

# 7

Problems in Education Series

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## **Teachers' Rights, Responsibilities and Legal Liabilities**



The Alberta Teachers' Association



**Problems in Education  
Series Number 7**

# **Teachers' Rights Responsibilities and Legal Liabilities**

## **Mission Statement**

The Alberta Teachers' Association, as the professional organization of teachers, promotes and advances public education, supports teachers' professional practice and serves as the advocate for its 46,000 members.

The Alberta Teachers' Association  
Barnett House, Edmonton



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# INTRODUCTION

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This monograph was first published by the Association in 1978. Since that time legislation has changed materially, and many of the changes, including how professional conduct is regulated, affect the responsibilities and rights of teachers. This monograph is revised regularly to reflect changes to legislation, regulations and policy.

Readers should nonetheless keep in mind that legislation is amended on an ongoing basis, and regulations are subject to change with little notice or fanfare. Therefore, a teacher experiencing serious difficulty would be wise to check with an Association executive staff officer that the advice contained in this monograph is still current before using it as the basis of final action.

At many points throughout this monograph, the teacher is urged to contact the Association for advice and assistance; in such cases, the correct contact most frequently is with an executive staff officer in Teacher Employment Services. Teachers north of Innisfail should phone Barnett House; those south of Innisfail should phone the Southern Alberta Regional Office. Below are phone numbers of these offices.

#### Barnett House

Local calls 780-447-9400

Toll free in Alberta 1-800-232-7208

Fax 780-455-6481

#### Southern Alberta Regional Office

Local calls 403-265-2672

Toll free in Alberta 1-800-332-1280

Fax 403-266-6190

# 1

## EMPLOYMENT AS A TEACHER

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### Pre-employment

#### *Certification*

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The registrar at Alberta Education is responsible for the evaluation of credentials and issuance of certification for teachers in Alberta.

The requirements for interim professional certification in the province are a minimum of sixteen years of schooling, inclusive of four years of university education, and a recognized degree that includes, or is supplemented with, a structured, preservice teacher preparation program from an institution acceptable to the minister of education. The program must include, at minimum, 48 semester-hour credits (1 and 3/5 years) in professional teacher education coursework, inclusive of a minimum of 10 weeks in supervised student teaching at the elementary or secondary level. Currently, all preservice teacher education programs in Alberta exceed the minimum requirements both in the amount of coursework and weeks of practicum that are required to complete their programs. Depending on the institution, up to one year of advanced credit may be given to qualified journeymen (including certified) who enter the vocational education route and to persons holding acceptable credentials in music, drama or art.

For applicants who have graduated from a teacher education program at an Alberta institution, an interim professional certificate is generally issued on the recommendation of the dean of a faculty offering a Bachelor of Education program, providing other qualifications have been met.

The certificate is valid for up to three years with the possibility of extension if needed.

Graduates from an Alberta Bachelor of Education program with an employment offer are also eligible for a 90-day temporary teaching authority.

1. Submit your Interim Professional Certificate (ICP) application, including all required documentation, and submit your fee at least 8 weeks before the end of your degree program.
2. In approximately 20 business days you will get a precertification letter.
3. Request an offer letter from your employer.
4. Take the precertification letter and the offer letter from your employer to the dean of your education faculty and request a letter stating you have successfully completed your program.

With these three letters, you are authorized to teach for 90 days.

To move to permanent certification, an individual must have taught for a minimum of two full school years (or equivalent) in the province's school system (public, separate, private, charter, francophone and band schools), receive two successful formal evaluations, and receive a written recommendation for permanent certification by the superintendent of schools or other officer acceptable to the minister of education, attesting that the teacher's practice consistently demonstrates the competencies for permanent certification as identified in the Teaching Quality Standard Applicable to the Provision of Basic Education in Alberta, Ministerial Order (#001/2020, amended 2023).

Due to the Agreement on Internal Trade (AIT), teachers from outside Alberta who hold valid Canadian certification, can obtain certification in Alberta without additional training and examination, with the exception of teachers who hold a certificate with a limited scope of practice. A teaching certificate with a limited scope of practice is one that restricts teaching practice to certain grade levels or specific subject areas. The AIT is only applicable to teachers who hold a valid teaching certificate from another Canadian jurisdiction. It does not apply to teachers who hold a certificate that has been suspended or revoked or has expired.

Two types of certificates can be issued in Alberta to teachers with Canadian certification:

1. Certificated teachers from Canadian jurisdictions whose scope of practice as denoted on their teaching certificates is the same as in Alberta (can teach in kindergarten through Grade 12) will be granted an interim professional certificate with no additional requirements.
2. Certificated teachers from Canadian jurisdictions whose scope of practice as denoted on their teaching certificates is different from Alberta's scope of practice may be issued an Internal Trade Letter of Authority (AITLA). The letter will include the same conditions on scope of practice (grade levels and subject areas) as established by the current certifying jurisdiction.

The letter of authority is issued for three years and can be renewed. However, in accordance with the deficiency letter from Alberta Education, teachers can take additional coursework to meet the requirements for interim certification and can then apply for an interim professional certificate. Only days taught under an interim professional certificate can be counted toward permanent certification.

Address

The Registrar at Alberta Education  
2nd Floor, 44 Capital Boulevard  
10044 108 Street NW  
Edmonton, AB T5J 5E6

### *Teacher Qualifications Service*

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The Teacher Qualifications Service (TQS), established under the Memorandum of Agreement between the Alberta Teachers' Association, the Alberta School Trustees' Association (now the Alberta School Boards Association) and the Department of Education, is the agency in Alberta responsible for evaluating a teacher's years of education for salary purposes. All public, separate and francophone school boards in the province, as well as some private boards, accept evaluations issued by the TQS for the purpose of helping to determine a teacher's placement on the salary grid. School boards use a teacher's TQS

evaluation (which is based on years of acceptable education), along with an assessment of the teacher's years of teaching experience (as governed by the relevant collective agreement), to ascertain a teacher's ultimate placement on the salary grid.

Address

Teacher Qualifications Service  
 Alberta Teachers' Association  
 11010 142 Street NW  
 Edmonton, AB T5N 2R1

*Obtaining a position* \_\_\_\_\_

Whether new to teaching in Alberta or merely wishing to change employers, most teachers secure a teaching position by applying to the superintendent. Sometimes application is made on forms provided by school boards or online; however, it is common for teachers to write their own letters. An application should specify the teacher's desires regarding geographic location, grade level and subject preference. A copy of the application letter should be retained since it may be the only record of any conditions that the teacher placed on the type of assignment deemed acceptable. If the application was in response to a specific posting, a copy of it should be kept as well. Copies of all correspondence should be kept.

An applicant should attach copies of evaluation reports, if any. University transcripts and recent student teaching reports are often required for new teachers. Copies rather than original documents should be used to avoid loss of originals. Catholic jurisdictions usually require a reference letter from a priest or pastor.

The teacher should maintain a permanent file of all original documents and retain a list of all boards to which applications are submitted.

## Teaching Contracts

*Nature of a teaching contract* \_\_\_\_\_

In Alberta, a teacher's contract is made up of three parts: (a) an exchange of offer and acceptance, (b) specified clauses of the *Education Act* and (c) the collective agreement between the employing board and the Alberta Teachers' Association. The first part may contain specific provisions that do not conflict with the other two.

Section 205 of the *Education Act* deals with contracts of employment between a board and a teacher.

*Education Act*

## Contracts of Employment

205(5) Every contract of employment between a board and a teacher shall

- (a) be in writing,
- (b) be offered to a teacher by a person acting on behalf of the board, and
- (c) be accepted by the teacher.

(6) For the purposes of this Division, an offer, acceptance, confirmation, statement or notification must be in writing and must be

- (a) sent by registered or ordinary mail or by courier to,
- (b) personally served on, or
- (c) sent by fax or electronic mail to

the person to whom it is addressed.

Note that the offer and acceptance, which together constitute a contract, shall be in writing and may be delivered by a variety of methods, including by hand.

The *Education Act* does not specify the period of time to elapse between the receipt of the offer of employment and the acceptance in writing by the teacher. The significance of this fact is that the teacher and the person acting on behalf of the board must agree on the period of time that the teacher will be allowed to decide about the position. Ideally, that period would be specified in the offer. If it is not, the teacher would be wise to clarify this point if wishing to wait a few days before accepting. A teacher should be wary of a verbal offer of a position when it is not immediately confirmed by an offer in writing.

The offer of a position and its acceptance within the agreed time limit, both in writing, constitute a contract of employment between a teacher and a school board. All the terms and conditions of employment that are contained in the collective agreement between the Alberta Teachers' Association and the employing board apply to each teacher and are part of the individual's contract. No teacher can agree with a board to accept conditions or responsibilities that are in conflict with those specified in the collective agreement.

A further requirement is that no agreement between a board and a teacher is valid if it negates or contravenes those matters covered by sections 204 to 207 and 209 to 219 of the *Education Act*. These sections define the length of the contract, give the superintendent the right to transfer a teacher, specify the conditions under which a board or a teacher can terminate a contract of employment, specify the reasons and manner in which a suspension or termination of a teacher can be carried out and provide the teacher with the right to appeal to the Board of Reference in case of a suspension or termination. Therefore, all these matters must be handled in a manner consistent with the statute and not by any other mutual agreement in conflict with it. No teacher should sign a contract that purports to waive or supersede these rights without first seeking advice from the Association.

Section 205(3)(c) allows the board and the teacher to specify further contract provisions about matters that are not dealt with by either the collective agreement or the aforementioned sections of the act. If, for example, the collective agreement does not in any way specify conditions for noon-hour supervision or for cocurricular activities, it would be permissible for the board and the teacher to make some agreement about such a matter. Teachers could make use of this section to specify grade level or subject matter assignments that they are willing to accept. Teachers offered conditions about which they are dubious should consult the Association prior to accepting the offer.

## *Probationary contracts*

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Most teachers, particularly those just entering the profession or new to the province, will start employment with a board under a probationary contract, a provision introduced by the *Education Act* 1988. Section 206 sets out the requirements. The contract must be for a complete school year, cannot be offered to someone employed by the board in the preceding school year (other than as a substitute or temporary contract teacher—see below) and will terminate on the following June 30. If, at the end of the year, the employer's evaluations of the teacher so indicate and the teacher agrees, the probationary contract may be extended for an additional period not exceeding a second full year.

### *Education Act*

#### Probationary contract

206(1) A board may employ a teacher under a probationary contract of employment for a complete school year if that teacher

(a) was not employed by that board as a teacher in the school year immediately prior to the school year in which the contract is entered into, or

(b) in the school year immediately prior to the school year in which the contract is entered into was employed by that board under section 208 or under a contract referred to in section 209.

(2) For the purposes of subsection (1), a teacher who was employed under section 211 is deemed to have been employed by the board under a probationary contract of employment if at the conclusion of a school year the total amount of time that the teacher taught for the board is at least equal to the amount of time the teacher would have been required to teach in a complete school year if the teacher had been employed by the board to teach on a full-time basis.

(3) A probationary contract of employment terminates on the June 30 next following the commencement date specified in the contract.

(4) Notwithstanding subsection (3), if evaluations of the teacher indicate to the board that a further probationary period is required and the teacher agrees, the probationary contract of employment may be extended for a further period ending no later than the June 30 next following the date of the renewal of the contract.

## *Continuing contract*

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A board may employ a teacher on continuing contract. If the board has been employing the teacher either under a probationary contract (or an extended probationary contract) or under an interim contract, and the board wishes to employ that teacher in the next school year and the teacher agrees, the teacher is on a continuing contract. While this is the normal process, a board can also offer a continuing contract to a teacher new to the division or a teacher who has been on temporary contract provided these teachers have demonstrated successful teaching with at least two full evaluations. If the board does not wish to employ such a teacher, it is not legally required to provide the teacher with reasons for that decision, assuming that it is acting in good faith. However, it is morally obligated to do so. A teacher in such a situation, if genuinely ignorant of the reasons, should request them from the superintendent.

The continuing contract is a contract that remains in force from year to year without any further documentation being required. Any teacher offered a contract that does not conform to this requirement should immediately consult an Association executive staff officer prior to any action on the contract offer.

*Education Act*

Continuing contract

207 Subject to this Act, a contract of employment between a board and a teacher continues in force from year to year.

*Substitute teaching* \_\_\_\_\_

A teacher may, under section 208 of the act, be employed (a) on a day-to-day basis or (b) to occupy a vacancy that is expected to be less than 20 consecutive teaching days in duration. It frequently happens that the teacher being replaced is absent for a period that is expected to be 20 teaching days or more. In this event, a temporary contract, which provides 30 days' notice of termination, should be provided. Whether or not a temporary contract comes into effect, most collective agreements provide that, after a specified number of consecutive teaching days in the same position, salary changes from substitute pay to that determined by the salary grid. A few agreements provide full grid placement from day one.

*Education Act*

Substitute teachers

208(1) A teacher may teach without a contract of employment that is in accordance with section 205 only when the teacher is employed

- (a) on a day-to-day basis, or
- (b) to occupy a vacancy that is expected to be less than 20 consecutive teaching days in duration.

(2) Neither a teacher who teaches without a contract of employment that is in accordance with section 205 nor the board employing the teacher may appeal to the Board of Reference in respect of that teacher's employment.

*Temporary contracts* \_\_\_\_\_

Section 209 of the act deals with temporary contracts. These are used when a teacher is employed to replace a teacher who is expected to be absent for 20 or more consecutive teaching days. This written contract must specify the starting date; it may specify the ending date, but if it does not, it ends on June 30. It may be terminated earlier by either party giving 30 days' notice to the other. In this event there is generally no appeal to the Board of Reference.

Teachers are cautioned about temporary contracts that expire "on the return of the teacher." Although this clause provides a legitimate reason for the board to terminate the temporary contract, the board must still provide 30 days' notice as required under the *Education Act*.

*Education Act*

## Temporary contract

209(1) A teacher may be employed by a board under a temporary contract of employment when that teacher is employed for the purpose of replacing a teacher who is absent from the teachers' duties for a period of 20 or more consecutive teaching days.

(2) A temporary contract of employment entered into under subsection (1) must

- (a) specify the date on which the teacher commences employment with the board, and
- (b) terminate
  - (i) on the June 30 next following the commencement date specified in the contract, or
  - (ii) on a date provided for in the contract, whichever is earlier.

(3) Notwithstanding anything contained in a temporary contract of employment, a party to a temporary contract of employment may terminate that contract by giving 30 days' written notice of the termination to the other party to the contract.

(4) Section 231 does not apply to the termination of a temporary contract of employment under this section.

*Part-time teaching*

Any of the preceding employment contracts may be on a part-time basis. In the case of probationary and interim contracts, all requirements should be interpreted as full-time equivalents. Thus, a probationary contract that is half-time could be valid for two years or an interim contract could be for up to 720 half-time consecutive teaching days. A continuing part-time contract, like a continuing full-time contract, is subject to appeal to a Board of Reference if terminated by one party. However, if the teacher is employed under a part-time contract, there is a unique provision: the board may vary the fraction of time the teacher is required to teach in the subsequent year or semester. If the board varies the amount of time and the teacher does not agree to teach for that new amount of time, the board may terminate the contract. In that event, except in unusual circumstances, the teacher does not have the right to appeal to the Board of Reference.

