



Education Act - Draft Regulation Review

Information for School Boards

January 2015

Note:

- **Summary of changes only.** This document provides a summary of key changes from the existing regulations to the draft regulations aimed at helping to inform a review of the new draft regulations by school boards. This summary is not intended to provide an exhaustive list of all provisions or changes under the draft regulations. Therefore, it is important to review the draft regulations in their entirety.
- **Overall statutory scheme.** These regulatory changes must not be viewed in isolation. Overarching provisions and changes under the Education Act (from the *School Act*) must be borne in mind. Therefore it is important to review and consider provisions of the Education Act that are relevant to the substance of each regulation in conjunction with a review of the draft regulations.
- **Policy and procedure implications.** Boards will need to ensure that any relevant policies, procedures or other documents impacted by the Education Act and new regulations are amended or added, as the case may be, to ensure compliance and consistency with the Act and regulations.

1. Alberta School Foundation Fund Regulation

This regulation governs how school boards are paid from the Alberta School Foundation Fund - the provincial pool of funds that education funding comes from.

Education Act Regulation Making Authority

Section 169(8):

169(8) The Lieutenant Governor in Council may make regulations

- (a) respecting payments to boards from the Alberta School Foundation Fund for the purposes of education under this Act;
- (b) establishing criteria for determining who is an eligible student.

Key Changes

Change in wording of the regulation-making authority under the Education Act (i.e. adds s.169(8)(b) re: eligible student criteria). Overall the draft regulation remains largely unchanged from the current regulation. Key changes include:

Eligible student criteria (s.3)

- Section 3(1) sets out the eligible student criteria:
 - Removes reference to September 30th as the “count date”; now uses “last day of September on which instruction is given...”.
 - One of the criterion for an “eligible student” set out in s. 3(1)(a) is that: “on the last day of September on which instruction is given by a teacher at a school operated by the board, the student is enrolled and attending the school.” *(Note: This one criterion combines and slightly modifies two requirements under the current regulation s. 1(b) that the student (i) on September 30 meets the requirements of section 8(1)(b) of the Act [child and parent citizenship requirements];... (iii) is enrolled in and is attending a school operated by a board.)*
 - Reflects (in s.3(1)(b)) the changes to eligibility requirements for a right of access to education under s.3 of the Education Act that residency is based upon where the student lives. The Education Act no longer requires that the student’s parent be resident in Alberta. The student must be a resident of Alberta and the student’s parent must only be a resident of Canada.
 - Students that are over the age of 5 years 6 months and under the age of 22 as of September 1st are funded (s. 3(1)(c)). The current regulation funds students that are over the age of 5 years and 6 months and under the age of 20 as of September 1st. *(Note: This change indicates that students aged 21 as of September 1st are eligible for funding. This is an increase of funding for 2 years over the current regulation which funds students aged 19 as of September 1st. Under the Education Act, students only have a right of access until the age of 20 (meaning a board must provide them with an education program), but boards may accept a 21 year old student and receive funding for that student.)*
- Section 3(2) has been added to the regulation and provides: “A student who is an eligible student by virtue of meeting the criteria in subsection (1), including the requirement that the student be enrolled in and attending a school on the last day of September on which instruction is given by a teacher at the school, does not qualify as an eligible student for a second or subsequent time by virtue of enrolling in and attending a different school on a later day in September.”

2. Board Procedures Regulation

This is a new regulation. This regulation addresses a number of school board procedural issues currently provided for under sections 64-74 of the *School Act*.

Education Act Regulation Making Authority

Section 69(a):

- 69 The Minister may make regulations
- (a) respecting board governance and administrative procedures;

Key Provisions

Provisions regarding open meetings (*School Act* s. 70) and inspection of documents (*School Act* s.75) are covered under the Education Act (s.64 and 65) and remain essentially the same. The provisions of the new draft regulation are summarized as follows:

Organizational meetings(s. 1)

- Must be held 2 weeks following the date election results are announced or posted, rather than 4.
- Section 1(3) maintains the requirement for the board, at the organizational meeting, to elect a chair and a vice-chair, who is to hold office during the pleasure of the board. (*Note: The draft regulation does not address the issue currently set out in s.65(2) and (3) of the School Act of who shall assume duties if the chair, or chair and vice-chair, is absent or cannot perform their duties due to illness or other cause.*)

Regular meetings (s.2)

- These provisions are the same as section 66 of the *School Act*.

Special meetings (s.3)

- Notice required for the calling of a special meeting has been reduced from seven days to five days for all methods of notice, including notice by mail, personal service, facsimile, email or other electronic means. (*Note: Under the current School Act boards have the ability to call a special meeting upon two days' notice where documents are personally served. The ability to waive notice requirements if every trustee agrees has been maintained.*)

Board procedure (s. 4)

- Under the current section 68 of the *School Act* a board may make rules governing its internal procedures and its meetings. Under the new regulation the board must establish policies and procedures governing the conduct of meetings of the board and the administration and business of the board, and must also monitor and evaluate the effectiveness of the established policies and procedures on a regular basis.

Electronic meetings (s. 5)

- Consistent with s.71(5) and (6) of the *School Act* a trustee may still participate in a meeting of the board via electronic means or other communication facilities that enable a trustee participating in the meeting and members of the public attending the meeting to hear each other, and trustees participating in this manner are “deemed” to be present at the meeting. However, a new provision requires that the chair of the board or a designate of the chair and at least one trustee be physically present in the meeting room and gives the power to the chair of the board to refuse to permit a trustee to participate via electronic means or other communication facilities if doing so would mean that the physical presence requirements were not met.

Readings of bylaw (s.6)

- These provisions are the same as section 69 of the *School Act*.

