

BILL 25

2004

SCHOOL AMENDMENT ACT, 2004

(Assented to _____, 2004)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends RSA 2000 cS-3

1 The *School Act* is amended by this Act.

**2 Section 18 is amended by renumbering it as section 18(1)
and by adding the following after subsection (1):**

(2) At any time during the period of time that a teacher is under an obligation to the board to provide instruction or supervision or to carry out duties assigned to the teacher by a principal or the board, a teacher must, at the request of the board,

- (a) participate in curriculum development and field testing of new curriculum;
- (b) develop, field test and mark provincial achievement tests and diploma examinations;
- (c) supervise student teachers.

3 Section 44(6) is repealed and the following is substituted:

(6) If a student

- (a) is under 16 years of age and is not the subject of an order or agreement under the *Child, Youth and Family Enhancement Act*, and
- (b) is a child in respect of whom financial assistance is being provided under section 105.8 of the *Child, Youth and Family Enhancement Act*,

the student is a resident student of the board of the district or division in which the student resides.

4 Section 61(2) is amended by adding “and” at the end of clause (c) and by repealing clauses (d) and (e).

5 Section 94(1)(c) is amended

- (a) **by striking out** “providing for the means” **and substituting** “providing for and governing the means”;
- (b) **by adding** “, whether or not the teacher is a teacher to whom the *Teaching Profession Act* applies,” **after** “or incompetent in teaching”;
- (c) **in subclause (v) by striking out** “providing for” **and substituting** “respecting”.

6 Section 132(1) is repealed and the following is substituted:

Appeal

132(1) This section does not apply to

- (a) a superintendent, chief deputy superintendent, deputy superintendent, associate superintendent or assistant superintendent of a board, or
- (b) a teacher designated by a board to an administrative, supervisory or consultative position who, under section 96(2), is excluded from the teachers on whose behalf an organization is bargaining.

7 Section 133 is amended

- (a) in subsection (2)(a) by striking out “\$50” and substituting “\$250”;**
- (b) in subsection (3) by striking out “14” and substituting “21”;**
- (c) by adding the following after subsection (3):**
 - (4) A notice of appeal must set out the grounds on which the appeal is being made.**

8 Section 136 is amended by adding the following after subsection (2):

(3) Not less than 30 days before the date set for hearing the appeal, or such shorter time period as determined by the Board of Reference, each of the parties to the appeal must provide to the Board of Reference and the other parties to the appeal the following in respect of the appeal:

- (a) a full disclosure of the party’s case;**
- (b) the arguments in support of the party’s case;**
- (c) the names of witnesses that the party intends to call;**
- (d) a summary of the evidence that the party intends to present;**
- (e) copies of any documents that the party intends to use in evidence;**
- (f) any other information, document or thing that the Board of Reference requests.**

(4) Before conducting an appeal, the Board of Reference may determine any preliminary matter concerning the appeal, including, without limiting the generality of the foregoing, matters relating to process and jurisdiction.

(5) An appeal is considered to be abandoned if one year elapses from the day that a step in the appeal was last taken.

(6) Notwithstanding subsection (5), if the Board of Reference is satisfied that exceptional circumstances exist for doing so, the Board of Reference may permit an appeal to proceed even though one year has elapsed since a step in the appeal was last taken.

9 Section 138 is amended by renumbering it as section 138(1) and by adding the following after subsection (1):

(2) In making an order under subsection (1)(c)(i) or (d), the Board of Reference may take into consideration any matter that the Board of Reference considers relevant, but in making that order the Board of Reference must consider at least the following:

- (a) whether the teacher is guilty of gross misconduct;
- (b) whether the teacher refused to obey a lawful order of the board without justification;
- (c) the risk to the safety of students, co-workers and the teacher;
- (d) the ability of the teacher to perform teaching duties effectively;
- (e) the effect of reinstatement on the future relationship between the board and the teacher;
- (f) the possibility of recidivism;
- (g) whether the reinstatement would have the effect of undermining the confidence of Albertans in general in the public education system;
- (h) fairness to the teacher.

(3) Notwithstanding subsection (1), the Board of Reference shall not make an order under subsection (1)(c)(i) or (d) if the Board of Reference determines that

- (a) the teacher should not be engaged in teaching for a board, or

(b) there is just cause for terminating the contract of employment or designation.

(4) Subsection (3) applies notwithstanding that any technical or procedural irregularity by any party to the appeal may have taken place in relation to the matter being appealed.

(5) The Board of Reference, unless the Minister gives permission to the Board of Reference to do otherwise, must render its decision in respect of the matter being appealed within 45 days from the day that the Board of Reference concludes its hearing of the appeal.

(6) For the purpose of subsection (5), permission may be given by the Minister before or after the end of the 45-day period.

10 Section 139 is amended by striking out “referred to in section 132” **and substituting** “dealt with under this Division”.

11(1) In this section, a reference to

(a) section 44(6) of the *School Act* is a reference to section 44(6) of the *School Act* as amended by this Act;

(b) section 105.8 of the *Child, Youth and Family Enhancement Act* is a reference to section 105.8 as enacted by section 96 of the *Child Welfare Amendment Act, 2003*.

(2) For the purposes of clause (a) of section 44(6) of the *School Act*, a reference to the *Child, Youth and Family Enhancement Act* includes a reference to the *Child Welfare Act*.

(3) For the purposes of clause (b) of section 44(6) of the *School Act*, a reference to a child in respect of whom financial assistance is being provided under section 105.8 of the *Child, Youth and Family Enhancement Act* includes a reference to a child in respect of whom financial assistance is being provided by the Minister responsible for the *Child Welfare Act* in the situation where the guardian of the child is unable or unwilling to care for the student and the student is being cared for by another adult person.

