trustee's allegation.

The Member Trustee who intended to move the motion advised the Investigator that Trustee 1 never advised her that the proper procedure was for the written notice of motion to have been submitted by the Member Trustee from their email account, rather than by the Complainant. This Trustee stated that nonetheless, they were advised by Trustee 1 subsequently that this was the reason the Complainant's motion was contrary to the rules and not accepted.

On a balance of probabilities the Investigator accepts the Member Trustee's evidence that Trustee 1 advised them that the notice of motion ought to have been submitted by them directly. This is consistent with Staff 1's text message to Trustee 1 sent at 9:09 pm June 15th advising her of same. However, the Investigator notes that there was no evidence or resource provided in support of Trustee 1's and Staff 1's position that the notice of motion had to come directly from the Member Trustee and even if such exists, this is inconsistent with the direction provided to the Complainant at the June 8th meeting, which was that she could submit the notice of motion directly.

In Staff 1's opinion, at the time the Complainant submitted her notice of motion, there was ample time to contact the Member Trustee the Complainant had been working with or to email all of the Trustees to see if anyone would be willing to support the motion. She is not aware of Trustee 1 doing so and she did not take any steps to do so either. Despite Staff 1's text message exchange with Trustee 1 on June 15th, Staff 1 states that at the time she was under the impression that a specific Member Trustee was planning to support the motion, but does not recall communicating this impression to Trustee 1 or suggesting that Trustee 1 contact that Member Trustee to confirm.

Trustee 1 stated that the Complainant called her back shortly after she advised her that the motion would not be accepted and requested that she be permitted to amend her written notice of motion to address the concerns about violating the *Education Act* and to reflect the Member Trustee's willingness to sponsor the motion. Trustee 1 rejected the Complainant's request, and

stated that she told the Complainant that she was less inclined to be flexible around the Board's rules because a substantially similar motion to terminate the Program had been recommended by the HREA Committee and was already on the agenda for the June 22nd meeting.

While the Investigator favours the evidence of Trustee 1 to that of Staff 1 with respect to their initial discussion upon receipt of the Complainant's motion, as to the import of the motion being received late, Trustee 1 failed to take steps to help ensure that the Complainant was aware of the procedural deadline and then failed to reasonably exercise her discretion to accept the motion to be consistent with her claim that timing of the motion being submitted was not a major concern for her in deciding to deny the motion.

Based upon the text messages exchanged between Staff 1 and Trustee 1, the Investigator finds that Trustee 1 acted in a manner that was less than helpful and forthcoming in her communications with the Complainant. Trustee 1's conduct in this instance was contrary to her stated position on other occasions that in her capacity as Chair, she viewed herself as a mentor to the Complainant and as a resource to all Trustees, especially as it related to issues of governance. Trustee 1 acted not as a resource to the Complainant but through acts of omission, tried to censor and silence the Complainant's voice in an effort to advance Trustee 1's own agenda at that time; being to review but not terminate the Program, or alternatively to have the termination instigated by the HREA Committee and not the Complainant.

The exchange between Trustee 1 and Staff 1, prior to the Complainant submitting her written notice of motion, provides additional context. On June 15th at 9:25 am Staff 1 texted Trustee 1 to inquire if she knew who was bringing forward the notice of motion to reconsider the prior week's vote; in response Trustee 1 advised her of the Member Trustee's name that would be doing so.

All of the Trustees advised that the public engagement between the June 8th and June 22nd meeting was rapidly swelling and some felt an increased pressure to end the Program. The change in perspective with respect to the Program on June 22, 2020 was likely driven by the increasing public attention and outcry to terminate the Program. As well, according to W6, they believe that the Complainant's amendment to the motion on June 8, 2020 was initially pushed over because it caught some Trustees off guard and there was a lack of general knowledge about the impacts of the Program, which was bolstered by white privilege. W6 stated that after the

June 8th meeting, both trustees and staff did more research around police brutality and the impact of the Program on racialized students, which led to a change in position by the June 22, 2020 Board Meeting. In order to table a new motion on the same subject matter, shortly after a vote had already occurred, W4 advises that the involvement of the HREA Committee was required in order to bring forward a motion to terminate the Program. By June 15, 2020, a recommendation had been made by the HREA Committee that a motion to terminate the Program be brought forward by the Board.

During that same text message exchange, Trustee 1 indicated that she wanted the agenda for the meeting to go out that same day, June 15th, or the following morning by 9 am, as she had heard that "there's going to be a local statement tmw calling for police out of schools across, reduction in police funding and that big local names signed to this letter." Staff 1, however, was unable to send the package for another couple of days due to outstanding reports.

Trustee 1 also maintains that at the time she decided to not accept the Complainant's notice of motion that she did not know the Complainant was affiliated with HWDSB Kids; the Investigator does not accept this to be true. In addition to the fact that W6 notified Trustee 1 on June 8, 2020 of the fact that HWDSB Kids and the Complainant were working together, and specifically that HWDSB Kids were inquiring if W6 would support the Complainant's motion to terminate the Program, on June 15, 2020, Staff 1 texted Trustee 1 that in her opinion the "entire motion doesn't read like she wrote it...I suspect it's coming from HCCI or folks who have close ties to the organization along with hwdsb kids need help." Trustee 1 replied "OK".

Staff 1 texted Trustee 1 at 11:07 am on June 15, 2020 and pointed out that even if she received a notice of motion from the Complainant it would have been received after the Member Trustee's notice of motion per the HREA Committee recommendation. Trustee 1 did not respond directly, but it is clear there was some importance, at least on the part of Staff 1, on ensuring that either the Complainant's motion was not received and if received, in noting that it would be secondary to a similar motion tabled by the Board itself, rather than the Complainant, to terminate the Program.

W6 stated that it was a "logistical nightmare" to get the HREA Committee's motion on the table and that Trustee 1, the Vice Chair and W1 worked tirelessly behind the scenes to get this motion on the table. Accordingly, W6 understands how some Trustees may have felt left out of the loop,

misinformed or alienated going into this meeting. The Vice Chair indicated that in light of the HREA Committee's motion, accepting the Complainant's motion would have unnecessarily complicated things. The Secretary of the Board stated that even if another Trustee had not brought a motion to terminate the Program, the issue still would have been raised independently by HWDSB staff at the June 22nd meeting.

However, W4 stated that the motion instigated by the HREA Committee was not substantially similar to the Complainant's written notice of motion. Whereas the former motion simply called for a full termination of the Program effective immediately, the Complainant's written notice of motion was over four pages in length, contained many whereas statements, referenced other provincial and international examples of school boards terminating similar police liaison programs, and called for an intersectional, anti-racist and anti-oppression framework to be applied to the Board's analysis of the Program as well as termination.