Drastic changes in the amount of assigned time under a part-time contract may constitute a constructive termination of the contract. Contact an Association executive staff officer if you are in this situation.



*Education Act*

## Part-time contract

211(1) A board may employ a teacher under a part-time contract of employment for a period that includes all the teaching days in a school year

- (a) to teach on a part-time basis, and
- (b) to be paid only for the time that the teacher teaches

(2) When the board employs a teacher under a part-time contract of employment, the board may, unless that teacher's contract provides otherwise, vary the amount of time that the teacher is required to teach in the subsequent semester or school year.

(3) If

- (a) under subsection (2), a board varies the amount of time that a teacher is required to teach under a part-time contract of employment, and
- (b) the teacher does not agree to teach for that amount of time as varied, the board may terminate that teacher's contract.

(4) Section 231 does not apply to the termination of a contract under subsection (3).

## TEACHERS' EMPLOYMENT ARRANGEMENTS IN ALBERTA

[The *Education Act*, 2019 with Amendments in Force as of April 2023]

TYPE OF CONTRACT	MAY BE OFFERED TO	DURATION	EXTENDABLE	TENURE PROVISIONS
PROBATIONARY section 206	a) teacher not on staff in prior year unless as a substitute or on temporary contract b) teacher on part-time contract for less than a full year	complete school year (or full-time equivalent); terminates June 30	once, if evaluation indicates a need and if teacher agrees	premature termination may be appealed to Board of Reference; on prescribed termination date, no obligation on board to provide reasons for nonre-employment
INTERIM section 210	same as above	up to 360 consecutive teaching days; terminates next June 30 or as specified	not applicable	as above
TEMPORARY section 209	any teacher	replacement for minimum of 20 consecutive teaching days; terminates June 30 or on the date specified	further temporary contracts permitted	termination on 30 days' notice; no appeal
CONTINUING section 207	any teacher	indefinite	not applicable	any termination may be appealed to Board of Reference; notice must be minimum of 30 days by either party and may not be served during, or less than 30 days prior to, a vacation of 14 or more days
SUBSTITUTE section 208	any teacher	day-to-day	unlimited, unless absent teacher to be gone for 20 or more consecutive teaching days	termination without notice; generally no appeal
PART-TIME section 211	any teacher	Position may be probationary, interim, temporary or continuing and above rules apply, <b>except</b> that school board may vary fraction of time for next semester or school year and if teacher does not accept, board may terminate, in which case there is generally no appeal.		

Note: This is general advice only and should not be applied to your personal situation without direct contact.

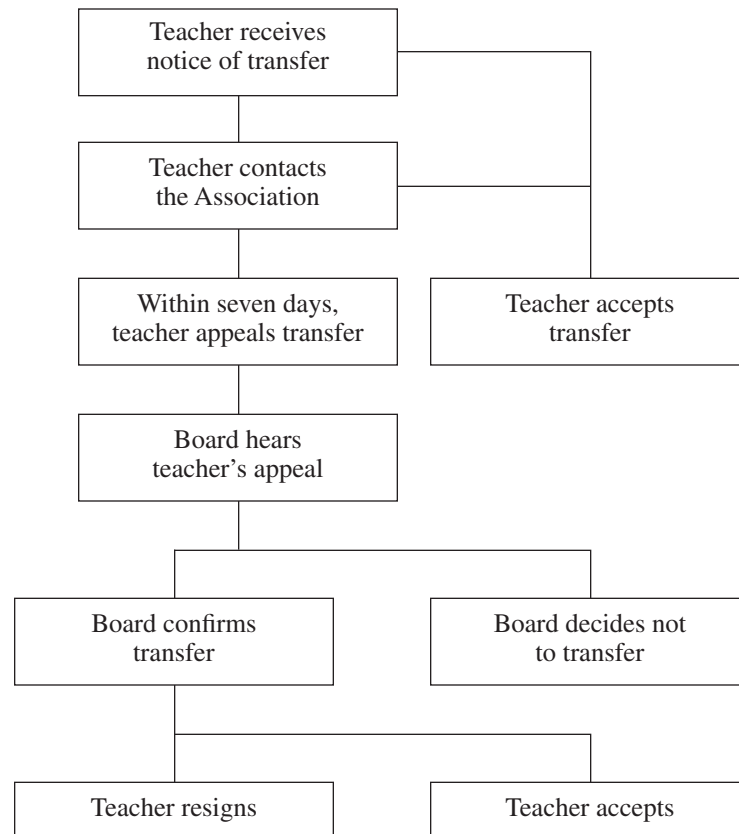
## Transfer

### Transfers

Section 212 of the *Education Act* provides that a superintendent may transfer a teacher from one school to another at any time during the school year. In carrying out a transfer, the superintendent must give the teacher at least seven calendar days' notice in writing. If the teacher wishes to contest the transfer, a written request for a hearing before the school board must be made within seven calendar days of receiving the transfer notice. If the teacher does request a hearing, the transfer may not take place until the hearing has been conducted by the board. The hearing must be scheduled not earlier than 14 days from the day the teacher received the transfer notice. If the teacher is unsuccessful in persuading the board to reverse the superintendent's transfer decision, the teacher may decide to resign upon 30 days' notice. If so, the transfer does not take effect; the board must pay salary to the termination date but may relieve the teacher of further duties forthwith (see flow chart).

Teachers wishing to appeal a transfer should obtain advice and assistance from an Association executive staff officer. No public announcement of the transfer should occur until after the hearing.

### Transfer of teacher



## Suspension and Termination

### Resignation

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The *Education Act*, in sections 215 and 216, provides that either a school board or a teacher may terminate a contract by giving not less than 30 days' notice in writing of intention to do so. Such a notice may not be given at any time in the 30 days preceding or during a vacation of 14 or more days' duration. In most cases this condition means that a teacher may not give the board notice after the end of May or before the first of September, though the actual dates will vary from one jurisdiction to another since they depend on the specific school calendar. Similarly, teachers should note that when the Christmas vacation lasts 14 or more days, resignation is prohibited for 30 days preceding and during that vacation.

A letter of resignation should clearly state the effective date of resignation and should be in the hands of the appropriate school board official a full 30 days before the intended termination date. Date of receipt can be certain if the letter is personally delivered or sent by registered mail, though other forms of transmission are acceptable.

A teacher who intends to resign should give the board as much notice as possible. The 30 days required by the *Education Act* is a minimum. Resignations during a school year should be infrequent and for strong reasons only, such as urgent personal circumstances or intolerable working conditions. Resignations for trivial or frivolous reasons are not in the best interests of children or of education generally.

The *Education Act* provides for termination by mutual consent. Occasionally a teacher has to request release during a vacation period or on less than 30 days' notice. Most school boards and superintendents are cooperative and release by mutual consent if not difficult to arrange, and when the circumstances are justified and a replacement is readily available.

A teacher does not have to resign because someone (anyone) makes such a request. A teacher who is asked to resign should contact the Association before any letter of resignation is signed or submitted.

Resignation prior to having rendered service under a contract is particularly frowned upon. Section 216 provides that in such a case no other board in the province may employ the teacher without first obtaining the consent of the original board. When a teacher accepts a position, it is expected that more enticing subsequent offers will be resisted.

Any resignation that does not meet the conditions described above (that is, 30 days' notice in proper time or consent of the board) may constitute unprofessional conduct and could, therefore, lead to the teacher being charged with unprofessional conduct.

### *Suspension by school boards*

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The *Education Act* permits a board or an authorized superintendent to suspend a teacher to whom notice of termination has been given. It also provides in section 213 for suspension if the board has reasonable grounds for believing that the teacher has been guilty of gross misconduct, neglect of duty or refusal or neglect to obey the lawful order of the board. In either case, the teacher is paid their regular salary during the period of suspension. A teacher may appeal a suspension under section 213 to the Board of Reference, which may reinstate the teacher or confirm the suspension. If the suspension is confirmed, the school board may reinstate the teacher or may terminate the teacher's contract. If it chooses to terminate in this sequence of events, it is deemed to have acted reasonably and no further appeal to the Board of Reference on that point would be allowed.

School boards and superintendents do not have the right under the provisions of the *Education Act* to dismiss a teacher summarily; that is, at once and without notice, except after conviction of an indictable offence as per section 217(2). It must be recognized, however, that the school board has authority to adopt policy and to make rules. Section 196 explicitly requires the teacher to carry out duties assigned by the board. In some instances, the rules or duties may be part of the collective agreement. In any event, any such rules must be reasonable. This requirement is based on at least three sources: the common law of master and servant, the provisions of the *Education Act* and the *Labour Relations Code*, all of which may relate to the dismissal of teachers.

### *Termination by school boards*

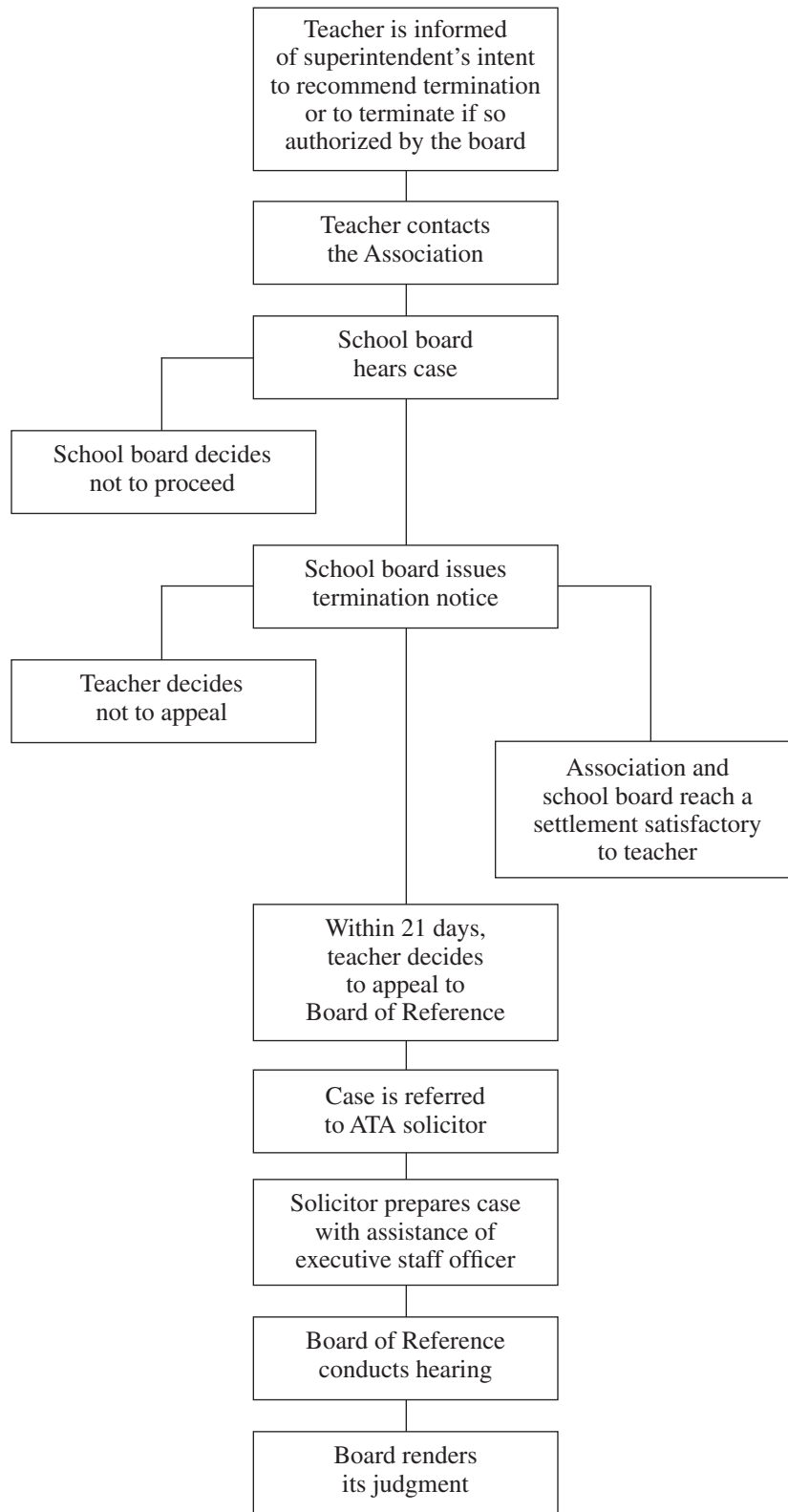
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Tenure is the right of a teacher to have a contract of employment with a school board continue as long as no adequate cause for its termination arises. Having a continuing contract with a board is tenure. The *Education Act* provides that a contract of employment between a board and a teacher terminates if the teacher's certificate is suspended or cancelled by the minister or if the certificate of qualifications (such as a letter of authority) expires. The *Teaching Profession Act* provides that a board may not continue to employ a teacher who ceases to be a member of the Association except as provided in the act. Employment can be impacted if a teacher's certificate is suspended or cancelled in the registrar's discipline process.

The *Education Act* provides that a school board shall act reasonably if it terminates the contract of a teacher. *Reasonable* has a definition in law and it may be presumed that a board would be judged to have acted reasonably if it established that the teacher was incompetent, if something serious in the mode of life or character of the teacher was judged to be detrimental to the students of the school or if the termination was necessary to accomplish a required reduction in division staff. Other reasonable grounds for termination would include excessive or flagrant breaches of section 196 of the *Education Act* (see box on page 14).

Sections 215 and 217 of the *Education Act* provide for the termination of a teacher's contract by the board. Prior to serving notice of termination, a school board or superintendent must give notice of its intent to consider such action. Actions taken must comply with the rules of natural justice: (a) reasons for possible termination must be given; (b) the teacher must be given the opportunity to appear at a hearing in person, alone or with an advocate, or to be represented by counsel to answer to these reasons; and (c) the teacher must have enough time to prepare a case.

Termination of contract



### *Termination of designation* \_\_\_\_\_

A school board may terminate a teacher's designation without terminating the teaching contract. All the observations on termination of contracts in the foregoing section also apply to terminations of designation. Reasons would, of course, have to relate to performance or conduct of the teacher in the designated role only. In the case of a principal, the reasons could include serious or flagrant breaches of section 197 of the *Education Act*. Termination of a designation is appealable to a Board of Reference.

### *Appeal of termination or suspension* \_\_\_\_\_

If a teacher's contract is terminated by a school board or superintendent on 30 days' notice, the teacher may appeal to the Board of Reference within 21 days of receipt of the notice of termination. The appeal must be in writing, must set out the board's reasons for the termination, should indicate the reason(s) for contesting the board's decision and must be dispatched to the minister of education by registered mail along with a \$250 certified cheque or money order as a deposit.

A teacher is urged to consult with the Association as soon as a termination notice is received so that, if the choice is to appeal, help in filing an appeal in the proper form may be given. In most cases, the teacher would already have had the assistance of an Association executive staff officer at the division level hearing.