Quorum (s.7)

- This section is identical to the existing section 71 of the *School Act* on quorum, with the exception of the electronic meeting provisions having been moved and a minor change in subsection 7(3) of the draft regulation which removes the word “normal” from the phrase “achieve ~~normal~~ quorum”. The new subsection 7(3) provides, “Notwithstanding subsection (1), the Minister may order that when the number of trustees has fallen below the quorum the remaining trustees are deemed to be a quorum until elections are held to fill the number of vacancies required to **achieve quorum.**”

Voting (s. 8)

- This portion of the draft regulation includes matters currently addressed under section 72 of the *School Act* with one change. Clause 8(2) of the draft regulation provides:
“The chair of the board and every trustee present at a meeting of the board shall vote for or against every question unless
 - (a) in a specific case, the chair or a trustee is excused by resolution of the board from voting, or
 - (b) the chair of the board or a trustee **has a pecuniary interest in the matter and abstains from voting as required by section 88(1) of the Act.**” (*Note: this is a change from the current wording of 72(2)(b) of the School Act that provides “the chair or a trustee is otherwise excused by this Act”*)

Required votes (s. 9)

- These provisions are the same as section 73 of the *School Act*.

Records (s. 10)

- These provisions are the same as section 74 of the *School Act*.

3. Borrowing Regulation

This regulation sets out the circumstances in which a board may borrow.

Education Act Regulation Making Authority

Section 180:

180(2) The Minister may make regulations respecting the circumstances in which a board is not required to obtain the prior approval of the Minister before borrowing to meet operating and capital expenditures, including qualifying conditions or requirements that the Minister considers appropriate.

180(5) The Minister may make regulations respecting borrowing by a board under this section.

Key Changes

Name change from “Capital Borrowing Regulation”. A number of the provisions are the same as in the current regulation. Key changes include:

Borrowing for construction or purchase of school building(s. 2)

- This section allows a board to borrow, by issuing a debenture or otherwise, to meet **capital expenditures** for the construction or purchase of a school building, which includes a modular building, subject to 5 conditions. (*Note: currently, a board is prohibited from borrowing for the construction or purchase of a school building except for energy refits.*) The 5 conditions include:
 - (a) the board must submit a business case analysis to Alberta education that includes:
 - (i) calculation of the total payments to be made under the loan including interest;
 - (ii) description of the source of the borrowed funds;
 - (iii) repayment terms;
 - (iv) the loan’s effect on the board’s capital reserves and operations.
 - (b) All indebtedness under the loan must be retired within 20 years;
 - (c) The board’s debt ratio at the time of borrowing (total financial assets ÷ total liabilities from board’s most recent audited financial statements) must be higher than .5;
 - (d) The board’s capitalization ratio at the time of borrowing (debt ÷ [debt + operating reserves + capital reserves + unrestricted surplus from board’s most recent audited financial statements]) must be below .35; and
 - (e) The Minister approves the loan.

Borrowing to refit school building for energy conservation purposes (s.3)

- These provisions are virtually identical to the current regulation with the exception that section 3(d) includes the requirement that the Minister “approves the loan” replacing the provision that the Minister “may approve all or part of a loan...”

Short term borrowing (s.4)

- Section 4(1) provides a definition for “borrowing room” as the lesser of (a) 3% of Alberta Education operating revenues, and (b) board’s accumulated surplus less 1% of board’s total expenses, less the board’s unsupported debt.

- Section 4(2) expands a board’s ability to borrow, other than by issuing a debenture, to meet capital expenditures for assets that are not school buildings by authorizing a board to also borrow “for expenditures that qualify under the Infrastructure Maintenance and Renewal Funding Program” if the following 2 conditions are met:
 - (a) the loan does not result in the board exceeding its borrowing room [*new condition*];
 - (b) all indebtedness under the loan is required to be retired within the lesser of the life expectancy of the asset for which the money is borrowed and 10 years [*current condition*].
- Section 4(3) is a new provision that provides that “if a loan referred to in subsection (2) would result in the board exceeding its borrowing room, the board may incur the loan only if the Minister approves the loan.” Subsection (4) requires a board that applies for Ministerial approval for this type of loan to provide the Minister with a statement of the “final cost of the asset to which the loan applies and any other information the Minister requires.” Subsection (5) authorizes the Minister to approve all or part of this type of loan.

Debenture borrowing (s.5)

- These provisions are the same as in the current regulation with the exception of the inclusion of a “modular building” in the reference to constructing or purchasing a “school building” in section 5(1)(d).

4. Charter Schools Regulation

This regulation sets out requirements for the establishment and operation of charter schools.

Education Act Regulation Making Authority

Section 28(1):

28(1) The Minister may make regulations with respect to charter schools.

Section 25(3):

(3) The Minister may by regulation establish criteria for issuing a charter to a charter school on a continuing basis.

Key Changes

The regulation-making authority under the Education Act is worded more generally than under the *School Act*. The draft regulation remains largely unchanged from the current regulation. Key changes include:

Application requirements for establishment of a charter school (s.3)

- Under the draft regulation, in addition to the current charter school establishment application requirements, the final application to operate a charter school must now also include measures to be used to determine the outcomes referred to in s. 25(1)(c) and (d) of the Education Act:
 - demonstrates collaboration or engagement with a post-secondary institution or a school division, and
 - has the potential to provide improvements to the education system as a whole and to enhance education research and innovation in Alberta.

Contents of charter (s.4)

- Provisions of s. 35 of the *School Act* (contents of charter) have been moved to the draft regulation so that all requirements regarding the contents of a charter pursuant to which a charter school must operate are now contained in s.4 of the regulation.
- In addition to the current charter content requirements a charter must now also include:
 - An enrolment cap for the charter school that is consistent with its mandate and facility space
 - A description of the type of collaboration or engagement with a post-secondary institution or a school division.
 - The projected student enrollment, grade distribution and school building requirements from the beginning to the end of the initial charter term.