Although Trustee 1 was not as concerned about the notice of motion being late, she cited it as a reason for denying the Complainant's motion. Further, Trustee 1's evidence was that her decision was not unique to the Complainant but consistent with her past practice where she denied a Vice Chair's motion because it was submitted late. The Vice Chair confirmed this and in doing so cited it as a basis for adherence to the deadlines for submissions. As discussed above, Trustee 1 distinguished the Complainant's situation from that of W4, whose motion was submitted late for the June 8th meeting, on the basis that she initially wrongly dissuaded W4 from bringing her motion.

The Secretary of the Board's evidence was that while he was not aware of any specific incidents where a notice of motion was accepted late, he believes there is some flexibility. Staff 1 stated that in the past there had been flexibility around the deadline for submitting written notices of motion, allowing them to be included in the package for upcoming Board meetings. However, Staff 1 states that there is no flexibility around including a Student Trustee's motions in the package without the required Member Trustee support, and that such a motion has never been included in the package in the past based on her experience.

The Investigator accepts and agrees with Staff 1's position that: the deadline for submissions had some flexibility, especially where the agenda and package had not gone out and in this case it was Staff 1's evidence that it would not go out until around June 17th;

that there was sufficient time in which to ascertain if the Complainant in fact had a Member Trustee that would move her motion or to canvas the other Trustees regarding same; and that Trustee 1 never indicated that she would take any of those steps. Trustee 1's failure to attempt to remediate the issue of the alleged lack of a Member Trustee as a mover and permit the Complainant to amend her motion with respect to the alleged violations of the *Education Act*, was, in the Investigator's view, largely driven by a desire to see the motion fail, as evidenced by her text messages to Staff 1 expressing relief that the Complainant had not delivered her notice of motion in time.

There is considerable dispute as to whether Trustee 1 acted fairly in deciding not to accept the Complainant's written notice of motion. Trustee 1 stated she believes she fulfilled her duties as Chair to safeguard the integrity of the Board's processes in deciding not to accept the motion. She stated that the Complainant was given clear direction on the Board's procedures for bringing a written notice of motion, was given governance training on the timelines and proper format for submitting a written notice of motion, and had ample time and opportunity to find a Trustee to sponsor her motion. Trustee 1 provided an email dated May 22, 2020 in which she denied another Trustee's written notice of motion because it was late and not properly formatted as an example of how she has applied the Board's procedural rules consistently to all Member Trustees and Student Trustees.

In contrast, two Trustees stated they felt that Trustee 1 has applied the Board's procedural rules inconsistently. W10 stated that Trustee 1 tends to use procedural barriers to justify denying motions that she feels uncomfortable with, but that she is quick to forgive procedural defects in allowing "Board-friendly" motions or motions that she personally wants brought. W4 echoed this sentiment, and expressed concern that Trustee 1 chose to apply the Board's procedural rules rigidly in denying the Complainant's motion because it concerned a contentious subject, and speculated it may have been easier for Trustee 1 to cite procedural issues to justify her decision rather than spending the time to seriously entertain the motion.

Upon learning that Trustee 1 had declined the Complainant's motion, the Member Trustee who intended to sponsor the Complainant's motion called her and expressed her concern that despite Trustee 1 knowing they intended to sponsor the motion, she rigidly applied procedural rules to prevent the Complainant from bringing a substantive motion.

W9 recalled that prior to the June 22nd meeting, the Complainant told them that Trustee 1 had suggested to her that she abandon her motion because it would have repeated business that the Board had already discussed. W9 stated that they told the Complainant that she had the right to suggest a motion if it was sponsored by a Member Trustee, and that Trustee 1 could not prevent her from doing so. W10 stated that Trustee 1 will often tell Trustees that they will have to wait until the next meeting to bring their motion due to procedural issues, and then use the time before the next meeting to try to talk the Trustee out of bringing the motion at all. W10 felt that the Complainant faced this tactic when she tried to bring her written notice of motion.

Conclusion

In light of the foregoing, the Investigator finds that Trustee 1 knew or ought to have known that the Complainant had the required Member Trustee support to bring her motion, and that Trustee 1 acted deliberately and arbitrarily in denying the Complainant's written notice of motion, and in a manner that was inconsistent with past Board practices, which allowed for late submissions.

The Investigator finds that there was ample time in which any procedural deficiencies with the Complainant's motion could have been remedied, as the agenda and package for the June 22nd meeting was delayed in going out by nearly two days, which Trustee 1 was aware of prior to her decision to deny the adding the Complainant's motion.

The Investigator finds that the Complainant at first instance was not provided with clear direction on how to bring her motion and Trustee 1 made no efforts to ensure that there was a clear understanding of the governance rules, which was inconsistent with her past practices at that time.

The Investigator finds that given Trustee 1's conduct, her desired intention was to see the Complainant's motion not proceed and to achieve that end she misrepresented and inconsistently applied the Board's governance rules. First, on June 8th by denying the Complainant's right to bring a motion from the floor, as supported by a Trustee mover; second, by subsequently providing the Complainant with incomplete information on how to move the motion forward in writing; third, by directing the Complainant that she had to work on her written notice of motion directly with Staff 1 and a Member Trustee and had to name the Member Trustee in the motion despite knowing that Student Trustees are not required to do so and merely require

the support of a Member Trustee in order to submit a motion; fourth, by failing herself, or through Staff 1, to confirm with the Member Trustee, if they in fact had any doubt, that the Member Trustee was the supporter for the Complainant's motion; and finally, by rigidly applying the Board's procedural rules to defeat the Complainant's notice of motion despite the Board and Trustee 1 having a past history of flexibility in these matters.

It is not accepted as reasonable or a matter of good governance that the existence of another motion to terminate the Program on the agenda for June 22nd was a proper basis on which to deny the Complainant, in her capacity as a Trustee, her right to have her motion heard. It is the finding of the Investigator that Trustee 1's conduct regarding the Complainant, specifically her efforts to censor the Complainant, both in terms of her comments at key Board meetings and preventing the Complainant's amendment and subsequent motion from being heard, is consistent with past conduct relayed to the Investigator by several witnesses. In short, the evidence suggests that Trustee 1 has utilized her position as Chair to attempt to and/or prevent matters that are inconsistent with her own agenda from being tabled and/or discussed at Board meetings.

c. Media Interview Request by the Hamilton Spectator

The Complainant's allegations

The Complainant stated that Trustee 1 told her in relation to an interview request made to the Complainant directly by the Hamilton Spectator regarding the Safe Schools Panel that the Complainant should remember that she sits on the Board and then gave her a paragraph as to what she should say, which was something she did not do with the Complainant's fellow Student Trustee.