A teacher filing an appeal may ask that the Association provide the services of its solicitors at Association expense. If such a request is made, an investigation of the circumstances involved in the termination of contract will be carried out and the solicitor's advice sought as to what arguments can be made on behalf of the teacher. While Association support may not be granted in certain cases, such a decision in no way prejudices the teacher's right to proceed with the appeal, if so desired, at the teacher's own expense.

*Education Act*

## Order of Board of Reference

237(1) 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 teacher's contract of employment;
- (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 of Reference considers just in the circumstances.

(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 any technical or procedural irregularity by any party to the appeal that may have taken place in relation to the matter being appealed.

(5) The Board of Reference, unless the minister directs or gives permission to the Board of Reference to do otherwise, shall render its decision, including any reasons on which the decision is based, 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), the direction or permission of the minister may be given by the minister before or after the end of the 45-day period.



The Board of Reference is composed of one person assigned from a list of arbitrators as approved by the Lieutenant Governor in Council. All evidence placed before it is given under oath. The school board must first state its case and register the supporting evidence. The teacher then has the opportunity to rebut the case, usually by introducing witnesses to counter the testimony led by the board. Both parties are usually represented by legal counsel. The Board of Reference may make any order it deems appropriate to the case. Such orders could include support for the board's termination, support for the teacher's appeal, payment of salary or recovery of salary. The order is registered with the Court of King's Bench and is appealable only to the Alberta Court of Appeal.

Teachers who have been suspended under section 213 of the *Education Act* or holders of designated positions whose designations have been terminated pursuant to section 219 of the act may also appeal to the Board of Reference in a similar manner to that described on page 15.

## Other Employment Matters

### *Collective agreement provisions*

If a disagreement arises between a school board and a teacher over the interpretation, application or violation of any provision of a collective agreement, the teacher may file a grievance as provided for in the collective agreement. Procedures for the settlement of grievances depends on whether the alleged violation is related to a Central Table item (clauses in italics) or a Local Table item (clauses in regular text). A teacher who has a grievance should consult the chair of the teacher welfare committee as soon as possible to ensure timelines are maintained. Advice may also be obtained from Teacher Employment Services. If the grievance cannot be resolved it may be submitted to the grievance or interpretations committee, if applicable to that specific collective agreement. If no decision is reached at this level, the grievance may later be submitted to arbitration, in which case the Association assumes the responsibility for the action.

A common source of grievances is a teacher's long delay or failure to submit to the board a statement of teacher education for salary purposes. A teacher should take steps to secure an evaluation immediately after accepting employment with a board or on completing additional university work that will lead to an increased evaluation. The first step is to submit an application for an evaluation to the Teacher Qualifications Service (TQS) of the Association, along with proper original transcripts and other documents. School boards will consider the letter of notification from TQS stating the application has been received and the evaluation is ongoing, as demonstration that the application has been filed in good time and that the teacher has done everything possible to expedite the matter.

Another source of grievances lies in the application of the sick leave provisions of the *Education Act*, which are included with other salary matters in section 220. If a teacher has been ill and is experiencing difficulty in collecting proper salary, advice should be sought from the Association by contacting Teacher Employment Services at 1-800-232-7208.

### *Education Act salary and medical leave provisions*

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Unless otherwise indicated in the collective agreement, the *Education Act* provides for a teacher to be absent with pay for a maximum of 20 teaching days per year, or if employed for part of the year only, a number is determined by dividing the total number of days taught for the board in the school year by 9.

Collective agreements usually provide details on when and how salary payments are to be made. The amount of salary is determined by the teacher's position on the salary grid as a result of their level of education as determined by TQS and their years of experience according to the collective agreement. The salary to teachers on contract is usually paid on the basis of 1/12 of the annual grid amount per month during the school year, with any residual paid during the summer months or upon termination of the contract.

The *Education Act* in section 220 specifies that teachers working full-time for the complete school year are entitled to the salary as determined by their grid position. Teachers employed on contract for part of the year only, or a full year but work fewer than 100 days, accrue salary on the basis of 0.5 per cent of their grid placement for each day of work. Notwithstanding the above, teachers employed on a contract for the complete year but who do not work for the full year, but work more than 100 days, are entitled to the full salary less 0.5 per cent of grid salary per day they did not work.

### *Teacherages*

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Some school divisions provide teacherages for some of the teachers in their employ. Policy regarding rental rates varies. In some areas, particularly the more isolated ones, rent is considerably less than the current rate in the area for similar, privately owned accommodation. Other boards take the position that, while they are willing to provide teacher accommodation, they will not do so at subsidized rates.

Teacherage rental rates are rarely included in collective agreements, though some agreements do contain a provision requiring notice of increased rates to be given well before the end of a school year if they are to be effective in the next school year.

Some school boards enter into lease agreements with teachers while others simply operate on some type of understanding. Teachers would be well advised to have the terms and conditions of their rental agreement with a board clearly stated in writing. A properly executed lease with mutually agreed conditions is the best insurance against misunderstanding and trouble.

# 2

## TEACHING DUTIES

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### Nature of Teaching Duties

For the purposes of this monograph, teaching duties are defined as all those professional tasks encountered by teachers in the course of their activities concerned with the instruction of pupils. Included would be (a) the actual conducting of classes and presentation of lessons; (b) the preparation of lessons; (c) requisitioning of materials and equipment; (d) evaluation and reporting of student progress; and (e) maintenance of such classroom order as is necessary to promote a healthy learning climate. Implied, as well, is an expectation for a teacher to carry out such general pupil supervision as may be required by law, by regulation or by agreement to assist to a reasonable extent with the school program as agreed to by the staff, to cooperate with other teachers in the best interests of students and generally to act as an enthusiastic member of the school's educational team. *Education Act* sections 196 and 197 form the legislative basis for these duties. Also included in the term teaching duties are the tasks of such functional specialist assignments as administrator, teacher-librarian, counsellor, supervisor and so forth.

*Education Act*

## Teachers

196(1) A teacher while providing instruction or supervision must

- (a) provide instruction competently to students;
- (b) teach the courses and programs of study 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 assess students and periodically report the results of the assessments 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 the duties that are assigned to the teacher by the principal or the board.

(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, the 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 assessments, and
- (c) supervise student teachers.

## Duties in Classroom Instruction

### *Preparation*

It is axiomatic that a teacher has a duty to prepare adequately for daily teaching assignments and to plan the semester's or year's work in each subject to promote orderly development and progress. Good conscientious preparation of lessons would seem to demand that a teacher know exactly what is to be attempted from the beginning to the end of each lesson period. As well, teachers should have a very clear idea of how they and their students are going to accomplish the outcomes set. This requires that teachers make advance decisions as to the method of presentation; proportions of teacher and student activity; student assignments, both in class and for homework; and other teaching aids that will be used.

The length or nature of preparation of a lesson will vary widely with the subject, the topic and the experience and qualifications of the teacher. Many authorities believe that proper lesson preparation gives the teacher a confidence and enthusiasm that is reflected in the attitudes of students. On the other hand, there is little doubt that inadequate preparation contributes to student apathy and to the serious discipline problems that often accompany it.

In cooperative or team-teaching arrangements, a substantial amount of time will be required for group planning in addition to the individual preparation time needed.

## *Presentation*

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One of the most frequently heard criticisms of unsuccessful or marginally successful teachers is that they lack the quality of enthusiasm and cannot excite their students about learning. This quality is likely a result of many things, including depth of knowledge, clearly defined objectives, careful planning, a sincere liking for children, good health, job satisfaction, a well-modulated manner of speech and willingness to adjust and to innovate. Whatever its components may be, a teacher who aspires to excellence would do well to strive to project an image of enthusiasm.

No two teachers could, or should, present a lesson in exactly the same way. The choice of the methods by which a professional carries on practice is a matter for individual decision. A professional is obliged to keep abreast of the best in current practice and to be accountable for the success of the methods chosen. Major reliance on the lecture type of lesson presentation is currently in disfavour both with teachers and students; more stimulating methods of teaching do exist and should be used. Use of persons from the community who have expertise in specific topics is frequently advocated. When such people are brought in, it must be recognized that the teacher is still in charge and is responsible for student supervision and evaluation. With the emphasis on the use of the inquiry method and other participative techniques, teachers should find it possible to devise lessons that will motivate students and encourage their participation.

## *Evaluation of students*

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This topic is discussed in some detail in a succeeding section. Accordingly, it should be sufficient here to point out that a teacher's duties include the systematic, objective and continuous evaluation of the progress being made by each of the students, having in mind their abilities, the general objectives of education and the specific objectives of each course.

<b>Duties as a Staff Member</b>
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## *Records and reports*

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Teachers are required by law to keep accurate records of the attendance of pupils in their charge, including absences and lateness. This information must be accurate and promptly supplied.

In addition to routine attendance records, teachers are obligated to keep systematic records of evaluations of student progress. This may assume great importance if a parent questions the grading assigned to a child by a teacher or the decision to withhold advancement to a succeeding grade. Anecdotal records have also proved useful.

*Education Act*

## Section 56

## Student records

56(1) A board shall establish and maintain in accordance with the regulations a student record for

- (a) each student enrolled in a school operated by the board, and
- (b) each child or student enrolled in an early childhood services program provided by the board.

(2) A person, other than a board, providing an early childhood services program to a child shall establish and maintain in accordance with the regulations a student record for each child enrolled in the early childhood services program.

(3) The following persons may review the student record maintained in respect of a student or a child enrolled in an early childhood services program:

- (a) the student;
- (b) the student's parent, except where the student is an independent student;
- (c) the parent of a child enrolled in an early childhood services program.

(4) A person who is entitled to review a student record under subsection (3) may submit a request for a copy of the student record, along with any associated fee, to the board or a person other than the board providing an early childhood services program, and the board or the person other than the board providing the early childhood services program shall provide a copy of the student record to the person.

(5) A person who provides information to a student record is exempt from any liability with respect to the provision of that information if that person, in providing that information,

- (a) acted in good faith,
- (b) acted within the scope of that person's duties and responsibilities, and
- (c) did not act in a negligent manner.

(6) If, on reviewing a student record, a person who is entitled to review the student record is of the opinion that the student record contains inaccurate or incomplete information, that person may request that the board or the person other than the board providing an early childhood services program rectify the matter.

(7) Where in accordance with the regulations a board or a person other than a board providing an early childhood services program is required to transfer a student record, the board or the person other than the board providing the early childhood services program shall do so in a timely manner.

**(8) The minister may make regulations respecting student records for students and children referred to in subsections (1) and (2).**

Efficient evaluation and accurate records are particularly important for use in regular parent–teacher interviews, which are scheduled by many schools, as well as for individual interviews, which parents may request if they are concerned about their child's progress.

Another important use of pupil evaluation records is to aid teachers in their own self-evaluation. If student-evaluation procedures are adequate and records good, a teacher can often assess the success of the teaching methods being used and devise more effective ones if individual or general progress do not meet expectations.

Section 56 of the *Education Act* gives parents rights to examine and to appeal student records. Moreover, the minister may make regulations on this topic. Teachers' and schools' student records must conform to section 56 and to any subsequent regulations made by the minister.

### *Staff meetings*

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Schools have an obligation to hold staff meetings at regular intervals and teachers have a duty to attend these meetings. A teacher who fails to attend the staff meeting without being previously excused for adequate reason could well be accused of neglect of duty, which, in turn, might lead to disciplinary action.

On the other hand, teachers have a right to expect that staff meetings will not be called with unreasonable frequency, with inadequate notice or without taking into consideration other employment and/or professional commitments of teachers. Consideration must be given to scheduling meetings at reasonable times for part-time teachers to attend. Normally this would mean at a time during or close to their assigned work hours. All teachers also have a right to expect that an agenda will be prepared by the staff and administration in cooperation and that the meetings will be of reasonable length.

### *Curricular activities*

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School staffs often schedule activities involving students and teachers that are related directly to the function of the school and to the general objectives of education but that occur outside of regularly scheduled classroom periods. They may arise out of any program undertaken by the school. They are designed primarily to be additional educational experiences for the students and often aid both students and teachers by creating an atmosphere in which mutual understanding can be enhanced.

Most educational authorities agree that such activities not only are desirable but also form an integral part of the educational process. Expectations for involvement in curricular activities beyond the classroom must be reasonable in both scope and commitment.

A school staff should agree on the nature and extent of the program to be undertaken for the year. Since each teacher is a member of the educational team and must be reasonably in accord with the educational philosophy of the school, it follows that the teacher has a responsibility to support whatever program of curricular activities colleagues collectively agree to institute. A reasonable interpretation of this responsibility might be that all teachers should be willing to contribute to curricular activities within the limits imposed by their teaching assignments, skills and abilities and health. It is inherent in this attitude that the participation by teachers in a given activity and in the total program should be voluntary and not assigned by the school administration or the board and should be shared as equitably as possible by the staff as a whole.

When defining the teacher's workday in terms of a required amount of instructional time plus a required amount of time devoted to other assigned duties continues, it may be that the assignment of broad-based curricular activities to teachers will tend to be more directive. Should such cocurricular activities be assigned, some of the teachers' spontaneity and enthusiasm for such activities will be lost. Assigned duties also make up a part of a teacher's assignable time so caution must be exercised to not exceed the maximum hours of assignable time.

### Extracurricular activities

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School programs are enhanced with a program of activities designed to motivate students and enrich their educational experience by going outside the curriculum. These activities are voluntary for both students and teachers and may include athletic, cultural or other special-interest activities.

An individual teacher's involvement will reflect the personal time available to the teacher and the individual's skill, abilities and health.

### School discipline

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As with many other aspects of teaching, student discipline is not the same for every teacher. Some teachers find class control a constant struggle while others seem to cope effortlessly. While a good deal of latitude should be, and is, allowed to teachers in discipline within their own classes, there must be a considerable degree of consistency within a school staff covering student conduct and control between classes, in hallways and washrooms, on playgrounds, on excursions and in assemblies. Most schools have developed and publicized concise policies and these must be supported by all staff members, at least until the rest of the staff can be persuaded, through proper processes, to implement a change. Workshops, presentations and materials on student discipline are available from the Association. Contact the Professional Development program area for workshops and presentations and the ATA library for print and digital resources.

The *Youth Criminal Justice Act* is federal legislation that redefined disciplinary rights for children in some circumstances. Among the implications is the concept that a young person has the same civil rights as an adult and, in addition, further rights because of being young. This comes into play in schools in such serious breaches of discipline as to constitute possible criminal charges. In this type of circumstance, teachers must be careful to carry out procedures in such a way that the student's rights are not violated, thereby enabling them to escape punishment on these grounds. Teachers and principals must act in *parens patriae*, which requires that they protect the rights of the student. Students have the same rights as adults in criminal matters.

Those rights include the right to remain silent, the right to counsel and the right to know what the charges are. Before allowing the police to interview students, principals should contact both the Association and the school division for advice.

## Noncertificated Personnel

The term *educational assistant(s)* is used by the Association to designate noncertificated personnel of all kinds employed to assist teachers.