Cap on number of charter schools

- The cap on the number of charter schools that may operate in Alberta at any one time (15 in the current regulation s.9) has been eliminated.

Responsibility to share research, innovations and best practices (s.13)

- While it is a required component under the current regulation and draft regulation that a charter include a description of the process by which successful charter school innovations are communicated to the education community, a new stand-alone provision has been added to the draft regulation stating that a charter board is responsible to share research, innovations and best practices with other education stakeholders including post-secondary institutions and public schools.

5. Disposition of Property Regulation

This regulation sets out certain conditions and requirements regarding board disposition of reserve land, school buildings, and other real property.

Education Act Regulation Making Authority

Section 194:

194 The Minister may make regulations respecting the disposition of property by a board.

Key Changes

Overall, the regulation is similar to the current regulation. Key changes include:

Closed school buildings (s.2)

- In a board's policy regarding whether it has use for a closed school building (required under the current regulation), a board must, in addition to other factors, also consider "the length of time that the school building has been closed".

Surplus reserve land (s.4)

- In a board's policy regarding whether its interest in reserve land is surplus to the board's needs (required under the current regulation), a board must now, in addition to other factors, also consider "the length of time that the school reserve, municipal and school reserve or municipal reserve has existed and has not been needed by the board."

Available space in school building (s.8)

- The provisions related to the lease of real property that exist in section 8 of the current regulation have been removed as they now appear (slightly modified) in section 193 of the Education Act. Section 8(2) of the current regulation, which requires boards to keep a copy of lease agreements at the board's offices and provide information to the Minister related to leased school space, has been deleted entirely. Section 8(3) of the current regulation which allows the Minister to direct a board to make space in a school building available to another board is retained in section 8 of the new regulation.

Method for sale of real property (s.9)

- The dollar amount thresholds at which a board must comply with the requirements in the regulation surrounding obtaining appraisals and the method of sale have been raised. For real property, these requirements now apply to real property valued at over \$100,000 (under the current regulation, it is \$50,000.). For personal property, they apply to personal property valued at over \$50,000 (under the current regulation, it is \$10,000).
- When selling property, boards are no longer limited to public tender or auction and only using a real estate broker if a reasonable bid was not received through those methods. Boards may now sell property through public tender, public auction, or a real estate broker, or any other method with prior approval of the Minister.
- The sale of property conducted through a real estate broker must be publicly advertised for a minimum of 10 business days.

- Provides greater flexibility in how the sale of property through public tender or auction must be publicly advertised, that being: for a minimum of 10 business days in any manner that is “commercially reasonable and likely to be seen by community members and potential buyers”.
(*Note: This replaces the provision in the current regulation that requires advertisement in the local newspaper.*)

Sale of real property (s.10)

- Establishes a threshold dollar amount of \$200,000 for proceeds from the sale of real property, after outstanding debt has been repaid, above which the board must divide the proceeds along the lines of government and board contribution to the project. Under the current regulation, all proceeds – regardless of how small – had to be divided this way.
- Proceeds from the sale of real property may now be applied to either current or future capital projects or expenditures. Under the current regulation, proceeds may only be applied to future capital projects or expenditures.

Transfer of real property (s.11)

- The provisions related to the transfer of real property to another board that exist in s.11 of the current regulation have been removed.

6. Early Childhood Services Regulation

This regulation sets out conditions and requirements for an application to operate, and for the continued operation of, early childhood services programs.

Education Act Regulation Making Authority

Section 21(6)

(6) The Minister may make regulations respecting early childhood services programs.

Key Changes

The draft regulation remains largely unchanged from the current regulation. Key changes include:

Definition of kindergarten (s.1(b))

- A definition of “kindergarten” has been added: “an early childhood services program for the year of instruction prior to grade one provided to a child or student”

Kindergarten age of entry (s.2)

- Commencing in the 2018-2019 school year a child entering kindergarten must be at least 5 years old on December 31 of the respective school year.

Approval to operate ECS (s.3)

- Term of approval for a person (other than a board) to operate an ECS program is one year under the draft regulation (s. 3(2)) & the Minister may impose any terms and conditions on the approval or cancel an approval at any time and for any reason (s.3(4)).

Safety standards

- The provision in s.3 of 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.

Programs, policies (s.4)

- Lists specific policies that ECS operators must develop and maintain (in addition to the existing requirement that programs be consistent with the Minister’s ECS policies and programs):
 - application for registration
 - safety for field trips
 - a health protocol
 - the evaluation of children
 - teacher growth, supervision and evaluation

Records (s.6)

- Adds more detailed record keeping requirements for ECS operators in respect of each child:
 - enrollment records, attendance records, legal name, gender, name of parents, birth date, address and phone number of parents, academic achievement information, academic support information, any other information required by the Minister.
- Adds a provision that an ECS operator must submit any records referred to in s.6(1) upon request by the Minister.

7. Establishment of Separate School Districts Regulation

This regulation sets out a significantly modified process to be followed for formations or expansions by separate school electors within public school districts. Sections 98 through 111 of the Education Act set out a new framework and process for the establishment and disestablishment of separate school districts, replacing sections 212 to 221 of the *School Act*, which are commonly known as the “4x4” provisions.

Education Act Regulation Making Authority

Section 101(4) (Separate school establishment area)

(4) The Minister may make regulations respecting the process and criteria for determining a separate school establishment area.

