



Ombudsman Report

Transparency of Near North District School Board's
decision to close Widdifield Secondary School
after the 2016-2017
Pupil Accommodation Review process

“Lessons Not Learned”

**Paul Dubé
Ombudsman of Ontario**

July 2019

Table of Contents

Executive Summary	5
Complaints	6
Investigative Process	7
Closing and Consolidating Schools in Ontario	8
Ministry of Education guideline	9
The process for closing and consolidating schools	10
Administrative review.....	11
Previous School Closures and Consolidations at Near North	12
The 2016-2017 North Bay Secondary School Closure and Consolidation	14
The board’s policy	14
Starting the review process	15
Accommodation Review Committee	16
Final staff report	16
Deferring the final decision	18
Consolidation doesn’t take a summer break	19
Deciding to close Widdifield.....	20
Communicating the message	20
Controversy brews.....	23
Delaying the closing of Widdifield	24
2018 trustee elections	25
Seeking Clarity	25
Open Meetings, Fairness, and the Education Act	27
July 2017 workshop session.....	29
September closed sessions of the Committee of the Whole	32
September 5, 2017.....	32
September 12, 2017.....	33
September 19, 2017.....	34
Contravening the open meeting rules	35
A procedurally unfair process	37
Committee meeting processes and procedures need clarification	39
Set clear committee agendas and follow a process for amending agendas	39
Ensure public notice of committee meetings	39

The final decision at the board meeting of September 26, 2017	40
Set clear agendas and provide proper public notice	41
Ensure adequate record of amendments to agendas.....	41
Ensure adequate supporting documentation	42
Improper closure of board of trustee meetings.....	44
Opinion.....	45
Recommendations	46
Response	48
Appendix A – Facilitator’s 2013 recommendations re Board Procedures.....	49
Appendix B – Near North District School Board Response	53

Executive Summary

- 1 Deciding to close a school is one of the most important and controversial actions that a school board can take. Although school closures may be necessary because of low enrolment or aging infrastructure, they can have significant negative effects on students, families, and the surrounding community. In 2017, public outcry and concern over school closures led the Ministry of Education to establish, in addition to its regular capital funding program, a fund to support schools in rural and northern communities. The Ministry also revised its guidelines for school closures and placed a moratorium on new ones.
- 2 In 2016, because of declining enrolment, the Near North District School Board began a “pupil accommodation review” – the process used when school consolidation or closure is contemplated – involving secondary schools in the North Bay area. On September 26, 2017, the board voted to close one of its secondary schools and refurbish two others, subject to the availability of capital funding from the Ministry. The proposed school closure became an increasingly contentious topic during board meetings in 2018. My Office received eight complaints from concerned parents, teachers, and community members. Three additional complaints were received during the course of this investigation.
- 3 My Office’s preliminary assessment of the situation identified that there were serious issues involving the transparency of the decision-making process, including concerns that the school board’s trustees had held several closed-door meetings to discuss the school consolidation and closure.
- 4 My investigation found that trustees’ private discussions about the school consolidation and closure were not permitted under the *Education Act*. In addition, information and discussions relevant to the decision-making process were not made public ahead of the final decision, depriving affected communities of the opportunity to meaningfully participate in the process and to understand the reasons for the board’s final decision. Accordingly, I concluded that the trustees’ decision-making process was unfair and lacked transparency.
- 5 I am making 14 recommendations to improve the Near North District School Board’s meeting practices and promote increased transparency, fairness, and accountability in its student accommodation process. The secondary school targeted for closure remains open while the board waits for information about applying to the Ministry for capital funding. However, the flawed process followed by the board in deciding to close the school has undermined public confidence.

In order to restore trust and ensure a fair and transparent process, I am recommending that the board issue a public report before it moves forward with the closure, setting out the evidence that trustees relied on in their decision. I also recommend that the public be given a chance to comment, and that the board take a new vote on the matter.

Complaints

- 6 As of September 1, 2015, the Ontario Ombudsman has the authority to carry out impartial and independent reviews and investigations of complaints concerning the administrative conduct of school boards, including closing or consolidating schools.
- 7 The Near North District School Board serves approximately 9,500 pupils¹ in 28 elementary schools, seven secondary schools, an Adult and Continuing Education Centre, and two alternative schools.² It covers a large geographic area of 17,020 km² in Parry Sound and Nipissing Districts,³ including the municipalities of Parry Sound, North Bay, Sturgeon Falls and Mattawa, among others. The communities in its jurisdiction vary in size from less than 100 people to more than 50,000 in the City of North Bay. The board of trustees has nine members, including a Chair and Vice-Chair, who are responsible for a budget of approximately \$140 million.⁴
- 8 In 2016, the board began a “pupil accommodation review” – the official process used in Ontario to consolidate or close schools – concerning secondary schools in the North Bay area. The review was initiated in order to address declining enrolment and the resulting surplus of space in local schools.
- 9 In 2017, faced with public outcry over rural school closures, the Ministry of Education established a fund to support schools in rural and northern communities and placed a moratorium on new closure efforts while it revised its guidelines. Since the Near North District School Board’s review was already underway, it wasn’t affected by the Ministry’s moratorium. On September 26,

¹ Ministry of Education, “Grants for Student Needs: Projections for the 2019-20 School Year (Revised August 2018), online: <http://www.edu.gov.on.ca/eng/funding/1920/GSNProjections2019.pdf> [Grants for Student Needs 2019-20]

² Near North District School Board, “Capital Priority Business Case Submission: 3:1 Consolidation of E.T. Carmichael, E.W. Norman and W.J. Fricker Public Schools - 2017”

³ Ontario Regulation 412/00 – Elections to and Representation on District School Boards, online: <https://www.ontario.ca/laws/regulation/000412>.

⁴ Grants for Student Needs 2019-20

2017, its trustees voted to close one secondary school and refurbish two others, subject to the availability of the new Ministry funding.

- 10 Between March 8 and April 2, 2018, my Office received eight complaints about the decision to close Widdifield Secondary School, many of which focused on the lack of transparency in the trustees' decision-making process. The decision and subsequent unrest also attracted considerable local media attention.

Investigative Process

- 11 My Office receives more than 21,000 complaints each year, most of which are resolved expeditiously through alternative dispute resolution techniques. Consistent with our normal practice, we reviewed these complaints about the Near North District School Board to determine whether they could be resolved quickly and informally. Because the pupil accommodation review involved complex issues, we conducted an in-depth preliminary assessment, during which we spoke with complainants and board staff. We also obtained and considered documents, including meeting minutes, the board's governance manual and by-laws, pupil accommodation review minutes, submissions and policy, the relevant Ministry of Education Pupil Accommodation Review Guideline, and the *Education Act* provisions relating to pupil accommodation reviews and open meetings.
- 12 My preliminary review of complaints did not identify significant issues relating to the stages of the pupil accommodation review before it reached the board of trustees. However, there appeared to be several significant concerns with the transparency of the board's decision-making process. I therefore determined it was necessary to launch a formal investigation – making it only the second such investigation my Office has launched since gaining jurisdiction over school boards in September 2015.
- 13 On October 3, 2018, I informed the Near North District School Board of my intent to investigate. An objection was raised with respect to the timing of my notice of intent to investigate, as municipal and school board elections were ongoing at the time. My practice is not to issue final reports during election periods. However, notices are sent as needed to ensure the integrity and timeliness of my investigations.
- 14 The investigation was conducted by an investigator and a legal counsel, with the assistance of an articling student. They interviewed 12 current and former school board employees, including the Director of Education, all nine members of the

board of trustees who were in office during the decision-making process, a consultant who had been hired by the board to facilitate the public accommodation review process, and an architect for the board. They also spoke with three new complainants who came forward during the investigation, as well as representatives from the Ontario Public School Boards Association, and the Ministry of Education’s Leadership, Collaboration and Governance branch, Capital Policy branch, and Sudbury-North Bay regional office.

- 15 Investigators also reviewed documentation provided by interviewees in the course of the investigation, guidance and training resources available to school boards, such as the *Guide to Good Governance* prepared by the Ontario Public School Boards Association,⁵ policies and procedures of other Ontario school boards, past reports relating to school board governance in Ontario, and case law.
- 16 Consistent with *Ombudsman Act* requirements, a confidential preliminary report was provided to the board to distribute to relevant staff and trustees before my report was finalized. The former chair was also provided a copy as part of this process. Comments that I received from individuals based on the preliminary report were considered and, where appropriate, changes were made. The school board’s formal response is addressed later in this report.
- 17 The board co-operated fully with our investigation.

Closing and Consolidating Schools in Ontario

- 18 Under the *Education Act*, school boards have the authority to “determine the number and kind of schools to be established and maintained and the attendance area for each school, and close schools in accordance with policies established by the board from guidelines issued by the Minister.”⁶ The Act also sets out the Ministry of Education’s authority to issue guidelines that school boards must rely on when developing their own policies for the closing of schools.⁷

⁵ During the writing of this report, the Ontario Public School Boards Association issued an updated version of the guide previously prepared by the Ontario Education Services Corporation: *OPSBA’s Guide to Good Governance 2018-2022*, online: <http://www.opsba.org/opsbas-guide-to-good-governance-2018-2022>.

⁶ *Education Act*, RSO 1990, c E.2, s 171(1)7.

⁷ s 8(1)26.

Ministry of Education guideline

- 19** In March 2015, the Ministry released an updated Pupil Accommodation Review Guideline that set out the minimum process requirements that school boards were required to follow when considering closing or consolidating schools.⁸ The purpose of the guideline was to ensure that any decision to close or consolidate schools “is made with the involvement of an informed local community and is based on a broad range of criteria regarding the quality of the learning experience for students.”⁹
- 20** The guideline stated that in developing pupil accommodation review policies, school boards should:
- a. ensure they are designed to serve local needs in the pupil accommodation process;
 - b. consult with local communities prior to adopting or amending their policies;
 - c. clearly state that the final decision rests solely with the board of trustees;
 - d. provide clear timelines on any closure decisions and communicate a transition plan to all affected school communities within the school board; and,
 - e. include statements that encourage information sharing and an opportunity for the public and affected school communities to voice their opinions.
- 21** In response to public concerns in 2016 and 2017 about the impact of school closings and consolidations on rural and northern communities, the government held consultations from April to June 2017 to seek input on “how to strengthen education in rural and northern communities.”¹⁰ On June 28, 2017, the government announced several initiatives, including a review of the guideline, a moratorium on any new school closing and consolidation processes, and targeted funding for rural and northern schools called the Rural and Northern

⁸ Ministry of Education, Pupil Accommodation Review Guideline (March 2015), online: <http://edu.gov.on.ca/eng/funding/1516/2015B9appenAEN.pdf> [“2015 PAR Guideline”].