The Respondent's position

Trustee 1 stated that she reminded the Complainant that she sits on the Board because the Board's governance by-laws stipulate that the Board speaks as a single corporate identity and only speaks to the decisions made collectively by the Board.¹⁶

Trustee 1 explained that as Chair, she has departed from the Board's past practice of having Trustee 1 act as the exclusive spokesperson for the Board, which is the practice across most school

¹⁶ Trustee Handbook at pp 32-33.

boards in Ontario. Instead, Trustee 1 stated that she has provided opportunities to Trustees to respond to interviews in order to build capacity around the Board table and to enable the public to become more familiar with their school officials through the media.

Trustee 1 denied that she treated the other Student Trustee differently with respect to interview requests from media. Trustee 1 stated that her intention was to offer the Complainant brainstorming ideas for the interview, but that in re-reading her email she understands that her tone came off as direction rather than suggestion.

The Investigator's findings and the evidence

W2 confirmed that the *Education Act* provides that Trustee 1 is the designated spokesperson for the Board.¹⁷ W2 further asserted that in many other school boards trustees are not allowed to speak to the media on behalf of their board. Accordingly, W2 stated that Trustee 1 provides Trustees with speaking points in recognition of the fact that Trustees are supposed to express the Board's collective opinion, and not their personal views, in media interviews. The Investigator makes no finding with respect to whether or not Trustee 1 provided speaking points to all Trustees with respect to media interviews.

However, with respect to the Complainant's specific allegation that Trustee 1 did not direct the other Student Trustee in the same manner with respect to conducting media interviews, the Investigator finds that the available evidence does not support the allegation.

The other Student Trustee confirmed that during the time period in question, they were also contacted directly about a potential media opportunity, which they discussed with Trustee 1 and was directed by her, and agreed, not to accept the interview given the Board's stated position on the issue to be covered. Trustee 1, also produced an email to the Student Trustee, dated June 8, 2020, wherein she not only denied their request to do the interview but also reminded the Student Trustee that they were a member of the Board, referenced the Board's by-law regarding the Board speaking as one. The Investigator notes that Trustee 1 also copied the Complainant on that email.

¹⁷ *Education Act*, s 218.4(e).

In the Complainant's instance, Trustee 1 permitted her doing the interview, but prescribed the Board's position as to what should be communicated, which in effect, was what she did with the other Student Trustee. Accordingly, for the foregoing reasons, the Investigator finds that Trustee 1 treated both Student Trustees in a similar manner with respect to their requests to participate in media interview related to Board matters, and did not deliberately attempt to silence or censor the Complainant's voice in relation to her interview with the Hamilton Spectator.

3. Racial Gaslighting

a. Failure to intervene to stop racist comments during Board meeting

The Complainant's allegations

The Complainant stated that Trustee 1 failed to intervene when overt racism happened at Board meetings, and interrupted one Trustee when they expressed disbelief over overt racism happening within the Board.

The Respondent's position

Trustee 1 stated that in her capacity as Chair, she does her best to facilitate Board meetings in a fair and impartial manner with due regard for every Trustee's opinion or views, and referenced a governance by-law that stipulates that the Board is collectively responsible for maintaining respect, decorum and adherence to the rules and procedures during meetings.¹⁸ Trustee 1 added that as someone with dyslexia and both a hearing impairment and Auditory Processing Disorder, she found it challenging to chair meetings in the conference call format during the pandemic due to the loss of visual cues and body language and disruptions from background noises.

The Investigator's findings and the evidence

Every witness recalled that the June 22nd Board meeting at which the Board ultimately voted to terminate the Program was tense and emotional, and that a majority of Trustees were passionate and heated in their tone when speaking. There is some dispute over whether the discussion around whether to terminate the Program was centered on the safety of racialized students and informed by the Black Lives Matter movement ("BLM"). W1 stated that the Program's negative

¹⁸ Trustee Handbook at p 63.

effect on Black and LGBTQ students was mentioned during the meeting, but hesitated to say it was the main focus of the discussion because this issue is brought up at many Board meetings in relation to various topics. W3 recalled that the discussion was rooted in the lived experience of all students who did not feel safe with police in schools, and was not exclusively about Black students. Conversely, W4 stated that it was obvious to all Trustees that the discussion was centered on the safety of Black students and police brutality, particularly given the social climate at the time, which was informed by the recent murder of George Floyd. W10 agreed, stating that BLM inspired many students and community members to come forward with their concerns about the Program, and that the discussion was situated in the context of anti-Black racism. Every witness recalled receiving an unprecedented amount of form emails and social media communications in the week leading up to the June 22nd meeting from community members calling for the termination of the Program due to its negative impact on racialized students.

The Complainant stated that Trustee 2, Trustee 3 and Trustee 4 made overtly racist comments during the June 22nd meeting. Trustee 2 admits to using the term "Twitter trolls" in reference to community advocates during the meeting. She states that it was an unprofessional term and that she said it out of frustration due to the emotional period of time leading up to the meeting. She explained that the comment was not directed at any particular group, but rather at Twitter users who, in her opinion, were harassing her.

Several witnesses recalled Trustee 4 and Trustee 3 making comments to the effect that the discussion was not only about Black lives, and that all lives mattered. Trustee 4 denies that she stated "It's not only about Black lives – All Lives Matter", and recalled that she actually stated, "It's not only about Black lives – we need to be representing all marginalized groups." Trustee 4 recognizes that "All Lives Matter" has become a phrase some use to trivialize the oppression that many Black people experience, and stated this was not her intent. Trustee 3 recalled stating, "All students matter, and all voices need to be heard", and explained that her intent was to express that the Board should have the opportunity to hear from students who had positive experiences with the Program and not only those who had negative experiences. Trustee 3 stated that she did not comment that Black voices were too loud or prevalent with respect to the discussion around the Program, as is alleged by the Complainant, and denied that she has attended any rallies or protests against BLM. Most witnesses also recalled W3 sharing a story of a student who played basketball with the police in the Program as an example of one of the Program's positive effects. W3 denied this, and stated that she shared the story of an at-risk

student in her ward who she had worked with to create an annual event in an effort to build relationships with the police to illustrate that there were other community programs intended to build relationships between students and police, and that these programs had been successful.

In reviewing the audio recording of the June 22nd meeting, the Investigator finds that Trustee 4 commented that the Board was focusing on anti-Black racism to the exclusion of anti-Semitism and Islamophobia, and that this focus was inequitable. The Investigator finds that Trustee 3 commented that all student voices mattered, and that the report brought by HWDSB staff did not capture the voices of all students. The Investigator finds that Trustee 2 used the term "Twitter trolls" in reference to community advocates, and commented that the positive aspects of the Program have been overshadowed by a few bad interactions.