The Association favours the use of educational assistants provided they are used in accordance with Association policy. The major aspects of that policy are as follows:

- The purpose of educational assistants is to enable teachers to extend their professional service.
- The deployment and assignment of duties of educational assistants is the responsibility of the teachers in the school.
- Assistants are responsible to teachers to whom they are assigned.
- The assignment of an educational assistant must have the approval of the teacher to whom the assistant is assigned, and the teacher must determine the assistant's specific duties.



Code of Professional Conduct for Teachers and Teacher Leaders (2022, amended 2023)

1(h) the teacher or teacher leader may delegate specific and limited aspects of instructional activity to non-certificated personnel, provided that the teacher or teacher leader supervises such activity.

A teacher who assigns an assistant responsibility for professional services or who has an assistant do a major share of services that ought to be performed by the teacher may be charged with unprofessional conduct.

Another category of noncertificated personnel is parent volunteers. In many schools, especially at the elementary level, large numbers of parents assist in the school on a regular basis. Their help is very much appreciated, and the increased community awareness of the school's tasks and difficulties is beneficial. The work volunteers undertake is similar to that done by educational assistants, and the same restrictions apply. The teacher has a greater responsibility for supervision to compensate for the lower level of responsibility inherent in the role of volunteer as compared with the role of employee.

See the ATA publication *Teachers and Educational Assistants: Roles and Responsibilities* for further information.

## Financial Responsibilities

### *School funds* \_\_\_\_\_

Teachers, especially principals, often have occasion to handle and administer school funds either provided by the board or acquired through fund-raising activities. There may be arguments as to whether it is a legal duty of teachers to collect or handle such monies, but there is little question that any teacher who accepts the responsibility must safeguard the funds, see that they are properly expended, take reasonable precautions to guard them from loss or theft and account for them meticulously. Carelessness in handling money or poorly kept records can lead only to embarrassment and possibly to serious trouble.

When teachers have been delegated authority to make purchases on behalf of the board, they must conform scrupulously to any relevant regulations and give proper attention to accounts and forms.

### *School purchases* \_\_\_\_\_

Proper procedure in making purchases for a school has been a sensitive area of concern and has even led to termination of designations or contracts. Trouble seems to arise most often when a principal neglects to follow purchasing procedures laid down by the school board. A common example is the forwarding of purchase orders directly to supplying firms without the countersignature of the secretary-treasurer or other designated official. Another example is failure on the principal's part to forward invoices promptly to the board office.

School administrators and others involved are advised to become familiar with purchasing procedures adopted by their boards and to adhere meticulously to such procedures. Failure to do so may lead to charges of refusal to obey a lawful board order and, at the least, can cause deterioration of relations with the board.

## Hours of Work

Preparing lessons, marking and other tasks that must be performed to provide proper instruction add many hours each day and week to the more visible part of a teacher's job. Research shows that teachers spend between 1 and 1.5 hours preparing and marking for each hour spent on instruction. Section 205(2) of the *Education Act* states that a board may not require a teacher to instruct for more than 1,100 hours or more than 200 days in a school year. Most teachers would maintain that 5.5 hours of instruction a day is not merely excessive but also nearly impossible to carry out enthusiastically and efficiently. This is shown by provisions in all collective agreements that limit instructional time to a maximum of 916 hours per year.

Teachers working in schools, distributed learning centres, central office positions and administrative designations have become increasingly concerned about the intensification of their workloads.

# 3

## TEACHER LIABILITY

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### Introduction

There is a great deal of interest in teacher liability for three basic reasons.

First, many school and off-campus activities are prone to accidents and therefore to possible litigation. The number of off-campus activities has increased dramatically in the past several years, thereby increasing the potential danger of an accident that could lead to allegations of teacher negligence.

Second, in recent years the courts in Canada have awarded large sums of money to students who were seriously and permanently injured during a school activity. There is now a much greater incentive for parents whose children are injured at school to risk the high cost of litigation in the hope of obtaining a large compensation award.

Third, the public's understanding of the concept of rights and a corresponding readiness to seek redress has increased.

We are therefore faced with the likelihood of more litigation involving teachers. This section provides the ounce of prevention that may avoid a lawsuit by informing teachers of their liability.

### The Principle of *in loco parentis*

The concept that the teacher is acting *in loco parentis* has gradually evolved through legal precedent. This means that the teacher stands, in relation to the student, in the position of a caring parent, as an unofficial guardian. This concept not only allows the teacher some of the privileges of a parent but also brings with it added responsibilities for the protection of pupils. Thus, a teacher could be liable for damage caused to a pupil where the teacher's conduct falls below the standard of care commonly accepted as being reasonable in a parent-child relationship. A teacher may even have to meet a higher standard of care where special knowledge makes the teacher aware of dangers that the normal parent might not appreciate.

This principle affects several aspects of teacher conduct and risk.

## The *Criminal Code*

Teachers are governed by Canada's *Criminal Code*, Alberta's *Education Act*, Alberta regulations, school board policies and regulations, and school policies and regulations.

Section 43 of the *Criminal Code* states, "Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances."

It is clear from this section that teachers are protected against conviction of an assault as a result of reasonable punishment of students under their care. This is an application of the *in loco parentis* concept.

In the last several years, there have been repeated proposals to remove section 43 from the *Criminal Code*. This stems primarily from a growing opposition to the use of corporal punishment in schools and concern about child abuse. However, loss of the principle of *in loco parentis* would have very serious repercussions for teachers far beyond the question of corporal punishment.

Although section 43 of the *Criminal Code* was upheld by the Supreme Court of Canada in *Canadian Foundation for Children, Youth and the Law v. Canada* (Attorney General), [2004] 1 S.C.R. 76, many provinces have banned corporal punishment from schools altogether. This is not the case in Alberta. Therefore, for teachers in Alberta, the Supreme Court of Canada's comments in this and other cases help to provide direction as to what would be considered a reasonable and corrective use of force on a child, pursuant to section 43, in a way that also complies with the Code of Professional Conduct for Teachers and Teacher Leaders.

Section 43 specifies that force can be used only by way of correction. The Court says that it must be "intended for educative or corrective purposes." Therefore, only sober, reasoned use of force that addresses the actual behaviour of the child and that is designed to restrain, control or express some symbolic disapproval of his or her behaviour is permissible. It is also required that the child be capable of benefiting from the correction.

A second requirement in section 43 is that the force be reasonable under the circumstances. In the guidelines provided by the Court, corporal punishment using objects, a slap to the head or face, or force that is applied in a degrading, inhuman or harmful way would all be considered unreasonable.

What must be recognized is that section 43 of the *Criminal Code* should not be viewed as giving teachers the right to use physical force or the threat of physical force. Indeed, section 43 identifies what the Supreme Court of Canada calls a "risk zone for criminal sanction" and states that "the prudent parent or teacher will refrain from conduct that approaches those boundaries, while law enforcement officers and judges will proceed with them in mind." Teachers are well advised to exercise caution in any physical intervention with students.

## Insurance

The *Education Act*, in section 54, deals with powers of school boards. Among other matters, this section requires that every board carry liability insurance or make equivalent arrangements to cover its exposure, including the exposure of its employees.

### *Education Act*

#### Insurance and Investments

54(1) A board shall, in respect of its operations, keep in force adequate and appropriate policies of insurance for the purpose of, at a minimum, indemnifying the board and its employees and school councils in respect of claims for

- (a) damages for death or personal injury,
- (b) damage to property,

Any claims, including lawsuits, against the board and/or any of its employees would be dealt with by the insurance company (or equivalent agency) providing the coverage required by this legislation.

## Negligence

Negligence comes under the broader heading of tort law. The word *tort* means crooked or twisted. Generally speaking, a tort is a wrong committed by one person against another. Some specific types of wrongs are assault, defamation and negligence.

Negligence consists of not doing something a prudent and reasonable person would do or doing something that a prudent and reasonable person would not do. It can be the subject of a lawsuit between people whenever there is a duty upon one person not to be negligent and when a breach of that duty occurs that causes damage to another person. Negligence exists where the activity or conduct on the part of the teacher creates an unreasonable chance of danger. When teachers ignore the danger or do not see the danger when they should, they may be held negligent if someone is injured as a result.

The law recognizes different degrees of negligence. There is slight negligence which is failure to use great care; ordinary negligence, which is failure to use reasonable care; and gross negligence, which is failure to use any care at all. It should be understood that to warn a pupil of dangerous places and actions is not an adequate defence if a suit is brought for negligence.

Likewise, it is not sufficient to put up instructions regarding proper conduct to avoid accidents. Such instructions are valuable from the standpoint of reducing accidents but, when one does occur, they do not remove liability for the teacher who has been otherwise negligent.

Four elements must be present before negligence is established, namely,

- the plaintiff has suffered some damage;
- the damage was caused by some act or omission of the defendant;
- the act or omission was one of which a reasonable person, behaving with ordinary prudence, would not have been guilty; and
- in the circumstances of the case the defendant owes the plaintiff a duty to take care of that act or omission that was in breach.

The extent to which the injured party contributed to that party's own damage would also be an issue in determining the amount of damages to be awarded.

As with punishment, the principle of *in loco parentis* applies; so, too, does the idea that teachers who possess "expert" knowledge must exhibit a higher standard of care than ordinary parents in elements of the subject matter or program that are inherently dangerous. This would apply to the use of chemicals, machinery or apparatus, for example.

## Supervision

The teacher will normally be required to ensure that a system of supervision is established in the classroom or wherever an activity takes place to ensure that the warnings or instructions given to the pupils are obeyed. Of course, there is no expectation of having one supervisor for each pupil except in extremely dangerous activities. Teachers' own experiences will normally give them a good idea of what level of supervision is required to ensure an adequate degree of safety.

Teachers and administrators should decide on the amount of supervision they deem adequate for the school. Once a schedule has been decided upon, it is the teacher's responsibility to carry out assigned supervisory duties. Adequate supervision does not mean constant supervision of all students at all times—that is not reasonable. The teacher's duty is to guard against dangers that could reasonably be foreseen, not to keep students under direct observation every moment.

The extent of supervision required depends on the age, mental ability and emotional stability of the students being supervised. If there is a lack of supervision, it would have to be shown that the failure to supervise caused or contributed to the injury. Negligence will be determined by a judgment of what was reasonable in a particular set of circumstances. In any event, if the teacher is performing assigned duties, the school board's liability insurance will provide the necessary protection in the event of a lawsuit to the extent of the limits provided in the policy. Teachers at risk should check the adequacy of coverage.

## Student Injury or Illness

If a child appears to be seriously ill or has suffered an injury, the teacher must take all necessary steps to secure medical attention. All decisions ought to be made, if possible, in consultation with the principal. If, in the opinion of the teacher and principal, medical treatment is required, immediate steps must be taken to secure it. Attempts ought to be made to notify the parents and to advise them of the event and the steps proposed to be taken. If the parents cannot be located or if the emergency is such that there is not time to contact them before arranging for medical aid, a physician should be called or the child taken to the hospital as quickly as possible.

The responsibility of the teacher ends as soon as the child enters the care of a qualified doctor or a hospital, and the sole remaining duty is to continue efforts to contact the parents if such had not been done before. It should be noted that teachers' actions will not be measured by the standards applied to a medical doctor but by those of reasonable prudent parents. If you err, make sure it is on the side of getting medical attention.

## Transporting Students

The *Insurance Act* provides coverage for teachers who transport students to and from activities conducted as part of an educational program without the necessity of specifically endorsing their own insurance policy. Such trips must be occasional and infrequent and are discouraged. Teachers using their automobiles to transport students should make sure that they have adequate public liability coverage in their own policy.

Some carriers of school board liability insurance do provide excess liability insurance for employees' vehicles, provided they are transporting students on school-sponsored activities. The school board must assume liability for non-owned vehicles for this coverage to be effective. Teachers are advised to check with their employer to determine if coverage is provided. It should be noted that such coverage does not generally include parents driving students or students transporting other students—only school board employees are insured. However, a few policies may cover volunteers. The practice of students driving other students should be discouraged. A good policy to follow is never to permit students to drive other students unless the school has the written consent of the student driver, the student passengers and their parents.

## Child Abuse

A teacher who has reasonable and probable grounds for believing that a child has been physically ill-treated or is in need of protection must report the situation to a child welfare director. This requirement is set out in the *Child, Youth and Family Enhancement Act*. To report, call 1-800-387-KIDS. No action can be taken against a teacher for reporting suspected cases of child abuse unless such reporting is done with malice or without grounds. It should be clear that the legislation requires the teacher to report directly to the child welfare director and not to parents, counsellors or administrators. Contact with parents in cases where child abuse is a possibility should be limited to routine factual inquiries about absences or injuries. Discussions with counsellors and/or administrators are best kept to a level of generality that does not entail revealing the identity of the student. No counsellor, administrator or other person can relieve the teacher of the obligation to report to the proper authorities. In any case, repeated interviewing of the student by school authorities is to be avoided as it is likely to do more harm than good. Once a report has been made and a child welfare worker from the Department of Children's Services has been assigned, the teacher's subsequent conduct in the case should be guided by the worker.

## Corporal Punishment

In addition to the *Criminal Code* provisions noted earlier, ordinary civil law recognizes the principle of *in loco parentis*. As a result of that legal relationship, teachers are permitted to take reasonable steps as may be required to maintain control of pupils. However, in all cases related to discipline the best protection for teachers is to follow school and board policy.

The *Education Act* gives school boards the right to make rules and regulations regarding the operation of schools. These rules and regulations should be made in consultation with teachers. Once the rules have been established, the teacher must apply them scrupulously. If the board makes a rule that prohibits the use of physical force and a teacher disobeys, it could be

grounds for employer discipline up to and including termination of contract for disobedience of a lawful order of the board. It could not be grounds for criminal or civil action unless the punishment was shown to be unreasonable.

#### Some Important Points

- The student's age should be taken into account in arranging supervision. Generally speaking, the older the student the less supervision required.
- Students should be instructed as to the dangers inherent in a given activity, as well as on how to perform the activity.
- If shortcomings have been detected in past practices, they should be rectified.
- If a student is injured, the activity should be terminated.
- In Alberta, if a teacher is assessed for damages in a suit for liability, the damages will be covered by the school board's liability insurance, and as teachers are employees, any suit for negligence would be against the board as well as against the teacher.
- Liability insurance does not cover acts of a teacher's own free will.
- The principle of *in loco parentis* may shield and defend teachers in the performance of duties but also adds to their "duty of care."
- In a matter of dispute concerning exercise of authority over pupils, the courts will judge the teacher's behaviour in light of what they deem to be "reasonable under the circumstances."
- Pupils in attendance in public schools must submit themselves to the reasonable rules and regulations of the school board and to the control of teachers.
- Negligence occurs from (a) taking any action that should not have been taken or (b) failure to do what should have been done.
- In Alberta, a teacher may legally administer punishment if it is justified and not excessive or malicious and if it is in accordance with school board policy and school rules.
- School boards in consultation with teachers should formulate rules and regulations governing punishment.
- The teacher must fulfill assignments; one assigned to supervise must do so or make alternative arrangements.
- Teachers are advised not to make a practice of transporting students in private vehicles unless (a) they are explicitly authorized to do so and (b) the board's insurance includes non-owned automobile coverage. Insurance coverage must be ensured.
- If an accident or injury happens, the teacher, as soon as possible after coping with the emergency itself, must make a complete record of the circumstances and what occurred. Board policy should be respected.
- Negligence should not be admitted in an accident, even if a teacher feels responsible. Such an admission would remove all defence in a subsequent suit.