⁹ 2015 PAR Guideline, p 4.

¹⁰ Ministry of Education, Plan to Strengthen Rural and Northern Education, online: http://www.edu.gov.on.ca/eng/parents/rural_schools.html.

Education Fund.¹¹ The Ministry of Education issued a new updated guideline in April 2018.¹² The moratorium remains in effect as of the writing of this report.

- 22** The Rural and Northern Education Fund was available only to schools that met a rural student enrolment threshold set by the Ministry.¹³ The Near North District School Board did not receive any monies from the fund for its North Bay-area schools¹⁴ because they are not considered rural, based on the Ministry's calculation of population density. Any funding for schools in North Bay would need to come from the Ministry's usual capital funding application process. The last such process concluded in September 2017.¹⁵

The process for closing and consolidating schools

- 23** The school board's decision to close Widdifield Secondary School was made under the March 2015 guideline.
- 24** The guideline set out the steps that school boards were required to take before deciding whether to close or consolidate schools, and established timelines for stages of the process. It also required boards to adopt their own pupil accommodation policies and procedures in accordance with the guideline requirements.
- 25** Under the guideline, boards could proceed with the pupil accommodation process "only after undertaking the necessary assessment of long-term capital and accommodation planning options for the school(s)" at issue.¹⁶
- 26** The first required step was an initial staff report, to be provided to the board of trustees and containing one or more options to address accommodation issues.

¹¹ Ontario Newsroom, "Province Strengthening Education in Rural and Northern Ontario" (June 28, 2017), online: <https://news.ontario.ca/edu/en/2017/06/province-strengthening-education-in-rural-and-northern-ontario.html>.

¹² See Ministry of Education, Revised Pupil Accommodation Review Guideline (PARG) 2018 (April 2018), online: <http://www.edu.gov.on.ca/eng/policyfunding/reviewguide.html>.

¹³ Ministry of Education, "Plan to Strengthen Rural and Northern Education" Memorandum 2017: B09 to Directors of Education and Secretary/Treasurers of School Authorities (June 28, 2017) at pp 2-3, online: https://efis.fma.csc.gov.on.ca/faab/Memos/B2017/B09_EN.pdf.

¹⁴ Ministry of Education, "List of Schools Eligible for Rural and Northern Education Fund Allocation" (Revised March 2018), online: <http://www.edu.gov.on.ca/eng/funding/1819/rural-school-List-2018-en.pdf>.

¹⁵ Ministry of Education, "Request for Capital Priorities Project Funding Submissions" Memorandum 2017: B7 to Directors of Education and others (June 12, 2017), online: https://efis.fma.csc.gov.on.ca/faab/Memos/B2017/B07_EN.pdf.

¹⁶ 2015 PAR Guideline, p 6.

The initial staff report was to provide a detailed rationale for each option and present a recommended option if more than one was offered.

- 27 If the board of trustees decided to proceed with a pupil accommodation process based on the information in the initial staff report, the guideline required the school board to establish an Accommodation Review Committee to act as “the official conduit for information shared between the school board and the [affected] school communities.”¹⁷ The Accommodation Review Committee would provide feedback on the staff report after reviewing profiles of the affected schools and considering information provided by the community in response to the initial staff report. The committee was to be made up of parent representatives from each school under review as well as other community members as set out in a school board’s policy.
- 28 The guideline also required boards to facilitate public meetings to solicit community feedback on the options contained in the initial staff report, and to consult with affected municipalities.
- 29 Once the review was completed, staff were to prepare a final report for consideration by the board of trustees, which had to include the community feedback received from the Accommodation Review Committee, public consultations, and municipal and community partners. Staff could choose to modify the options and recommendations from the initial staff report, based on the feedback received.
- 30 The guideline also required that community members be given an opportunity to comment on the final staff report through public delegations to the board of trustees. Staff would then compile the feedback from the public delegations and provide it to the board of trustees along with the final staff report.
- 31 The board of trustees would then make its decision, having received the final report with the compiled feedback from public delegations. It could approve the recommendations of the final staff report, modify the recommendations, or approve a different outcome.

Administrative review

- 32 School community members who participated in the pupil accommodation process and believed that a board failed to adhere to the Ministry guideline or the

¹⁷ 2015 PAR Guideline, p 7.

board's own policy could formally request that the Ministry conduct an administrative review – if they made the request within 30 days of the board's decision.

- 33 The administrative review could look at whether the board followed its pupil accommodation review policy; it could not overturn a school board's decision.
- 34 Before appointing a facilitator to conduct an administrative review, the Ministry would gather relevant documentation to identify whether the requirements of the board's policy were met during the accommodation review process. The Ministry would also assess whether the documentation indicated that the steps taken by the board were sufficient and reasonable within the context of a public consultation. If the Ministry-appointed facilitator determined that there were problems with the process, they could make recommendations to the school board to improve the process in future.

Previous School Closures and Consolidations at Near North

- 35 In recent years, the Near North District School Board has conducted several reviews to address demographic changes and declining enrolment in its region. Most of its schools are more than 45 years old.¹⁸
- 36 In 2012-2013, the board decided to close three primary schools in North Bay and consolidate them in a new building on the site of another closed school. After another review in 2013, it decided to consolidate three schools in the Parry Sound area. In 2013-2014, it decided to close a primary school in Burk's Falls and refurbish another to create a single school comprising kindergarten through Grade 8. These changes are at various stages of completion.¹⁹
- 37 The 2012-2013 review was particularly contentious²⁰ and led some community members to request that the Ministry conduct an administrative review.

¹⁸ Near North Capital Plan at p 11.

¹⁹ Near North Capital Plan at p 2-3.

²⁰ The information about the 2012-2013 North Bay pupil accommodation review is adapted from Margaret Wilson, "Independent Facilitator's Report on the North Bay Accommodation Review, Near North District School Board" (Toronto: November 8, 2013), online: <http://www.edu.gov.on.ca/eng/new/2013/NorthBayReport.pdf> [NND SB Wilson Report].

- 38** The Ministry appointed a facilitator, who found that the board’s student accommodation policy was “mostly consistent” with the relevant Ministry guideline.²¹ However, she noted that:
- The board had not fully complied with its obligation to provide information to the school community;
 - The school information profiles prepared by staff were inadequate; and
 - The board failed to make its final analysis of the Accommodation Review Committee options public.²²
- 39** As a result of her findings, the facilitator made several recommendations. She noted that although the Accommodation Review Committee meetings went well, the board of trustees’ process was “less than transparent.” Her recommendations included the development of “a compact set of written, basic rules and procedures” to guide trustees through the accommodation review process. She indicated that these rules and procedures should cover:
- Delineation of the roles of committees and the board of trustees;
 - Correction of errors and omissions in minutes;
 - Setting committee terms of reference;
 - Formally presenting information to committees and the board of trustees; and
 - Posting significant reports and documents to the school board’s public website.²³
- 40** Ultimately, the facilitator concluded that the process irregularities she identified did not materially affect the outcome. However, she stated that the lack of transparency had a “negative effect on the school board’s relationship with the public it serves” and she encouraged the board to “move quickly” to change how it manages the school closure and consolidation process.²⁴
- 41** A few years later, the board continued to be faced with reduced enrolment and a need to consider school closures.

²¹ NNDSB Wilson Report, p 18.

²² NNDSB Wilson Report, p 20.

²³ NNDSB Wilson Report, p 22-23.

²⁴ NNDSB Wilson Report, p 23.

The 2016-2017 North Bay Secondary School Closure and Consolidation

- 42 In 2016, the board began a review to consider consolidating its three North Bay secondary schools: Chippewa Secondary School, West Ferris Intermediate and Secondary School, and Widdifield Secondary School.²⁵ Chippewa and Widdifield are located in the northern portion of the review area, while West Ferris is located in the southern portion.

The board's policy

- 43 The board's student accommodation policy generally reflects the process set out in the Ministry's guideline. The policy notes that the board will seek input about proposed school closures and consolidations before a decision is made, and that final decisions about the closing or consolidation of schools are made by the board of trustees.
- 44 The Accommodation Review Committee under the board's policy is composed of parent representatives from each affected school, the principal of each affected school, and the superintendent(s) responsible for the schools. The committee may also include secondary school and First Nation representation, broader community representation, and "ad hoc school board trustee members." School board staff are required to provide the committee with terms of reference setting out the committee's mandate, procedures, and anticipated working meetings.
- 45 The policy explains that the board will hold a minimum of two public meetings for "broader community consultation," to be announced publicly. These are followed by the final staff report, which must include a summary of the feedback received from the committee, the public consultations, and any municipalities or community partners that expressed an interest in the process. The board of trustees is to make its decision based on the final staff report and the feedback received during the public delegations meeting. The board of trustees may adopt the recommendations of the final staff report, modify the recommendations, or approve a different outcome.

²⁵ At the same time the School Board commenced a pupil accommodation review of three primary schools in the North Bay area. My report does not address this process.

Starting the review process

- 46** On September 27, 2016, the Near North District School Board adopted its 2016-2024 capital plan, which was developed by an *ad hoc* capital planning committee of all trustees and relevant staff members. The plan notes that, based on meetings with the municipalities within the board’s boundaries:

While there is slight growth in populations in many of the communities, the growth has been in the group of the population that are now retired and looking to relax and enjoy the beauty of their surroundings. Economically, communities, while each unique, did not indicate that there was any economic development on the horizon that could potentially affect future additional enrolment at our schools. In talking to the communities, the story that the enrolment data tells us aligns very closely to what we heard and saw in each of the communities that were visited and remains coupled against a narrative of less prosperous conditions for work and opportunity throughout remote regions.²⁶

- 47** For the North Bay area, the capital plan notes that “Chippewa, West Ferris and Widdifield are in poor condition requiring significant renewal, and will lose their base top-up allocation for school renewal and operations by 2017-18,” and that “decrease in enrolment at West Ferris and Widdifield is a concern .”²⁷ Based on this assessment, it recommended that the board “complete an accommodation review for secondary schools in the North Bay Planning Area to reduce surplus spaces by 1,346, including the development of a business case for the consolidation of the current three schools to a new build of one school.”²⁸
- 48** An initial staff report was provided to the capital planning committee on December 13, 2016. It stated that the North Bay area schools were identified “as being significantly under capacity with further enrolment decline forecasted in the coming years.”²⁹ Staff recommended a 3:1 consolidation, with one new school being built at the Chippewa site, and the other two schools closing. On December 20, 2016, the initial staff report was received by the board of trustees, which passed a motion to commence the accommodation review process for the North Bay planning area.