Section 103(5) (Community information meeting)

(5) The Minister may make regulations respecting community information meetings, including regulations respecting

- (a) the time period within which a meeting must be held,
- (b) the conduct of a meeting, including, without limitation, regulations respecting the determination of who shall chair the meeting, the appointment and duties of a secretary and time for questions and discussion, and
- (c) who may participate in a meeting.

Section 104(5) (Vote respecting establishment)

(5) The Minister may make regulations respecting the vote on the establishment of a separate school district, including, without limitation, regulations respecting who may vote, the method of voting, the wording of the question on the ballot, the hours of the poll and the duties of the returning officer.

Section 111(5) (Disestablishment of separate school district)

(5) The Minister may make regulations respecting the conduct of a plebiscite including, without limitation, regulations respecting the wording of the question.

Key Provisions

Sections 98-111 of the Education Act contain a number of new provisions related to the establishment and disestablishment of separate school districts.

- No fewer than three separate school electors may initiate the establishment process by notifying the Minister, the operating separate school division, the public school division and any municipalities in which the public school district is located of their intention to proceed with the establishment of a separate school district.
- The initiating separate school electors, the operating separate school division and the public school division are required to meet in an effort to come to an agreement as to the boundaries of the separate school establishment area.
- In order that the proposed establishment area meets the requirements of the Regulations the Minister must approve the proposed establishment area. If the parties are unable to agree on the boundaries or if the proposed establishment area does not meet the requirements of the Regulations, the Minister may, subject to the Regulations, declare the separate school establishment area to be
 - the public school district in which the initiating separate school electors reside, and
 - all the public school districts that are

- contiguous to the public school district in which the initiating separate school electors reside, and
 - located in the separate school region.
- Once the Minister has approved or made a declaration respecting the proposed establishment area, the initiating separate school electors must prepare a petition in a form prescribed by the Minister that is signed by no fewer than three of the initiating separate school electors and provides evidence satisfactory to the Minister that the separate school electors are of the same faith as the minority in the establishment area. A copy of the petition must be provided to the Minister, the operating separate school division and the public school division.
- Following completion of the petition, the petitioners, the operating separate school division and the public school division are required to arrange a community information meeting for the purpose of providing information with respect to the process and operational implications of the establishment of a separate school district. The community information meeting must be conducted in accordance with the regulations. The meeting is informational only – no vote respecting establishment can be conducted at the meeting.
- After the community information meeting the petitioners need to arrange for a vote which must be held on a date separate and subsequent to the date of the information meeting, and conducted in accordance with the Regulations, which will be described below. Only separate school electors who reside in the separate school establishment area are eligible to vote on the establishment of the new separate school district.
- Notice of the impending vote must be in the form prescribed by the Minister and made public in accordance with the Regulations and served on the board of the public school division in the boundaries of the proposed establishment area at least 10 days prior to the date set out in the notice of the vote.
- In order for a vote on the establishment to be binding, a minimum of 25% of the eligible separate school electors must cast a ballot on the question. A majority vote is required for the establishment to proceed. In the event of a tie vote the question is deemed to be decided in the negative.
- Within 10 days of the date of the vote the Minister must receive notification of the results. If the vote is successful the Minister shall by order establish a separate school district with the same boundaries as those of the separate school establishment area.
- Once established the Minister will add the separate school district to the operating separate school division. If this occurs during the school year the board of a public school division shall, at the request of the separate school division, continue to provide educational services and transportation to separate school district resident students.
- If the vote is unsuccessful no further petition can be issued for one year if less than 60% of persons voted against the establishment, or two years from the date of the vote on establishment if 60% or more of the persons voted against the establishment of the new district.
- A separate school division may also request the Minister to disestablish a separate school district, or may do so of its own volition if at least 25% of the separate school electors petition the board to disestablish the district, and then conduct a plebiscite to determine whether the district should be disestablished.

Key provisions of the draft regulation include:

Part 1 – Establishment (s.1-2)

Intention to Establish (s.1)

- The establishment process must be initiated by providing written notice to the Minister on or before October 30 of the year prior to the year that the proposed separate school district is to be established.

Determining the separate school establishment area (s.2)

- This requirement relates to section 101 of the Education Act under which the initiating separate school electors, the operating separate school division and the public school division are to meet collectively to determine the boundaries of the proposed establishment area. In doing so, the Regulation provides that the parties are to act in good faith.
- The following restrictions apply to a determination of the separate school establishment area.
 - Any public school district that is to be part of the separate school establishment area must include the entire public school district;
 - The establishment area must not exceed the area within either the operating separate school division or the public school division in which the initiating separate school electors reside;
 - The separate school establishment area must be contained in one separate school region.
- The parties are to notify the Minister on or before December 7 of the year prior to the year that the proposed separate school district is to be established of whether or not they were able to agree to the establishment area.

Community Information Meeting (s.3-8)

Timing (s.3)

- The community information meeting must be held not less than three weeks before a vote is held under section 104 of the Act.

Notice (s.4)

- Notice of the community information meeting must be given in accordance with Part 2 of the Petitions and Public Notices Regulation.

Co-chairs (s.5)

- The community information meeting must be co-chaired by a representative from the operating separate school division and the public school division. If the parties are unable to select their separate representatives they shall together select a third party as chair of the community information meeting.
- In the event that the parties are unable to agree to a third party as the chair of the community information meeting they shall immediately advise the Minister in writing, who shall appoint a chair of the meeting.
- This process must be completed at least three weeks prior to the community information meeting.
- If at the end of the selection process the meeting is to be chaired by one individual, any reference to co-chairs in the remaining provisions of the regulation are to be read as a reference to the chair.

Appointment of secretary & approval of records and minutes (s.6)

- The co-chairs must appoint a secretary to record attendance and minutes of the community information meeting and must approve the attendance record and minutes and provide a copy to the Minister.

