



January 27, 2015

Honourable Gordon Dirks
Minister of Education
320 Legislature Building
10800 97 Avenue
Edmonton, AB T5K 2B6

Dear Minister:

RE: ASBA Response to Draft Regulations

Please find the ASBA response to the draft regulations as attached.

Thank you for the opportunity to provide further input into this process and encourage you to reflect on our feedback in finalizing the regulations to support the new Education Act.

I would be pleased to meet to discuss any aspects of this response.

Sincerely,

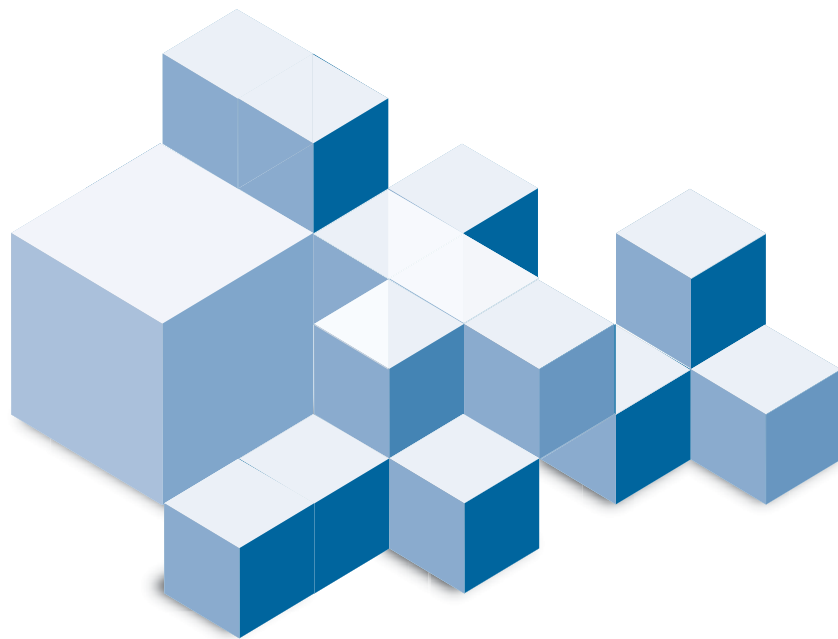
A handwritten signature in black ink, appearing to read 'Helen Clease', written over a horizontal line.

Helen Clease
ASBA President

Attachment

Education Act Draft Regulations

Submission of the Alberta School Boards Association



Stewards of public education

As locally-elected representatives, Alberta's school boards are entrusted with the responsibility to foster excellence in public education.

In fulfilling this crucial governance role, school boards are connected with and responsive to their local communities, ensuring all students – each of whom has the fundamental right to be educated – receive the *best* education.

Theirs is the voice most reflective of local context. Theirs are the decisions made in the best interests of the students and communities they serve, ever-mindful that the dollars allocated to public education come from all Albertans.

Building on the solid foundation of what is already a world-class education system, school boards are uniquely placed to ensure the very best outcomes for all students in a future shaped by Inspiring Education and the Education Act.

School boards are stewards of public education. Preparing for a future where all students are engaged thinkers and ethical citizens with an entrepreneurial spirit, in an education system centered on the learner and ever-more responsive to local direction, this stewardship role has never been more important.

To fulfil their mandate of delivering an excellent education system, school boards require predictable, sustainable funding to fulfil their stewardship role.

Desired regulatory environment

The Education Act, within the spirit of Inspiring Education, is often characterized as more enabling and less prescriptive than the current *School Act*.

The principles underlying Inspiring Education and the bestowing of natural person powers upon locally elected school boards must be reflected in the regulatory environment supporting the new Education Act. Additionally, the exercise of natural person powers requires adequate, predictable, sustainable funding to school boards to give effect to these powers.