²⁶ NNDSB Capital Plan at p 27.

²⁷ NNDSB Capital Plan at p 9

²⁸ NNDSB Capital Plan at p 27

²⁹ Near North District School Board, “Initial Staff Report” (December 13, 2016) at p 3.

- 49** The board hired a consultant “to plan, develop action plans, timelines and guidelines for meetings for the community [and] staff consultation for the [Accommodation Review Committees] for the North Bay Families of Schools and chair all meetings with principals, municipalities, community members, staff members to effect the consolidation of schools.”³⁰
- 50** In February 2017, senior board staff met with other local school boards, municipalities and community partners to discuss and comment on the recommendations from the initial staff report.

Accommodation Review Committee

- 51** The Accommodation Review Committee was established in early 2017. Its voting members were two parent representatives from each affected school,³¹ one student from each of the secondary schools, two community members selected through an application process, and an Indigenous representative appointed by Nipissing First Nation. The non-voting members were the facilitator, a representative from the City of North Bay, the principals of the affected schools, three school board staff, and a trustee.
- 52** The committee held public meetings on February 15, April 18, and May 8, 2017, and working meetings on March 22, April 19, and April 24, 2017. At the end of the April 24, 2017 meeting, the committee reached a consensus to recommend the consolidation of the three secondary schools, and the renaming and rebranding of two sites – one in the south end and one in the north end. At the final public meeting on May 8, 2017, it amended its recommendation to state specifically that Chippewa be closed and that Widdifield and West Ferris be refurbished or have new schools built on their sites. The recommendation noted that “total modernization” of the existing buildings was needed, and if this was not possible, then the board should build two new schools.

Final staff report

- 53** On May 23, 2017, the board of trustees received the final staff report. Staff recommended that the trustees accept the committee’s recommendation, but with some modifications. The final staff report recommendation was as follows:

³⁰ Estimate from Addvent10 Management Inc., “Consultative Services Description” (October 22, 2016).

³¹ Including the three primary schools that were also subject to the review process. As noted above, this report focuses on the secondary schools and does not address the primary school part of the process.

Given that a 3:2 Grade 7-12 Option is the overwhelming desire of the ARC Committee, the local community and municipal partners (and next to no public support expressed for the 3:1 option during the ARC process), the Staff's Final Recommendation would be for the Board of Trustees to accept the ARC Recommendation with the following alterations:

- Consultation and analysis to determine appropriate north site,
- Consultation to determine the appropriate site(s) for the Special Education Programs,
- Refurbishment (total modernization) of the two 7-12 sites (rather than two new 7-12 builds) subject to Ministry of Education Capital Funding.³²

- 54** At a special public delegation meeting on June 12, 2017, the board of trustees heard from 20 people who had registered and provided written submissions in advance. The written submissions were appended to the agenda of the meeting. The issues they raised included the effect of a larger "super school" on student experience and wellness, the impact of longer bus routes for some students, access to extra-curricular activities and allocation of programming, the potential for traffic congestion at larger schools, and the financial viability of the options presented.
- 55** After the delegations, the Chair thanked everyone for their presentations and said the board of trustees would have a "committee of the whole" meeting to talk about the process. This is essentially a committee made up of all the school board's trustees, without the authority to make final decisions on school closures. The Chair said there would be no decisions at this meeting, only recommendations for the June 27, 2017 board of trustees meeting, when the decision would be made. He also said: "If there are any more public meetings, we will publicize that."³³

³² Near North District School Board, "Final Staff Report" (May 23, 2017) at p 15. The Ministry of Education's Capital Funding is allocated based on applications made by school boards for school refurbishments or the construction of new schools. Applications are accepted only during time frames imposed by the Ministry.

³³ Minutes of the June 12, 2017 public delegation meeting, online: <https://www.nearnorthschools.ca/wp-content/uploads/2017/08/03-PUBLIC-Special-Board-Meeting-Minutes-June-12-2017.pdf>.

Deferring the final decision

56 The board of trustees met as the Committee of the Whole on June 13, 2017, as the Chair had indicated. During the public portion of the meeting, trustees discussed the June 12 public delegations. They also asked board staff to provide more detail for three different scenarios: The 3:1 consolidation recommended in the initial staff report, the 3:2 consolidation recommended in the final staff report, and the 3:2 consolidation recommended by the committee. The minutes show that trustees also wanted an analysis of the “chances” that each scenario would be funded by the Ministry, along with more information about challenges associated with each school site.

57 At the end of the meeting, they recommended:

That the Near North District School Board defer the secondary accommodation review matter involving Chippewa Secondary School, West Ferris Secondary School and Widdifield Secondary School to the Committee of the Whole for further discussion.

58 The board of trustees then met on June 27, 2017— the date originally set for the final consolidation decision. The public agenda included the minutes of the June 12 public delegation meeting, the June 13 meeting of the Committee of the Whole, and an agenda item containing a motion to defer the secondary accommodation review to the Committee of the Whole for further discussion.

59 During the meeting, a member of the public asked whether the Chair could provide details about outstanding information for the trustees’ decision on the consolidation, and also asked under which provincial initiative the board would apply for funds. According to the minutes, the Chair responded:

Many questions were raised by trustees during initial discussions on the secondary accommodation review. Over the summer, trustees hope to have some of these questions answered and may have more public meetings in September.³⁴

60 A majority of trustees then adopted the recommendation of the Committee of the Whole that the board defer its final decision.³⁵

³⁴ Minutes of June 27, 2017 meeting of the board of trustees, online: <https://www.nearnorthschools.ca/wp-content/uploads/2017/09/03-PUBLIC-Meeting-Minutes-June-27-2017.pdf>.

³⁵ Minutes of June 27, 2017 meeting of the board of trustees, online: <https://www.nearnorthschools.ca/wp-content/uploads/2017/09/03-PUBLIC-Meeting-Minutes-June-27-2017.pdf>.

- 61 Board staff and trustees told us that the decision to delay the final decision was in response to the committee recommendation of a 3:2 consolidation, rather than the 3:1 consolidation initially recommended by staff. They noted that there had been a great deal of public pressure, and trustees wanted more information about the differences between Chippewa and Widdifield before deciding which school to close. Staff also had to seek additional information to assess whether or not Widdifield could have an additional floor built, which some trustees had heard was possible.

Consolidation doesn't take a summer break

- 62 On July 13, 2017, trustees and staff met in private to discuss the consolidation and closure options. The gathering was characterized as a “trustee workshop.” The workshop was not publicized, and there was no posted agenda or minutes. There were no further meetings during the summer.
- 63 On July 19, 2017, the Director of Education sent an email to all trustees attaching additional information about the facilities at the three secondary schools. She noted that the architect for the board had confirmed that Widdifield could not have an additional floor built – even if it were possible, it would not meet building code requirements because of the age of the school. “Chippewa has the room to expand and the ability to hold students and build new,” she wrote.
- 64 There is no formal opinion or documentation related to the school board’s discussion with the architect. Internal staff emails refer to a phone conversation with the architect in the days leading up to the Director of Education’s July 19, 2017 message to trustees.
- 65 The emails indicate that the architect told a staff member that the “as-built” drawings show that there were no design elements in place that would allow the construction of additional levels, but that even if such elements existed, they would not meet requirements under the building code. In our interviews with them, neither the architect nor the staff member who spoke to him were able to confirm the details of this discussion.
- 66 Based on the additional information provided to trustees in the summer, the option recommended by the Accommodation Review Committee of closing the Chippewa site was considerably less palatable. However, this information was not publicly communicated.

Deciding to close Widdifield

- 67 The trustees resumed their consideration of the North Bay secondary school consolidation and closure during closed sessions of the Committee of the Whole on September 5 and 12, 2017. The topic did not appear on the relevant agendas. It was also discussed on September 19, 2017, but it is unclear whether this discussion was held in public or not.
- 68 Under the *Education Act*, the formal board of trustees must meet in open session, but the Committee of the Whole may meet in closed session in certain circumstances. The Committee of the Whole can consider issues relating to consolidation and closure of schools and make recommendations for consideration of the board of trustees, but only the formal board of trustees has the authority to make a final decision on school consolidation and closure.
- 69 On September 5, 2017, the Committee of the Whole – in closed session – resolved to recommend the consolidation of the three schools into two, located at the West Ferris and Chippewa sites. The Widdifield location would be closed. The resolution was never mentioned or voted on in public that day.
- 70 The first the public officially learned that trustees were leaning towards closing the Widdifield site was at the Committee of the Whole meeting on September 12, 2017. After discussing the consolidation and closure again in closed session, the Committee of the Whole voted publicly on the recommendation to consolidate the three schools into two and close Widdifield.
- 71 On September 26, 2017, the board of trustees formally voted publicly to consolidate the two North Bay secondary schools into West Ferris and Chippewa and to close Widdifield Secondary School. Again, the topic was not listed on the public agenda.

Communicating the message

- 72 By September 12, 2017, the direction that the trustees were taking was clear. The Director of Education met that day with staff from the three affected schools in the Chippewa auditorium. She informed them that instead of considering Chippewa for closure, as the Accommodation Review Committee had recommended, the trustees were looking at closing Widdifield. The school board told us that there was a “leak” of information on social media after this meeting about the impending decision to close Widdifield.