(4) On the coming into force

- (a) of section 117(8)(b) of the *Child Welfare Amendment Act, 2003*, subsection (2) ceases to apply, and
- (b) of section 96 of the *Child Welfare Amendment Act, 2003*, subsection (3) ceases to apply.

12(1) In this section,

- (a) “amended *School Act*” means Part 5, Division 3 of the *School Act* as amended by this Act;
- (b) “Board” means a Board of Reference under the *School Act*;
- (c) “existing appeal” means an appeal that was commenced and is being proceeded with but has not been concluded prior to Part 5, Division 3 of the *School Act* being amended by this Act;
- (d) “previous section” or “previous sections” is a reference to provisions of the *School Act* as it read immediately before Part 5, Division 3 of the *School Act* was amended by this Act.

(2) With respect to an existing appeal,

- (a) the amended *School Act*, subject to clauses (b) and (c), applies to the existing appeal;
- (b) the previous sections 132 and 133(2)(a) continue to apply to the existing appeal;
- (c) the Board may, taking into consideration the stage to which the existing appeal has proceeded at the time that Part 5, Division 3 of the *School Act* is amended by this Act, determine to what extent sections 133(3) and (4), 136 and 139 of the amended *School Act* apply to the existing appeal and to what extent, if any, the previous sections 133, 136 and 139 will continue to apply to the existing appeal.

13 This Act comes into force on Proclamation.

Explanatory Notes

1 Amends chapter S-3 of the Revised Statutes of Alberta 2000.

2 Section 18 presently reads:

18 A teacher while providing instruction or supervision must

- (a) provide instruction competently to students;*
- (b) teach the courses of study and education programs that are prescribed, approved or authorized pursuant to this Act;*
- (c) promote goals and standards applicable to the provision of education adopted or approved pursuant to this Act;*
- (d) encourage and foster learning in students;*
- (e) regularly evaluate students and periodically report the results of the evaluation to the students, the students' parents and the board;*
- (f) maintain, under the direction of the principal, order and discipline among the students while they are in the school or on the school grounds and while they are attending or participating in activities sponsored or approved by the board;*
- (g) subject to any applicable collective agreement and the teacher's contract of employment, carry out those duties that are assigned to the teacher by the principal or the board.*

3 Section 44(6) presently reads:

(6) *If a student is*

- (a) *under 16 years of age, and*
- (b) *not the subject of an order or agreement under the Child Welfare Act,*
- (c) *repealed RSA 2000 c32(Supp) s3,*

the student is a resident student of the board of the district or division in which the student resides.

4 Section 61(2) presently reads:

(2) *The board shall not delegate*

- (a) *the power to make a bylaw under this Act,*
- (b) *the power to close a school or school building under section 58,*
- (c) *the power to requisition from a municipality that the board may have from time to time,*
- (d) *subject to section 105, the power to suspend the services of a teacher,*
- (e) *the power to terminate the services of a teacher, and*
- (f) *the power to hold a hearing under section 104.*

5 Section 94 presently reads in part:

94(1) *The Minister may make regulations*

- (c) *providing for the means of dealing with allegations that a teacher is unskilled or incompetent in teaching or for the means of dealing with complaints about alleged unprofessional conduct of a teacher, other than a teacher to whom the Teaching*

Profession Act applies, including, without limitation, regulations

- (v) *providing for the establishment of panels to deal with complaints and allegations and respecting the powers and duties of those panels;*

6 Section 132(1) presently reads:

132(1) This section does not apply to a superintendent, chief deputy superintendent, deputy superintendent, associate superintendent or assistant superintendent.

7 Section 133 presently reads:

133(1) A notice of appeal shall

- (a) *be in writing, and*
- (b) *set out the nature of the appeal.*

(2) The board or teacher appealing shall within the period specified in subsection (3) send by registered mail

- (a) *to the Minister, the notice of appeal and a \$50 deposit, and*
- (b) *to the other party to the appeal, a copy of the notice of appeal.*

(3) The period referred to in subsection (2) is 14 days from the date of receipt of the notice of

- (a) *termination of contract or of designation,*
- (b) *suspension, or*
- (c) *refusal to give an approval.*

8 Section 136 presently reads:

136(1) After the hearing is set under section 134(2), the Board of Reference shall not make any decision in respect of the matter being appealed without giving the parties to the appeal an opportunity to be heard.

(2) A person appearing at a hearing is entitled to be represented by counsel.

9 Section 138 presently reads:

138 In deciding the matter being appealed, the Board of Reference may make an order doing one or more of the following:

- (a) confirming the termination, suspension or refusal to give an approval;*
- (b) changing the termination date of a contract of employment or of a designation;*
- (c) directing the board
 - (i) to reinstate the contract of employment or the designation of a teacher, or*
 - (ii) to give the approval;**
- (d) removing the suspension;*
- (e) confirming the suspension and authorizing the board to terminate the contract of employment of the teacher;*
- (f) directing a board to pay to the teacher an amount of money equivalent to the teacher's salary for a specified period;*
- (g) authorizing a board not to pay salary to the teacher for a specified period;*

(h) providing for any matter not referred to in clauses (a) to (g) that the Board considers just in the circumstances.

10 Section 139 presently reads:

139 The Board of Reference may proceed with an appeal under this Division notwithstanding any technical or procedural irregularity in respect of matters referred to in section 132 if the Board of Reference is of the opinion that none of the parties to the appeal were substantially affected by the technical or procedural irregularity.

11 Transitional.

12 Transitional.

13 Coming into force.