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September 14, 2006

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File: 82560.1

Mr. Peter Ferreira, Chair and Fellow Trustees of the
Dufferin-Peel Catholic District School Board
40 Matheson Boulevard West
Mississauga, Ontario L5R 1C5

Dear Trustees:

Re: Dufferin-Peel Catholic District School Board

My appointment as Special Advisor obliges me to provide the Board of Trustees with my advice on the matters that are before you relating to the budget and the deficit management plan at the Board meeting on September 14, 2006.

The Context

As you are aware, s. 231 of the *Education Act* imposes a legal obligation on the Board to pass a balanced budget that also accommodates any deficit of any previous year. It provides:

231. (1) Every board, before the beginning of each fiscal year and in time to comply with the date set under clause (11) (c), shall prepare and adopt estimates of its revenues and expenditures for the fiscal year, and the estimates,

(a) shall set out the estimated revenues and expenditures of the board, including debt charges payable by the board or on its behalf by the council of a municipality or an upper-tier municipality;

(b) shall provide for a projection of any surplus or deficit arising in the fiscal year immediately preceding the fiscal year, as calculated by the treasurer of the board;

(d) shall provide for any deficit of any previous fiscal year, including a deficit projected under clause (b);

(g) subject to clause (d), shall not provide for any deficit.

(2) In meeting the requirements of clause (1) (a), the board shall ensure that its estimated expenditures do not exceed its estimated revenues.

Where the Minister has concerns about a board's ability to meet its financial obligations, the Minister can direct an investigation of the board under s. 257.30 of the Act. This investigation occurred and the Report was issued on April 3, 2006.

Instead of seeking the appointment of a supervisor, the Minister appointed me as Special Advisor under certain Terms of Reference to assist the Board in preparing a deficit management plan. The Terms of Reference were accepted by the Board by motion dated July 12, 2006. They provide:

With the guidance of the Special Advisor, the DPCDSB will prepare the deficit management plan based on:

- announced funding levels by the government, rather than funding increases anticipated by the board;
- cost increases that are currently known to the board, such as wage provisions in labour contracts; and
- enrolment changes that have been projected by the board and previously shared with the ministry.

The deficit management plan should at a minimum identify:

- specific measures the board is adopting in each year and the contribution these measures make towards deficit reduction;
- any significant change in programs and services on year by year basis;
- staffing changes, if any, per year and per category of personnel;
- any one-time costs per year to implement the deficit management plan;
- the use of reserves, if any;
- financial and non-financial assumptions in developing the plan; and
- required methods for dealing with in-year expenditure decisions to ensure zero-base budgeting.

The Special Advisor will ensure that the deficit management plan of the DPCDSB includes the following measurable financial objectives:

- in 2006-07, fully address the remaining deficit carried-forward from the previous year and to end the fiscal year in a balanced position or with a deficit not to exceed 1% of 2006-07 operating grant revenue; and
- in 2007-08, fully address any remaining deficit carried-forward from the previous year and end the fiscal year in a balanced position.

The deficit management plan of the DPCDSB is to be submitted to the Minister of Education no later than September 22, 2006.

It is important for trustees to understand that the *Education Act* does not specifically provide for the possibility of a deficit management plan. In effect, the Ministry may forebear from using the enforcement mechanisms in the *Education Act* including, for example, the ability to restrict the flow of grants, where there is non-compliance with the financial requirements of the Act and the regulations, provided that the board has submitted an agreeable deficit management plan.

Plan B

The goal of any deficit management plan adopted by the Board would be to eliminate the structural deficit and any deficit carried forward to achieve a balanced budget position by the end of 2007/2008, which is year 2 of the plan.

Plan B presented to the Board a series of permanent and temporary reductions. Permanent reductions in year 1 would be the fastest way to eliminate the structural deficit, because they carry forward into the future. But Board staff have presented a plan with a more balanced approach that includes both temporary and permanent reductions over 2 years. This balanced approach results in a less detrimental reduction in service delivery to the students and to the system.

As I indicated to you in my brief remarks at the meeting of the Administration & Finance Committee on September 6, 2006, in my opinion, Plan B is fully compliant with the Terms of Reference. It meets the required goals with a holistic and balanced set of measures including an effort to minimize impacts on the class room, while recognizing that it is not possible to make changes in the system without in some way or other impacting on the classroom.

Plan B was prepared by staff after extensive internal consultation and much difficult work. It is strongly supported by senior staff of the Board as the best way for the Board to meet its legal obligations while continuing its ability to provide excellent Catholic education to its students. It also has my very strong support.

Plan B has been extensively described to trustees and you have had many opportunities to raise questions about it. I strongly urge you to support your staff and their professional judgment. I urge you to pass a motion supporting Plan B.

The 1% proposal

At the meeting on September 11, 2006, it was proposed that the Board aim for a 1% deficit at the end of 2006/2007, which is a deficit in the amount of about \$6.5 million. Plan B, by contrast, proposes a deficit of \$2.271 million.

