

## Schedule “A”

### **Amendment to the Governor in Council Education Act Regulations made under Section 146 of Chapter 1 of the Acts of 1995-96, the Education Act**

The *Governor in Council Education Act Regulations*, N.S. Reg. 74/97, made by the Governor in Council by Order in Council 97-405 dated June 24, 1997, are amended by repealing Sections 67 to 78 and substituting the following Sections:

#### **Definitions**

**67** In this Section and Sections 68 to 78,

- (a) “adaptations plan” means a documented plan for achieving the curriculum outcomes of the NS public-school program that accommodates the specific learning needs of a student;
- (b) “designated special education private school” means a special education private school designated under Section 68;
- (c) “funded student” means a student for whom a funding unit has been granted under subsection 77D(1);
- (d) “funded student’s school board” means the school board for the school region in which a parent of a funded student resides on September 30 in a school year;
- (e) “funding unit” means an amount of money
  - (i) calculated in accordance with subsection 77E, and
  - (ii) payable for tuition fees for a school year at a designated special education private school or a registered special education private school;
- (f) “individualized program plan”, in respect of a student for whom the curriculum outcomes of the NS public-school program are not applicable or attainable, means a documented plan for achieving annual and specific individualized outcomes instead of the curriculum outcomes of the NS public-school program that accommodates the learning strengths and

challenges of the student;

- (g) “NS public-school program” means the public-school program of education for the Province prescribed by the regulations made by the Minister and defined as “school program” in the Act;
- (h) “extra-Provincial private educational institution” means an educational institution that is located outside of the Province and is not publicly funded;
- (i) “registered special education private school” means a special education private school registered under Section 73;
- (j) “resident” means a person who resides in the Province as a Canadian citizen or permanent resident as defined by the *Immigration and Refugee Protection Act* (Canada);
- (k) “Reviewer” means the Reviewer appointed under Section 77A for the purpose of reviewing applications for funding units or supplements under these regulations;
- (l) “student with special needs” means a student with attention deficit hyperactivity disorder (ADHD), autism spectrum disorder (ASD) or a learning disability (LD), as diagnosed by 1 of the following:
  - (i) a licensed physician, or
  - (ii) a registered psychologist or candidate registered psychologist, with expertise and training in making the diagnosis;
- (m) “special education private school” means a private school or extra-Provincial private educational institution that offers and delivers educational programs and services to meet the needs of students with special needs only, and includes a natural person, an association of natural persons, a partnership or a corporation;
- (n) “supplement” means an amount of money, calculated in accordance with Section 77H, that is payable in addition to a funding unit for tuition fees for a school year at a designated special education private school or a registered special education private school;
- (o) “transition plan” means a documented plan for achieving annual and specific individualized outcomes to enable the student to transition from a designated special education private school or a registered special education private school to a public school or post-secondary educational institution, that

accommodates the learning needs of the student;

- (p) “Tuition Appeal Board” means the Tuition Appeal Board appointed under subsection 78A(1) to hear appeals under Section 78B;
- (q) “tuition support funding” means either
  - (i) a funding unit, or
  - (ii) a funding unit and a supplement.

**Application for designation of private school as designated special education private school**

- 68**
- (1) A private school that is a special education private school that has been in operation for at least 1 year may apply to the Minister, in the manner and form required by the Minister, for designation or renewal of its designation as a designated special education private school.
  - (2) The Minister may designate a private school that applies under clause 68(1) as a designated special education private school if the Minister is satisfied that the school meets all of the following requirements:
    - (a) each individual employed on the school’s teaching staff
      - (i) holds a teacher’s certificate issued by the Minister, and
      - (ii) has demonstrated qualifications or competencies to teach students with special needs;
    - (b) the school follows the NS public-school program;
    - (c) the school has rules and procedures in place for disciplining, suspending and expelling students that incorporate the principles of natural justice and procedural fairness and accord with the policies and procedures made by the Minister;
    - (d) the school is not insolvent, as defined in subsection (3);
    - (e) the school maintains the financial security required by the Minister, including a fidelity bond;
    - (f) the school maintains a general liability insurance policy or other form

of indemnification in an amount determined by the Minister and on the terms and conditions determined by the Minister;