There is some dispute among the witnesses as to whether Trustee 3 and Trustee 4's comments were racist. W4 and W5 stated that these comments insinuated that the issue of police violence in the HWDSB was just a trendy topic, and were inappropriate because they trivialized the trauma and harm that was being reported by marginalized students. W9 stated that Trustee 4 was attempting to nullify the perspective of other Trustees and students with her comments. W10 stated that these comments indicated that Trustee 3 and Trustee 4 perceived the concerns of ethnic students as trivial and overblown. W2 understood how Trustee 3 and Trustee 4's comments could be perceived as racist, but stated that within the education system using the terms "all students" or "all lives" is common language that is meant to convey that the Board must ensure that it hears from all the students it represents. W3 and Trustee 2 agreed with W2's interpretation of Trustee 3 and Trustee 4's comments. W10 acknowledged that the Board represents all students, but felt that where the Board is aware that a portion of the student body is being victimized or traumatized, its duty to help those students should trump its duty to represent all students.

Trustee 1 interrupted Trustee 4 during the meeting to remind her to refrain from cross-table talk after she had mentioned another Trustee's name in her comments, and also issued a general caution at the beginning of the debate on the motion to terminate the Program to remind all Trustees to refrain from cross-table talk. Trustee 1 stated that she did not intervene any further or call any other comments out of order because no Trustee raised a point of order at any time during the June 22nd meeting. According to the Board's governance by-laws, Trustees may

bring to the attention of Trustee 1 any departure from the rules of procedure by raising a point of order, and Trustee 1 must decide whether to allow the point of order.¹⁹

Trustee 1 denied that she interrupted W10 when they expressed disbelief at such overt racism occurring during the meeting. Trustee 1 recalled she offered a general caution to the entire table to remind everyone to refrain from cross-table talk after W10 made the statement on the motion. She stated that she made this caution because W10 had remarked in reference to fellow trustees that "the level of ignorance is just jaw dropping". Trustee 1 believed that W10 made this remark in response to another trustee questioning "Where is the equity in the equity report?". Trustee 1 stated that she did not interrupt W10 for cross-table talk because their statement did not specifically mention another Trustee by name. W10 recalled that their comment about the "level of ignorance" was in response to Trustee 4's statement that students with weight issues were just as victimized as Black students or any other marginalized group. Several other Trustees agreed that W10's comment was in response to Trustee 4's statement.

Trustee 1 stated that during and following the June 22nd meeting, she struggled in her capacity as Trustee 1 with how to implement what she felt to be competing directions in the Board's Code of Conduct. On one hand, the direction that Trustees shall ensure that their comments are issue-based and not personal, demeaning or disparaging with regard to Board staff or fellow Board members, and on the other, the direction that when expressing individual views, Trustees shall respect the differing points of view of other Trustees, staff, students and the public.²⁰ She stated that Trustees are entitled to express their individual views on a topic that is being debated by the Board, but also understands that the debate itself can cause harm and offence to Board staff and Trustees. W2 echoed Trustee 1's perspective, stating that several Trustees – including the Complainant – were confusing racism with a difference of opinion. W2 stated that while the discussion around whether to terminate the Program was informed by students' lived experiences of racism with the police, the decision itself was about the Program and not a referendum on racism. W2 felt it was important to distinguish between racism and difference of opinion, and stated that Trustees can hold different opinions and not necessarily be racist.

¹⁹ Trustee Handbook at p 12.

²⁰ Trustee Handbook at p 32.

Conclusion

Based on the audio recording of the June 22nd meeting and the similar evidence of various witnesses, the Investigator finds that on a balance of probabilities the comments alleged to have been made by Trustee 2, Trustee 3 and Trustee 4 during the June 22nd meeting were in fact made. Although the Trustee Code of Conduct requires Trustees to respect differing points of view, the Investigator finds that a commitment to building equity and addressing racism within an organization requires the prioritization of the voices of marginalized groups, and that comments that seek to question or devalue marginalized voices undermine the concept of equity and are in themselves racist and offensive.

In light of the foregoing, the Investigator finds that Trustee 1 failed to intervene when racially offensive comments were made by Trustees during this meeting, and failed to adopt an equity-informed understanding of the Trustee Code of Conduct in deciding whether to intervene during meetings. Furthermore, the Investigator finds that Trustee 1 should have taken a more active role in her capacity as Chair to stop racist and offensive comments.

b. Indigenous Student Trustee Position

The Complainant's allegations

The Complainant alleges that during the September 30, 2019 Board meeting, where the issue of implementing an Indigenous Student Trustee position was tabled, Trustee 2 said it would be unjust and unfair to other students to do so and questioned why one specific voice should be privileged over other students.

It is further alleged that Trustee 1 thanked Trustee 2 for being brave in sharing her perspective, although it was the lone view, on the issue of creating an Indigenous Student Trustee position on the Board; namely that it was unfair as it privileged one student group over others.

The Respondent's position

Trustee 2 admits that it was her position that instituting an extra Student Trustee position for one minority group was not an equitable act.

Trustee 1 denied that she thanked the Member Trustee, but stated that to her recollection it was another Member Trustee that extended their appreciation. Trustee 1 stated that she did not interrupt the comment, despite the fact that it constituted impermissible cross-table talk because

the comment was not intended to be disparaging. However, Trustee 1 acknowledges in hindsight that she should have upheld the Board's rules and intervened.

The Investigator's findings and the evidence

Most witnesses recalled that the comment was made by Trustee 2. Specifically, W5 recalled that Trustee 2's view was that if the Board could not create dedicated student trustee positions for all equity-seeking groups, it would be more equitable to not create any such position. Trustee 2's position at that meeting was admitted.

Both W1 and W5 advised the Investigator that Trustee 2 did not fully grasp the historical context behind the motion or the reasons for instituting an Indigenous Student Trustee position. W5 recalled that Trustee 2, as well as several other Trustees, struggled with the concept of equity at a Governance Committee meeting where the idea for the Indigenous Student Trustee position was first raised. W5 stated it was their impression that these Trustees were conflating equity with equality.

There was some inconsistency in the evidence as to whether or not Trustee 1 thanked Trustee 2 as alleged. While none of the witnesses recalled Trustee 1 making the comment during the meeting, Trustee 2 advised that after the vote was taken, Trustee 1 and one other Member Trustee approached her privately to acknowledge her bravery in being the lone dissenter in the meeting, and thanked her for making her argument in a kind and compassionate manner.