Reading of the petition (s.7)

- The meeting is to begin with the co-chairs reading the petition following by a reasonable time being provided for questions and answers regarding the petition and the potential implications of establishing a separate school district.

Participation at the meeting (s.8)

- Those who are eligible to participate in the meeting include: residents of the separate school establishment area, including the petitioners, and representatives of the operating separate school division, the public school division and the Minister.

Voting and appointment of returning officer (s.9-21)

- The operating separate school division is to appoint a returning officer who may also appoint one or more deputy returning officers to conduct the vote to establish the separate school district in accordance with section 104 of the Education Act.
- Voting day means the day or days on which a vote is taken.

Powers and duties of returning officer (s.10)

- The returning officer's powers and duties are specified under this section. The returning officer is in essence responsible for conduct of the vote, establish the voting stations, designating at least two deputy returning officers to work at each voting station, and to do all things necessary for the conduct of the vote.
- The returning officer must provide for the supply and delivery of ballots, ballot boxes and instructions to separate school electors and other necessary supplies to all voting stations.
- Prior to commencing duties, the returning officer shall take and subscribe to the official oath in the form prescribed by the Minister, and administer that same oath to the deputy returning officers.

Notice of Vote (s.11)

- The returning officer shall give notice of a vote in accordance with Part II of the Petitions and Public Notices Regulation.

Timing of the vote (s.12)

- The vote must occur not later than April 30 of the year in which the separate school district is to be established.

Conduct of vote (s.13)

- Separate school electors are entitled to vote if they sign, in the presence of a returning officer or a deputy returning officer, a declaration in the form prescribed by the Minister stating that the elector is a separate school elector. Anyone refusing to sign such a declaration is not entitled to vote.
- Vote is by secret ballot and the returning officer presides over the poll.

Instructions for voters (s.14)

- Printed instructions for the electors are to be posted within each voting compartment and at a conspicuous location within the voting station prior to the opening of the voting station.

Ineligible voter (s.15)

- In the event that the returning officer/deputy returning officer, on reasonable and probable grounds, believes that a person is not eligible to vote, the returning officer must note in the voting register the reason for the belief and initial it.

Voting hours (s.16)

- Voting stations must be open for a minimum of four consecutive hours. Anyone already in the voting station at the time of closing shall be permitted to vote.

Advance vote (s.17)

- An advance vote may be held if determined necessary by the returning officer.

Wording of question (s.18)

- The required wording is: “Do you favour the establishment of the proposed separate school district within the existing relevant school district boundaries?”

Results of vote and notice (s.19)

- The returning officer counts the votes, declares the results and provides notice of the results of the vote in a manner determined by the returning officer to the petitioners, the operating school division and the public division, and then notifies the Minister.

Ballots and other election materials (s.20)

- Ballots and other voting materials are returned to the operating separate school division after the vote.

Declaration of minimum participation (s.21)

- The returning officer must, when providing notice of the results to the Minister, include a declaration that the minimum participation (25% of the separate school electors eligible to vote) has been met.

Part 2 - Disestablishment (s.22-25)

Eligible voters (s.22)

- Only separate school district electors are entitled to participate in the plebiscite vote under s.111 of the Act respecting disestablishment.

Conduct of plebiscite (s.23)

- A plebiscite vote under s.111 of the Act shall be conducted in the same manner as if it were a vote respecting establishment under s.104 of the Act.

Petition (s.24)

- A petition for disestablishment pursuant to s.111(1)(b) of the Act must provide evidence satisfactory to the Minister that the separate school electors are of the same faith, whether Protestant or Roman Catholic, as those in the minority in the separate school establishment area, and be in the form prescribed by the Minister. The petitioners must provide the petition for disestablishment to the Minister, the operating separate school division and the public school division.

Wording of question (s.25)

- Required wording of the question for the plebiscite is: “Do you favour the disestablishment of The _____ Separate School District?”

8. Home Education Regulation

This regulation sets out requirements related to the provision and supervision of home education programs and the roles and responsibilities of parents and the supervising school board/ private school.

Education Act Regulation Making Authority

Section 20(3):

(3) The Minister may make regulations respecting home education.

Key Changes

The draft regulation remains largely unchanged from the current regulation. Key changes include:

Evaluation of student progress/Standardized testing (s.4(2)(a))

- The language used regarding the responsibility of the supervising board or private school to ensure the student has the opportunity to access standardized testing has been changed so it no longer refers to grade 3, 6, and 9 PAT's and instead aligns with new Education Act wording re standardized assessments, i.e. "provincial standardized tests for evaluation established by the Minister".

Ministerial review

- Section 8(2)(c) and Section 9 of the current regulation relating to a parent's right to seek ministerial review of a decision by a supervising board or private school under the regulation, including a decision to terminate a home education program, have been removed.

9. Investment Regulation

This regulation sets out the conditions under which a board may make investments.

Education Act Regulation Making Authority

Section 54

54(2) A board may invest only in accordance with the regulations made under subsection (3)(b).

54(3) The Minister may make regulations

(b) respecting the investment of money for the purpose of subsection (2).

Key Changes

Name change from “School Board Investment Regulation”. This regulation completely replaces the current regulation which only has 4 provisions. Key changes include:

Powers and duties (s.1)

- Requires boards to review investments at “reasonable intervals” to determine that the investments continue to be “appropriate to the circumstances of the board.” (s.1(a))
- Sets out the matters that a board **MUST** consider in planning the investment of funds (insofar as they are relevant to the circumstances of the board), while providing boards with the discretion to consider other matters, (s.1(2)). Boards must consider:
 - the need to maintain the real value of the capital or income of the board;
 - the need to maintain a balance that is appropriate to the circumstances of the board between: risk; expected total return from income and the appreciation of capital; liquidity; and regularity of income;
 - the importance of diversifying the investments to an extent that is appropriate to the circumstances of the board;
 - the role of different investments or courses of action in the board’s portfolio;
 - the costs, such as commissions and fees, of investment decisions or strategies.

