

# Bill 173

## An Act respecting 2011 Budget measures, interim appropriations and other matters

( Excerpt, pages 17-23, Amendments to the Education Act )

### Schedule 10 ... Education Act

1. Subsection 1 (1) of the Education Act is amended by adding the following definition:

“third party program” means a program operated by a person or entity other than a board under section 259. (“programme offert par un tiers”)

2. Clause 218.2 (2) (b) of the Act is repealed and the following substituted:

(b) governing codes of conduct that apply to board members, whether permitted or required under this section, including,

- (i) prescribing codes of conduct or parts of codes of conduct, and
- (ii) prescribing matters to be addressed by codes of conduct.

3. The heading immediately before section 258 of the Act is amended by striking out “Extended Day Programs” and substituting “Extended Day Programs and Third Party Programs”.

4. Section 258 of the Act is amended by adding the following definition:

“operator” means, in respect of a third party program, the owner or person who has the charge, management or control of the program; (“exploitant”)

5. Section 259 of the Act is repealed and the following substituted:

Extended day or third party programs

**259.** (1) Subject to the regulations, policies and guidelines made under this Part, every board shall do one of the following in each elementary school of the board, on every school day, other than professional activity days, outside the time when junior kindergarten and kindergarten are operated in the school, for pupils of the board who are enrolled in junior kindergarten or kindergarten:

1. Operate an extended day program.
2. Ensure that a third party program is operated by a person or entity other than a board.

Same

(2) Subject to the regulations, policies and guidelines made under this Part, a board may also do one of the following in a school of the board, outside the time when junior kindergarten and kindergarten are operated in the school, for any pupils of the board to whom the board decides to provide the program:

1. Operate an extended day program.
2. Ensure that a third party program is operated by a person or entity other than a board.

Same

- (3) Two or more boards may enter into agreements for the purposes of subsection (4).

Same

(4) Subject to the regulations, policies and guidelines made under this Part, a board may do one of the following in a school of the board, outside the time when junior kindergarten and kindergarten are operated in the school, for pupils enrolled in a school of another board if the board has entered into an agreement with the other board to do so:

1. Operate an extended day program.
2. Ensure that a third party program is operated by a person or entity other than a board.

Same

(5) If an agreement under subsection (4) provides that the program will be operated on every school day, other than professional activity days, for pupils who are enrolled in junior kindergarten or kindergarten in a school of the other board, the other board is relieved of its obligations under subsection (1) with respect to that school until,

- (a) the agreement is terminated or expires; or
- (b) if the program is a third party program, the program is terminated or ceases to operate.

No limitation of rights

(6) Subject to subsection (7), nothing in this section limits any right of a board to enter into an agreement with a person or entity to operate a program in a school of the board.

Conflict with subs. (1) program

(7) A board shall not enter into an agreement with a person or entity, other than a board, to operate a program in a school of the board that is of the same nature as a program operated in the school under subsection (1).

Third party programs

**259.1** A board shall ensure that a third party program operated in a school of the board meets the following requirements:

1. The program must be a day nursery licensed under the Day Nurseries Act or another program prescribed by the regulations made under this Part.
2. The program must be led by an early childhood educator or another person who an operator of a day nursery may employ for the purposes of subsection 59 (1) of Regulation 262 of the Revised Regulations of Ontario, 1990 (General) made under the Day Nurseries Act.

3. The program must meet any conditions and criteria prescribed by the regulations, policies or guidelines made under this Part, including conditions and criteria related to programs or operators of programs.

Operator not agent of board

**259.2** Nothing under this Part makes the operator of a third party program an agent of a board.

Termination or cessation of third party program

**259.3** (1) If a third party program operated in a school of a board under section 259 is terminated or ceases to operate during a school year, the following applies:

1. The board is relieved of its obligations under subsection 259 (1), with respect to that school, for seven days after the day the program is terminated or ceases to operate.

2. For the remainder of the school year, the board shall ensure that a program under subsection 259 (1) for pupils enrolled in that school is operated,

i. in respect of school days other than professional activity days, during at least the same hours of operation of the program that was terminated or ceased to operate, and

ii. if required by the regulations, policies or guidelines made under this Part,

A. on professional activity days or any other day on which the program that was terminated or ceased to operate would have operated under the agreement that governed it, and

B. during at least the same hours of operation on the days described in sub-subparagraph A that the program that was terminated or ceased to operate would have operated under the agreement that governed it.

Same, s. 259 (5) agreement

(2) If a third party program operated under an agreement referred to in subsection 259 (5) is terminated or ceases to operate during a school year, the following applies to the board that was relieved of its obligations under subsection 259 (5):

1. The board continues to be relieved of its obligations under subsection 259 (1), with respect to the school in respect of which the agreement applies, for seven days after the day the program is terminated or ceases to operate.

2. For the remainder of the school year, the board shall ensure that a program under subsection 259 (1) for pupils enrolled in that school is operated,

i. in respect of school days other than professional activity days, during at least the same hours of operation of the program that was terminated or ceased to operate, and

ii. if required by the regulations, policies or guidelines made under this Part,

A. on professional activity days or any other day on which the program that was terminated or ceased to operate would have operated under the agreement that governed it, and

B. during at least the same hours of operation on the days described in sub-subparagraph A that the program that was terminated or ceased to operate would have operated under the agreement that governed it.