As well, two other Member Trustees, other than the one identified by Trustee 1, acknowledged that they also personally thanked Trustee 2 for expressing her opinion in a respectful and thoughtful manner, although they disagreed with her; one of the Member Trustee also expressed similar sentiments to Trustee 2 in private after the meeting.

The Investigator finds that Trustee 1 did not thank Trustee 2 for her remark during the Board meeting as alleged. Furthermore, the Investigator finds that even if Trustee 1 had thanked Trustee 2 during the Board meeting such comment, although impermissible cross-table talk, could have been for the purpose of recognizing the effort it takes to be the lone dissenting voice, as Trustee 1 and all other Trustees were in favour of the motion and voted accordingly.

c. Differential Treatment Compared to Fellow Student Trustee

The Complainant's allegations

The Complainant stated that Trustee 1 told her that if she ever wanted to raise oppression or anti-racism lens issues, she should approach it more like her fellow Student Trustee, and that he gave people the benefit of the doubt and was not as aggressive. The Complainant also stated that Trustee 1 told her that she should be gentler, and that if she challenged the Board less her life as a Student Trustee would be easier.

The Respondent's position

Trustee 1 denied telling the Complainant any of these things.

The Investigator's findings and the evidence

None of the witness recalled hearing Trustee 1 telling the Complainant anything to this effect or perceived Trustee 1 as treating the Complainant differently; and no other evidence was provided to the Investigator concerning the allegations. However, there is a finding made above that Trustee 1 singled the Complainant out by directing her to provide her comments/questions for review to herself; telling her not to talk about her personal experiences and to remove some content and then send her questions to her general mentor once final prior to the Safe Schools Panel Board meeting, when she did not require the other Student Trustee to do so. While Trustee 1 treated the Complainant in the same manner as the other Student Trustee on the issue of media requests, the Investigator has also concluded that Trustee 1 failed to adopt an equity-informed understanding of the Trustee Code of Conduct, and also failed to intervene to call out racist remarks. The Complainant's allegations are consistent with that approach. Accordingly, on a balance of probabilities, the Investigator finds that it is more probable than not that by direct words or interference, Trustee 1 implied that the Complainant should raise issues of oppression or anti-racism more gently, like the other Student Trustee, and in a less challenging manner.

4. Microaggressions

a. Ugly Christmas Sweater Dinner

The Complainant's allegations

The Complainant alleges that at the Board's traditional Christmas dinner, Trustee 1 shamed her for not wearing a Christmas sweater, even though Trustee 1 knew the Complainant was Muslim.

That same evening Trustee 1 interrupted the Complainant speaking with the Safe Schools Panel members, and again referenced the failure of the Complainant to wear a Christmas sweater.

The Respondent's position

Trustee 1 does not recall shaming the Complainant as alleged or at all. Furthermore, Trustee 1 added that she did not know at the time of the meeting that the Complainant identifies as Muslim.

The Investigator's findings and the evidence

Every witness stated that it is the Board's tradition for Trustees to wear ugly holiday sweaters to the last meeting of the year. Several witnesses explained that the Board uses the inclusive term "holiday sweater" and avoids using the term "Christmas sweater" because not every Trustee celebrates Christmas. W13 stated that she has seen a Trustee wear a Chanukah sweater in the past.

Trustee 1 sent an email to all Trustees and the Executive Council on December 15, 2019, as follows: "A friendly reminder that tomorrow is our last board meeting before winter break and as is tradition please wear your ugly holiday sweater, reindeer ears and festive blinking light necklaces!"

Most of the witnesses did not recall hearing Trustee 1 make any comment about the Complainant's attire at this meeting – although several witnesses recalled that the Complainant was not wearing a holiday sweater. Specifically, W9 recalled that neither they nor the Complainant wore a holiday sweater to the meeting, and that Trustee 1 commented on this fact because he had worn one the year before. W9 recalls someone making a comment directly to the Complainant about not wearing a sweater but does not recall who or what was said; he is not sure if it was Trustee 1. W10's evidence was that Trustee 1, and other Trustees, asked why they were not wearing a holiday sweater, and that Trustee 1 asked why they were not in the "festive spirit".

In her opening remarks at the Board's December 16, 2019 meeting, Trustee 1 stated, "I will also acknowledge that all of our executive council and Board of Trustees are sporting festive sweaters tonight. We don't normally dress this way, but we are happy to celebrate."

Notwithstanding the foregoing, Trustee 1's comments were not sensitive to the fact that not all Trustees celebrate Christmas, Chanukah, or any other holidays that occur at that time of year. In her interview, Trustee 1 acknowledged that upon reflection she understands that the Board's ugly holiday sweater tradition can evoke exclusion and discomfort.

Conclusion

The Investigator finds that on a balance of probabilities, Trustee 1 likely asked the Complainant why she was not wearing an ugly holiday sweater, as she did with other Trustees in attendance. However, the Investigator also finds that there is insufficient evidence to support that Trustee 1's query was meant to shame the Complainant and there is insufficient evidence to confirm that Trustee 1 knew the Complainant identified as being Muslim. While it may not have been Trustee 1's intention to shame the Complainant for not wearing a Christmas sweater, it is a finding of this Report that on a balance of probabilities, Trustee 1 made comments to the Complainant that caused her to feel ashamed for not wearing a Christmas sweater to the meeting.

b. Use of the 'N-Word'

The Complainant's allegations

The Complainant alleges that Trustee 3 referred to tennis player Serena Williams as "that 'n-word' lady or Black or whatever you call them these days" during a conversation with another Member Trustee that took place at Trustees dinner in September 2019. It is further alleged that Trustee 1 overheard Trustee 3's comment and said nothing.

The Respondents' position

Trustee 3 denied making this comment and Trustee 1 denies hearing any such comment being made, but does not know if it was in fact made.

The Investigator's findings and the evidence

The Investigator finds that there is insufficient evidence to support this allegation. None of the witnesses, including the Member Trustee that Trustee 3 allegedly made the comment to, recalls hearing any such language used by Trustee 3 during this dinner or recalls any discussion ever about Serena Williams.

c. Mistaken for another Racialized Trustee

The Complainant's allegation

The Complainant alleges that at a meeting of the Ontario Public Schools Association of Trustees ("OPSA"), Trustee 1 downplayed the actions of another Member Trustee who referred to the Complainant by the name of the only other brown woman present by saying "it was just a mistake". The Investigator notes that no complaint was launched specifically against the Member Trustee in question, only as against Trustee 1.

The Respondent's response

Trustee 1 stated that on November 2, 2019, at the OPSA regional meeting in London, Ontario, she heard a Member Trustee mistakenly refer to the Complainant by the name of a trustee for the Thames Valley District School Board whom Trustee 1 had introduced the Member Trustee to shortly before. Trustee 1 denied that she dismissed this mistake, and stated that she immediately corrected the mistake.