- (g) the school has measures in place, similar to those followed by school boards, to ensure the safety of students and protect the students from harm from its employees or other students;
- (h) the school is not affiliated with a religious faith or denomination, and is either
  - (i) recognized as a non-profit organization under the *Income Tax Act* (Canada), or
  - (ii) registered as a charitable organization under the *Income Tax Act* (Canada).

(3) In clause (2)(d), “insolvent” means any of the following:

- (a) unable, for any reason, to meet financial obligations as they become due;
- (b) unable to pay financial liabilities in the course of business as those liabilities become due;
- (c) unable to meet financial obligations due and accruing because the aggregate of its property
  - (i) is not, at a fair value, sufficient to pay all the financial obligations that are due or accruing, or
  - (ii) if disposed of at a fairly conducted sale, would not be sufficient to pay all the financial obligations that are due and accruing.

(4) Subject to Section 71, a designation made under this Section is valid for 2 years.

#### **Continuation of previous designations**

**69** A designation made under Section 68 of the *Governor in Council Education Act Regulations* made under the Act, as that Section existed immediately before the effective date of these regulations, is deemed to be a designation made under these regulations and remains valid until the expiry date of the designation.

#### **Refusal of designation**

- 70** The Minister may refuse to designate a private school that applies under clause 68(1) for any of the following reasons:
- (a) the information supplied in the application is incomplete;
  - (b) in the Minister's opinion, the school does not meet the requirements of subsection 68(2).

**Suspension or revocation of designation**

- 71** The Minister may suspend or revoke a designation made under Section 68 if, in the Minister's opinion, the designated school fails to meet the requirements of Sections 68 and 72.

**Ongoing obligations and monitoring of designated school**

- 72 (1)** A private school designated as a designated special education private school must continue to meet the requirements in subsection 68(2) and do all of the following:
- (a) at the request of the Minister, provide proof of the school's compliance with subsection 68(2);
  - (b) report annually to the Minister on the types of interventions and instructional strategies that the school uses to meet the needs of funded students enrolled at the school;
  - (c) for each funded student enrolled at the school during a school year,
    - (i) develop and implement an individualized program plan or an adaptations plan for the school year,
    - (ii) at the end of the school year, provide the Minister with a copy of an annual report for the school year, as set out in subsection (2),
    - (iii) meet with the funded student's school board at least 2 times during the school year to explain and share documented evidence of the funded student's progress and achievements,
    - (iv) conduct provincial assessments and examinations at the request of the Minister.
  - (d) for each funded student who intends to return to a public school or a publicly funded school or pursue post-secondary studies the following school year, develop a transition plan with the funded

student's school board.

- (2) The annual report required by clause (1)(c)(ii) must include all of the following for the funded student:
  - (i) a record of academic progress for the school year,
  - (ii) an attendance record for the school year,
  - (iii) an individualized program plan or an adaptations plan for the school year.

**Application for registration of extra-Provincial private educational institution as registered special education private school**

- 73**
- (1) An extra-Provincial private educational institution that is a special education private school that has been in operation for at least a year may apply to the Minister, in the manner and form determined by the Minister, for registration or renewal of its registration as a registered special education private school.
  - (2) The Minister may register an extra-Provincial private educational institution that applies under clause 73(1) if the Minister is satisfied that the school meets the requirements in clauses 68(2)(a) to (h) and all of the following requirements:
    - (a) each individual employed on the school's teaching staff
      - (i) holds a teacher's certificate from the teacher certification authority of the jurisdiction where the extra-Provincial private educational institution is located, and
      - (ii) has demonstrated qualifications or competencies to teach students with special needs.
    - (b) the school follows the equivalent of the NS public-school program;
    - (c) the school offers French-first-language programs and services for students with special needs.
  - (3) A registration made under this Section is valid for 2 years.
  - (4) The Minister may, for the purpose of an application made under subsection (1) before September 1, 2011, waive any of the requirements in subsection

(2) if the Minister considers it is appropriate in the circumstances.