Authorized investments (s.2)

- Sets out the types of investments that a board is authorized to invest in **without** Ministerial approval (s.2(2)) (*Note: “securities” is defined in s.2(1)*)
 - securities issued or guaranteed by
 - (i) the Crown in right of Canada or an agent of the Crown, or
 - (ii) the Crown in right of a province or territory or an agent of a province or territory;
 - securities of a municipality;
 - securities that are issued or guaranteed by a bank, treasury branch, credit union or trust corporation;
 - units in pooled funds of all or any of the investments described above.
- Authorizes a board to invest in shares of a corporation incorporated or continued under the *Canada Business Corporations Act* (federal) or incorporated, continued or registered under the *Business Corporations Act* (provincial) if the investment is approved by the Minister (s.2(2)(e)). Allows the Minister to impose conditions on such an investment and prohibits boards from acquiring shares of such a corporation if the acquisition would allow the board to control the corporation (s.2(3)).
- Authorizes the Minister to allow one or more boards to invest in investments other than those set out in section 2(2) [s.2(4)].
- Prohibits boards from engaging in the short selling of securities (s.2(5)).

10. Petitions and Public Notices Regulation

This regulation sets out requirements related to petitions submitted to boards and for public notice by boards.

Education Act Regulation Making Authority

Section 250:

- 250 The Minister may make regulations respecting
- the form, requirements respecting validity, the process of presentation and requirements respecting sufficiency of a petition;
 - the form, contents and method of service of a notice of a public meeting or other public notice.

Key Changes:

This is a new regulation. The subject matter of this draft regulation is currently included in sections 263-271 of the *School Act*. Changes of note include the following:

Part 1 - Petitions

Application (s.1)

- The requirements in the draft regulation with respect to petitions do not apply to petitions for the establishment or disestablishment of a separate school district under the Education Act.

Petitions (s.2)

- The draft regulation removes the distinction in requirements under the *School Act* for different types of petitions, including those that call for a vote on a question and those that call for a public meeting. The draft regulation sets out standard requirements for all petitions (with the exception of petitions related to establishment and disestablishment of separate school districts).

Administration of petitions (s.8)

- Introduces a requirement that once a petition is determined to be sufficient, the board must, within 30 days of notifying petitioners of the petition's sufficiency (under s.5), establish a committee to review the petition and provide recommendations on the purpose of the petition to the board. The secretary-treasurer of the board must provide written notification to the petitioners of the outcome of the committee's review within 90 days of determining the petition's sufficiency. This section does not apply to a petition regarding non-school buildings.

Board policy (s.9)

- Requires boards to establish a policy regarding the administration of petitions.

Representative petitioner

- Removes the requirement for a "representative" of the petitioners with which the board may communicate. Under s.263(3) of the *School Act*, it is required that every petition include a statement signed by an elector who will act as a "representative" for the petitioners and to whom the board may direct inquiries with respect to the petition.

Part 2 – Public Notice

Public notice

- The public notice provisions in s.10 of the draft regulation cover public notice, including notice of a public meeting, and stipulate requirements to publish the notice in newspapers at least once a week for 2 consecutive weeks and post the notice for 10 business days in at least two "areas" considered appropriate by the "person" required to give notice.

11. *Private Schools Regulation*

This regulation sets out conditions and requirements for the application to operate and for the continued operation of private schools.

Education Act Regulation Making Authority

Section 29(7)

(7) The Minister may make regulations respecting private schools, including, without limiting the foregoing, regulations establishing eligibility criteria that must be met by a person who proposes to operate a private school.

Key Changes

Regulation making authority in the Education Act is slightly more specific than under the *School Act*. The draft regulation contains a number of housekeeping/streamlining and minor wording changes. Key changes include:

Level 1 and Level 2 private schools

- Removes the distinction between level 1 (not eligible for FNMI funding) and level 2 (eligible for FNMI funding) accredited private schools from the regulation.

Application requirements for registered private schools (s.2)

- Makes a number of minor changes to application requirements for registration as a registered private school.

Student learning requirement(s. 3)

- Adds a requirement that the operator of a registered private school must ensure students have the opportunity to achieve basic student learning outcomes and to write provincial standardized tests.

Count date & operating plan (s.4)

- Instead of using the count date of September 30th for estimated enrollment the regulation now refers to the last instructional day in September (s. 4).
- Annual operating plan to be submitted April 30th instead of May 31st.

Funding/Application for grant (s.7)

- Under the draft regulation an accredited private school must still operate for a year before the operator is eligible to receive funding. The regulation also now expressly requires the accredited private school operator to be in compliance with all requirements to be met by a funded private school under the Act and regulations for the year immediately preceding the application for funding. The ability of the Minister under the current regulation to waive the waiting period for funding is maintained in the draft regulation.

Requirement for instructional staff (s.8)

- Sets out an express requirement that individuals employed as teachers at accredited private schools be certificated under the Certification of Teachers Regulation.

Programs and standards (s.10)

- Requirement for operator of accredited private school to ensure students have the opportunity to meet the requirements for the granting of credits, certificates and diplomas, including requirements for high school completion prescribed pursuant to s. 18(1)(b) of the Education Act (*minor change in language from current regulation*).

- Language regarding assessment requirement in relation to accredited private school operators changed from “provincial achievement tests and diploma examinations” to “examinations and evaluations established by the Minister”.
- Requirement that the accredited funded private school ensure that students meet provincial graduation requirements has been removed.