## Field Trips

Teachers should be certain that the activity is school-sponsored, in which case the school board's liability insurance will cover normal liabilities that may arise. Virtually all schools require parents' approval for students to participate on school-sponsored outings. This practice serves as a useful communication device, but it does not eliminate the possibility of liability arising out of untoward events occurring during the field trip. Parent permission does not give the teacher the right to commit a negligent act. Students must be instructed in advance on all aspects of safety during the field trip, and all foreseeable dangers should be brought to the students' attention. School board policy must be followed.

More supervision should be provided on a field trip than in the classroom. Adult volunteers may be used to supplement the teacher supervision, and they would qualify for coverage under the board's insurance policy. While on the field trip, teachers should not intentionally expose students to known dangers or even to situations where there is a strong possibility of injury.

# 4

## ASSAULT

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### Introduction

Teachers are often placed in a position of trust with students. This relationship comes with certain legal parameters. On the rare occasion, a teacher's breach of these legal obligations to their students can result in criminal investigations, charges and convictions under the *Criminal Code*. This chapter provides legal, ethical and professional guidance for teachers with the aim of preventing criminal conduct and protecting teachers' rights as Canadian citizens when the full power of the state comes down on them through the criminal justice system.

### Offences

The *Criminal Code* offences most likely to arise in the teacher employment context are explained below.

#### *Common assault*

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Historically, teachers were most likely to be charged for common assault under subsection 265 (1) of the *Criminal Code*. There are three elements of common assault: (a) lack of consent by the victim, (b) intention and (c) an application of force to the victim (or the threat of force that the victim believes will be carried out).

If a person consents to the application of force, any subsequent touching within the scope of that consent cannot amount to an assault. Such consent must be freely given, not coerced by the use of authority or by fraud. Provocation, such as insulting words or gestures, is not a defence. The application of force must be intentional. Accidental contact does not amount to an assault, whether or not it produces injury. By the same token, if there was any intent at all to make contact, the fact that injury was far more severe than intended is of no significance. It is not strictly necessary that there be an application of force. Mere touching with intent can amount to an assault.

Although section 43 of the *Criminal Code* can provide a defence in limited situations, this defence is limited to a context where a teacher applies force in order to protect children.

*Criminal Code*

265(1) A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
- (b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to affect his purpose; or
- (c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

*Sexual assault* \_\_\_\_\_

Increasingly, teachers are more likely to be charged with a sexual offence.

Sexual assault is defined as conduct that includes all of the elements of common assault plus one additional element. This is that the assault is committed in circumstances of a sexual nature, such that the sexual integrity of the victim is violated and/or so that the accused may gain some sexual gratification thereby. The sexual nature of the assault must be detectable by an objective standard. The criminality of the touching, at law, focuses on the sexual integrity of the victim. In some circumstances, a pat on the behind can be a sexual assault if it is done to obtain sexual gratification or if it violates the sexual integrity of the victim.

*Consent* \_\_\_\_\_

As in the case of common assault, the lack of consent on the part of the victim is an element of sexual assault. However, consent is no defence in a sexual assault charge where the victim is less than 16 years old. The law does not allow a minor under 18 years old to provide consent where the accused was in a relationship of trust or authority. Relationships of trust or authority are typically found between a minor and a teacher, coach, pastor or parent. Circumstances may allow a Court to infer a relationship of trust between a student and their friend's teacher. In other words, if a relationship of trust exists, it is a crime to have a consensual sexual relationship between a teacher and a student. There would never be a time when consent between a teacher and student would be acceptable.

*Sexual interference* \_\_\_\_\_

This is a specific form of sexual assault where a person touches a part of the body of a person under 16 years old with a part of the body or an object for a sexual purpose.

*Invitation to sexual touching* \_\_\_\_\_

This also applies to persons under 16 who are “invited, counselled or incited” to touch the body of another person. It differs from sexual assault in that only the invitation, not actual touching, need occur.

*Sexual exploitation* \_\_\_\_\_

This offence is very similar to the two preceding ones, but applies specifically to any person who is in a position of trust or authority toward a young person.

*Knowingly permitting prohibited sexual activity* \_\_\_\_\_

This applies to an “owner, occupier or manager of premises” permitting such activity involving a person under 18. This opens up many areas where teachers may be at risk but particularly in cocurricular activities such as school dances and extended field trips.

*Indecent exposure or act* \_\_\_\_\_

A person doing an indecent act in public or exposing his or her genitals for a sexual purpose to a person under 16 in any place is guilty of an offence.

*Luring* \_\_\_\_\_

A relatively new provision under the *Criminal Code*, luring, involves online facilitation of the above offences. In other words, the person need not commit any of the above offences, but need only communicate with a person under 18 years of age by means of telecommunication, for the purpose of facilitating the commission of a sexual offence. In the age of social media, this offence is of broad application. Communications need, only on their face, suggest a luring to constitute an offence. Typically, words alone do not constitute a sexual offence. However, this offence means that something that is said to a student, of a sexual nature, may be an offence if communicated electronically. However, if it is not online then it will not be an offence.

<h2>Implications for Teachers</h2>
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The above offences are very broadly defined. They can capture a wide range of conduct, from innocuous and caring gestures to sexual abuse.

If you are in a situation where boundaries may have been crossed with a student, it is important to be aware of the legal framework governing the consequences of such conduct. In rare cases, teachers may have intentions to pat a student on the back, to show support, but this is construed differently by a student.

Below are some considerations to hopefully avoid misconstruing of minor acts, and identifying the risk of more serious commissions before they occur.

The consequences of criminal charges are grave. Awareness and prevention are important: a conviction of a sexual offence will almost always lead to some jail time. In some cases involving minors, the mandatory minimum is a one year jail sentence.

## Knowing the Framework

Many authorities, particularly those who frequently deal with cases of this nature, suggest that teachers should refrain from all physical contact with students. This runs counter to the beliefs of many teachers and some educational theorists that hugs and pats are important positive acts.

In turn, many students benefit from nurturing, positive relationships with teachers, especially where they are not provided with such an environment at home. Teachers are not to be discouraged from having positive relationships with their students, or to be afraid of providing this support to their students.

However, below are some behaviours to avoid when interacting with students:

- Exchanging notes, comments, e-mails of a personal or intimate nature
- Social media contact that is personal in nature
- Making telephone calls of personal nature or encouraging students to do the same
- Texting students
- Sharing sexually explicit images
- Commenting on a student's appearance
- Meeting students outside school without the parents' knowledge or consent
- Dating students
- Making physical contact of a sexual or intimate nature (massaging, kissing, hugging or tickling)
- Unnecessary touch and, where touch is necessary or positive, seek consent first
- Favouritism toward students, especially students of one gender
- Becoming overly involved and invested in a student's personal life

Finally, teachers should document any significant discipline of students. Such documentation should be retained in your permanent personal files as many cases of accusations have been made years later.

Unless a teacher has special training or assignment in counselling, avoid counselling students who display signs of sexual, emotional or mental vulnerability. In these situations, a teacher should avoid dealing with a student alone. At minimum, teachers should consult regularly with the teacher counsellor in the school or with someone else with expertise in this area and keep a record of such consultations.

## When a Student Comes to You

Because many teachers have trusting relationships with their students, you may encounter a scenario where a student discloses an incident of sexual abuse or other incidents where they were victims of a crime. Students' complaints are not to be discounted, but most teachers are not trained to counsel or investigate such incidents. Therefore, teachers should refer these issues to their school's counsellors. If a school does not have a counsellor, teachers are advised to call Teacher Employment Services for direction.

If you believe a child is presently at risk, you have a positive duty to report it using the Child Abuse Hotline: 1-800-387-5437 (KIDS).

## What to Do If You Are Accused

If you are accused, you should remember the following:

- You have the right to remain silent. You should say: “I will cooperate but I will remain silent until I talk to a lawyer.” Any comments or statements you make may be used against you later. You are required to identify yourself (name, address and birthdate) to the police. Beyond that you should not volunteer any information or respond to any questions until you have sought and received legal advice.
- As a teacher, you have access to necessary legal advice on matters relating to your work. To get it, contact the Association as soon as possible.
- In the meantime, avoid discussing the situation with anyone else (other than your legal spouse). Discussing it with other persons may put them in the position of being called to testify against you.
- Do not attempt to contact any of the complainants or witnesses involved.
- Do not panic. It is highly stressful to be charged with a criminal offence and have your liberty at stake. Staying calm and listening to advice will at least avoid making it worse.

# 5

## STUDENT SAFETY

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### Welcoming, Caring, Respectful and Safe Learning Environments

The *Education Act* sets out the legal parameters that govern the education of students in Alberta. As such, provision is made to ensure that students may learn in a welcoming, caring, respectful and safe learning environment. Students are entitled to welcoming, caring, respectful and safe learning environments that respect diversity and nurture a sense of belonging and a positive sense of self. Every board has the responsibility to ensure that each student enrolled in a school operated by the board and each staff member employed by the board is provided with a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging.

In keeping with their obligation, boards must establish and implement policies to provide a welcoming, caring, respectful and safe learning environment that includes the establishment of a code of conduct for students that addresses bullying behaviour.

Section 1(1)(d) of the *Education Act* states that

“bullying” means repeated and hostile or demeaning behaviour by an individual in the school community where the behaviour is intended to cause harm, fear or distress to one or more other individuals in the school community, including psychological harm or harm to an individual’s reputation.

Bullying also includes in Section (1.1) “Without limiting the generality of the definition of “bullying” in subsection (1)(d), bullying includes the distribution of an intimate image of another person knowing that the person depicted in the image did not consent to the distribution, or being reckless as to whether or not that person consented to the distribution.”

In addition, such policies must affirm the rights provided by the *Alberta Human Rights* and individuals will not be discriminated against as provided for under the same legislation.

*Education Act*

Board responsibilities 33(1)

A board, as a partner in education, has the responsibility to

(a) deliver appropriate education programming to meet the needs of all students enrolled in a school operated by the board and to enable their success,

(b) be accountable and provide assurances to students, parents, the community and the minister for student achievement of learning outcomes,

(c) provide, where appropriate, for the engagement of parents, students, staff and the community, including municipalities and the local business community, in board matters, including the board's plans and the achievement of goals and targets within those plans,

(d) ensure that each student enrolled in a school operated by the board and each staff member employed by the board is provided with a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging,

(e) provide a continuum of supports and services to students that is consistent with the principles of inclusive education,

(2) A board shall establish, implement and maintain a policy respecting the board's obligation under subsection (1)(d) to provide a welcoming, caring, respectful and safe learning environment that includes the establishment of a code of conduct for students that addresses bullying behaviour.

(3) A code of conduct established under subsection (2) must

(a) be made publicly available,

(b) be reviewed every year,

(c) be provided to all staff of the board, students of the board and parents of students of the board,

(d) contain the following elements:

(i) a statement of purpose that provides a rationale for the code of conduct, with a focus on welcoming, caring, respectful and safe learning environments;

(ii) one or more statements that address the prohibited grounds of discrimination set out in the *Alberta Human Rights Act*;

(iii) one or more statements about what is acceptable behaviour and what is unacceptable behaviour, whether or not it occurs within the school building, during the school day or by electronic means;

(iv) one or more statements about the consequences of unacceptable behaviour, which must take account of the student's age, maturity and individual circumstances, and which must ensure that support is provided for students who are impacted by inappropriate behaviour, as well as for students who engage in inappropriate behaviour,

and

(e) be in accordance with any further requirements established by the minister by order.

Students, parents, teachers and principals all have a role to play in ensuring a positive learning environment in schools, where individuals are not only free of harassment and intimidation, but feel welcome and respected. The following sections of the *Education Act* reference their obligations.



*Education Act*

Student responsibilities

31 A student, as a partner in education, has the responsibility to

- (c) ensure that the student's conduct contributes to a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging,
- (d) respect the rights of others in the school,
- (e) refrain from, report and not tolerate bullying or bullying behaviour directed toward others in the school, whether or not it occurs within the school building, during the school day or by electronic means,
- (f) comply with the rules of the school and the policies of the board,
- (h) be accountable to the student's teachers and other school staff for the student's conduct, and
- (i) positively contribute to the student's school and community.

Parent responsibilities

32 A parent has the prior right to choose the kind of education that shall be provided to the parent's child, and as a partner in education, has the responsibility to

- (d) ensure that the parent's conduct contributes to a welcoming, caring, respectful and safe learning environment,
- (f) encourage, foster and advance collaborative, positive and respectful relationships with teachers, principals, other school staff and professionals providing supports and services in the school,

Teacher

196(1) A teacher while providing instruction or supervision must

- (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:

Principals

197 A principal of a school must

- (a.1) provide a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging,

In addition to the obligations in the *Education Act*, teachers and principals have an obligation under the Code of Professional Conduct for Teachers and Teacher Leaders.

Note the following selected sections:

***In relation to students***

1 (a) the teacher or teacher leader shall respect the dignity and rights of all students and persons without prejudice as to the prohibited grounds of discrimination set out in the *Alberta Human Rights Act* and with regard to rights as provided for in the *Canadian Charter of Rights and Freedoms*, and be considerate of the circumstances of students and persons.

(b) the teacher or teacher leader is required to demonstrate a welcoming, caring, respectful and safe learning environment that respects diversity and nurtures a sense of belonging, which students are entitled to under the Act.

(d) the teacher or teacher leader shall not (i) intentionally harm or abuse a student verbally, psychologically or emotionally, or (ii) harm or abuse a student physically or sexually.

***3 In relation to colleagues, the teacher or teacher leader shall***

(d) in addition to other reporting required by law, report to the Commissioner the conduct of another teacher or teacher leader who is alleged to cause or have caused psychological, emotional, physical or sexual harm or abuse to a student.

As part of the obligation to provide a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging, the *Education Act* provides specific direction to principals as to the establishment of student organizations and activities that are intended to promote welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging.

*Education Act*

Support for Student Organizations

35.1(1) If one or more students attending a school operated by a board request a staff member employed by the board for support 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 of the school shall

(a) permit the establishment of the student organization or the holding of the activity at the school, and

(b) designate a staff member to serve as the staff liaison to facilitate the establishment, and the ongoing operation, of the student organization or to assist in organizing the activity.

(2) For the purposes of subsection (1), an organization or activity includes an organization or activity that promotes equality and non-discrimination with respect to, without limitation, race, religious belief, colour, gender, gender identity, gender expression, physical disability, mental disability, family status or sexual orientation, including but not limited to organizations such as gay-straight alliances, diversity clubs, anti-racism clubs and anti-bullying clubs.

(3) The students may select a respectful and inclusive name for the organization, including the name “gay-straight alliance” or “queer-straight alliance,” after consulting with the principal.