- 73 The next morning, the Director of Education met with Widdifield staff to again relay the trustees' pending decision and to provide some information about how staff would be involved in next steps. An email was also sent to the trustees on September 13, informing them of the apparent leak, and that staff were drafting a media release to address the recommendation passed by the Committee of the Whole on September 12, as well as a voice message to go to parents.
- 74 On September 14, the Director of Education sent an email to trustees, entitled "Talking points 3:2 with input." The email set out information the trustees could use to explain why Chippewa was chosen to stay open, rather than Widdifield. The email contemplated that trustees would share the talking points "as necessary" or wait until after the September 26 board of trustees meeting to discuss the matter. The talking points contained information that was never disclosed publicly in any reports to the trustees, but reflected the Director of Education's email to trustees in July 2017 and documentation provided over the course of the accommodation review process.
- 75 In the evening of September 14, 2017, an automated message was sent to parents of the three affected secondary schools, and reported by local media the next day. It said, in part:
- We want to bring to your attention before it becomes officially public knowledge through the appropriate channels, as a respectful acknowledgement of your relationship with us as a parent and partner, that there will be a motion put forth at the September 26 public board meeting addressing the recommendation from the Chippewa, West Ferris, Widdifield ARC and outlining the board's decision to move to a north and south school location. The motion will speak to the rebranding of the schools in question and will outline the schools to be located on the Chippewa and West Ferris sites. [...]We understand that these are not the same locations suggested by the ARC members[.] The trustees have spent much time with all of the data and have deliberated for both short-term and long-term planning.
- 76 On September 15, a local news article reported on the trustees' September 12 recommendation to close Widdifield.³⁶ It referred to the Director of Education's

³⁶ Chris Dawson, "Board recommends to shut the doors at Widdifield" *BayToday.ca* (September 15, 2017), online: <https://www.baytoday.ca/local-news/board-recommends-to-shut-the-doors-at-widdifield-717826>.

automated message and quoted the Chair as saying that the recommendation would go to the board of trustees for determination on September 26.

- 77 On September 17, the Director of Education sent an email to all staff with the text of the September 14 automated message. She explained that the decision had not yet been adopted by the board of trustees, which led to “the rather awkward communication,” adding:

It is not usual that we would put out a press release or address things when a recommendation for a motion is forthcoming. But, given the sensitive nature of the message, we wanted to let our staffs at the three schools know right away, which unfortunately led to the press and friends of friends finding out. While this was not our intent, it was probably naïve to think it wouldn't happen.

- 78 On September 18, the Director of Education sent an email to the three affected secondary school principals indicating she was considering releasing a “counter message” to media, and that she would speak to trustees about how to share the “why” behind the decision to close Widdifield.
- 79 On September 19, at another meeting of the Committee of the Whole, trustees reaffirmed their recommendation to close Widdifield, but added a provision stating that the two remaining secondary schools be rebranded.
- 80 Finally, on September 26, the board of trustees formally approved the recommendation to close Widdifield and consolidate students into West Ferris and Chippewa.
- 81 We did not obtain any information indicating that a formal statement was ever released to the media. However, media covered the decision to close Widdifield as it happened³⁷ and the day after the decision.³⁸ The coverage quotes trustees' comments in the course of the meeting as well as reactions from parents and students to the decision.

³⁷ “BREAKING: Board votes to close Widdifield” BayToday.ca (September 26, 2017), online: <https://www.baytoday.ca/local-news/breaking-board-votes-to-close-widdifield-727096>.

³⁸ Linda Holmes, “The trend towards school closures continues in North Bay with loss of high school” BayToday.ca (September 27, 2017), online: <https://www.baytoday.ca/local-news/the-trend-towards-school-closures-continues-in-north-bay-with-loss-of-high-school-727203>; Shay Galor, “Widdifield Secondary School slated for closure, 'It angers me'” CTV News Northern Ontario (September 27, 2017), online: <https://northernontario.ctvnews.ca/widdifield-secondary-school-slated-for-closure-it-angers-me-1.3609164>; Hannah Knight, “OPINION: Widdifield students disappointed” BayToday.ca (September 27, 2017), online: <https://www.baytoday.ca/local-news/opinion-widdifield-students-disappointed-727888>.

Controversy brews

- 82** None of the participants in the pupil accommodation review process made a formal request to the Ministry for an administrative review of the decision to close Widdifield within the 30-day time limit. However, concerns about the decision continued to increase over the next several months. At the end of January 2018, the school board announced that French immersion students attending Chippewa would move to West Ferris in September of 2018, rather than 2019. This decision was extremely controversial and was later reversed.
- 83** At a February 27, 2018 meeting, members of the public asked questions about the board's September 26, 2017 decision and about the transition process. A trustee publicly expressed concern about the lack of a firm transition plan. However, no vote was taken or direction given with respect to these matters.
- 84** Subsequent meetings of the board of trustees in March and April were well attended by members of the public, who questioned the validity of the data in the board's reports and urged trustees to reverse or pause the closure of Widdifield. Some demanded the board release "costing information" for the school closure and refurbishments.
- 85** On March 18, 2018, during the open portion of a Committee of the Whole meeting, the Chair spoke publicly for the first time about the private Committee of the Whole sessions that had taken place in September 2017 to consider the closure and consolidation. There was discussion about whether or not the confidential minutes from those sessions would be released, and ultimately, the committee decided not to do so.
- 86** In response to mounting criticism, at a meeting of the board of trustees on March 27, 2018, the Chair read a letter titled "Setting the Public Record Straight." The letter was also published in a local newspaper. It addressed media articles and complaints that the board had received, and attempted to explain the decision-making process.
- 87** In the letter, the Chair noted that the student population had decreased from 12,600 to 9,500 since 2006, and that the board "has more than 4,500 surplus spaces, meaning we receive no funding to maintain them as per the current Ministry funding formula." He also pointed out that funding for rural schools does not apply to schools in North Bay.

- 88** He explained that school board staff had gathered detailed data as part of the capital planning process that preceded the accommodation review, and described the review process and the ultimate decision to move to a 3:2 consolidation. He stated that the board’s decision to close Widdifield instead of following the Accommodation Review Committee’s recommendation to close Chippewa was made after careful consideration of each site.
- 89** The Chair rejected suggestions by detractors of the board’s decision that my Office or the Ministry intervene, or that trustees await the results of the upcoming provincial election, saying:
- The issue of pupil accommodation is not within the purview of the Ombudsman. The Ombudsman does not have authority to overturn decisions made by a board of trustees.³⁹
- 90** He also noted the Ministry’s limited role in conducting an administrative review of the process, referring to the Ministry facilitator’s report from 2013. “We are very confident that our process was followed, as the suggestions provided [in the report] were considered when our policy was amended in 2015.”
- 91** In describing the trustees’ decision-making after the June 2017 meeting, the Chair acknowledged the private discussions at the Committee of the Whole and apologized that agendas for these meetings had not been properly posted at the time. He concluded by referring to the September 26 meeting at which trustees made their decision to close Widdifield, noting that the board of trustees would continue to monitor the process of consolidating the schools.

Delaying the closing of Widdifield

- 92** At the March 27, 2018 meeting of the board of trustees, the Director of Education explained that the 2018 provincial election would affect the timing of the planned changes. The election was held on June 7. Three months later, on September 10, 2018, the school board announced in a media release that the consolidation and transition was being delayed:

The timeframe for proceeding with the closure is contingent upon the timelines and requirements established by the Ministry with

³⁹ Although I do not have the authority to overturn the decision of the board of trustees, my jurisdiction does, as evidenced by this report, extend to reviewing the accommodation review process.

respect to funding opportunities. While the NNDSB had intended to apply for funding to have the closure and transitions completed by September 2019, funding and requirements have not been confirmed by the provincial government. As such, the closure and relocation of students will not proceed as originally scheduled.⁴⁰

- 93 The school consolidation and closing of Widdifield remains on hold at the time of writing this report.

2018 trustee elections

- 94 Municipal and school board elections were held across the province on October 22, 2018. Of the nine members of the board of trustees who participated in the decision to close Widdifield, only two returned for the 2018-2022 term.

Seeking Clarity

- 95 Many of those who complained to my Office expressed concern about the fact that the school board appeared to abruptly change course after the summer of 2017. In June, the trustees were considering the Accommodation Review Committee's recommendation that the Chippewa site be closed and the final staff report that recommended further information be gathered prior to deciding which school to close. There was no information publicly available to explain why, by September, Widdifield had become the target for closure. Concerned stakeholders were not privy to the information that had been considered at the private workshop and sent by the Director of Education to trustees by email in July, or discussed in closed sessions of the Committee of the Whole in September, which identified significant limitations on Widdifield's potential future use. The credibility of the entire consolidation and closure process was undermined by the board's failure to share relevant information, and ultimately generated public distrust of its final decision.
- 96 In its 2015 guideline, the Ministry emphasized the need for school consolidation and closure decisions to be made following a process where information is shared with the involved community. The facilitator hired by the board guided this process up to the point of the trustees' consideration of the final staff report in June 2017. It is concerning that significant additional information gathered after

⁴⁰ Near North District School Board, "Timeframe for Closure of Widdifield Secondary School Changed" (September 10, 2018, online: <https://www.nearnorthschools.ca/blog/16287/16287/>).

the final staff report relating to the school consolidation and closure was considered by the trustees without public knowledge. Unfortunately, the Ministry's guideline and the board's policy do not specifically address how a board of trustees is to ensure transparency around its own decision-making process when considering and acting on the final staff report.

- 97 The trustees' decision-making process is particularly troubling, given the findings of the earlier Ministry administrative review. The school board never implemented the recommendation from the Ministry facilitator to develop a set of basic written rules and procedure to aid trustees through the process and ensure greater transparency. Once the trustees began their deliberations, the decision-making process became shrouded in secrecy. The information contained in the Director of Education's July 19, 2017 email should have been included in a formal report to the trustees and publicized. The board's failure to follow a rigorous and transparent process damaged its relationship with stakeholders. This situation could have been avoided had the Ministry facilitator's earlier advice been heeded.
- 98 Although the Chair indicated on March 27, 2018 that the recommendations from 2013 formed the basis of changes to the board's student accommodation policy, this is not the case. Neither the board's 2016 policy nor its governance manual set out the rules for trustees regarding student accommodation matters.
- 99 Since taking office after the October 2018 election, the newly elected board of trustees has struck a committee to develop a new governance manual. The school board should ensure that the governance manual and student accommodation policy fully reflect the recommendations in the Ministry facilitator's 2013 report.⁴¹

Recommendation 1

The Near North District School Board should fully integrate the recommendations from the 2013 Ministry facilitator's report into its governance manual and student accommodation policy.