Designated special education private schools (DSEPS) (s.11)

- Definition of DSEPS moved from definition section to body of regulation. Includes requirement that DSEPS operate for at least one year before being designated as a DSEPS.

Financial statements and budget/Audit requirements (s.16)

- The draft regulation includes a number of new express requirements related to financial statements and audits.

Student records

- Section 20 of the current regulation specifying which sections of the Student Record Regulation apply to private schools has been removed in the draft regulation. Section 30(1) of the Education Act provides that s. 56 – student record requirements - apply to private schools.

Provision and disclosure of information

- Section 22 of the current regulation requiring a private school to provide to the Minister any information relating to the school that the Minister requests in writing, and authorizing the Minister to publish or otherwise disclose such information, has been removed in the draft regulation.

12. School Councils Regulation

This regulation governs the establishment, role and responsibilities of school councils.

Education Act Regulation Making Authority

Section 55(11):

55(11) The Minister may make regulations

- (a) respecting the establishment of school councils, the election or appointment of the members of a school council, the term or other conditions of election or appointment and the dissolution of a school council;
- (b) respecting the roles of the principal and the school council of a school and their respective powers, duties and responsibilities;
- (c) respecting the re-establishment of school councils that have been dissolved by the Minister pursuant to subsection (9);
- (d) respecting any other matter the Minister considers necessary respecting school councils;
- (e) exempting a school or class of schools from the application of this section.

Key Changes

Overall, the regulation is substantially the same as the current regulation. Key changes include:

Principals

- Under the current regulation, if fewer than 5 parents attend an establishment meeting or if the meeting is unsuccessful in establishing a school council at an establishment meeting, the school principal may establish an “advisory committee” for the remainder of the school year. Under s.2(2) and (3) of the draft regulation, the principal may adjourn the establishment meeting to a later date if this occurs and advisory committees are only temporary until a school council is established.
- Under the current regulation, notice of an establishment meeting had to be done by posting about it in 2 publicly accessible locations in the area around the school and in a “publication that is circulated to the general public in the area around the school.” Section 3(3) of the draft regulation provides more flexibility in how this notice is given and says that it may be given by any means considered appropriate by the principal, including electronic means.

ECS

- The draft regulation places greater emphasis on including parents of ECS children in the school council. Under s.5(2), it is clarified that a school council may include all parents of children enrolled in an ECS program at the school. Under s.7 of the draft regulation, a school council must include ECS parents as members of the school council, if an ECS program is offered at the school. Under s.8(2) the chair of the school council must be either a parent or an ECS parent.

Responsibilities of board (s.12)

- The language has been changed slightly under the draft regulation regarding the responsibility of a board:
 - to provide the school council with an opportunity to provide advice on the development of the school’s “foundation statements, if any, respecting the school’s vision, principles and beliefs” (*changed from “mission, vision and philosophy”*), and
 - to provide the school council with the results for the school from “examinations and evaluations referred to in section 18(4) of the Act...” [“18(4) The Minister may make

regulations respecting the examination and evaluation of persons by the Minister...”] (*changed from “provincial testing program results and other provincial measures ...”*).

Donations and fundraising (s.13)

- A new section has been added to the draft regulation regarding donations which states that:

13(1) A school council may receive donations on behalf of a board but no school council shall raise funds or otherwise solicit donations in any manner that would require a gaming licence under the *Gaming and Liquor Act*.

(2) A school council must handle and report all money it receives, if any, in accordance with applicable policies and procedures of the board.

Duty to report to the board (s.14)

- The language has been changed slightly under the draft regulation regarding the responsibility of a school council chair to provide to the board by September 30 of each year a report “(b)detailing, in accordance with the policies referred to in section13(2), the receipt, handling and use of any money by the school council in the previous school year” (*changed from “including a financial statement relating to money handled by the school council in the previous school year, if any, and how the funds were used”*)

13. School Fees Regulation

This a new regulation. 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”. Currently under the *School Act* (s.60(2)(j)), school fees are restricted to the provision of “instructional supplies or materials”.

Education Act Regulation Making Authority

Section 57(2)

(2) the Minister may make regulations respecting school fees.

Key Provisions

Establishment of policies and procedures (s.2)

- A board must establish policies and procedures respecting the charging of school fees.

Contents of policies and procedures (s.3)

- Policies and procedures established under s. 2 must at minimum include:
 - A requirement to consult with parents prior to setting, increasing or decreasing school fees;
 - A requirement to demonstrate to parents the need to charge fees;
 - A requirement to maintain financial statements in a form set by the Minister demonstrating that the school fees collected have been spent for the same purpose for which they were collected;
 - The circumstances in which school fees may be waived; and
 - The process a parent must follow in order to request a school fee waiver;

School fee waiver (s.4)

- A board must disseminate to staff and parents circumstances and procedures for school fee waivers

School fee schedule (s.5)

- A board must establish and publish a school fee schedule listing each school fee that may be charged, prior to the commencement of each school year.

Publication of policies, procedures and fee schedule (s.6)

- A board must publish school fee policies and procedures and the school fee schedule on the board’s website or in any other manner the board determines appropriate.

14. Special School Tax Levy Plebiscite Regulation

This regulation addresses the process for holding a plebiscite on a special school tax levy.

Education Act Regulation Making Authority

Section 172(6):

172(6) The Lieutenant Governor in Council may make regulations

- (a) respecting the information to be given to the public by a board before a plebiscite is held under this Division;
- (b) respecting the question, any information or any other matter to be included on a ballot in a plebiscite under this Division;
- (c) respecting generally the holding and conduct of a plebiscite under this Division.