At my request, staff have modeled what such a deficit management plan would look like in year 2.

To reach a level of deficit at the end of year 1 of \$6.5 million, the planned reductions in Plan B could be reduced by \$4.2 million (that is from \$5.1 million to \$0.9 million).

It is important to understand that, under the Terms of Reference, reductions that are not made in year 1 must be made in year 2. As well, the deficit carried forward in year 2 would increase. Also, any portion of the structural deficit that is not reduced in year 1 would be carried into year 2. This would require deeper cuts in year 2 to achieve a balanced budget. Deviation from Plan B to achieve a deficit level of 1% of the estimated grant revenue in year 1 will result in the Board having to make more cuts in year 2 to make up for the deferral of cuts from year 1.

Most of the Plan B cuts in year 1 are largely attained through attrition. The additional cuts required by a 1% plan in year 2 would be well beyond attrition, and would dramatically impact staffing and service levels. Is it seriously expected that the currently vacant positions would be filled for only one year?

If mostly permanent cuts are removed in getting to a deficit of \$6.5 million in year 1, then the necessary cuts in year 2 to get to a balanced budget would be \$17,143,743, as opposed to the Plan B cuts of \$9,276,800. In short, the Board would have to find \$7,866,943 more dollars in cuts than it would have to make under Plan B. If the Board did not want to make more cuts than are projected by Plan B, it would end year 2 with a deficit of \$3,638,736, and it would not be compliant with the Terms of Reference.

The other way to get to 1% at the end of year 1 would be to use temporary cuts and some permanent cuts. The necessary cuts in year 2 to get to a balanced budget would then be \$13,360,759, or \$4,083,959 more in year 2 cuts than are projected by Plan B. If the Board did not want to make more cuts than are projected by Plan B, then it would end year 2 with a deficit of \$3,638,736 and would again not be compliant with the Terms of Reference and its legal obligations.

	Plan B	1% temporary	1% permanent
Year 1 ending	(\$2,271,793)	(\$6,500,000)	(\$6,500,000)
Cuts needed in Year 2	\$8,954,777	\$13,360,759	\$17,143,743
Year 2 cuts identified in Plan B	\$8,876,800 400,000 \$9,276,800	\$8,876,800 400,000 \$9,276,800	\$8,876,800 400,000 \$9,276,800
Year 2 cuts required to balance	\$322,023 (none required)	(\$4,083,959)	(\$7,866,943)

It is important, in my view, to understand that there are certain features of Plan B which must be present in any deficit management plan that the Board might wish to file. The key words in the Terms of Reference are that the plan must, “in 2007-08, fully address any remaining deficit carried-forward from the previous year and end the fiscal year in a balanced position.”

These words are critical because they require the same level of detail in the actual cuts that is found in Plan B, as required by the Terms of Reference, which are very specific. Any plan that the Board of Trustees may wish to put forward other than Plan B must have a similar level of detail. In short, all of the cuts must be clearly identified and must be feasible. Anything less would not be a “plan” within the meaning of the Terms of Reference.

Therefore, if the Board wishes to adopt a 1% plan with a \$6.5 million deficit at the end of year 1, then it must detail the cuts that it plans in year 1 and year 2 to reach its goals, with the degree of specificity referred to in the Terms of Reference and now found in Plan B.

Most importantly, however, it is the opinion of staff, which I heartily support, that it is impossible for the Board to make the cuts in year 2 that would be required to compensate for lower cuts in year 1. I therefore urge you not to support a 1% plan that results in a \$6.5 million deficit at the end of year 1 because it is bad for the school board, bad for education and bad for the children and staff of the system.

The need for Ministry approval of any deficit management plan

It is important for the Board of Trustees to understand that the fact of compliance with the Terms of Reference is a necessary, but not a sufficient condition for Ministry approval.

In other words, the Ministry may assess the deficit management plan filed by the Board and reject it as being inadequate. The Ministry has had an opportunity to review Plan B and in my opinion, if it is adopted by the Board, it would be approved. By contrast, in my opinion, a back-end loaded 1% deficit management plan with draconian cuts in the second year would not be accepted by the Ministry.

If Trustees flinch from the cuts proposed in Plan B, there is no reasonable expectation that you would have the stomach for the cuts required in year 2 of a 1% plan.

It is doubtful whether the cuts that would be required in year 2 would even be made. If they were made, the disruption of the system would be massive and its ability to provide quality Catholic education would be seriously compromised.

In truth, a 1% plan would be the moral equivalent of proverbial “Hail Mary” football pass, thrown in the expectation that, somehow, the government would rescue the Board in year 2. That is not going to happen and it is not appropriate to gamble the fate of the system on such wishful thinking. The Terms of Reference specifically forbid it.

I have no doubt that the Ministry would reject 1% plan.