(4) The principal shall immediately inform the board and the minister if no staff member is available to serve as a staff liaison referred to in subsection (1), and if so informed, the minister shall appoint a responsible adult to work with the requesting students in organizing the activity or to facilitate the establishment, and the ongoing operation, of the student organization at the school.

(5) If a staff member indicates to a principal a willingness to act as a staff liaison under subsection (1),

(a) a principal shall not inform a board or the minister under subsection

(4) that no staff member is available to serve as a staff liaison, and

(b) that staff member shall be deemed to be available to serve as the staff liaison.

## Religious and Patriotic Instruction

Under the *Education Act*, any board may provide religious and patriotic instruction and exercises to its students. Boards must also provide to parents notice where a course of study, educational program or instructional material, or instruction or exercises, include subject matter that deals primarily and explicitly with religion or human sexuality. Parents may request in writing that their child be excluded from such instruction or exercises, and upon receiving such a request, teachers must permit the student to leave the classroom or if they remain, not take part in the instruction or exercise.

This section of the act does not apply to incidental or indirect references to religion, religious themes or human sexuality in a course of study, educational program, instruction or exercises or in the use of instructional materials nor does it apply with respect to the establishment or operation of a voluntary student organization referred to in section 35.1 or the organizing or holding of an activity referred to in section 35.1.

### *Education Act*

#### Religious and patriotic instruction or exercises

58(1) A board may

- (a) prescribe religious instruction to be offered to its students;
- (b) prescribe religious exercises for its students;
- (c) prescribe patriotic instruction to be offered to its students;
- (d) prescribe patriotic exercises for its students;
- (e) permit persons other than teachers to provide religious instruction or exercises to its students.

(2) Where a teacher or other person providing religious instruction or exercises or a teacher providing patriotic instruction or exercises receives a written request signed by a parent of a student that the student be excluded from religious instruction or exercises or patriotic instruction or exercises, or both, the teacher or other person shall, in accordance with the request of the parent, permit the student

- (a) to leave the classroom or place where the instruction or exercises are taking place for the duration of the instruction or exercises, or
- (b) to remain in the classroom or place without taking part in the instruction or exercises.

#### Notice to Parent

58.1(1) A board shall provide notice to a parent of a student where courses, programs of study or instructional materials, or instruction or exercises, include subject-matter that deals primarily and explicitly with religion or human sexuality.

(2) Where a teacher or other person providing instruction, teaching a course or program of study or using the instructional materials referred to in subsection (1) receives a written request signed by a parent of a student that the student be excluded from the instruction, course or program of study or educational program or use of instructional materials, the teacher or other person shall in accordance with the request of the parent permit the student, without academic penalty,

(a) to leave the classroom or place where the instruction, course or program of study is taking place or the instructional materials are being used for the duration of the part of the instruction, course or program of study, or the use of the instructional materials, that includes the subject-matter referred to in subsection (1), or

(b) to remain in the classroom or place without taking part in the instruction, course or program of study or using the instructional materials.

(3) This section does not apply to incidental or indirect references to religion, religious themes or human sexuality in a course, program of study, instruction or exercises or in the use of instructional materials.

#### Non-compliance

##### 58.2(1)

If a board, teacher or other person fails to comply with section 58 or 58.1, that failure to comply is deemed to be a decision that may be appealed in accordance with section 42.

(2) A decision of the board under section 42 with respect to an appeal relating to subsection (1) is final.

# 6

## STUDENTS WITH SPECIAL NEEDS AND MEDICAL REQUIREMENTS

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### Inclusion

The challenges of inclusive education have been an ongoing concern for a significant period of time.

In 1978, in a landmark decision in what is referred to as the *Carriere* case, the Honourable Justice M J O’Byrne ruled that it is the responsibility of the local school jurisdiction to provide an educational program for all children. A decade later, the revised *Education Act* affirmed, in section 3, “Every person who . . . is 6 years of age or older and younger than 19 years of age . . . is entitled to have access in that school year to an education program . . .” The current *Education Act* maintains this responsibility.

ATA Policy

Statement of Educational Policy

2.1.0.1 All children in a public education system have the right to an education that will develop their individual potential. [1963, 2019]

Long-range policy 6.2.8.2

6.2.8.2 School authorities should ensure that students with exceptional learning needs are placed in what teachers, in consultation with other professionals, believe to be the most enabling learning environment. [1999, 2022]

The act further provides, in section 40, for placement of students in special education programs after consultation with parents, for a process to follow if a board states that it cannot meet a given student’s special needs.

An inclusive education system is a way of thinking and acting that demonstrates universal acceptance of, and belonging for, all students. Inclusive education in Alberta means a value-based approach to accepting responsibility for all students. It also means that all students will have equitable opportunity to be included in the typical learning environment or program of choice. The goal of inclusive education is to instill in students a sense of belonging and to help them achieve their full potential. The Association recognizes inclusion as a broad and complex term and therefore it is critical that collaborative planning takes place

at the provincial, jurisdiction and school levels to build understanding and support for the vision of inclusive education and to create short-, medium- and long-term implementation plans to guide the work. The Association supports the ideals of inclusion, with the provision that students with exceptionalities are placed in the most enabling environments, as determined by teachers in consultation with other professionals.

- The learning environment must meet student needs and ensure that the following conditions are in place:
- Teachers and staff are provided with information about the individual needs of each student.
- Students with exceptionalities and other students in the same class have been prepared for inclusion.
- Teachers are provided with ongoing professional development.
- Regular access to professional support services (such as consulting and health support services) is provided.
- Appropriately trained educational assistants are provided.
- Appropriate resources, including assistive technology, are provided.
- Class size is reduced to effectively meet the needs of all students.
- Regular instructional time for the teacher is reduced to allow for documents such as individual program plans.
- Learning opportunities are provided for students who are gifted and talented, through a balance of acceleration and enrichment.
- School boards have policies for handling emergency situations in schools that contain appropriate, specific procedures for individual students with exceptionalities.

## Teacher Position

What should a teacher do when dealing with medical requirements? What steps can be taken to minimize teacher liability?

First, the teacher should protest the assignment to the principal and the superintendent.

Second, the teacher should insist that medical assistance be provided by a trained individual to fulfill the special needs of students.

Third, if suitable arrangements are not made in response to the first two steps, the teacher should contact the Association for assistance to alleviate the problem.

Finally, if a board insists that the student requiring medical assistance be placed in a regular classroom, the parents of the pupils should be informed that teachers are not qualified to provide appropriate assistance for the child and do not accept responsibility for the child's medical needs.

However, once a teacher accepts students with medical problems, there is no doubt about the effect on the teacher's legal responsibility. An Alberta court case dealt with the duty owed by a teacher to a student who was deaf and mute. The court described that duty, in part, as follows.

“The fact that this particular school deals with those that are handicapped through being deaf and dumb\* undoubtedly increases the degree of care that would be expected because I am sure that a reasonably careful parent of a deaf and dumb\* child is going to have to be careful with respect of features that the parent of a child so unhampered would not have to be careful of.”

When a case went to the Supreme Court of Canada, that Court said, “The duty of care owed by the instructor, being that of a reasonably careful parent, had to be assessed in the light of the handicaps of the students; . . .”

When a teacher agrees, either explicitly or by not protesting, to accept such students, that teacher is accepting responsibility for a higher standard of care than would be the case for an ordinary student. This higher standard will require that the supervisory care be more vigilant than it would be with an ordinary pupil, both with regard to avoiding circumstances that would give rise to the medical problem and to detecting the medical problem should such arise. This is true in the case of both physical and medical disabilities, for example, epilepsy and diabetes.

The law would not likely require that a teacher be involved in administering a course of treatment involving medication, but it may impose a duty of supervision on the teacher to ensure that a student takes pills or other treatment as required by the schedule. If teachers become involved in administering a therapeutic regime, an obligation is assumed that might well expose them to liability. Adequate protection for teachers who find themselves in this circumstance will vary from case to case. Teachers should contact the Association for assistance if they are directed to manage medication.

Attention is drawn again to section 3 of the *Education Act*, which casts a statutory duty upon the board to make attendance possible and appears to include a requirement for appropriate health services. It should be noted that this duty is cast upon the board and not upon its teachers. It is equally clear that teachers are not prepared through their teacher education to carry out medical duties nor are they employed to provide services such as lifting, toileting or feeding of physically handicapped students. Teachers' obligation is restricted to providing adequate educational services for children.

\*Current terminology is *deaf and hearing impaired*.



# 7

## ASSESSMENT OF STUDENTS

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### Responsibility for Evaluation

*Teacher* \_\_\_\_\_

Section 196 of the *Education Act* says, in part, “A teacher while providing instruction or supervision must ... regularly assess students and periodically report the results of the assessment to the students, the students’ parents and the board; ...”

There is no doubt that the teacher, who as a professional is responsible for the instruction of students, is in a better position than anybody else to make the necessary decisions concerning the promotion of students and the grades they should receive. As was mentioned earlier, the teacher has a responsibility to carry out frequent and fair evaluations of the work of the students and to base decisions regarding promotion and final grades on adequate records of the performance of each student. Where several teachers teach the same student, each must be involved in the decisions made regarding promotion.

It is the right of parents to be informed of the progress of their children. The cooperation of the home should be sought when students are experiencing serious problems, and consultation must occur as early as possible in the school year.

*Principal* \_\_\_\_\_

The principal is responsible for the total operation of the school and therefore has a right to be informed from time to time of the progress of each student and to be alerted about those students whose achievement indicates that they have serious problems. The principal also has the right to be consulted when students may be assigned a failing grade.

The principal is not normally conversant with the problems and abilities of each student in the way that the student’s teacher is and therefore is not in a position to overrule or change a teacher’s decision, except in unusual cases or when a parent appeals the teacher’s decisions about the child. In any event, the principal and the teacher should resolve such occurrences in cooperation.

## *Superintendent*

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The superintendent is even further removed from the basic information used to decide about the promotion and grading of students. However, as the chief executive officer of the school board and the chief educational leader of the system, the superintendent must bear the ultimate responsibility for the decisions made by others about these matters and in the most serious cases must retain the right to make the final decision.

A general summary of the material in this section follows:

- The ultimate responsibility with respect to the promotion and grading of students in the school system must lie with the superintendent.
- The ultimate responsibility within the school must lie with the principal.
- The teacher or teachers involved with the students are professionally and operationally the most competent to make decisions about individual students and that interference with teachers' rights to do so from anybody else must take place only rarely and under circumstances of the greatest justification.

## **Responsibility for Reporting**

It is a major responsibility of the educational system to report on its progress. This obligation must be met by all levels of the system and must take place according to well-articulated plans that are understood in advance. In all contexts, the reporting should touch on both areas of strength and areas needing improvement. The transmittal and discussion of information is a two-way process, and the consideration of follow-up plans is an essential part of reporting.

## *Teacher and school*

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The teacher reports to students to provide information about their achievement that will help them plan future activity; this should also encourage students and help them develop the skills of self-evaluation. Each student receives frequent, informal reports, which can be self-initiated or initiated by the teacher. Such reports stress constructive information delivered within the appropriate degree of privacy. Information conveyed to the student in this way must be consistent with information conveyed to the parent.

The teacher reports to the parents to provide information regarding the student's progress relative to (a) potential, motivation, aspirations and other individual differences; (b) program objectives; and (c) appropriate comparison groups.

The elements of reporting between teacher and parent include written reports and interviews in both formal and informal contexts. The teacher conveys information clearly, trying to leave no doubt in the mind of the parent as to the state of the student's progress. Such reporting emphasizes openness of communication. It is often desirable to have the student present at a parent-teacher interview.

The teacher reports to the principal and other teachers to provide the type of information that permits planning a program with continuity and appropriate teaching strategies. Good in-school reporting requires the maintenance of student records. These records should contain current and complete information and the teachers concerned should be allowed to examine and use those data. Open communication within the school and between schools is crucial to good reporting.

The school staff report to parents, and the principal reports to the superintendent and the school board. To parents, the school staff report on school and system objectives, school programs and its evaluation procedures. Included in the school staff's reporting system should be provision for receiving parental opinion on the quality of the school's program. To the board, the school staff (through the principal) reports according to board and administrative policies and procedures and relevant provincial acts and regulations.

The *Education Act* includes provisions for school councils (section 55). These bodies will play a role in the school reporting process, but this role may vary from one jurisdiction to another. Their creation will provide an opportunity for school staffs to enhance school-community interaction.

### *School board*

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The board reports to the public to provide general information on the programs, operations and finance of the board and to provide background information against which the public can interpret data relating to local schools. Good board reporting might involve drawing attention to the perceived needs of the community, a clear articulation of the programs designed to fulfill those needs and an estimate of the progress of those programs in addition to their financial costs and implications.

The board reports to the minister of education to convey its own educational needs and to contribute to a provincial assessment of educational needs, as well as to meet various statutory requirements. This provincial assessment is dependent in part upon reports of local evaluations of the extent to which provincial objectives are being achieved and of the assessments on which these are based.

### *Education minister*

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The minister reports to the legislature, and hence to the public, on the nature and quality of education throughout the province. Such reporting should be based on an evaluation of the extent to which provincial objectives are being achieved, direct assessments by the Department of Education and compilations of local findings as indicated above.

An important component of reporting at the ministerial level should be the discussion of current problems and the preparation of the profession and the public for measures designed to address them. In addition, attention should be paid to publicizing existing programs and objectives of the ministry in forms that are appropriate for the specific audience intended.

# 8

## AUTHORITY AND ROLE OF ADMINISTRATORS

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### Hierarchy of a School System

#### *Superintendent* \_\_\_\_\_

The superintendent is the chief executive officer of the board and the educational leader of the school system and, as such, is responsible for the success of all facets of the school operation in the division.

The *Education Act* provides that the school board may delegate all but a specified few of its responsibilities to the superintendent. If a board does delegate such responsibilities, made pursuant to section 52 of the *Education Act*, the superintendent then acts as the agent of the board in any decisions made or in any rules and regulations formulated. It is inherent, of course, that such decisions may not violate the provisions of the *Education Act* or of the collective agreement or any agreement between a board and the teacher and that any orders issued to teachers must be both lawful and reasonable.

Though the powers of a superintendent or any other school administrator derive from the law and from the school board, the manner in which these powers are exercised with respect to personnel will determine the person's ultimate accomplishments. Facilitative personnel policies and extensive consultation with those affected by the decisions have come to be musts for any successful school administrator and are probably among the more important determinants of tenure.

#### *Supervisors* \_\_\_\_\_

The designations or titles of teachers operating at various levels in the hierarchy of a school system change so frequently and vary so much from system to system that it is hard to be definitive about the authority of any one of them. It would be reasonable to assume that supervisors would be appointed by the school board and given certain authority to carry out their duties.

Each supervisor may be involved in one subject area only or may be charged with more general duties in many subject areas. The major role of supervisors could well be defined as the improvement of instruction in their fields. The board and superintendent may delegate to them responsibilities to assist in the determination of competence and evaluation of teacher performance. If so, it is obvious that they would have the authority to make judgments in such matters,

but the final decision must remain the responsibility of the board through the superintendent.