⁴¹ These recommendations are appended to this report: See Appendix A – Facilitator's 2013 Recommendations re Board Procedures.

Open Meetings, Fairness, and the *Education Act*

- 100** The school board's reliance on closed sessions to consider critical information about the school consolidation and closure must also be considered in terms of its legal obligation to observe procedural fairness and to hold meetings open to the public under the *Education Act*.
- 101** The *Education Act* requires that the board of trustees hold its meetings open to the public.⁴² A committee meeting may only be closed 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;
 - 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.⁴³

In addition, a meeting of a board of trustees or committee must be closed when discussing an ongoing investigation under the *Ombudsman Act*.⁴⁴

- 102** Several court decisions have considered the relevance of the open meeting requirements in the *Education Act* in connection with school reorganization and closure. Typically, such cases also consider whether school boards have acted in accordance with the duty to act fairly. Administrative bodies owe a duty of fairness to those whose interests they affect, the scope of which varies depending on the circumstances. For instance, if a decision will be made that adversely affects someone, they are entitled to an opportunity to be heard.
- 103** In *Vanderkloet et al. v. Leeds & Grenville County Board of Education*,⁴⁵ the Court of Appeal reviewed decision-making leading to a reorganization of three elementary schools in 1984. The Leeds & Grenville County Board of Education had considered the topic of school reorganization at a social event as well as during two closed meetings under the topic of "personnel." The board later

⁴² *Education Act*, RSO 1990, c E.2., s 207(1).

⁴³ s 207(2).

⁴⁴ s 207(2.1).

⁴⁵ 1985 CarswellOnt 682, 11 O.A.C. 145.

resolved to reorganize the schools in a public meeting, in accordance with its private discussions. After concerns were raised by stakeholders, the board heard public submissions, and reconsidered and confirmed its position at another public meeting. The court of appeal found that the board members were not precluded from engaging in informal discussion. It also observed that, even if a duty of fairness applied, the board had not acted unfairly, given its subsequent actions.

- 104** In 1992, the Divisional Court in *Bezaire v. Windsor Roman Catholic Separate School Board*, considered a decision to close nine schools without notice to, or input from, the affected parents and students.⁴⁶ The case was decided on the basis of the duty to act fairly rather than on the open meeting requirements. The court decided that the board had breached this duty by failing to follow the relevant Ministry guideline, which emphasized consultation.⁴⁷
- 105** Other cases have recognized that trustees have no authority to meet in closed session to consider school consolidation and closure, unless they are discussing specific topics within the statutory exceptions. For instance, in 1994, the Divisional Court in *Funk v. Wellington County Roman Catholic Separate School Board*⁴⁸ found that a closed meeting to consider a high school closure was unlawful, as the subject did not come within the exceptions to the open meeting provision. However, the court concluded this was not of practical importance, as the decision to close the school was made at a public meeting and there was no failure to follow the relevant Ministry guideline or policy.
- 106** In 2002, the Divisional Court considered a trio of decisions about school closures. In *Vecchiarelli v. Toronto Catholic District School Board*⁴⁹, the board's initial decision to close two schools was reconsidered after a closed meeting, and changed to include another eight schools. The court concluded that the board had breached its duty to act fairly. It noted that an observer of the events could reasonably conclude that some arrangement had been made when the public was not present, and that the heart of the decision-making had not taken place at a public meeting, as required by the *Education Act*.
- 107** In *Huron East (Municipality) v. Avon Maitland District School Board*⁵⁰, the applicants asserted that trustees likely engaged in a closed-session discussion that materially advanced the decision to close a high school. The court noted that

⁴⁶ *Bezaire v. Windsor Roman Catholic Separate School Board*, [1992] O.J. No. 1478 at p 23 [Bezaire].

⁴⁷ *Bezaire* at pp 25-26.

⁴⁸ 1994 CarswellOnt 904, [1994] O.J. No. 529.

⁴⁹ 2002 CarswellOnt 2039, [2002] O.J. No. 2458.

⁵⁰ 2002 CarswellOnt 2185, [2002] O.J. No. 2697.

there may have been an infraction of the open meeting requirement when the board met privately, but there was nothing of material relevance discussed that was not already publicly available. It concluded that it was not a case where the heart of the decision-making was conducted out of public view.

- 108** In *Aitken v. Lambton Kent District School Board*,⁵¹ it was only once a judicial review proceeding had started that several community members discovered that a secret meeting to consider a school closure had taken place several weeks before the board made its final decision. The meeting was attended by senior staff and seven of 10 trustees. There was no public notice, no public agenda, and no minutes were kept. Even more importantly for the court, the board failed to disclose the information discussed at that meeting to the representatives of the school at issue.⁵² The court found that the board had “deprived the applicants of a level playing field to such a degree that the applicants have been deprived of procedural fairness and the appearance of procedural fairness has been irretrievably compromised.” It quashed the decision and sent it back to the school board for consideration.⁵³
- 109** In subsequent cases, the courts have confirmed the importance of transparency and public access to relevant information when deciding whether or not school closures and consolidations were procedurally fair.⁵⁴ In the case of the Near North District School Board review process, serious issues of transparency arose because relevant information shared with trustees by board staff was not made public, and trustees participated in private sessions in July and September 2017.

July 2017 workshop session

- 110** The trustees were all invited to the workshop on July 13, 2017, which was scheduled for two hours to discuss executive compensation and the school closure and consolidation process. Five told us they recalled attending the gathering, while four weren’t sure. There were no minutes taken or other record of who attended or what was discussed.

⁵¹ 2002 CarswellOnt 2577, [2002] O.J. No. 3026.

⁵² *Aitken* at para 24.

⁵³ *Aitken* at paras 43-44.

⁵⁴ *Friends of Niagara District Secondary School et al. v. District School Board of Niagara*, 2010 ONSC 4756; *DeLarue v. Kawartha Pine Ridge District School Board*, 2012 ONSC 3349; *Sydenham District Association v. Limestone District School Board*, 2014 ONSC 7199; *Citizens for Accountable and Responsible Education Niagara Inc. v. District School Board of Niagara*, 2015 ONSC 2058

- 111 Trustees who remembered attending told us they discussed the differences between the Widdifield and Chippewa sites, including property size, drainage issues, and the potential for renovation. One trustee noted that these discussions could have occurred in public, and acknowledged that the lack of a written record made it difficult for the school board to demonstrate how it arrived at its final decision.
- 112 The board’s by-laws refer to board and committee meetings, but not “workshops” – although we learned that it was not unusual for the trustees to hold informal workshops. Staff and trustees told us these are used for education and training, during the budget process, and to discuss matters such as pupil accommodation reviews. Trustees explained that workshops provide an opportunity for informal, in-depth discussion of topics, where no decisions are made. However, topics from workshops may be brought forward later to formal committee meetings for consideration.
- 113 While the Director of Education may be invited to attend a workshop, generally staff do not participate, and no formal records are kept. The Director of Education told us that staff have previously raised concerns about trustees apparently having substantive discussions during workshops.
- 114 In a meeting with my investigators, senior staff from the Ontario Public School Boards Association advised us that school boards may conduct trustee workshops, but they are meant for professional development purposes only, and cannot be used for advancing the business of a school board.
- 115 There is no definition of “meeting” in the *Education Act*. However, there are several relevant court decisions arising from similar open meeting provisions in the *Municipal Act*. For instance:
- The Court of Appeal found that a private workshop meeting that all municipal committee members were invited to and during which matters within their jurisdiction were discussed contravened the law.⁵⁵
 - The Divisional Court found that a retreat at a resort was a meeting that should have been held in public. The court noted that matters ordinarily

⁵⁵ *Southam Inc. v. Hamilton-Wentworth (Regional Municipality) Economic Development Committee* (Ont. C.A.), 1988 CanLII 4709 (ON CA), online: <http://canlii.ca/t/g18l1>.

constituting council business were dealt with in such a way as to move them materially forward in the overall spectrum of a council decision.⁵⁶

- The Supreme Court of Canada has also emphasized the importance of the open meeting requirements, subject to narrow exceptions, observing that they were “intended to increase public confidence in the integrity of local government by ensuring the open and transparent exercise of municipal power.”⁵⁷

116 Meetings of school board trustees are in many ways analogous to those of municipal councils, and should attract the same need for transparency to legitimize decision-making. It is useful to view the Near North District School Board’s private discussions relating to school consolidation and closure with this in mind.

117 In my view, when a quorum of trustees met at the workshop on July 13, 2017 to consider the North Bay secondary school consolidation and closure, they contravened the requirement in the *Education Act* to hold meetings open to the public. The meeting was not a pure exchange of information, or an education session. It involved substantive discussion of the options available to address declining enrolment in the area, and materially advanced the school board’s decision-making process with respect to its accommodation review. Consistent with the case law in the municipal context interpreting the meaning of “meeting,” workshops of this nature should be open to the public to ensure transparency and accountability in decision-making. The board should ensure that in future, a quorum of trustees does not meet outside of a formal meeting to advance school board business.

Recommendation 2

The Near North District School Board should set out in its governance policies that trustees are to refrain from coming together as a quorum to advance school board business outside of duly constituted meetings.

⁵⁶ *Southam Inc. v. Ottawa (City) Council* (Div. Ct.), 1991 CanLII 7044 (ON SC), online: <http://canlii.ca/t/q1k0q>.

⁵⁷ *London (City) v. RSJ Holdings Inc.*, [2007] 2 SCR 588, 2007 SCC 29 (CanLII), online: <http://canlii.ca/t/1rtq1>.

- 118 While I understand that there may be value in purely educational and training sessions, there should be clear limits to their use. The school board should also provide information publicly about any such sessions. As a best practice, it should adopt a by-law governing trustee workshops, and train trustees on their use.
- 119 For instance, the Kawartha Pine Ridge District School Board’s “Board and Committee Meetings” policy statement provides that discussions of educational topics take place in open session, unless one of the *Education Act* exceptions to the open meetings requirement applies.⁵⁸

Recommendation 3

The Near North District School Board should adopt a by-law governing trustee workshops, and train trustees accordingly. This by-law should set out explicitly that workshops are only for professional development purposes and cannot include substantive discussion of board business. The by-law should provide that public notice will be given of trustee workshops, including the general nature of the topic that trustees will be learning about.