### **Refusal of registration**

**74** The Minister may refuse to register an extra-Provincial private educational institution that applies under Section 73 for any of the following reasons:

- (a) the information supplied in the application is incomplete;
- (b) in the Minister's opinion, the applicant does not meet the requirements of subsection 73(2).

### **Suspension or revocation of registration**

**75** The Minister may suspend or revoke a registration made under Section 73 if, in the opinion of the Minister, the registered school fails to meet the requirements of Sections 73 and 76.

### **Ongoing obligations and monitoring of registered school**

**76** A registered special education private school must continue to meet the requirements in subsection 73(2) and do all of the following:

- (a) at the request of the Minister, provide proof of the school's compliance with subsection 73(2);
- (b) all of the actions required to be done in clauses 72(1)(a) to (d).

### **Reviewer**

**77A (1)** The Minister must appoint a person who has recognized professional qualifications and experience in working with students with special needs to serve as the Reviewer.

(2) The Reviewer holds office for 2 years and may not be reappointed.

(3) The Reviewer may be paid any remuneration and reimbursement of expenses that the Governor in Council determines.

(4) The Reviewer must issue an annual report and provide a copy of the report to the Minister.

(5) If the person appointed as Reviewer resigns office or retires, or if their term of office expires or is terminated, that person maintains jurisdiction as Reviewer over any application, matter or thing required to be determined by the Reviewer, including the power to complete any unfinished matter and give a decision in that matter as if the Reviewer had not resigned or retired or their term of office had not expired or been terminated.

- (6) The appointment of a person appointed under subsection 75(3) of the *Governor in Council Education Act Regulations* made under the Act, as they existed immediately before the effective date of these regulations, remains valid until the expiry date of the appointment.

**Eligibility for applying for funding unit**

**77B (1)** A student is eligible to apply for a funding unit for a school year at a designated special education private school if all of the following criteria are met:

- (a) the student is a student with special needs and has received or is offered an individualized program plan for the following school year;
- (b) the student was a student at a publicly funded school during a previous school year;
- (c) on the date of enrolment in the school,
  - (i) the student is or will be a resident of the Province, and
  - (ii) a parent of the student is or will be a resident of the Province.
- (d) the student secures a placement at the school any time during the school year for which the funding unit is sought;

**(2)** A student is eligible to apply for a funding unit for a school year at a registered special education private school if all of the following criteria are met:

- (a) the student is a student with special needs and has received or is offered an individualized program plan for the following school year;
- (b) the student was a student at a publicly supported school in Canada that offered French-first-language programs and services to the student during a previous school year;
- (c) on the date the application is made, the student is a resident of the Province;
- (d) the student is entitled to be provided a French-first-language program of the Conseil acadian under Section 12 of the Act.
- (e) the student has secured a placement at the school;



### **Application for funding unit**

- 77C** (1) A student who meets the eligibility criteria for a funding unit set out in subsections 77B(1) and (2) may apply to the Reviewer for a funding unit on a form prescribed by the Minister.
- (2) A completed application for a funding unit must be submitted no later than July 31 of the school year during which the student is enrolled at the designated special education private school or the registered special education private school and for which the funding unit is being sought and must include all of the following:
- (a) documented evidence, in a form satisfactory to the Reviewer, that the eligibility criteria for a funding unit set out in subsections 77B(1) and (2) are met;
  - (b) an outline of the programs and services being offered to the student by the designated special education private school or registered special education private school;
  - (c) a written rationale prepared by the student explaining how the programs and services referred to in clause (b) will benefit the student's academic and behavioural well-being;
  - (d) for a student who has been diagnosed with a learning disability (LD), a psycho-educational assessment of the student completed by a registered psychologist or a candidate registered psychologist.
- (3) A parent may apply under subsection (1) on behalf of a student under the age of majority.