### *Consultants*

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The name suggests that teachers bearing this designation would be available to consult with teachers in the classroom with respect to the carrying out of their teaching duties. It would seem that consultants should be available to help teachers who request help or who are identified as needing help to improve their teaching skills.

If consultants are to be of maximum value, it would follow that they should not be judges and reporters of teaching competence since this relationship would make teachers reluctant to seek their advice and help. The actual authority and role of consultants would be whatever the board, through the superintendent, defined them to be.

### *Principal*

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Section 197 of the *Education Act* defines some of the duties of principals (see box below). The principal has the authority to make decisions and promulgate rules and regulations consistent with legislation, with school board policy and with the authority specifically delegated by the school board. If a principal chooses to give directives to teachers, these must legally be regarded as directives of the school board to the extent that they are consistent with the authority given, they are reasonable and they are lawful.

As with any other administrator, the success of a principal is likely to depend not so much on the authority exercised as on the manner in which it is exercised and the extent of prior consultation with those persons who are affected by the authority.

#### *Education Act*

#### Principals

197 A principal of a school must

- (a) provide instructional leadership in the school,
- (b) ensure that the instruction provided by the teachers employed in the school is consistent with the courses and programs of study prescribed, approved or authorized pursuant to this Act,
- (c) evaluate or provide for the evaluation of programs offered in the school,
- (d) ensure that students in the school have the opportunity to meet the standards of education set by the minister,
- (e) direct the management of the school,
- (f) maintain order and discipline in the school and on the school grounds and during activities sponsored or approved by the board,
- (g) promote co-operation between the school and the community that it serves,
- (h) supervise the evaluation and advancement of students,
- (i) evaluate the teachers employed in the school, and
- (j) subject to any applicable collective agreement and the principal's contract of employment, carry out the duties that are assigned to the principal by the board in accordance with the regulations and the requirements of the school council and the board.

### *Assistant principals*

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Though assistant principals are found in most schools, the *Education Act* contains no provision that requires the appointment of such administrators. In place of such a requirement, a permissive clause [section 203(1)] allows boards to designate teachers to administrative, supervisory or consultative positions within the school. Some collective agreements require the appointment of assistant principals or other designated personnel in schools.

The duties of an assistant principal are not specified in legislation. Rather, these duties are defined by the school board or assigned by the principal. Where there are assistant principals, they must be considered to be deputies of the principal and to have such authority as the latter delegates. It follows that directives given by an assistant principal to a teacher would be lawful directives of the principal and hence lawful orders of the board, provided they refer to areas in which the assistant principal has been given the authority to make decisions.

### *Department heads*

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Generally, a department head is considered to be a coordinator of teachers operating in a specific subject area. Teachers, of course, have a responsibility to cooperate with the department head. A department head may have organizational responsibilities within the department in addition to that of helping teachers maintain and improve their teaching efficiency. The department head is, in effect, a type of consultant within the school to whom teachers in the department may go for help and advice when they need it. In the absence of a collective agreement clause, the department head's authority will be whatever the board, through the superintendent and the principal, has delegated. Department heads have no supervisory function in relation to staff.

### *Other administrative personnel*

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It is impossible to forecast what other types of administrative or supervisory personnel teachers may have to deal with. In some school systems, department heads or consultants are given different names. The title is not as important as the job description and the manner in which the human relations tasks are carried out.

A fact worthy of note here is that all administrative and consultative personnel in a school system are there for one purpose only—to contribute to the overall benefit of students by facilitating and improving the work of the classroom teacher. There is no other reason for their presence, and their performance will be judged by the contribution they make in this regard.

# 9

## TEACHER PROFESSIONAL GROWTH, SUPERVISION AND EVALUATION

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### Guiding Beliefs and Principles

Professional growth and supervision are dynamic and ongoing processes. They form the basis for the development of teaching abilities, and should be founded on the Teaching Quality Standard (Ministerial Order #001/2020, amended 2023).

The evaluation process must reflect the central importance of the Teaching Quality Standard and be consistent with Alberta Education Policy on Teacher Growth, Supervision and Evaluation. Anonymous questionnaires or interviews are not an acceptable part of a fair and ethical evaluation process.

The evaluation process must be reasonable and in keeping with procedural fairness and the rules of natural justice. The rules are based on precise legal concepts that govern the actions of public bodies such as school boards and apply in any situation where an individual's rights may be affected by the actions of the employer. These include the following:

- The teacher is provided guidance and support prior to the initiation of an evaluation and throughout the evaluation.
- The teacher knows the expectations of the position.
- The teacher receives written notification that an evaluation of professional practice is to be undertaken and the reason(s) for it.
- The teacher is a full participant in the evaluation process.
- The basis for the evaluation process is identifiable data which is made available to the teacher.
- The teacher is made aware when expectations of the position are not being met.
- If there are performance concerns as a result of information from a source other than the supervisor, the information is provided to the teacher in sufficient detail for them to understand the concern and have an opportunity to respond. This includes copies of any notes or letters.
- The teacher is provided with appropriate assistance and time to address any identified performance deficiencies.
- The teacher understands the possible outcomes of a failure to improve performance.

The evaluation process is consistently applied to all teachers recognizing that expectations for the beginning teacher may not be as rigorous as those of an experienced individual. Effective systematic communication is a key

component of fairness in any evaluation process, where the evaluation process is conducted in a cooperative and supportive climate that fosters mutual trust. The teacher has the right to consult with the Association during any part of the evaluation process.

## Teacher Growth, Supervision and Evaluation Policy

The Teacher Growth, Supervision and Evaluation policy reflects a professional model based on teacher growth rather than teacher deficiency. The policy takes seriously the professionalization of teaching. All teachers are responsible for students' learning. A collegial model fosters continued professional growth as well as collaborative professional learning.

### *Basic Positions*

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- There is an assumption of teacher competence.
- Professional growth is a major focus of the policy. Teachers who are required to create individual professional growth plans do so based on assessment of their own learning needs.
- Principals are required to supervise all teachers and, when there is a concern about a teacher's teaching practice, the principal will work directly with the teacher to provide support and guidance. If no growth is noted, the principal conducts an evaluation.
- Teachers who do not hold a continuing contract or permanent certificate will be evaluated.
- Supervision is a fundamental component of the policy and is pivotal to its success.
- Ongoing guidance and support are required throughout the processes of growth, supervision and evaluation.

### *Growth*

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- Teacher professional growth means a career-long learning process whereby a teacher annually develops and implements a plan to achieve professional learning objectives or goals that are consistent with respectively, the Teaching Quality Standard, the Leadership Quality Standard or the Superintendent Leadership Quality Standard.
- Teachers employed under probationary or continuing contracts, or under other provisions of the *Education Act*, if required by school authority policy, are required to complete an annual growth plan.
- The teacher is required to submit his or her plan for review or approval.
- At the end of the year, the completed plan is reviewed.
- A teacher's annual growth plan shall
  - reflect goals and objectives based on an assessment of learning needs by the individual teacher;
  - provide a basis upon which the individual can collaborate with others;
  - show a demonstrable relationship to the professional practice standard aligned most closely with their role; and
  - take into consideration the educational plans for the school, the school board and Alberta Education.
- Responsibility for receiving and reviewing growth plans may be delegated to a body of teachers.
- Unless a teacher agrees, the content of an annual growth plan shall not be a part of the evaluation process of a teacher.



- Despite this, practices that require an evaluation may be identified, provided that the information is based on a source other than the teacher's professional growth plan.

## *Supervision*

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- Supervision means the ongoing process by which a principal or superintendent exercises instructional leadership and carries out their duties with respect to teachers and principals, as required under sections 197 and 222 of the *Education Act*.
- A fundamental component of the policy is ongoing supervision of teachers by the principal or of a principal by the superintendent including
  - providing support and guidance to the teachers or the principal,
  - observing and receiving information from a variety of sources about the quality of education a teacher provides or the quality of leadership a principal provides and
  - identifying the practices of a teacher or principal that are not in keeping with the Teaching Quality Standard or Leadership Quality Standard, respectively.
- When a principal or superintendent has reason to believe that a teacher's teaching or a principal's leadership may not meet the standard, the principal or superintendent may
  - work with the teacher or principal directly, through supervision, to provide assistance to change practices or
  - initiate an evaluation
- Throughout the supervision process, the principal or superintendent should share relevant information with the teacher or principal, respectively.
- Through ongoing supervision, the principal or superintendent seeks to be satisfied that a teacher's teaching or a principal's leadership meets the requirements of the Teaching Quality Standard or Leadership Quality Standard.
- An important role of the principal and superintendent is to provide guidance and support to improve the teacher's quality of instruction or principal's quality of leadership.
- Teachers and principals should be willing to receive collegial advice and assistance.

## *Evaluation*

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Evaluation means the formal process of gathering information or evidence over a period of time and the application of reasoned professional judgment by a principal or superintendent in determining whether one or more aspects of the teaching of a teacher or the leadership of a principal meets or does not meet the Teaching Quality Standard or the Leadership Quality Standard.

- The evaluation of a teacher by a principal or of a principal by superintendent may be conducted under any of the following circumstances:
  - Upon the written request of a teacher or principal
  - For the purpose of gathering information related to an employment decision
  - For the purpose of assessing the growth of the teacher or principal in specific areas of practice
  - When, on the basis of information received through supervision, the principal has reason to believe that the teaching of the teacher, or the superintendent has reason to believe that the leadership of the principal may not meet the standard
- On initiating an evaluation, the principal or superintendent shall communicate explicitly to the teacher or principal the
  - reasons for and purposes of the evaluation;
  - process, criteria and professional quality practice standards to be applied;
  - timelines to be applied; and
  - possible outcomes.

- When an evaluation determines the teacher’s teaching or the principal’s leadership does not meet the Teaching Quality Standard or Leadership Quality Standard, the evaluation period may be extended or a notice of remediation may be issued to the teacher or principal.
- The notice of remediation describes the required change in practice; strategies the teacher or principal is advised to pursue; how it will be determined whether the required changes have been made; applicable time lines; and the consequences of not achieving the required changes.
- Following the notice of remediation, the following steps are recommended:
  - A program of assistance is offered to the teacher or principal.
  - If the teacher’s teaching or principal’s leadership meets the standard, the evaluation ceases.
  - If the teacher’s teaching or principal’s leadership does not meet the standard at the end of the timeline specified in the notice of remediation, and considering the best interests of the students, teacher, principal, profession and the jurisdiction, then it may be appropriate to
    - offer an additional period of remediation or
    - give the teacher or principal a change of assignment or
    - a combination of the above two or
    - recommend termination of the teacher’s or principal’s contract of employment.

## Steps in the Supervision/Evaluation Process

The principal or superintendent conducts ongoing supervision.

- The principal provides feedback to the teacher or the superintendent provides feedback to the principal on concerns raised during supervision.
- The principal or superintendent provides guidance, support and assistance to address concerns identified through supervision.
- The teacher or principal demonstrates improvement or seems unable to respond to the assistance and suggestions offered during supervision.
- The principal or superintendent decides, based on the evidence gained through supervision, that the teacher’s teaching or principal’s leadership may not be meeting the expectations of the applicable professional quality practice standard and board policy.
- The principal meets with the teacher or the superintendent meets with the principal to discuss the concern or evidence that the teaching or leadership may not be meeting the applicable professional quality practice standard.
- This meeting may result in
  - the teacher or principal continuing under the supervision process or
  - a written notice of evaluation being given to the teacher or principal.
- The principal and teacher or the superintendent and principal meet to discuss and draft an evaluation plan.
- Appropriate time is provided to carry out the evaluation as described in the evaluation plan.
- The principal or superintendent writes and presents the evaluation. The teacher or principal has the opportunity to append notes to the report. The evaluation report may recommend one of three options:
  - The teacher or principal, having met the expectations of the Teaching Quality Standard or Leadership Quality Standard, continues in the supervision process.
  - The evaluation timeline is extended with specific actions outlined.
  - The teacher or principal is issued a Notice of Remediation because the evaluation shows that the teacher or principal did not meet the expectations of the applicable professional quality practice standard.
- The program of remediation as outlined in the remediation plan is implemented.

- Evaluation at the end of the remediation process may result in:
  - a return to the supervision process (if the teacher or principal has met the expectations of the applicable professional quality practice standard) or
  - an extension of the remediation plan or
  - a change of assignment or
  - a recommendation for termination of contract.

Reasons for the initiation of an evaluation of a teacher or principal on continuing contract can be quite diverse but they should not be frivolous, petty or vexatious. In short, they must be professionally defensible. A single complaint about a teacher or principal should not, as a matter of course, start an evaluation.

At any time in the process, the principal and/or the teacher may seek assistance from the Association.

## Process for Complaints of Professional Incompetence

The *Education Act*, section 225.91(1), provides for a complaint mechanism regarding the professional competence of teachers and teacher leaders. The Association expects that the monitoring and maintaining of practice standards is in accordance with Alberta Education's Teacher Growth, Supervision and Evaluation Policy, the Teaching Quality Standard (Ministerial Order # 001/2020, amended 2023) and the Leadership Quality Standard (Ministerial Order #002/2020, amended 2023).

Any individual can make a complaint to the registrar regarding the practice of a teacher. A complaint alleging that a teacher or teacher leader is professionally incompetent in carrying out their duties may be made only in respect of alleged professional incompetence that occurred within the two-year period before the complaint was made.

Upon receipt of a complaint by the registrar, the registrar will either refer the complaint to the Alberta teaching profession commissioner (the commissioner) or dismiss the complaint if the complaint is in respect of an individual other than a teacher or teacher leader.

The registrar may, on its own initiative, refer a matter relating to the alleged professional incompetence of a teacher or teacher leader to the commissioner or the commissioner may, on the commissioner's own initiative, decide to make any preliminary inquiries with respect to a matter relating to the alleged professional incompetence of a teacher or teacher leader that the commissioner considers appropriate.

The commissioner shall, within 30 days after the complaint is referred: (a) make any preliminary inquiries relating to the complaint that the commissioner considers appropriate, (b) serve a notice setting out the nature of the complaint on the teacher or teacher leader who is the subject of the complaint, and (c) notify the superintendent in writing of the nature of the complaint.

Within 30 days after the day on which the commissioner concludes preliminary inquiries, the commissioner shall (a) decide to take no further action with respect to the complaint or (b) refer the complaint to a mediation process or (c) refer the complaint to an investigator if the commissioner is of the opinion that the complaint warrants an investigation.

The investigator shall (a) commence an investigation within 30 days after the matter or complaint is referred, and (b) conduct the investigation in accordance with the regulations.

Following an investigation arising out of a complaint, the investigator shall send to the commissioner a written report and copies of all material related to the investigation.

On receiving an investigator's report respecting a complaint of alleged professional incompetence, the commissioner shall forthwith (a) decide to take no further action, or (b) seek to enter into a consent resolution agreement with the teacher or teacher leader, or (c) refer the complaint to a hearing committee.

The commissioner shall (a) serve on the complainant, if any, and the teacher or teacher leader the commissioner's decision, including the reasons for the decision, and (b) notice of the complainant's right to appeal the decision if the decision is to take no further action and (c) send the commissioner's decision to the superintendent and (d) to the registrar, if the commissioner makes a decision that no further action is required.