September closed sessions of the Committee of the Whole

September 5, 2017

- 120 On September 5, 2017, the Committee of the Whole discussed the secondary school closure and consolidation in closed session. The public agenda included reference to the secondary school pupil accommodation review. The agenda also indicated that there would be private discussion of “property,” but there was no mention of the topic of school closure and consolidation.
- 121 The meeting minutes also do not reflect that the agenda was amended to include closed session discussion of school closure and consolidation. However, the minutes reference this topic at length under the heading “Modernization of Schools Feedback.” The topics discussed included the need to decide on a

⁵⁸ Kawartha Pine Ridge District School Board, “Board and Committee Meetings,” Policy B-2.1 (February 23, 2017) at s 5, online: <http://kprcontentlibrary.kprdsb.ca:8080/docushare/dsweb/Get/Document-3961/B-2.1%20Board%20and%20Committee%20Meetings.pdf>.

specific school before making any funding requests to the Ministry, the proposed Grades 7-12 model for the schools, enrolment and its impact on school boundaries and programming, potential community partnerships, and the Ministry's funding model.

- 122 After this discussion, while still in closed session, the Committee of the Whole recommended that:

The Near North District School Board recommend consolidation and rebranding of three secondary schools into two schools, with the locations at West Ferris and Chippewa sites.

- 123 This recommendation was not brought into public session or voted on in public session that day.

September 12, 2017

- 124 On September 12, 2017, the Committee of the Whole met again. As on September 5, the public agenda included the secondary school pupil accommodation review and a closed session about "property." The closed session agenda made no mention of the secondary school closure and consolidation.
- 125 Once again, the meeting minutes do not reflect that the closed session agenda was amended to include this topic. However, the closed session minutes record a discussion with the heading "Modernization of Schools Feedback cont'd from Sept 5, 2017 meeting."
- 126 The September 12 closed session discussion covered the timing of the closure and the cost of renovations. It also included an update from the Director of Education that she had met with staff at the three affected secondary schools to let them know about the committee's recommendation from the September 5, 2017 closed session, which would be made public after the meeting. A trustee suggested that "modernization updates" be a set agenda item at future public meetings. The minutes then note that the Director of Education would work with other staff to draft talking points for trustees "so messages are succinct at board meetings."
- 127 The discussion concluded with the Committee of the Whole recommending, again in closed session, that:

The Near North District School Board recommend consolidation and rebranding of three secondary schools into two schools with the locations at West Ferris and Chippewa sites.

- 128 However, the public minutes of the September 12 meeting recorded that the Committee of the Whole recommended that:

The Near North District School Board recommend consolidation of three schools: Widdifield, Chippewa and West Ferris, into two schools with the locations at West Ferris and Chippewa sites.

- 129 No explanation was provided for why reference to “rebranding” was omitted from the public resolution. However, the Committee of the Whole revisited this phrase at its next closed meeting.

September 19, 2017

- 130 Neither the agendas (public and private), nor the minutes (public and private) for the September 19 meeting of the Committee of the Whole mention the secondary pupil accommodation review. However, during our investigation, my Office was provided with an email that was sent by a staff member to two trustees shortly after the session, copying the remaining trustees. It stated:

At tonight’s Committee of the Whole it was decided that the recommendation re: ACR [sic] 3-2 should also contain wording about the rebranding of the two remaining schools. The motion has been updated to read:

“The Committee of the Whole recommends the Near North District School Board recommend consolidation and rebranding of three secondary schools into two schools with the locations at West Ferris and Chippewa sites.”

- 131 Given the lack of any record of this discussion, and the limited information about the discussion obtained from witness accounts, we could not determine whether this apparent discussion took place in public or in private.

Contravening the open meeting rules

- 132** Under the *Education Act* and the board's by-law relating to meetings, all meetings of the board of trustees and of the Committee of the Whole must be open to the public, subject to the exceptions in the *Education Act*.⁵⁹
- 133** The board has provided varying explanations to justify why the Committee of the Whole met in private to discuss the school closure and consolidation. The March 18, 2018 Committee of the Whole minutes indicate that the Chair acknowledged that these discussions should have been in public. However, in his March 2018 public letter, the Chair appeared to reverse course, explaining that the private discussions involved property and staffing items. During our interviews, several explanations of why the discussions took place behind closed doors were offered, including:
- The topic of school closure fell into the “property” exception contained in the *Education Act*, with one trustee explaining that they were talking about school renovations which could affect property values;
 - The private discussion allowed for frank conversation;
 - The topic of school closure fell into the “financial” exception contained in the *Education Act*, and,
 - Trustees were concerned about the possibility of receiving additional confidential information.
- 134** There are no exceptions to the open meeting requirement for frank conversation or generally referring to confidential information. In order to justify closed meeting consideration of a subject, it must squarely fit within one of the exceptions to the open meeting rule.
- 135** The “property” exception in the *Education Act* applies only to discussions involving “the acquisition or disposal of a school site.”⁶⁰ The decision to dispose of a school site is distinct from a decision to close it. There is no indication that the board was considering disposing of Widdifield. The Information and Privacy Commissioner has found that the *Education Act* exemption is intended to protect discussions relating to the transfer of ownership or use of property.⁶¹ In the

⁵⁹ By-law III (Committee of the Whole Board); By-law XVII (Rules for Meetings of the Board).

⁶⁰ s 207(2)(c).

⁶¹ Toronto District School Board (Re), 2012 CanLII 81348 (ON IPC), online: <http://canlii.ca/t/fvf4m>.

municipal context, closed meeting investigators, including my Office,⁶² have established that a similar exception in the *Municipal Act*⁶³ is intended to protect the negotiating position of a municipality. There was no property being transferred and no bargaining position to protect during these discussions. Accordingly, there is little merit to the position that the closed meeting discussion was supported under the property exception.

- 136 Issues relating to “staffing” may involve the “disclosure of intimate, personal or financial information”⁶⁴ or “decisions in respect of negotiations with employees of the board.”⁶⁵ The Information and Privacy Commissioner in the education context, and closed meeting investigators interpreting similar language in the municipal context, have found that these provisions only apply to protection of personal privacy⁶⁶ or ongoing labour relations matters.⁶⁷ Potential financial, personal or labour relations implications for staff at some point in the future are insufficient to engage these exceptions.⁶⁸
- 137 Near North District School Board trustees had no authority to consider the subject of the school board closure and consolidation behind closed doors in September 2017. Trustees should ensure that they refrain in future from discussing subjects in closed session that do not fit within the exceptions to the open meeting requirement.

Recommendation 4

The Near North District School Board should ensure that any discussions that take place in private during a committee meeting properly fit within one or more of the exceptions set out in the *Education Act*.

⁶² Since 2008, the Ontario Ombudsman has been the closed meeting investigator for municipalities that have not appointed their own. Under the *Municipal Act*, individuals can complain that municipal councils, local boards or their committees have contravened the open meeting provisions. See, for example, Fort Erie (Town of) (Re), 2018 ONOMBUD 2 (CanLII), online: <http://canlii.ca/t/hvmtm>.

⁶³ s 239(2)(c), *Municipal Act*, 2001.

⁶⁴ s 207(2)(b), *Education Act*.

⁶⁵ s 207(2)(d).

⁶⁶ See, for example, Toronto Catholic District School Board (Re), 2010 CanLII 9064 (ON IPC), online: <http://canlii.ca/t/28cc8>.

⁶⁷ s 239(2)(b), *Municipal Act*, 2001; see, for example, Northern Bruce Peninsula (Municipality of) (Re), 2018 ONOMBUD 7 (CanLII), online: <http://canlii.ca/t/hvmtz>.

⁶⁸ See, for example, Kawartha Pine Ridge District School Board (Re), 1999 CanLII 14434 (ON IPC), online: <http://canlii.ca/t/1rggb>; see also, Petrolia (Town of) (Re), 2018 ONOMBUD 6 (CanLII), online: <http://canlii.ca/t/hvmtw>.

- 138 We also noted that the board’s by-laws permit meetings in “Private Session”⁶⁹ to discuss “the acquisition or disposal of property.” This is not a permissible ground under the *Education Act* to justify closed meeting discussion.⁷⁰
- 139 Its meeting by-law has also not been updated to refer to the obligation to hold a meeting in private when discussing an ongoing investigation under the *Ombudsman Act*.⁷¹ The board should accordingly amend its by-laws to ensure consistency with the *Education Act*’s open meeting provisions.

Recommendation 5

The Near North District School Board should amend its by-laws to reflect the exceptions to open meetings as set out in sections 207(2) and (2.1) of the *Education Act*.

A procedurally unfair process

- 140 The board’s accommodation policy reflects the basic fairness provisions set out in the Ministry’ guideline. The policy sets out the process for initiating an accommodation review, obligations with respect to the information collected in the course of the review, obligations with respect to public participation in the review, and timelines for each step of the process.
- 141 However, in applying its policies and procedures, the board has a duty to observe procedural fairness – not only as a matter of policy, but as a matter of law. Courts have confirmed that decisions about the closing and consolidation of schools must be transparent and fair. Fairness in this context means, for example, ensuring that relevant information is available to the public prior to making a decision to close or consolidate a school, and that the “heart of the decision-making”⁷² takes place in public.
- 142 The final decision of the school board was made in public on September 26, 2017. Trustees set out the reasons for their respective votes prior to the vote being taken. However, the information the trustees considered when making their

⁶⁹ By-law V (Meetings in Private Session).

⁷⁰The *Education Act* permits committees to meet in private to discuss “the acquisition or disposal of a school site.” It does not refer generally to discussions of “property.”

⁷¹ s 207(2.1)

⁷² *Huron East*, *supra* note 50 at para 7.

decision was not readily available to the public. While much of the information was contained in other public materials, including the capital plan and the final staff report from May 2017, the additional information received over the summer of 2017 supporting the trustees' decision was not made public in a staff report or in any other publicly available format ahead of the final vote. In addition, the evidence that led to the final decision was only discussed at length in private. Indeed, it is only as a result of this investigation that the July 13, 2017 trustee workshop and the July 19, 2017 email from the Director of Education have come to public light.