6. Subsections 260.1 (1) and (2) of the Act are repealed and the following substituted:

Fees

(1) Every board shall charge fees in accordance with the regulations made under subsection 260.6 (1) to parents of pupils enrolled in extended day programs operated by the board to recover operating costs incurred by the board.

Same

(2) No fees may be charged under subsection (1) unless the fees are charged in accordance with the regulations made under subsection 260.6 (1).

7. Section 260.3 of the Act is amended by adding the following subsection:

Same, enrolment

(3) Enrolment in a school, whether in junior kindergarten, kindergarten or otherwise, does not confer a right to be enrolled in a program operated under section 259.

8. The Act is amended by adding the following section:

Policies and guidelines: s. 259 (1) obligation

**260.4.1** (1) The Minister may issue policies and guidelines, and require boards to comply with them, respecting the schools at which a board is required and is not required to operate or ensure the operation of a program under subsection 259 (1).

Same

(2) Without limiting the generality of subsection (1), the Minister may issue a policy or guideline under subsection (1) respecting assumptions and calculations to be used in estimating or determining enrolment in, or staffing required for, extended day programs or third party programs in schools of the board.

Legislation Act, 2006, Part III

(3) Part III (Regulations) of the Legislation Act, 2006 does not apply to a policy or guideline of the Minister under this section.

9. Clause 260.5 (2) (a) of the Act is repealed.

10. The Act is amended by adding the following sections:

Policies and guidelines: third party programs

**260.5.1** (1) The Minister may issue policies and guidelines and require boards to comply with them,

(a) governing agreements between boards and operators of third party programs, including prescribing terms and conditions that must or may be included;

(b) prescribing conditions and criteria for the purposes of paragraph 3 of section 259.1, including conditions and criteria related to programs or operators of programs;

(c) requiring boards to comply with all or part of subparagraph 2 ii of subsections 259.3 (1) and (2).

Legislation Act, 2006, Part III

(2) Part III (Regulations) of the Legislation Act, 2006 does not apply to a policy or guideline of the Minister under this section.

Regulations: extended day and third party programs

**260.5.2** The Lieutenant Governor in Council may by regulation,

(a) do anything that may be done by policy or guideline under sections 260.4.1, 260.5 and 260.5.1;

(b) prescribe programs for the purposes of paragraph 1 of section 259.1.

11. (1) Subsections 260.6 (1) and (2) of the Act are repealed and the following substituted:

Regulations: extended day programs, fees

(1) The Lieutenant Governor in Council may make regulations respecting the fees that a board shall charge under subsection 260.1 (1), including regulations respecting,

(a) the amount of the fees or any part of the fees;

(b) the manner or method of calculating or determining the amount of the fees or any part of the fees;

(c) criteria or conditions relating to the calculation or determination of the amount of the fees or any part of the fees;

(d) fee deposits;

(e) the time of payment of the fees or any part of the fees;

(f) the assumptions and calculations to be used in estimating or determining operating costs of extended day programs in schools of the board, including regulations respecting what is to be included and excluded in determining those costs and regulations respecting how those costs are to be calculated;

(g) the assumptions and calculations to be used in estimating or determining any surplus or deficit or projected surplus or deficit for a fiscal year resulting from the collection of fees;

(h) the management of any surplus or deficit or projected surplus or deficit, including the use of any surplus or projected surplus and the manner of making up any deficit or projected deficit;

(i) respecting assumptions and calculations to be used in estimating or determining enrolment in, or staffing required for, extended day programs in schools of the board.

## Fee adjustments

(2) A regulation made under clause (1) (h) may provide for adjustments, including a reduction or an increase, to be made to fees charged under subsection 260.1 (1) at any time, including adjustments to,

(a) fees charged in the course of a fiscal year during which the surplus or deficit occurs or is projected; and

(b) fees charged in one or more fiscal years following the fiscal year in which the surplus or deficit occurs or is projected.

(2) Subsection 260.6 (3) of the Act is amended by striking out “clause (1) (b)” and substituting “subsection (1)”.

12. (1) Subsection 300.1 (1) of the Act is amended by striking out “and” at the end of clause (a) and by adding the following clauses:

(c) a person appointed by a board under paragraph 5.1 of subsection 171 (1) to supervise persons in positions designated by the board as requiring an early childhood educator; and

(d) a person appointed by a board under subsection 260 (2) to a position in an extended day program designated by the board as requiring an early childhood educator.

(2) Section 300.1 of the Act is amended by adding the following subsection:

## Same

(2.1) A person described in clause (1) (c) or (d) may only act under a delegation under this section if,

(a) the principal and vice-principal of the school are absent from the school;

(b) the delegated power, duty or function is exercised in respect of a pupil enrolled in an extended day program in the school; and

(c) the delegated power, duty or function is exercised during the time that the extended day program is operated in the school.

13. Subsection 301 (5.3) of the Act is amended by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following clause:

(d) providing programs or services to pupils in a school of the board.

## Commencement

14. (1) Subject to subsection (2), this Schedule comes into force on the day the Better Tomorrow for Ontario Act (Budget Measures), 2011 receives Royal Assent.

## Same

(2) Section 13 comes into force on a day to be named by proclamation of the Lieutenant Governor.