Questions and answers

During the meeting of September 11, 2006, trustees asked a number of questions that require a Ministry response.

I received a letter from the Assistant Deputy Minister dated September 14, 2006, which is attached to this letter. A summary of the response is set out below.

The Ministry will not approve the use of new pupil place grant reserve funds for operating purposes.

The Ministry advises that, in addition, borrowing from a capital reserve does not address the Board's deficit. Borrowing can only be used for cash flow purposes against an anticipated source of revenue. There is none identified by the Board to repay any borrowing from the new pupil place grant reserve. The Ministry's view is that the Board is attempting to borrow against future grant revenues, which is inconsistent with the Terms of Reference. Accordingly, borrowing from capital reserves is not a solution for the School Board.

In respect of transportation, the Ministry confirms that the *Education Act* does not permit parental contributions to transportation expenses or the charging of fees for transportation by a school board.

Concluding Observations

Plan B represents the best advice of the Board's professional education staff on how to meet the Board's legal obligations under the *Education Act* and under the Special Advisor's Terms of Reference. It represents a viable and workable approach that minimizes impacts on the classroom and is consistent with the values that this Board has espoused. Any other plan would, in my respectful submission, be worse in its impact on the system.

As Special Advisor, I therefore urge you to adopt Plan B without amendment.

It is important for you to understand that nothing stops you from pursuing politically your goal of improving the funding model. Your credibility in doing so would, in my opinion, be enhanced by complying with the law as other school boards have done.

I urge you not to give in to the temptation to use the budgeting exercise as a form of civil disobedience and as a weapon. If you decide not to file a deficit management plan in compliance with the Terms of Reference, you will be putting the Minister of Education into a position of having no choice but to pursue the appointment of a supervisor. If you lose control of the Board, you will lose the ability to influence the delivery of Catholic education in Dufferin-Peel.

Yours truly,

MILLER THOMSON LLP

Per: 

Peter D. Lauwers
PDL/pgs

c. Michael Bator
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September 14, 2006

Peter D. Lauwers
Miller Thomson LLP
600, 60 Columbia Way
Markham, ON L3R 0C9

Dear Peter Lauwers,

I understand that two issues were raised at the Administrative and Finance Committee meeting of the Dufferin-Peel Catholic District School Board (DPCDSB) held on September 11, 2006 that require clarification from the ministry. The two issues are: (1) the policy on sharing student transportation costs with parents and (2) the policy on borrowing from capital reserves in order to cover a deficit.

Transportation

In general terms, a school board is only empowered to do what the *Education Act* authorizes. The Act does not explicitly authorize school boards to charge for the transportation of students admitted to elementary or secondary schools, nor does it contain any implied authority to do so. The transportation allocation is intended to cover the whole cost of transportation borne by a board. Thus, although a parent may be willing to pay for transportation services, the board has no authority under the *Act* to enter into such an arrangement. There is no present intention to change this policy.

Using Capital Reserves

The Board has asked to use capital reserves, specifically its New Pupil Place Grant Reserve to offset the deficit. Boards are permitted to use capital reserves for the purposes as specified in regulation 446/98 of the *Act*. The use of capital reserves to cover an operating deficit is not a purpose specified in the *Act* and therefore is not permitted. The Ministry has refused similar requests from boards.

Borrowing from Capital Reserves

Boards are permitted to interim borrow from their capital reserves for operating cash flow purposes as specified in s.241(1)(d) of the *Act*. This is of no assistance to the Board in meeting its obligations under the terms of reference. First, borrowing money from a reserve can only be for cash flow purposes, where, for example, the Board anticipates funds from a source in the near future but needs the cash now. An example would be the need to meet a payroll now when the municipal taxes are not due to be received for a few weeks. Borrowed funds are not revenue and cannot be accounted for in that way. The deficit calculation would not be changed.

Second, there is no identified revenue source available to repay the proposed borrowing. As the Terms of Reference provide:

With the guidance of the Special Advisor, the DPCDSB will prepare the deficit management plan based on:

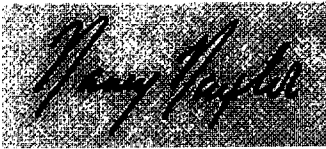
- announced funding levels by the government, rather than funding increases anticipated by the board;

The Board would appear to be seeking to borrow against future revenue flows from the Ministry, and this is contrary to the Terms of Reference.

I am confident that senior business staff at DPCDSB can provide trustees an overview of the PSAB for local government accounting standards that school boards in Ontario are required to follow and why an operating deficit cannot be erased by the board undertaking an internal or external borrowing arrangement.

Please feel free to contact me to discuss any of the above items.

Sincerely,

A black and white image of a handwritten signature, which appears to be "Nancy Naylor". The signature is written in a cursive style and is somewhat obscured by a grainy, high-contrast background.

Nancy Naylor
Assistant Deputy Minister