- 143** In June 2017, the public was led to believe that, based on the available information in the wake of the Accommodation Review Committee process, trustees were considering a very different course of action. The community was deprived of the opportunity to respond to or be consulted on the new information considered by trustees in the summer of 2017.
- 144** These circumstances bear a close resemblance to the facts set out in the *Aitken* case, where information considered by the school board only came to light after legal action had commenced. The discussions in private included materially relevant evidence that was not otherwise public. No additional staff reports were issued to address the viability of the options, and the board did not disclose the content of its private discussions about the school closure publicly after its meetings on July 13 and September 5, 12 and 19, 2017.
- 145** Widdifield remains open, as the Near North District School Board has not yet secured funding from the Ministry for the consolidation of its secondary schools. In light of this, the board should take the opportunity to remedy the procedural fairness concerns raised in my investigation. Before proceeding with the consolidation of its North Bay secondary schools, it should prepare an updated report, setting out the additional information received in the summer of 2017 and discussed in private in September 2017, and present it to trustees in a public meeting. It should also give community members an opportunity to comment on the updated report, and then make its decision, taking into consideration this additional feedback.

Recommendation 6

The Near North District School Board should prepare a new final staff report that explains the additional information received in the summer of 2017 and that was discussed in private in September 2017. It should present the report to trustees as part

of a public meeting, afford community members an opportunity to comment on it, and then take a new vote on the secondary school consolidation.

Committee meeting processes and procedures need clarification

- 146 My investigation also identified additional issues involving the board's committee meeting processes that require redress.

Set clear committee agendas and follow a process for amending agendas

- 147 It is unclear how the agendas for the closed sessions on September 5 and 12, 2017 were amended to include consideration of school closure and consolidation. The board's by-laws establish what can be placed on the agenda of a meeting of the board of trustees, including that items may be added by a two-thirds vote of trustees if the Director of Education is of the opinion that they require urgent action.⁷³ However, there are no similar requirements for committee meetings.
- 148 The board should ensure that its by-laws provide a specific process for setting committee agendas and for adding items, in order to ensure transparency.

Recommendation 7

The Near North District School Board should amend its by-laws to set out how public and private committee agendas are prepared and amended.

Ensure public notice of committee meetings

- 149 According to the board's by-laws, trustees are given notice electronically at least 72 hours prior to a meeting, including the agenda and supporting materials.⁷⁴ The agenda alone is also to be distributed to other stakeholders (e.g. principals, unions, school councils, local media) and may be distributed to other interested parties at the discretion of the Director of Education by request. The board posts

⁷³ By-law II (Board Meetings).

⁷⁴ By-law II (Board Meetings).

agendas to its website, including the minutes for previous meetings that require approval by trustees.⁷⁵

- 150** Special meetings are subject to the same notice requirements as regular meetings, or can be called verbally with at least 48 hours' notice to trustees.⁷⁶ However, there do not appear to be notice provisions with respect to committees of the board, including the Committee of the Whole, or for closed committee meetings. Consistent with the interests of transparency, the board should provide public notice of such meetings.
- 151** For example, the Toronto Catholic District School Board explicitly sets out notice requirements for committee meetings.⁷⁷ A similar Kawartha Pine Ridge District School Board policy makes clear that notice of committee meetings is also to be provided on the school board's website.⁷⁸

Recommendation 8

The Near North District School Board should make explicit in its by-laws how it provides notice to the public of its committee meetings, whether public or private, including the Committee of the Whole.

The final decision at the board meeting of September 26, 2017

- 152** On September 26, 2017, the board of trustees formally voted to consolidate the two North Bay secondary schools into West Ferris and Chippewa, and close Widdifield. The public agenda for that meeting made no mention of the pupil accommodation review, nor was there any supporting documentation for the decision. It is not clear from the meeting minutes how the item got onto the agenda.

⁷⁵ Near North District School Board, "Board and Committee Meetings," online: <https://www.nearnorthschools.ca/board/board-meetings/>.

⁷⁶ By-law IV (Special Meetings of the Board).

⁷⁷ Toronto Catholic District School Board, Operating Bylaw 175 (April 21, 2016) at ss 4.4-4.5, online: <https://www.tcdsb.org/Board/Documents/v3%20LARGE%20FONT%20ByLaws%20April%2021,%202016%20Board%20Amendments.pdf>.

⁷⁸ Kawartha Pine Ridge District School Board, "Board and Committee Meetings," Policy B-2.1 (February 23, 2017) at s 3, online: <http://kprcontentlibrary.kprdsb.ca:8080/docushare/dsweb/Get/Document-3961/B-2.1%20Board%20and%20Committee%20Meetings.pdf>.

- 153 The automated message sent to parents of the affected schools on September 14 and reported on by the media did indicate that the board of trustees would be making its decision September 26, 2017. However, proper notice, with the complete agenda, should be given before any meeting of the board of trustees – particularly when school consolidation and closure or another matter of significant public interest is to be considered.

Set clear agendas and provide proper public notice

- 154 Under the *Education Act*, the Chair is responsible for establishing agendas for board meetings in consultation with the Director of Education, and is to ensure that trustees have the information needed for informed discussion of agenda items.⁷⁹ The school board's by-laws state that meeting agendas are to be prepared by the Chair and Vice-Chair in consultation with the Director of Education, and that regular meeting agendas are to be approved by the board of trustees and must follow the format set out in an appendix to the by-laws.⁸⁰ The by-laws are silent with respect to agendas for committee meetings.
- 155 There is an expectation and obligation of transparency around the pupil accommodation review process. This is set out in the Ministry guideline, the board's policy, and the relevant case law. The board should take steps to ensure greater transparency when it comes to notice of meetings and complete agendas, particularly when meetings concern issues of significant interest such as school consolidations and closings.

Recommendation 9

The Near North District School Board should ensure that it prepares complete agendas of meetings and provides proper notice of all issues to be discussed at a meeting.

Ensure adequate record of amendments to agendas

- 156 The board's by-laws state that no matter can be placed on the agenda of a meeting of the board of trustees unless it meets one of the requirements set out in the by-law. The agenda can also be amended by a two-thirds vote of trustees

⁷⁹ s 218.4(c),(d).

⁸⁰ By-law II (Board Meetings).

to include a topic if, in the opinion of the Director of Education, it requires urgent action by trustees.⁸¹

- 157 There is no official record of how the final pupil accommodation review decision came to be added to the agenda for the meeting on September 26, 2017. Staff and trustees told us it would have been added by motion, as set out in the by-laws. However, only through the personal notes of one of the staff members in attendance at the meeting was my Office able to confirm that trustees had indeed amended the agenda during the meeting to add this and two other unrelated items.

Recommendation 10

The Near North District School Board should ensure that amendments to meeting agendas are properly voted on in accordance with its by-laws and that such amendments are clearly reflected in meeting minutes.

Ensure adequate supporting documentation

- 158 The school consolidation and closure process requires that a final staff report be followed by public delegations before trustees make their final decision.
- 159 In this case, a public meeting did take place in June 2017 to hear delegations about the recommendation presented in the May 2017 final staff report. However, the decision to defer the final vote and the surrounding discussions suggested that a supplemental or updated final staff report was going to be prepared. This would have assisted trustees in their deliberations and aided the public in understanding the basis for trustees' decision-making.

Recommendation 11

The Near North District School Board should ensure that information intended to assist the board of trustees with its decision-making on school consolidation and closure decisions is set out in a report that explains the information being reported, its relevance, and next steps, if any. Such reports should be

⁸¹ By-law II (Board Meetings).

included in the agenda package for the meeting or meetings at which the information will be received or discussed.

- 160 I note that the Ministry's new 2018 guideline addresses situations where the final report proposes a school closing option that is not explicitly set out in the initial report. If the final report introduces a "new school closure" after considering the recommendations of the accommodation review committee, the board is now required to hold an additional public meeting.⁸²
- 161 The Near North District School Board's initial option was a 3:1 consolidation at Chippewa, which implied the closure of Widdifield. However, the move to a 3:2 consolidation and a recommendation to seek more information essentially left it open for a new option to be considered, which had not been part of the accommodation process or contained in the recommendations of the accommodation review committee. If the board had held an additional public meeting to address the new option put forward by staff in the summer of 2017, it would likely have helped the community better accept the its decision. The Chair had indicated on June 27, 2017 that further meetings might be held to receive further public input – but none took place.
- 162 The board should take immediate steps to ensure that its student accommodation policy is updated to reflect the Ministry's new guideline with respect to "new school closures" and includes provisions for ensuring public input on any options that did not form part of the initial staff report or the accommodation review committee recommendations.

Recommendation 12

The Near North District School Board should, consistent with the Ministry's 2018 guideline, amend its student accommodation policy to set out a process for an updated or supplemental final staff report and an additional public meeting in cases where trustees may be considering school closing options other than those set out at the beginning of the accommodation review process or in the recommendations of the accommodation review committee.

⁸² 2018 PAR guideline at p 15.

- 163 The Ministry's 2015 guideline required that school board staff compile all the feedback from public delegations and present it together with the final staff report to the trustees when making their final decision on the pupil accommodation review.⁸³ The requirement to provide this information is also referenced in section 16.1 of the board's student accommodation policy.⁸⁴
- 164 Staff and trustees confirmed that they received the public delegation comments and the final staff report before the June 27, 2017 meeting. However, the public delegation information was provided separately, not along with the final staff report, as contemplated by the guideline. After the final decision was deferred, no further documentation concerning the school consolidation and closure (other than meeting minutes) formally made its way before the board of trustees. The information contained in the Director of Education's July 19, 2017 email to trustees and the information about the architect's opinion on whether an additional floor could be built at Widdifield was never included in a formal report or made public.
- 165 This runs contrary to the public participation and transparency considerations underlying the guideline. As noted in the 2013 facilitator's report, it also means the school board lacks readily retrievable records of its decision-making process.

Recommendation 13

The Near North District School Board should ensure that all relevant information is properly documented, and that this information, including the final staff report and compilation of public delegation feedback, is included as part of the agenda package for any meeting at which the board of trustees is making a final pupil accommodation review decision.

Improper closure of board of trustee meetings

- 166 I would also like to address another issue relating to board of trustee meetings, which generally affects the transparency, accountability and legality of trustee meetings. The by-laws indicate that regular meetings of the trustees are held on

⁸³ 2015 PAR guideline, p 12.

