

Legally Speaking:



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THE EDUCATION ACT: WHAT'S OLD WILL BE NEW AGAIN



Alberta's *Education Act* was passed in 2012 but has been sitting, unproclaimed, since then. The legislation was passed by the Progressive Conservatives but was never proclaimed into force as the government was still in the process of working on the regulations when it lost power to the NDP. The NDP government chose to make changes to the existing *School Act* instead of proclaiming the *Education Act* into force. However, after 7 years of waiting, the *Education Act* may become law with Premier Jason Kenney, having pledged to proclaim the *Education Act* into force.

While the *Education Act* will have implications for schools generally, such as by raising of the age for access to education from 19 to 21, there are a number of provisions in the *Education Act* which will have unique implications for Catholic education.

Student resident qualifications is one of those provisions. The *Education Act* defines a resident student based on where the student resides during the school year, as opposed to the *School Act*, which determines student residency based on where the parent(s) resides. Under the *Education Act*, a student is a resident of a separate school district if the student resides within the boundaries of that district, and the student's parent (where there is only one parent) or parents (where there are two parents) declare(s) that they are of the same faith as those who established that district, whether Protestant or Roman Catholic. When a student has two parents, but one parent has not declared his/her faith, the parents shall choose whether the student is a resident student of the board of the separate school division or of the public school division.

Another new provision in the *Education Act* is the granting to school boards of the rights, powers and privileges of a "natural person". In exercising these rights however, boards must not act in a manner that is inconsistent with their statutory responsibilities. Further, the Minister retains the right to prohibit, restrict or limit the use of these rights, powers or privileges by regulation. In general, this gives boards the right to sign contracts, hire staff and acquire property without ministerial approval. However, for Catholic boards, this provision may also give them the opportunity to assert their entitlement to act in accordance with directions of the local Bishop, pursuant to Code of Canon Law and in accordance with Catholic principles and doctrines.

Despite some earlier concern that the *Education Act* would include a provision allowing the Minister to order shared facilities, that has not been done. A blended board is possible, but it can only be established upon the request of both the public school division and the separate school division. In addition, while the *Education Act* maintains the provision whereby the Minister may direct boards to co-operate with respect to the transportation of students, it removes the wording in the *School Act* that specifically states that the Minister may direct the boards to enter into specific transportation arrangements. That being said, there are indications that this issue may be revisited.

The *Education Act* provides that separate school residents maintain their residence in a separate school district, and their declaration that they are of a minority faith, but are granted the additional right, without interference with their residence or minority faith, to vote for and run for public school trustee (with equivalent provisions for Francophone regional authorities). The “Brassard Choice Provision”, as it is known colloquially, enables separate local residents to vote or run for the position of the public school trustee.

The establishment provisions for new school districts contained in the *Education Act* are colloquially known as the “flower petal formation”, as opposed to the traditional “4X4” formation provisions in the *School Act*. This change could be problematic if there is a challenge to the constitutionality of the “flower petal formation”.

The *Education Act* requires support for student organizations. It requires that a principal must allow a student’s request to establish a voluntary student organization or to lead an activity intended to promote a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging. The principal must also designate a staff member to serve as a staff liaison. While the *School Act* requires that the principal “immediately” allow the request and designate the staff member “within a reasonable time”, the *Education Act* does not contain any set time limits.

Student organizations specifically include gay-straight alliances, diversity clubs, anti-racism clubs and anti-bullying clubs. The students may select the name for the organization which may include “gay-straight alliance” or “queer-straight alliance” after consulting with the principal. However, the *Education Act* is silent on whether the principal must agree to the name and there are no express prohibitions on the principal’s ability to interfere in the name selection. Contrary to the *School Act*, the *Education Act* does not contain any restrictions on the disclosure of information regarding participation in student organizations. Disclosure would be governed by the *Freedom of Information and Protection of Privacy Act*. This is likely to be a key point of discussion and debate if the *Education Act* is proclaimed.

Another difference between the two acts relates to the code of conduct requirements. The *Education Act* requires that a board establish, implement and maintain a policy regarding the board’s obligation to provide a welcoming, caring, respectful and safe learning environment that includes a code of conduct for students that addresses bullying behaviour. The code of conduct must be publicly available, reviewed annually, provided to all staff, students and parents and contain the following requirements: a statement of purpose; one or more statements that address the prohibited grounds of discrimination set out in the *Alberta Human Rights Act*; one or more statements about what is and is not acceptable behaviour; one or more statements about the consequences of unacceptable behaviour; and be in accordance with any other requirements established by the Minister. This is different from the *School Act* which, among other things, specifically requires that the policy and code must affirm the rights in the *Alberta Human Rights Act* and the *Charter* for all staff and students and state that neither staff nor students will be discriminated against.

Another provision of note is that while the Minister may prohibit the use of a course, a program of study or a learning and teaching resource in schools, that right is subject to a board's right to provide religious instruction. This will prevent the Minister from prohibiting any course or program that is focused on Catholic content.

The *Education Act* would allow Catholic school boards to require school council members to be Catholic.

The provisions in the *Education Act* dealing with filling board vacancies could potentially be a concern. They provide that where two attempts to fill a vacancy on a board have failed to yield any nominations, the Minister may appoint a trustee to fill the vacancy; however, there is no express requirement that those appointments be members of the denominational minority.

There are also a number of provisions in the *Education Act* dealing with the establishment of school divisions and separate school regions, as well as property assessments that will be of importance to Catholic educators.

It will remain to be seen whether the current government will proclaim the *Education Act* into force and if so, whether it will be in its current form, or with some adjustments and whether it will be in force for the 2019/20 school year.