The Investigator's findings and the evidence

There is insufficient evidence to support this allegation. The Complainant and the Respondent have differing views and the Member Trustee in question did not recall the incident.

d. Comment on the Complainant's Clothing

The Complainant's allegation

The Complainant stated that she wore traditional pants from Kenya with a printed design to a trustee dinner, and that Trustee 1 commented "those are some really interesting pants" with a smirk on her face.

The Respondent's Response

Trustee 1 stated that she recalls the pants the Complainant was wearing at this dinner, as she really liked them, and she recalls complimenting the Complainant on them.

The Investigator's findings and the evidence

There is insufficient evidence to support this allegation.

5. Issues with Trustee 4

The Complainant stated that Trustee 4 has made anti-Muslim remarks to other Trustees, and that Trustee 4 has stated on numerous occasions that there is too much Black leadership within the HWDSB. The Complainant added that Trustee 4 sighs, shows exasperation and talks on the phone during HREA Committee meetings, and complains that the HREA Committee is always speaking about anti-Blackness and not anti-Semitism. Several witnesses corroborated the Complainant's allegations against Trustee 4. W4 stated that the Complainant shared with her that Trustee 4 had told the Complainant that she felt the HREA Committee had too much of a Black focus, and that the committee should be about "everybody's equity" because early in 2020 the committee had passed a motion requesting that the Board specifically examine anti- Black racism in the HWDSB.

a. Anti-Muslim and Racist Sentiments

Trustee 4 denied making any anti-Muslim comments to other Trustees. She recalled sharing a story with W3 during a Trustee dinner about meeting the former Prime Minister of the Palestinian National Authority, Salam Fayyad ("Fayyad"), on a 2017 trip to Israel. Trustee 4 stated she told W3 that during this meeting she had told Fayyad that Jews and Arabs needed to love each other and stop the hate. Fayyad agreed, and told Trustee 4 that Hamas takes whatever money is supposed to go towards the Palestinian people and they put it towards destroying Israel. W3 did not recall having this conversation with Trustee 4, or ever hearing any Trustees discussing the Middle East at any time.

Trustee 4 stated that she shared the same story about her 2017 trip to Israel with W4 during a one-on-one coffee date the two had to get to know each other better in September 2019. W4 recalled this coffee date, and stated that the conversation became heated after W4 shared their criticisms of the Israeli occupation of the West Bank and Gaza with Trustee 4. W4 stated that Trustee 4 began insinuating that the people in the occupied territories deserved what they got because they were terrorists, that Israel can do what it wants since it owns the occupied territories, and also began referring to Palestinians as "Arabs". At some point thereafter, W4 recalled putting an end to this conversation because they felt troubled about the direction it was headed, and felt uncomfortable with Trustee 4 using the word "Arabs". W4 stated that they shared the contents of this conversation with Staff 1 after the Complainant's allegations were made public because they thought it may have been relevant to this

Investigation, but did not recall sharing this conversation with the Complainant. Staff 1 stated that W4 told them about a conversation in which Trustee 4 made derogatory comments towards people in the Middle East, and recalled agreeing with W4 that these comments were problematic. Staff 1 was not aware if any action was taken by the Board regarding this conversation.

W5 did not recall Trustee 4 making any overtly anti-Muslim comments, but stated that they had a similar interaction with Trustee 4 when they shared their experience of visiting the West Bank with a group of Trustees prior to the Complainant's term as a Student Trustee. W5 recalled that Trustee 4 asked if they were scared to visit the West Bank, and commented that there would never be peace between Israel and Palestine.

Conclusion

Based on this evidence, I find on a balance of probabilities that Trustee 4 has made anti-Muslim remarks to other Trustees.

b. Problematic Attitude towards Equity Issues

Trustee 4 sat on the HREA Committee as a non-voting Trustee representative during the 2019-2020 school year along with W4, W6, and the Complainant. Two HWDSB staff members also sat on the HREA committee. According to Trustee 4, the HREA Committee was composed of twelve people at the time, a majority of whom were racialized. Trustee 4 recalled attending an HREA Committee meeting in February 2020 where agenda topics for future meetings were being discussed, including the issue of anti-Semitism. In response, Trustee 4 recalled that she voiced her concern that there was not enough focus being given to anti-Semitism in schools, and that she felt the HREA Committee as it was composed was not representative of her diverse constituency as it did not have enough Jewish, Asian, Indigenous or European members. According to Trustee 4, several committee members responded that Jews were not a race, and that Trustee 4 was white. As the only Jewish person on the HREA Committee, Trustee 4 stated she felt overwhelmed and marginalized by these comments due to the negative focus being put on Jews specifically. Shortly thereafter, Trustee 4 stated that she reported this experience to Trustee 1 and Staff 1, who suggested holding an informal meeting with all the members of the committee to discuss the incident. Trustee 4 stated that no such meeting was ever held. Staff 1 recalled this conversation, and

stated she suggested to Trustee 4 that she could advocate to include the groups she felt were underrepresented on the committee during its next recruitment cycle.

W5 recalled hearing about this incident from the two HWDSB staff members on the committee, but stated that it occurred during the HREA Committee's December 3, 2019 meeting to discuss the development of an anti-Black racism procedure as part of the Plan. In any event, W5 recalled that the staff members expressed concerns about Trustee 4's comments during the meeting in response to the discussion around anti-Black racism. W5 noted down Trustee 4's comments, as reported by the staff members, as being to the effect of:

"I'm sitting back here quietly, I have something to say and I'm feeling uncomfortable. I am a Jewish person. I'm one of the most persecuted people in the world. I am uncomfortable that the focus is on anti-Black racism. I'm uncomfortable that we're speaking about only one group. And of course we are, because look who is around the table."

W5 stated that Trustee 4 would have been referring to the Black and racialized community members who made up the majority of the HREA Committee. The staff members told W5 that Trustee 1 of the HREA Committee explained to Trustee 4 that it was appropriate to address the issue of anti-Black racism in relation to the Plan that was on the agenda for this meeting. One staff member also told Trustee 4 that the HREA Committee was not minimizing the issue of anti-Semitism, but that the topic of this meeting was the Plan and that the discussion should not devolve into "oppression Olympics".

W5 stated that they called Trustee 1 to relate this incident and the concerns regarding Trustee 4. W5 recalled asking Trustee 1 to tell Trustee 4 that her comments were inappropriate and unacceptable, and to explain to Trustee 4 that she needed to apologize to Trustee 1 of the HREA Committee. W5 recalled that Trustee 1 spoke to Trustee 4, but was not aware if Trustee 4 ever apologized to Trustee 1 of the HREA Committee.