With respect to a complaint alleging that a teacher or teacher leader is professionally incompetent, the hearing committee may find one or more of the following with respect to the teacher or teacher leader: (a) that the teacher or teacher leader (i) is professionally incompetent in carrying out their duties, or (ii) is not professionally incompetent in carrying out their duties, related to the appropriate Standard.

If the hearing committee makes a finding that the teacher or teacher leader who is the subject of the hearing is not professionally incompetent, the hearing committee may recommend to the minister that the minister dismiss the complaint.

If the hearing committee makes a finding that the teacher or teacher leader who is the subject of the hearing is professionally incompetent, the hearing committee may recommend to the minister that the minister (a) issue a letter of reprimand to the teacher or teacher leader; (b) suspend one or more certificates of the teacher or teacher leader, with or without conditions; (c) cancel one or more certificates of the teacher or teacher leader or cancel a certificate and issue a certificate of a different class, with or without conditions; or (d) order that the teacher or teacher leader be ineligible for one or more certificates for a definite or indefinite period, with or without conditions.

On receiving the decision of a hearing committee or appeal committee, the minister may do one or more of the following, whether or not it is the recommendation of the hearing committee or appeal committee: (a) dismiss the complaint; (b) issue a letter of reprimand to the teacher or teacher leader; (c) suspend one or more certificates of the teacher or teacher leader, with or without conditions; (d) cancel one or more of the certificates of the teacher or teacher leader or cancel one or more of the certificates of the teacher or teacher leader and issue one or more certificates of a different class, with or without conditions; (e) order that the teacher or teacher leader be ineligible for one or more certificates for a definite or indefinite period, with or without conditions.

Complaints of professional incompetence go beyond employment. It is a process by which a teacher or teacher leader's certificate may be suspended or cancelled, preventing the individual from teaching in Alberta. Members who are the subject of a complaint of professional incompetence should immediately contact the Association for assistance and, if required, representation

## Professional Practice for Teacher Leaders

Professional judgment may quite properly cause a principal to inform supervisors of a teacher who is encountering serious problems or whose work is below an acceptable level of competence.

Before finalizing a written report, the evaluator should arrange for a discussion with the person concerned. This discussion should be between the evaluator and the person being evaluated. A copy of a report by any person should be given to the person reported on before it is sent to anyone else. The person about whom a report is written should have the right to comment on it and submit it to the author of the report. The author of the report should file both the original report and the commentary jointly, or subsequently file a copy of the commentary, with all parties who received a copy of the report.

Code of Professional Conduct for Teachers and Teacher Leaders

3(c) In relation to colleagues, the teacher or teacher leader shall not take any steps to pursue the discipline or dismissal of another teacher or teacher leader because of animosity or for personal advantage.

In conclusion, it must be remembered that related policy and relevant clauses of the Code of Professional Conduct for Teachers and Teacher Leaders make certain demands on a principal with respect to relationships with staff members. They make equivalent demands of a teacher, and principals have every right to expect to receive the same professional courtesies that they are required to extend.

# 10

## PROFESSIONAL RELATIONS

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### Introduction

In most areas of professional relations, the Code of Professional Conduct for Teachers and Teacher Leaders prescribes the minimum standard of acceptable conduct for members of the Association.

The majority of serious professional-relations problems that develop within schools are caused by misunderstandings that are allowed to grow until effective communication between the parties concerned breaks down. All teachers have a responsibility to do what they can to prevent this from happening. When a problem arises, the following steps are recommended:

- Assess how the problem arose.
- Analyze your position and list the facts that support it.
- Analyze the position of the other teacher(s) and try to assess why they have taken this position.
- Discover ways, if any, in which you can compromise to find a solution. Few professional-relations problems are entirely one-sided. Most include some common ground.
- Arrange to meet with the other party under conditions in which you have the time and the privacy to discuss the problem thoroughly and to arrive at solutions.
- Do not wait for the other person to act first. It is a sign of strength and maturity to take the initiative.

The above approach could come close to eliminating serious professional-relations problems between teachers.

If a teacher finds it necessary to criticize the professional competence or professional reputation of a colleague, there are provisions in the *Education Act* to do so.

#### Code of Professional Conduct for Teachers and Teacher Leaders

3 In relation to colleagues, the teacher or teacher leader shall (a) not undermine the confidence of students in other teachers or teacher leaders, (b) not criticize the professional competence or professional reputation of another teacher or teacher leader, except (i) in confidence to appropriate officials, or (ii) in making a complaint about the alleged unprofessional conduct or alleged professional incompetence of a teacher or teacher leader under the Act.

4 In relation to the teaching profession, the teacher or teacher leader shall (a) behave in a manner that maintains the honour and dignity of the profession.

Appropriate officials are those who have the authority to take action with respect to the complaint or criticisms. The list might include the appropriate supervisor or principal, the superintendent and the school board through the superintendent.

The list does not include members of the community or nonadministrative colleagues within the school. A teacher should observe administrative channels.

It is always best to inform the colleague of one's intentions before one approaches the principal or assistant principal. It is generally poor practice to bypass these officials or the superintendent by making complaints in the first instance to the school board.

In confidence means just what it says. Such criticisms are to be submitted only to those who may take action but who can be expected to protect the confidential nature of the communication. In confidence does not mean in the staff room when other teachers are present, at social gatherings, on social media or on the street.

When a written report deals with professional competence, it is also desirable to allow the colleague to add comments. This aspect is addressed in Chapter 9 Teacher Professional Growth, Supervision and Evaluation.

Any teacher who encounters a serious problem in the area of professional relations would be well advised to consult with an executive staff officer of the Association. This is recognized by clause 20 of the Code of Professional Conduct.

The Association has available

- one-on-one assistance,
- professional development seminars and workshops,
- the Staff Relations Service (mediation) for school-based assistance to a group of members and
- the Healthy Interactions program for development of positive relationships throughout the school division.

## **Process for Complaints of Unprofessional Conduct**

Members have responsibilities for their own conduct and to assist in maintaining proper professional discipline among other members.

The registrar and minister of education ultimately determine whether or not unprofessional conduct has occurred based on the broad definition provided in the legislation. Unprofessional conduct includes that which contravenes the Code of Professional Conduct for Teachers and Teacher Leaders but is much broader.



*Education Act*

## Unprofessional conduct

**225.4 Conduct that**

**(a) is detrimental to the best interests of students, the public, teachers or teacher leaders or the teaching profession,**

**(b) does not comply with the code of professional conduct, or,**

**(c) is the basis for a conviction for an indictable offence constitutes unprofessional conduct.**

**Code of professional conduct**

**225.5(1) The Lieutenant Governor in Council may by regulation establish a code of professional conduct for teachers and teacher leaders.**

**(2) A teacher or teacher leader shall comply with the code of professional conduct**

The *Education Act*, section 225.91(1)(c), provides for a complaint mechanism regarding the professional conduct of teachers and teacher leaders. The Association expects that teachers and teacher leaders who are subject to complaints will be afforded procedural fairness throughout.

Any individual can make a complaint to the registrar regarding the conduct of a teacher. A complaint may be made about the alleged unprofessional conduct of a teacher or teacher leader at any time.

If a superintendent has reason to believe that a teacher or teacher leader has been or may have been convicted of an indictable offence at a time when the teacher or teacher leader held a teaching certificate or leadership certificate or was eligible for the reissuance of any of those certificates, the superintendent shall make a complaint under this section relating to that belief.

Upon receipt of a complaint by the registrar, the registrar will either refer the complaint to the Alberta teaching profession commissioner (the commissioner) or dismiss the complaint if the complaint is in respect of an individual other than a teacher or teacher leader.

The registrar may, on its own initiative, refer a matter relating to the alleged unprofessional conduct of a teacher or teacher leader to the commissioner or the commissioner may, of the commissioner's own initiative, decide to make any preliminary inquiries with respect to a matter relating to the alleged unprofessional conduct of a teacher or teacher leader that the commissioner considers appropriate.

The commissioner shall, within 30 days after the complaint is referred: (a) make any preliminary inquiries relating to the complaint that the commissioner considers appropriate, (b) serve a notice setting out the nature of the complaint on the teacher or teacher leader who is the subject of the complaint, and (c) notify the superintendent in writing of the nature of the complaint.

Within 30 days after the day on which the commissioner concludes preliminary inquiries, the commissioner shall (a) decide to take no further action with respect to the complaint or (b) refer the complaint to a mediation process or (c) refer the complaint to a dispute resolution process or (d) refer the complaint to an investigator if the commissioner is of the opinion that the complaint warrants an investigation.

The investigator shall (a) commence an investigation within 30 days after the matter or complaint is referred, and (b) conduct the investigation in accordance with the regulations.

Following an investigation arising out of a complaint, the investigator shall send to the commissioner a written report and copies of all material related to the investigation.



On receiving an investigator's report respecting a complaint of alleged unprofessional conduct, the commissioner shall forthwith (a) decide to take no further action, or (b) order a dispute resolution process, or (c) seek to enter into a consent resolution agreement with the teacher or teacher leader, or (d) refer the complaint to a hearing committee, or (e) report to the minister, where an investigator's report confirms that a teacher or teacher leader has been convicted of a prescribed offence that proceeded by indictment.

The commissioner shall (a) serve on the complainant, if any, and the teacher or teacher leader the commissioner's decision, including the reasons for the decision, and (b) notice of the complainant's right to appeal the decision if the decision is to take no further action and (c) send the commissioner's decision to the superintendent and (d) to the registrar, if the commissioner makes a decision that no further action is required.

With respect to a complaint that the alleged conduct of a teacher or teacher leader constitutes unprofessional conduct, the hearing committee may find one or more of the following with respect to the teacher or teacher leader: (a) that the teacher or teacher leader (i) engaged in unprofessional conduct, or (ii) did not engage in unprofessional conduct.

If the hearing committee makes a finding that the teacher or teacher leader's conduct does not constitute unprofessional conduct, the hearing committee may recommend to the minister that the minister dismiss the complaint.

If the hearing committee makes a finding that the teacher or teacher leader's conduct constitutes unprofessional conduct, the hearing committee may recommend to the minister that the minister (a) issue a letter of reprimand to the teacher or teacher leader, (b) suspend one or more certificates of the teacher or teacher leader, with or without conditions, (c) cancel one or more certificates of the teacher or teacher leader or cancel a certificate and issue a certificate of a different class, with or without conditions, or (d) order that the teacher or teacher leader be ineligible for one or more certificates for a definite or indefinite period, with or without conditions.

On receiving the decision of a hearing committee or appeal committee, the minister may do one or more of the following, whether or not it is the recommendation of the hearing committee or appeal committee: (a) dismiss the complaint; (b) issue a letter of reprimand to the teacher or teacher leader; (c) suspend one or more certificates of the teacher or teacher leader, with or without conditions; (d) cancel one or more of the certificates of the teacher or teacher leader or cancel one or more of the certificates of the teacher or teacher leader and issue one or more certificates of a different class, with or without conditions; (e) order that the teacher or teacher leader be ineligible for one or more certificates for a definite or indefinite period, with or without conditions.

The teacher or teacher leader who is the subject of a complaint of unprofessional conduct should promptly contact the Association for assistance and, if necessary, representation. There are appeal procedures available to members and complainants in the discipline process and members are advised to contact the Association for assistance.

Code of Professional Conduct for Teachers and Teacher Leaders

3 In relation to colleagues, the teacher or teacher leader shall

(d) in addition to other reporting required by law, report to the Commissioner the conduct of another teacher or teacher leader who is alleged to cause or have caused psychological, emotional, physical or sexual harm or abuse to a student.

## Online Registry

Effective September 1, 2022, the registrar established an online registry for the purpose of providing the public with information required or authorized to be published under provisions of the *Education Act*. The online registry enables any member of the public to access the published information by searching the name of any individual who held a certificate after January 1, 1954.

The following information is available for each certificate holder: (a) the individual's current name and any previous name of that individual that is known to the registrar; (b) each certificate that is held by the individual when the information is published in the online registry or that was held by the individual on or after January 1, 1954; (c) the date that each certificate referred to in clause (b) was issued and the current status of the certificate; (d) in the case of a certificate that is suspended or cancelled when the information was published in the online registry or that was suspended or cancelled on or after January 1, 1990, an indication as to whether the suspension or cancellation was imposed after a hearing relating to alleged professional incompetence or alleged unprofessional conduct, or both, and whether there was a finding of professional incompetence or unprofessional conduct; (e) in the case of a certificate that is expired when the information is published in the online registry, any finding of professional incompetence or unprofessional conduct, or both, that was made on or after January 1, 1990, if the certificate was expired when the finding was made; (f) in the case of a certificate that is suspended or cancelled on or after January 1, 2023, an indication as to whether the suspension or cancellation resulted from a consent resolution agreement.

The minister may publish in the online registry a summary of the matters that led to a finding of professional incompetence or unprofessional conduct in the case where a certificate is suspended or cancelled.

There are some restrictions as to the type of information that can be published in the online registry and members with concerns are encouraged to seek advice from the Association.

## Help Available from the Association

### Responsibilities of members

- Act professionally.
- A member who believes that the conduct of another teacher or teacher leader has caused psychological, emotional, physical or sexual harm or abuse to a student must make a complaint to the commissioner.
- Cooperate with the commissioner in investigations and hearings regarding professional conduct.

To teachers \_\_\_\_\_

Considerable help is available to all members in professional relations and tenure matters. Association policy should be clearly enunciated at this point. There is no differentiation in any way between those members who are

engaged entirely as classroom teachers and those employed as school leaders or in other capacities. If there is tension between a principal and a teacher, either or both may bring the problem to the Association for help, and its efforts to resolve the problem will be made without regard to the position the member concerned occupies. In cases where both school leader and teacher have sought assistance, confidentiality and separation of the files and assistance is maintained until both parties agree to permit consultation as a step toward resolution.

Some areas in which the Association will help are as follows:

- Provide consultation about professional relations matters and advice as to their resolution.
- Give general and legal advice and assistance where necessary with respect to matters arising from the member's duties as a teacher. This includes, in most cases, the provision of the services of an Association solicitor, without charge, to defend a teacher in a lawsuit or criminal allegation arising out of the teacher's duties.
- Assist and advise teachers in cases of termination of contract or designation and provide representation, in most instances by an Association solicitor, in a Board of Reference appeal.
- Offer advice and assist teachers who have been asked to resign from their positions. Such advice should always be requested before a teacher submits a resignation. Some teachers believe that they must submit their resignations if they are asked to do so. This is completely erroneous.
- Provide advice and assistance and, if necessary, legal counsel for members facing allegations or charges under discipline provisions of the *Education Act*.
- Assist members requiring representation before the Teacher Salary Qualifications Board, the Certification Appeal Committee, the Alberta School Employee Benefit Plan Executive Committee or Board, or the Extended Disability Benefit Appeal Committee.

### *To school boards*

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The Association believes that school boards and teachers have many problems in common. It stands ready to cooperate with school boards and superintendents in many ways such as consulting about teachers who may be having problems, improving professional relations (superintendents as well as teachers may request assistance) and cooperating in attempts to resolve teacher-board disputes.