The Government of Alberta has delegated a high degree of responsibility for the operation of Alberta’s school system to school boards under legislation. School boards are accountable for the success of their students and require the latitude, flexibility and tools to enable them to do their job well.

This twenty-first century regulatory environment governed by the new Education Act should be one of minimal regulation and prescription. One that recognizes the need for school boards to have the authority and flexibility to make decisions that are responsive to the unique opportunities and needs of the local communities they serve and in the best interests of students. And one that is balanced by an acknowledgement that in certain limited instances regulation may be appropriate where province-wide consistency is needed.

A movement toward minimal regulation and less prescription is essential if Alberta is to strive for excellence through a forward-thinking, student-centred education system that enables democratically elected school boards to engage their communities and respond practically and effectively, through locally established school board policy, to local circumstances, needs and opportunities.

Diversity is one of Alberta’s core strengths. A “one size fits all” approach to education through unnecessary and ineffective regulation will not capitalize on that strength. Learning from the different experiences and valuable perspectives of the diverse education communities across the province is one of the reasons why Alberta has a world class education system – it is essential that all partners in the education system continue to reinforce and build on this strength under the new Education Act and associated regulations.

Commentary on specific draft regulations

School boards will be responsible for implementing the provisions of the Education Act and its supporting regulations on a day-to-day basis. It is essential that full and ongoing collaboration between the government and the Alberta School Boards Association continue throughout all stages of the Regulatory Review process to ensure that the vision and principles upon which the new Education Act is founded are translated into action in the most effective way possible.

What follows is commentary on certain specific elements of many of the draft regulations, identification of areas of potential concern, questions for clarification, as well as requests for consideration.

Alberta School Foundation Fund

Right of access

The “eligible student” criteria reflect the changes to eligibility requirements for a right of access to education under s.3 of the Education Act.

This regulation provides that students under the age of 22 as of September 1st are eligible for funding. When contrasted with the right of access, where students only have a right of access to an education program until the age of 20, a lack of clarity exists with respect to reconciling these two related provisions in implementation.

Question for clarification

Given the interplay between right of access and eligible student criteria with respect to funding and the differing ages represented in each provision, what is the Government’s intended direction with respect to students whose age places them in the gap between the provisions (i.e. aged 21 at September 1)?

Attendance

The draft regulation states that one of the criterion for an “eligible student” is that: “on the last day of September on which instruction is given by a teacher at a school operated by a board, the student is enrolled in and attending the school...”

The meaning of “and attending” in this context is unclear, and the wording of this subsection could imply that in order to be eligible for funding, the student must physically attend school on the last instructional day of September.

Question for clarification

What is the Government’s intention with respect to the phrase “and attending” in the context of a criterion for an eligible student?

Funding

The regulation provides criteria for eligible students (including the date determined – the last day of September on which instruction is given...). A significant portion of school board funding is determined based on the number of eligible students at the count date.

In practice, school jurisdictions often experience significant fluctuations in the number of students entitled to receive an education program over the course of a school year. Practically, the net change in student numbers can significantly impact planning and program delivery.

Potentially compounding this matter are the changes to the definition of resident student, which now account for where the student resides [rather than the parent(s)]. The full impact of this change will only be known when the Education Act is proclaimed and this specific requirement implemented.

Request for consideration

That consideration be given to the implications, financial and otherwise, of a net increase in resident, eligible students who enroll after the count date and are entitled to receive an education program from a school board which has not necessarily received funding for such students.

Board Procedures

Electronic Meetings

This regulation updates provisions with respect to electronic meetings and provides that a trustee may participate in a meeting of the Board via electronic means, or other communication facilities that enable a trustee to participate in the meeting and members of the public attending the meeting to hear each other. Trustees participating in this manner are “deemed” to be present at the meeting.

These changes raise the issue of the challenge in reconciling the potential for a trustee to “physically” miss three regular meetings of the Board while participating by way of electronic means, with disqualification provisions and residency requirements.