Two other witnesses shared similar concerns about Trustee 4's attitude towards equity issues on the HREA Committee. W6 stated that during their tenure on the HREA Committee, Trustee 4 expressed discomfort with the fact that the committee was largely made up of people of colour and that there was not enough Jewish or white representation on the committee. W6 added that everybody on the committee could sense that Trustee 4 did not belong there, but that Trustee 4 had inserted herself into the committee because she saw herself as the "equity and human rights trustee" on the Board.

W4 corroborated the Complainant's allegation that Trustee 4 would sigh and show exasperation during discussions about anti-Black racism with two examples. First, W4 recalled that during the Board's June 22nd vote on whether to terminate the Program, which took place over audio-conference due to the pandemic, Trustee 4 and her husband could be heard scoffing and muttering under their breath in indignation in reaction to other Trustees' comments advocating for the termination of the Program. W4's recollection is also captured in the text message exchange between Staff 1 and Trustee 1, as they identified the sighs as coming from Trustee 4. As well, these sighs can be heard on the audio recording of the meeting.

W4 recalled a similar incident during a June 2020 HREA Committee meeting that took place over audio-conference, at which community members were discussing whether or not to recommend that the Board terminate the Program. W4 recalled that shortly after Staff 3 advised the committee that they could present their recommendation to the Board as a motion, Trustee 4 abruptly hung up without saying goodbye or giving a reason for her departure. W4 stated that it is possible Trustee 4 had to attend to an emergency, but that from the timing of her departure it appeared more likely that Trustee 4 hung up because she did not want to participate in the committee's vote on whether to put forward such a motion. W4 recalled that everyone on the committee understood Trustee 4's departure as clear disregard for the committee's discussion around equity and anti-Black racism.

Conclusion

Based on this evidence, I find that Trustee 4 failed to understand the concept of equity, and displayed a blatant disregard for the Complainant's and the Board's efforts to raise and address equity issues.

VI. CONCLUSION

In summary, on a balance of probabilities the Investigator finds as follows with respect to each of the five groupings of the Complainant's Complaint:

Lack of Board Governance and EDI Training

The Investigator found that there was a lack of Board governance and EDI training for all Trustees. The evidence was consistent that Member Trustees are only provided with one mandatory training session at the start of their elected term; all other governance training was

provided to Trustees on an optional basis through online programming. A Trustee that joined the Board mid-term was never provided with any Board governance training. The Student Trustees were each provided with one mandatory training session and the commencement of their term on the general parameters of their roles as Student Trustees, the Investigator found that the training was unsatisfactory. Finally, all Trustees agreed that the Board did not have any EDI policies or training specifically for Trustee and that this issue needed to be addressed.

There is insufficient evidence of precisely when Trustee 1 made the alleged comments that the Board appreciated the Complainant's equity lens, however given the foregoing evidence, on a balance of probabilities it is probable that Trustee 1 made this comment at least once, even if in passing.

Silencing of the Complainant

The evidence given by various witnesses was largely consistent on the fact that it was not an accepted or typical practice for Trustee 1 to edit a Student Trustees' intended statement or question in advance of a Board meeting. The evidence supported that Trustee 1 did act in a manner consistent with the allegation of engaging in conduct to silence the Complainant in advance of the Safe Schools Panel meeting, and that Trustee 1 in fact directed the Complainant to remove references to personal experiences from her statement. The evidence disclosed that any review of the Complainant's questions by her mentor, ought to have been directed by either Staff 1 or Staff 4, rather than by Trustee 1. The witnesses interviewed were divided on what they perceived Trustee 1's motivations to be in requesting the Complainant to provide her statement and questions for review in advance of the Safe Schools Panel meeting.

It is a finding of this Report that the Complainant was, for the most part, subjected to efforts to silence her voice as a Trustee. Specifically, the Complainant faced censorship of her comments and questions in advance of the Safe Schools Panel Board meeting; including not being permitted to share her personal experiences with race based bullying and being directed to have her questions to the Secretary of the Board reviewed by Trustee 1 and/or the Complainant's general mentor in advance of the meeting.

Also, the Complainant was directed to, and there was an expectation that she would, prepare her motion materials with respect to the termination of the Program under the supervision of the

Staff Member and/or the Trustee Member supporting her motion, which is inconsistent with the autonomy the Student Trustee holds as a member of the Board representing student interests. The Complainant was only required to secure a Member Trustee to support her motion, there was no evidence or authority provided for the directive that she work with Staff 1 and/or the Member Trustee in preparing her motion.

In addition to the universal evidence that the Board provided limited governance training to its Trustees, several witnesses agreed that the Complainant was not provided with clear direction on how to bring a motion pursuant to the Board's governance rules. There was some dispute among the witnesses as to whether Trustee 1 applied the Board's rules inconsistently with respect to the Complainant. With few exceptions, the evidence of the witnesses interviewed was that late motions have been accepted by Trustee 1 in the past, that Trustee 1 knew which Member Trustee would be supporting the Complainant's motion when it was submitted, and that Trustee 1 unfairly denied the Complainant's motion based on procedural defects. Documentary evidence, including text messages exchanged between Trustee 1 and other witnesses, corroborated these assertions. However, other witnesses gave evidence that Trustee 1 applied the Board's rules consistently to all Trustees, and that Trustee 1 gave the Complainant ample direction as to how to submit her motion.

The Investigator finds that on a balance of probabilities, giving due consideration to all the available evidence and the circumstances at the time, that Trustee 1's treatment of the Complainant in this regard was inconsistent with her interactions with other Trustees, including the other Student Trustee.

The Investigator also finds that Trustee 1 knew or ought to have known that the Complainant had the required Member Trustee support to bring her motion, and that Trustee 1 acted deliberately and arbitrarily in denying the Complainant's written notice of motion, and in a manner that was inconsistent with past Board practices, which allowed for late submissions.

The evidence given by several witnesses was consistent on the fact that while Trustee 1 did provide the Complainant with some direction with respect to conducting a media interview, this practice was consistent with her statutory duties as Chair, and was applied consistently as between both Student Trustees. This was corroborated by documentary evidence, including email exchanges between Trustee 1 and the Student Trustees.

The Investigator finds that the Complainant was not silenced with respect to her participation in a media interview, as it was within Trustee 1's statutory powers to provide direction and to determine the messaging to be shared with media when Trustees are being interviewed as representatives of the Board.