Key Changes

No changes in the draft regulation from the current regulation apart from clarifying that public notice is now to be given in accordance with the Petitions and Public Notices Regulation.

15. Student Record Regulation

This regulation sets out what information is to be included and not included in the student record; the retention, disposal and destruction of the student record; access and disclosure of information, student transfers and compliance.

Education Act Regulation Making Authority

Section 56(8)

56(8) The Minister may make regulations respecting student records.

Key Changes

The Education Act requires that a student record now also be provided for “each child or student enrolled in an early childhood services program provided by the board.” A number of general streamlining changes were made to in the regulation with some additional changes. Key changes include:

Information included in student record (s.2)

- Section 2(1)(d) replaces “a copy of any separation agreement or court order ...” with “proof of guardianship.”
- Section 2(1)(f) replaces “sex of the student” with “gender of the student”.
- Section 2(1)(h) replaces “the board of which the student is a resident student” with “resident board”
- Section 2(1)(i) replaces “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 “information or evidence related to the student’s entitlement to access an education program in accordance with the Act,”
- Section 2(1)(m) removes the reference to “the Student Evaluation Regulation (AR 177/2003) for special provisions or directives”. It now simply states “the results of any application for accommodation or exemption from an examination or evaluation.”
- Section 2(1)(n) and (o) have added the categories of “learning” and “communication” as potential types of assessment or evaluations referred to in these subsections. Section 2(1)(n)(vi) and 2(1)(o)(vi) now include a reference to “including specialized supports or services” regarding any action taken as program planning resulting from any assessment, evaluation or interpretive report of a student.
- Section 2(1)(r) removes the time requirement for retaining and removing information on the student record relating to suspensions of more than one day, expulsions or the student’s rights pursuant to the Act.
- Section 2(3) replaces “individualized program plan” with “instructional support plan”.
- Section 2(4)(b) replaces the references to “Canadian citizenship certificate or of the visa or other document ...” with “to establish the student’s entitlement to access an education program in accordance with the Act.” This change is consistent with the changes made to section 2(1)(i) referred to above.

Information not to be included in student record (s.3)

- Section 3(3) of the current regulation which states that “a board shall ensure that the information referred to in this section is disclosed only in accordance with [FOIP]” has been reworded slightly and moved to a new section 7(2) in the draft regulation.

Access to student record (s.6)

- The reference to “any other person who has access to the student under a separation agreement or an order of a court” having a right to be informed of their entitlement to review the student record has been removed.

Disclosure of information (s.7)

- The reference to the definition of an “employee” has been removed (*section 7(1) in the current regulation*).
- Section 7(2) confirms that disclosure of information under this regulation shall not be disclosed except in accordance with FOIP. A similar section 7(3) has been added regarding private schools confirming that private school operators shall not disclose information under this regulation except in accordance with PIPA.
- The term “sex” is replaced with “gender” in section 7(5) and (6). This change is consistent with section 2(1)(f) discussed above.
- Section 7(7) is a new provision which states that “each board shall ensure that information in a student record is only disclosed as authorized by this section.”

Student transfer (s.8)

- Section 8(1) provides a new requirement that “the board to which the student transfers to shall notify the board from which the student is transferring of the transfer...” Furthermore, the student record from the original school must be transferred to the receiving school “in a timely manner”.

16. Student Transportation Regulation

This regulation sets out requirements regarding a board's responsibilities for the transportation of students, including the charging of transportation fees.

Education Act Regulation Making Authority

Section 59(5)

The Minister may make regulations respecting the transportation of students.

Key Changes

The Education Act (s. 59) requires boards to establish, maintain and implement a policy respecting the safe and appropriate transportation of students. Changes to the regulation are significant.

Under the current transportation scheme boards must transport students to and from the site of a school in which the board has enrolled the student if the student resides 2.4 km or more from the school. Under the draft regulation these “walk limits” have been removed. Specific sections under the current regulation stipulating requirements related to the transportation of students residing outside attendance areas and transportation service areas, and limits on transportation fees, have been removed. In reviewing the proposed regulation it is important to keep in mind that the concept of residency has been amended in the new Education Act so that residency is based upon where the student lives. Key changes under the draft regulation include:

Establishment of policies and procedures (s.2)

- A board must establish policies and procedures respecting the transportation of students and the charging of transportation fees.

Content of policies and procedures (s.3)

- Policies and procedures established under s.2 must at a minimum must include:
 - Eligibility criteria for access by students to transportation services.
 - The requirement to demonstrate to parents the need to charge transportation fees.
 - The requirement that any transportation fees collected have been spent for the purpose for which they were collected.
 - The amount of transportation fees that the board may charge.
 - The circumstances in which transportation fees may be waived.
 - A process a parent must follow to request that a transportation fee be waived.

Student in need of specialized supports and services (s.4)

- This section regarding a board's obligations for the transportation of students in need of specialized supports and services remains the same as s.3 of the current regulations with the exception of a change in language regarding “specialized supports and services”.

Transportation fee schedule (s.5)

- Sets out a mandatory requirement for boards to establish, prior to the commencement of each school year, a school transportation fee schedule, listing each transportation fee that may be charged.

Transportation fee waiver (s. 6)

- A board must disseminate to staff of a school and to parents of students enrolled in that school information about circumstances and procedures regarding transportation fee waivers.

Surplus fees (s. 7)

- Any surplus from transportation fees charged by a board must be used to subsidize the cost of transportation of students in the two school years following the school year in which the surplus was collected. (Similar to existing section 5(4) of the current regulation)

Publication of policies, procedures and fee schedule (s.8)

- The board's policies and procedures respecting transportation services, together with the annual fee schedule, must be posted on the board's website or in any other manner the board determines would provide notice to parents and the public.