Additionally, in fulfilling the requirements for open meetings, school boards must have flexibility to determine exactly how meetings shall occur.

Request for consideration

School boards are best positioned to establish appropriate board procedures through policy. This includes how a board addresses participation by electronic means in a board meeting. It is therefore suggested that section 5 of the draft regulation be amended to provide general statements on participation by electronic means, including that this element be addressed in board policy, while removing the provision which automatically deems a trustee present if the requirements currently noted in the draft regulation are met. This would allow for school boards to establish appropriate policies reflective of their specific circumstances, expertise and knowledge of local communities.

Borrowing

Appearing contrary to the spirit of granting natural person powers to school boards, the draft regulation includes the requirement for Ministerial approval for all types of borrowing and places a number of limitations on a board's ability to borrow.

Additionally, and especially without the ability to generate funding through taxation, it is imperative that school boards have access to adequate, stable, predictable funding to both fulfil their mandate to deliver excellent education and give full effect to the borrowing authority of school boards.

Requests for consideration

That school boards are provided with adequate, stable, predictable funding to both fulfil their mandate to deliver excellent education and give effect to the borrowing authority of school boards.

That the requirement for Ministerial approval of school board borrowing be eliminated.

Charter Schools

Alberta's public, separate and francophone school boards – locally-elected by Albertans with a stake in the education system – are responsible and accountable for the governance, operation and administration of Alberta's public education system. The Alberta School Boards Association and its members believe in public education.

Public education is a cornerstone of democracy. Alberta's public education system develops creative thinkers and active, engaged citizens who contribute to their communities, participate in the economy and work to build an inclusive society.

Innovation rarely begins large-scale. School boards foster opportunities for unique and innovative responses to the education needs of their local communities through their regular and alternative programs; students benefit. And the imperative to share is embraced by school boards. What has been tried, tested and successful in one jurisdiction quickly spreads to others so barriers to student success can be eradicated.

Removal of provisions which cap the number of charter schools that may operate in Alberta at any one time would seem inconsistent with the above sentiments, the mandate of charter schools and the requirement that charter school programs be both significantly different than what a public board offers and ultimately shared with the wider education community.

Request for consideration

That provisions which cap the number of charter schools that may operate in Alberta at a given time and which currently exist in regulation remain in regulation.

Disposition of Property

Amendments to this regulation which provide greater flexibility and autonomy to school boards when disposing of board property are welcome.

Provisions which exist in the current regulation and remain unchanged in the draft reflect the ability of the Minister to declare a board's reserve lands surplus to the

board's needs and to direct the board to make space available to another board. These provisions seems contrary to spirit of many of the amendments to this regulation which are more enabling and less prescriptive.

Request for consideration

That the ability of the Minister to declare a board's reserve lands surplus to the board's needs and direct the board to make space available to another board be removed.

Early Childhood Services

Many provisions of the draft regulation remain largely unchanged from the current regulation, though a provision in the current regulation that "An early childhood services program must be operated in a facility that complies with all applicable municipal and provincial public health, safety, fire and building standards" has been removed from the draft regulation. Similar provisions for meeting health and safety standards remain in regulation for Charter Schools and Private Schools.

Question for clarification

Is the removal of the provision requiring an early childhood services program to be operated in a facility that complies with all applicable municipal and provincial public health, safety, fire and building standards intentional?

Home Education

Alberta's school boards are entrusted with the responsibility to foster excellence in public education and ensure all students – each of whom has the fundamental right to be educated – receive the best education. Where student learning and success are paramount, it is incumbent upon the system to ensure an appropriate legislative framework is supported by effective accountability measures to ensure those with the fundamental right to be educated have access to an excellent education program.

Petitions and Public Notices

Requirement to establish board policy

Included in this regulation is a requirement for boards to establish a policy regarding the administration of petitions. It is not clear what more a board policy would add to the specificity contained in the draft regulation.