⁸⁴ Near North District School Board, "EL-11 - Student Accommodation" (Revised June 28, 2016), online: <https://www.nearnorthschools.ca/wp-content/uploads/2017/04/EL-11-Post-Consultation-Student-Accommodation-Guideline.pdf>.

the fourth Tuesday of each month at 6:00 p.m.⁸⁵ They also indicate that the board of trustees holds a closed session at 5:00 p.m. prior to the regular public session.⁸⁶

- 167 The *Education Act* explicitly states that, with the exception of discussions related to an ongoing investigation under the *Ombudsman Act*,⁸⁷ only a committee may close a meeting to the public.⁸⁸ The practice of holding private meetings of the board of trustees is contrary to the plain wording of the Act and should cease immediately.

Recommendation 14

The Near North District School Board should amend its by-laws to provide that closed sessions may take place only during a committee meeting, in accordance with the *Education Act*.

Opinion

- 168 It is a reality in Ontario that declining enrolment, particularly in rural areas, may lead to school closures. The decision to close a local school can have significant repercussions for students, families, business owners, and the surrounding community. When a community school closes, students may have to travel outside of their neighborhoods for long distances each day, and miss out on extracurricular activities. Local businesses may suffer losses and the value of surrounding homes may decline. Decisions relating to school consolidation and closure are among the most difficult and contentious matters facing school boards.
- 169 The Ministry has established guidance for boards, emphasizing the need to consult the community. The subject of school closure has also repeatedly been before the courts, which have considered the process used to arrive at such decisions from the perspective of fairness and the requirements of the open meeting provisions of the *Education Act*.

⁸⁵ By-law II (Board Meetings); By-law VI (Place and Time of Meetings / Notification of News Media).

⁸⁶ By-law VI (Place and Time of Meetings / Notification of News Media).

⁸⁷ s 207(2.1).

⁸⁸ s 207(2).

- 170 My investigation confirmed that the Near North District School Board failed to follow a fair and transparent process leading to its decision to close Widdifield Secondary School.
- 171 It is my opinion that the school board's actions were unreasonable, unjust and wrong, in accordance with sections 21(1)(b) and (d) of the *Ombudsman Act*.
- 172 It is also my opinion that the school board acted contrary to law in accordance with section 21(1)(a) of the *Ombudsman Act*, when it discussed the secondary school pupil accommodation review in a trustee workshop on July 13, 2017 and in closed sessions of the Committee of the Whole in September 2017.

Recommendations

- 173 Given the results of this investigation, I am making the following recommendations:
1. **The Near North District School Board should fully integrate the recommendations from the 2013 Ministry facilitator's report into its governance manual and student accommodation policy.**
 2. **The Near North District School Board should set out in its governance policies that trustees are to refrain from coming together as a quorum to advance school board business outside of duly constituted meetings.**
 3. **The Near North District School Board should adopt a by-law governing trustee workshops, and train trustees accordingly. This by-law should set out explicitly that workshops are only for professional development purposes and cannot include substantive discussion of board business. The by-law should provide that public notice will be given of trustee workshops, including the general nature of the topic that trustees will be learning about.**
 4. **The Near North District School Board should ensure that any discussions that take place in private during a committee meeting properly fit within one or more of the exceptions set out in the *Education Act*.**

5. The Near North District School Board should amend its by-laws to reflect the exceptions to open meetings as set out in sections 207(2) and (2.1) of the *Education Act*.
6. The Near North District School Board should prepare a new final staff report that explains the additional information received in the summer of 2017 and that was discussed in private in September 2017. It should present the report to trustees as part of a public meeting, afford community members an opportunity to comment on it, and then take a new vote on the secondary school consolidation.
7. The Near North District School Board should amend its by-laws to set out how public and private committee agendas are prepared and amended.
8. The Near North District School Board should make explicit in its by-laws how it provides notice to the public of its committee meetings, whether public or private, including the Committee of the Whole.
9. The Near North District School Board should ensure that it prepares complete agendas of meetings and provides proper notice of all issues to be discussed at a meeting.
10. The Near North District School Board should ensure that amendments to meeting agendas are properly voted on in accordance with its by-laws and that such amendments are clearly reflected in meeting minutes.
11. The Near North District School Board should ensure that information intended to assist the board of trustees with its decision-making on school consolidation and closure decisions is set out in a report that explains the information being reported, its relevance, and next steps, if any. Such reports should be included in the agenda package for the meeting or meetings at which the information will be received or discussed.
12. The Near North District School Board should, consistent with the Ministry's 2018 guideline, amend its student accommodation policy to set out a process for an updated or supplemental final staff report and an additional public meeting in cases where trustees may be considering school closing options other than those set out at the

beginning of the accommodation review process or in the recommendations of the accommodation review committee.

13. The Near North District School Board should ensure that all relevant information is properly documented, and that this information, including the final staff report and compilation of public delegation feedback, is included as part of the agenda package for any meeting at which the board of trustees is making a final pupil accommodation review decision.

14. The Near North District School Board should amend its by-laws to provide that closed sessions may take place only during a committee meeting, in accordance with the *Education Act*.

Response

174 The board was given the opportunity to respond to the findings and recommendations in this report before it was finalized. The chair of the board of trustees replied on behalf of Near North District School Board. The chair noted that the board agreed with all of my findings and recommendations. He advised that the board is committed to moving forward with improved policies, guidelines, and procedures to increase transparency, fairness and accountability to its students, stakeholders and constituents. He also indicated that the board had already taken steps proactively to ensure that it is able to fully implement my recommendations. A copy of the board's full response is appended to this report (Appendix B).

175 I commend the board for its commitment to enhancing the transparency of its decision-making processes. I look forward to receiving updates on the implementation of my recommendations.



Paul Dubé
Ombudsman of Ontario

**Appendix A – Facilitator’s 2013 recommendations
re Board Procedures**

Margaret Wilson, “Independent Facilitator’s Report on the North Bay Accommodation Review, Near North District School Board” (November 8, 2013), pp 22-23.

The Board Procedures

The intention of the Board to create a fair and transparent accommodation review process is laudable. The meetings of the ARC were exemplary in this respect.

The Trustees told me that they were in the process of re-thinking their somewhat convoluted governance manual. This will assist in future, but the need to bring some basic procedures in line with current policy and by-laws is urgent. At present, the Board itself is less than transparent in carrying out its functions in the Accommodation Review process. For instance, the North Bay ARC was approved by a committee of the Board, but not by the Board. Further, the Freedom of Information complaint was caused by failure to process the administration’s analytical report properly, in terms of the format of the report, its formal receipt by the Board and its proper filing as a public document. Clear and publicly available rules of procedure and rules of order provide the basic framework for transparency in democratic governance. Procedural rules should govern such things as the development of Reports, their movement through various committees and the Board and the management of records, Rules of order should relate directly to the management of meetings.

I suggest that the Board develop immediately a compact set of written, basic rules and procedures to govern its role in Accommodation Reviews. In doing so they should be guided, where relevant, by *Robert’s Rules of Order*, which their governance manual already recognizes as their reference point for Parliamentary procedure. The basics might include rules which ensure that:

- there is a clear delineation of the respective roles of committees, whether Ad Hoc or Standing, and the Board as a public body.
- the establishment of an ARC, and its membership, is approved by motion of the Board;
- errors and omissions in the minutes of meetings are corrected, by electronic means if required by timelines, prior to the approval of those minutes;
- decisions on the hiring of outside help be made by motion of the Board;
- any Ad Hoc Committees are created by motion of the Board;
- Ad Hoc Committees have clear terms of reference and procedures for reporting to the Board;
- recommendations of Ad Hoc committees, for instance the Accommodation Committee, are reported intact to the Board for action. Any amendments should be moved at the Board meeting;
- reports, discussion papers, analytical papers etc., which are prepared for committees or for the Board, are presented as formal reports so that they may be properly received by motion, acted upon, and filed as reports separate from the

Board Minutes. They should then be available to the public, either on-line or with a reasonable processing charge if the request is for print copy;

- all significant reports and documents which are part of the ARC process are made public on the Board web site.

Appendix B – Near North District School Board Response

Head Office

P.O. Box 3110
963 Airport Road
North Bay, ON
P1B 8H1
Fax: 705.472.9927

June 3, 2019

Mr. Paul Dube
Ombudsman of Ontario
483 Bay Street
10th floor, South Tower
Toronto, ON M5G 2C9

Main switchboard for all offices:
705.472.8170

Toll Free:
1.800.278.4922

Web site:
www.nearnorthschools.ca

Dear Mr. Dube,

On behalf of the Trustees of the Near North District School Board (NND SB) I wish to thank you for the opportunity to review and provide comments with respect to your Preliminary Report of May 2019 regarding your investigation into the transparency of the NND SB's decision to close Widdifield Secondary School after the 2016-2017 Pupil Accommodation Review process.

Our board has reviewed your Preliminary Report and agree with your findings and recommendations. We are committed to moving forward with improved policies, guidelines and procedures to increase transparency, fairness and accountability to our students, stakeholders and constituents. The quality of education provided by the NND SB is something we are very proud of and we are committed to taking these steps to restore the public's confidence in our organization.

To that end, the following steps have proactively been undertaken to ensure that we are able to fully implement the recommendations contained in your final report:

- On December 10, 2018 six days after inauguration, our Board established a Governance Ad Hoc Committee to comprehensively review and update the Board's Governance Policies and By-Laws.
- That Governance Ad Hoc Committee will ensure all recommendations pertaining to Board Governance Policies and By-Laws from your final report will be implemented.
- Our Board will authorize our Director of Education to prepare a new final staff report regarding the 3:2 decision. This information will be presented at a public meeting prior to any vote on the North Bay secondary school closing and consolidation. Our Board intends to schedule this meeting after the issuance of your final report.

- Shortly after our inauguration in January of this year, our Board was provided with training by legal counsel with respect to open and closed meeting requirements of the Education Act. When the updated Board Governance Policies and By-Laws are finalized, further training will be provided to Trustees.
- Public notification of all Board and Committee Meetings, including Ad Hoc and Standing Committees is posted on the NNDSB website. This information includes the date, time and location of the meeting along with an electronic copy of the agenda and attachments for review at the meeting.

Our board appreciates the thorough work your office has provided in its investigation. Your recommendations will provide a key cornerstone for the Near North District School Board in restoring a strong foundation in good governance practices.

Sincerely,



Jay Aspin

Chair, Near North District School Board