### **Review and grant of funding unit**

- 77D** (1) On receiving an application for a student under Section 77C, the Reviewer may grant a funding unit for the student.
- (2) If the Reviewer grants a funding unit under subsection (1), the Reviewer must notify all of the following:
- (a) the funded student;
  - (b) the funded student's school board;
  - (c) the Minister;
  - (d) the designated special education private school or the registered

special education private school in which the funded student is enrolled.

- (3) The Reviewer may refuse to grant a funding unit for any of the following reasons:
  - (a) in the Reviewer's opinion, the eligibility criteria for a funding unit set out in subsections 77B(1) and (2) are not met;
  - (b) the information required by Section 77C is incomplete;
  - (c) the Reviewer does not consider the programs and services outlined under clause 77C(2)(b) to be acceptable;
  - (d) the Reviewer does not consider the rationale required by clause 77C(2)(c) to be acceptable.
- (4) If the Reviewer refuses to grant a funding unit under subsection (3), the Reviewer must notify the applicant in writing and include the reasons for the refusal.

#### **Calculation of funding unit**

**77E** A funding unit is calculated as the average per student allocation of combined Provincial and municipal funding to school boards for the school year as of March 31 of the previous fiscal year, as determined by the Minister.

#### **Application for supplement**

- 77F**
- (1) A funded student may apply to the Reviewer for a supplement for the same school year that the funding unit applies to, on a form prescribed by the Minister.
  - (2) A completed application for a supplement must be submitted to the Reviewer by no later than July 31 of the school year during which the student is enrolled at the designated special education private school or the registered special education private school and for which the funding unit is being sought and must include information satisfactory to the Reviewer that additional financial assistance is required, taking into account all the financial resources available to the funded student.
  - (3) A parent may make an application under subsection (1) on behalf of a student under the age of majority.

#### **Review and grant of supplement**

- 77G** (1) On receiving an application for a student under Section 77F, the Reviewer may grant a supplement for the student.
- (2) If the Reviewer grants a supplement, the Reviewer must notify all of the following:
- (a) the funded student;
  - (b) the Minister;
  - (c) the designated special education private school or the registered special education private school in which the funded student is enrolled
- (3) The Reviewer may refuse to grant a supplement for any of the following reasons:
- (a) the information required by Section 77F is not complete;
  - (b) in accordance with guidelines established by the Minister, the Reviewer does not consider that the funded student requires financial assistance in addition to a funding unit.
- (4) If the Reviewer refuse to grant a supplement under subsection (3), the Reviewer must notify the applicant in writing and include the reasons for the refusal.

**Calculation of supplement**

**77H** The Reviewer must calculate the amount of a supplement in accordance with guidelines established by the Minister, but a supplement must not exceed the lower of the following amounts:

- (a) the amount of the funding unit granted to the funded student;
- (b) 90% of the tuition fees charged by the designated special education private school or registered special education private school where the student is enrolled.

**Re-applying for tuition support funding**

**77I** For greater certainty, a funded student must re-apply for tuition support funding under these regulations for each year of funding availability under Section 77J.

**Maximum tuition support funding availability**

**77J** (1) Except as provided in subsection (2) and Section 77K, tuition support

funding is available for a maximum of 3 school years.

- (2) The Reviewer may grant tuition support funding for a student who applies for a fourth year of tuition support funding if all of the following requirements are met:
  - (a) the student has been a funded student and continues to meet the requirements for the tuition funding under these regulations;
  - (b) there is a transition plan in place for the student for the following school year developed by the funded student's school board and the designated special education private school or the registered special education private school in which the student is enrolled.