Request for consideration

That the requirement for boards to establish a policy regarding the administration of petitions be removed.

Representative Petitioner

A provision which previously existed in the *School Act* and which does not appear in the draft regulation is the requirement for a “representative” of the petitioners with which the board may communicate. Unless the intent is for this to be a matter which could be specified in a board policy, removing the requirement for a “representative” petitioner may place a significant administrative burden on the board and administration which, without a representative petitioner, may have to provide written notification to every individual petitioner regarding the sufficiency of the petition and the outcome of the committee’s review of the petition.

Request for consideration

That provisions similar to those which exist in the *School Act* respecting a “representative” petitioner be included in the regulation.

Public notice

The public notice provisions contained in the draft regulation continue to focus on publishing notice in newspapers. More updated language regarding public notice, such as that used in the draft Disposition of Property Regulation, should be considered.

Request for consideration

That provisions respecting public notice in this regulation reflect updated language, such as that used in the draft Disposition of Property Regulation.

Private Schools

Public education is best governed by locally elected boards and private schools are not governed by locally elected boards.

Private schools must demonstrate levels of accountability and transparency consistent with those required of the public education system.

Alternative programs offered by public school boards are the most effective and equitable means of delivering unique educational programming to Alberta students.

School Councils

Establishment process

The portion of the current School Councils regulation prescribing the establishment process has been retained in the draft regulation. The process for establishment is more appropriately determined by school boards establishing and maintaining effective local policies that will enable and guide school councils and their establishment, while respecting local context and circumstances. As locally-elected representatives of their communities, school boards are best-positioned to provide an open, flexible and transparent school council establishment process. Schools further establish specific procedures which are responsive to particular school communities.

Request for consideration

That provisions in the draft regulation which prescribe the establishment process for school councils be removed, and replaced with language referencing board policy which reflects local community needs.

Donations and Fundraising

A new section has been added to the draft regulation regarding donations. These new provisions lack clarity with respect to receipt, acceptance and use of donations.

Request for consideration

That the wording of provisions in the draft regulation respecting donations is clarified so both the intent and application of the provision are clear.

School Fees

This is a new regulation and in an ideal world, government should not regulate in this area. School boards have had authority to charge fees under the *School Act* for years and the new Education Act is premised upon increasing local autonomy and grants natural person powers to boards.

During the regulation review process, the government took the position that school boards would no longer have the authority to charge any school fees under the Education Act unless a regulation was in place. This position represents a significant policy shift that seems inconsistent with the principle of increasing local autonomy which was enunciated in *Inspiring Education* and also underlies the new Education Act.

Adequate, predictable, sustainable funding of the type of free public education envisioned for all students in *Inspiring Education* must be provided to ensure every student in every location in the province can access their preferred program options without the need to pay a fee. Until such time as this level of funding is achieved, boards must retain the ability to charge fees associated with program offerings which go beyond mandated curricular outcomes.

The Education Act maintains the ability for a board to charge a parent of a student fees in accordance with the regulations, but does not define “school fees”.

School boards also maintain the ability to charge fees for the provision of alternative programs and early childhood services. It is not clear whether these types of fees are to be considered school fees and governed by this regulation.

Questions for clarification

Clarity is desired on the Government's intention regarding:

Fees charged at the school level versus fees charged at the jurisdiction level.

Fees associated with the provision of alternative programs and early childhood services.

Student Record

Residency/citizenship information

The draft regulation replaces the current requirement to include, in the student record, “the citizenship of the student, and if the student is not a Canadian citizen, the type of visa or other document pursuant to which the student is lawfully admitted to Canada for permanent or temporary residence, and the expiry date of that visa or other document” with a more general description for “information or evidence related to the student’s entitlement to access an education program in accordance with the Act [s.3].”