Racial Gaslighting

The evidence was consistent and supported that at the June 22nd meeting the comments alleged by the Complainant to have been made by Trustee 2, Trustee 3 and Trustee 4 were in fact made during this meeting. The witnesses were divided as to whether these comments were racist or merely a difference in opinion. However, given the nature of the agenda topics, being that the drive behind the termination of the Program and the original request to review the Program was the impact that the Program was having on marginalized students in the Board, together with the civil rights unrest happening globally at that time in the wake of the death of George Floyd at the hands of the police, the Investigator finds that the Trustees knew or ought to have known that their comments were not only insensitive but expressions of anti-Black racism.

The foregoing is bolstered by the fact that it was also evident in the discussion with respect to the institution of the Indigenous Student Trustee position that some of the Member Trustees lacked a basic understanding of equity diversity and inclusion principles and made overtly racist comments, which were noted by other Member Trustees. Specifically, Trustee 2 admitted to remarking that to create such a position would be an inequitable act.

The evidence of the various witnesses interviewed was consistent on the fact that Trustee 1 did not thank Trustee 2 for expressing her opposition to the creation of an Indigenous Student Trustee position as alleged by the Complainant.

Microaggressions against the Complainant

It was the evidence of all witnesses interviewed that it is the Board's tradition for Trustees to wear ugly holiday sweaters to the last meeting of the year. Several witnesses recalled that the Complainant was not wearing a holiday sweater to this meeting. While there was no direct evidence that Trustee 1 made any comment directly to the Complainant about not wearing a sweater, given that other witnesses reported similar comments being made to them by Trustee 1 for not wearing a holiday sweater, the Investigator concludes on a balance of probabilities that Trustee 1 did so.

However, there was insufficient evidence to support the allegation that Trustee 1 did so knowing that the Complainant was Muslim.

None of the witnesses recalled hearing Trustee 3 use the "n-word" or any racist language nor that Trustee 1 heard her doing so and failed to act. There was also insufficient evidence to support the allegation that Trustee 1 did not act appropriately in correcting a Member Trustee who mistakenly called the Complainant by the name of another visible minority trustee from a different school board or that Trustee 1 referred to the Complainant's clothing in a racially disparaging manner.

Issues with Trustee 4

The Trustee to whom the Complainant alleges that Trustee 4 made anti-Muslim remarks did not recall ever having such a discussion with Trustee 4. However, two witnesses gave evidence that Trustee 4 had made overtly anti-Muslim and racist remarks in conversation with them, which was corroborated by the evidence of another witness. Multiple witnesses gave evidence that Trustee 4 displayed a problematic attitude towards equity issues in Board and committee meetings. Documentary evidence and the audio recording of one meeting corroborated the fact that Trustee 4 displayed disregard for the Complainant's and the Board's efforts to raise and address equity issues.

On a balance of probabilities, the Investigator finds that Trustee 4 made overtly anti-Muslim and racist remarks in conversation with other Trustees. Furthermore, that Trustee 4 displayed a problematic attitude towards equity issues in Board and committee meetings.



Arleen Huggins



Philip Graham

Schedule A – Review Protocol

HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD REVIEW PROTOCOL

PREAMBLE

The external investigator will investigate the allegations of discrimination on the basis of race (the "Complaint") brought by the Complainant.

The Review will take place in a timely manner and in a manner which is respectful of all parties participating in the Review.

The Review shall be conducted in a manner which, to the extent possible, preserves the confidentiality of those participating in the Review, while providing HWDSB necessary disclosure so as to allow HWDSB to undertake its responsibility and commitment to maintaining an environment in which all individuals can effectively carry out their work responsibilities free of discrimination and harassment and with dignity and self-worth.

PROCESS

To that end, the following Process shall be utilized in the conduct of the Review:

1. HWDSB shall retain an external investigator with experience in the conduct of workplace discrimination and harassment Reviews to conduct the Review (the "Investigator"). The Investigator shall remain objective and neutral in respect of the conduct of the Review.
2. Sufficient particulars of the allegations will be disclosed to any individual Trustee accused of improper comments or conduct (the "Respondents"). The Respondents shall be allowed ten (10) days to respond to the Complaint particulars in writing, to be followed by an interview with the Investigator.
3. The Complainant and the Respondents, together with any other individuals who may appear to the Investigator to be necessary to achieve a proper and fair Review (collectively the "Participants"), shall each be invited to participate in the Review, by way of a pre-scheduled Zoom interview.
4. Each Participant shall be entitled, at their sole election, to have a support person, which could be legal counsel, (the "Representative") present during any interview of the Participant by the Investigator. The Representative may observe but shall not participate in the Interview.
5. The information disclosed to the Investigator by any Participant shall be documented in writing by the Investigator (the "Interview Notes"). The Interview Notes shall be confidential and shall not be provided to any Participant. A typewritten summary of the Interview Notes shall be provided to the Participant for the Participant's review and written acknowledgment of the accuracy and completeness of the contents (the "Interview Statement"). The Interview Statement shall be the official record of the interview, and shall be kept confidential by the Investigator and the Participant (and the Participant's Representative).

6. The Interview Statements shall be provided to HWDSB.
7. The Participants and any Representatives who are present during an interview shall, to the extent possible, preserve the confidentiality of the information disclosed to the Investigator.
8. The Investigator shall provide a final report to HWDSB which identifies the nature of the Complaint and summarizes the factual information collected, the factual findings and the Investigator's conclusions.
9. The final report will be provided to the HWDSB and will be disclosed to the public by the HWDSB following internal processes after it has been reviewed.
10. The Review shall be completed in a timely manner having regard to the availability of the Investigator and the Participants. Every effort shall be made to complete the Review by November 30, 2020.
11. Should the Investigator be unable to complete the Review by the date identified in paragraph 10 above, the Participants shall be notified of the delay and the Investigator shall endeavour to make all necessary and appropriate arrangements to ensure that the delay is remedied at the earliest possible time.
12. The Participants to the Review:
 - (a) shall not be penalized or retaliated against by virtue of their participation;
 - (b) shall be treated professionally, fairly and with respect, dignity and courtesy by the Investigator at all times;
 - (c) shall be permitted to schedule a Zoom interview with the Investigator during normal working hours (unless they request otherwise); and
 - (d) shall be entitled to receive a copy of their own signed Interview Statement to retain for their own records. All other copies of the Interview Statements shall be maintained by the Investigator except that copies of the Interview Statements shall be provided to HWDSB.
13. In order to preserve the confidentiality of the Review, neither a Participant or a Representative shall call the Investigator as a witness to testify as to any aspect of the Review, whether by way of summons or subpoena or any other manner, or seek access from the Investigator to any documents prepared for, or in connection with the Review, including but not limited to, the Interview Notes or Interview Statements, other than that the Interview Statements shall be provided to HWDSB. The Investigator shall not be liable to any Participant or Representative for any act or omission in connection with the Review.