#### **Tuition funding for 2010-11 school year**

**77K** The Reviewer may grant tuition support funding to a student who applies for tuition support funding for the 2010-2011 school year if the student was a funded student for the 2009-2010 school year and continues to meet the requirements for the tuition support funding under these regulations.

#### **Remittance of tuition support funding**

- 77L** (1) A designated special education private school or a registered special education private school in which a funded student is enrolled must notify and provide the Minister and the funded student's school board with confirmation of the funded student's enrolment and corresponding invoice(s) as of September 30 and March 1 of a school year.
- (2) A funded student's school board must remit the funding unit in respect of a student for whom it has received notice of enrolment, to the designated special education private school or the registered special education private school as follows:
    - (a) the first instalment of 60% of the funding unit due no later than October 30<sup>th</sup>; and
    - (b) the second instalment of 40% of the funding unit due no later than April 1<sup>st</sup>.
  - (3) In the case of a supplement, after receiving notice of a funded student's enrolment and corresponding invoice under subsection (1), the Minister must remit the supplement for the student to the registered or designated special education private school.

### **Appointments to Tuition Appeal Board**

- 78A** (1) The Governor in Council must appoint a person who has recognized professional qualifications and experience in working with students with special needs to serve as the single adjudicator of the Tuition Appeal Board to hear appeals under Section 78B.
- (2) A person appointed to the Tuition Appeal Board under subsection (1) holds office for 3 years, and may not be reappointed.
- (3) A person appointed to the Tuition Appeal Board may be paid any remuneration and reimbursement of expenses the Governor in Council determines.
- (4) If the person appointed as the single adjudicator of the Tuition Appeal Board resigns office or retires, or if their term of office expires or is terminated, that person maintains jurisdiction as Reviewer over any application, matter or thing required to be determined by the Reviewer, including the power to complete any unfinished matter and give a decision in that matter as if the Reviewer had not resigned or retired or their term of office had not expired or been terminated.
- (5) The appointment of a person appointed under Section 78 of the *Governor in Council Education Act Regulations* made under the Act, as they existed immediately before the effective date of these regulations, remains valid until the expiry date of the appointment.

### **Decisions that may be appealed to the Tuition Appeal Board**

- 78B** (1) A student may appeal any of the following decisions made by the Reviewer:
- (a) a refusal to grant a funding unit under Section 77D;
- (b) a refusal to grant a supplement under Section 77G;
- (c) the amount of a supplement granted under Section 77H.
- (2) A special education private school may appeal any of the following decisions made by the Minister:
- (a) a refusal to designate the school, or to renew the designation of the school, as a designated special education private school under Section 70

- (b) a suspension or revocation of the school's designation under subsections 71;
- (c) a refusal to register the school, or to renew the registration of the school as a registered special education private school under Section 74;
- (d) a suspension or revocation of the school's registration as a registered special education private school under Section 75.

**Appealing a decision of the Reviewer**

- 78C** (1) An appellant must deliver a notice of appeal in writing to the Tuition Appeal Board no later than 30 days after the date of the decision to be appealed.
- (2) The Tuition Appeal Board shall hold a hearing that provides the appellant with an opportunity to present evidence, including new information, and make representations.
  - (3) A hearing of an appeal under this Section is not open to the public.
  - (4) The Tuition Appeal Board must observe the confidentiality of all documents and records pertaining to an appeal.
  - (5) The Tuition Appeal Board may do any of the following in deciding an appeal:
    - (a) confirm the decision appealed from;
    - (b) vary the decision appealed from;
    - (c) rescind the decision appealed from.

**Decisions of the Tuition Appeal Board**

- 78D** (1) A decision of the Tuition Appeal Board must be in writing and must include reasons for the decision.
- (2) A decision of the Tuition Appeal Board is final and binding.
  - (3) The Tuition Appeal Board must notify all of the following of any decision:
    - (a) the appellant;
    - (b) the Reviewer;

- (c) the Minister;
- (d) for a student's successful appeal under clause 78B(1)(a), the funded student's school board.