This more general description places the onus on boards to make the determination regarding acceptable information or evidence regarding residency and a right of access. Given the interplay between right of access to an education program and eligibility for funding, consistency between documentation accepted by Alberta Education with respect to determining eligibility for funding and that which would be accepted by a school board in determining right of access would be beneficial.

Question for clarification

Given the interplay between right of access and eligibility for funding, and to inform boards in establishing appropriate policies with respect to determination of right of access, that the Government articulate the types of information which will be considered valid when determining a student’s eligibility for funding.

Suspension/Expulsion History

The draft regulation removes the current requirements to maintain information on the student record relating to suspensions (of more than one day) and expulsions for a minimum of one year and a maximum of three years following the date of the suspension/expulsion. Such information will now be maintained on the student record until its destruction.

The perceived entitlement of “fresh starts” for students reflected in the current provisions should be balanced with ensuring that boards have comprehensive information about incoming students. Additionally, provisions in the draft regulation which require all suspension and expulsion incidents to remain on the student record until destruction may have unintended consequences which include boards facing dramatically increased numbers of appeals respecting suspensions and expulsions and the subsequent potential rendering of these two disciplinary measures less effective as they become less utilized.

Request for consideration

That a balance between the philosophy reflected in the current provisions respecting the length of time suspensions and expulsions remain on a student record and ensuring boards have comprehensive information about incoming students be struck in the regulation. This may include having expulsions remain on the record permanently; while having suspensions dealt with in graduated provisions.

Student Transportation

Ever-aware of local context and need, school boards are best-positioned to set school board policy regarding student transportation; nonetheless, the current regulation essentially drives the funding received for student transportation and in that respect the regulation has served a useful purpose.

The removal of walk limits in the regulation and subsequent implications must be fully funded and not negatively impact school boards.

The three faces of public education – public, separate and francophone – offer parents a rich selection of choices. The variety of Alberta’s schools and educational

approaches respects the right of parents to choose the kinds of programs their children can take. The right to choose must be founded on fairness.

Currently students who choose charter school education are eligible for transportation funds from the public purse; students whose “programs of choice” are within the public education system should receive the same consideration. And while charter schools can choose the students they serve, the public education system welcomes all children – regardless of their skills, talents, background or ability to pay. Fair funding and equitable access to programs of choice within the public system are particularly important.

Continued collaboration

In establishing the Regulatory Review process, the government stressed the importance of consultation with a view to engage interested Albertans to contribute in a meaningful way in order to facilitate regulations that are responsive to the needs of business and stakeholders, while also meeting the standard of regulatory excellence.

Through the Regulatory Review process, the Alberta School Boards Association has had representation on each of the external working groups examining the regulation-making powers and was well-represented at the government’s five public consultations held around the province in early-mid October 2013.

Previous submissions

The Alberta School Boards Association provided a submission to the Regulatory Review in October 2013 which contained commentary on many elements associated with the regulations and provides the basis for many of the comments made here. The October 2013 submission can be found at: http://www.asba.ab.ca/wp-content/uploads/2014/09/regulatory_review_report.pdf

Additionally, the Alberta School Boards Association has provided multiple submissions on various aspects of the Education Act. These submissions can be found at: <http://www.asba.ab.ca/advocacy/position-papers/>

Future legislative change

It is noted that a number of regulation-making powers present in the Education Act have not been exercised as reflected by the draft regulations. The Alberta School Boards Association acknowledges that ultimate authority for legislation and regulation rests with the government. And given the delegated responsibility for many aspects of education to school boards, the Alberta School Boards Association looks forward to working together in partnership to continue to shape a legislative and regulatory environment consistent with our world-class education system.

School boards' voices, which reflect and retain the central focus on what is in the best interest of all students, must be an integral and respected component of any dialogue on education in Alberta.



Alberta School Boards Association
Suite 1200, 9925 - 109 Street, Edmonton, AB T5K 2J8
Phone: 1.780.482.7311 Fax: 1.780.482.5659
www.asba.ab.ca