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**Governor in Council Education Act Regulations**  
**made under Section 98 of the**  
*Education Act*  
**S.N.S. 2018, c. 1, Schedule A**  
**O.I.C. 2018-104 (effective April 1, 2018), N.S. Reg. 50/2018**

**Designated Special Education Private Schools**

**Definitions**

**43** In this Section and Sections 44 to 46,

“adaptations plan”, in respect of a student, means a documented plan for achieving the curriculum outcomes of the public school program that accommodates the specific learning needs of the student;

“designated special education private school” means a special education private school designated under Section 44 or continued under Section 45;

“extra-Provincial private educational institution” means an educational institution that is located outside of the Province and is not publicly funded;

“funded student” means a student for whom a funding unit has been granted under subsection 56(1);

“funded student’s education entity” means the regional centre with jurisdiction over the school region in which a parent of a funded student resides on September 30 in a school year or, in the case of the child of an entitled parent enrolled in the French-first language program, the Conseil;

“funding unit” means an amount of money

- (i) calculated in accordance with Section 57, and
- (ii) payable for tuition fees for a school year at a designated special education private school or a registered special education private school;

“individualized program plan”, in respect of a student for whom the curriculum outcomes of the 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 public school program that accommodates the learning strengths and challenges of the student;

“registered special education private school” means a special education private school registered under Section 49;

“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);

“Reviewer” means the Reviewer appointed under subsection 53(1) to review applications for funding units or supplements under these regulations;

“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;

“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,
- (ii) a registered psychologist or candidate registered psychologist with expertise and training in making the diagnosis;

“supplement” means an amount of money, calculated in accordance with Section 60, 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;

“transition plan”, in respect of a student, 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;

“Tuition Appeal Board” means the Tuition Appeal Board appointed under subsection 65(1) to hear appeals of decisions in accordance with Section 66;

“tuition support funding” means either

- (i) a funding unit, or
- (ii) a funding unit and a supplement.

### **Designation as designated special education private school**

- 44 (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 subsection (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 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 education entities, 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) A designation made under this Section is valid for 2 years unless suspended or revoked under Section 47.

#### **Continuation of designations made before August 15, 2011**

**45** A private school designated under regulations as a designated special education private school on or before August 15, 2011, is deemed to be designated in accordance with Section 44 and the designation remains valid until the expiry date of the designation unless suspended or revoked under Section 47.

#### **Refusal of designation**

**46** The Minister may refuse to designate or renew the designation of a private school that applies under subsection 44(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 44(2).

#### **Suspension or revocation of designation**

**47** The Minister may suspend or revoke a designation of a designated special education private school if, in the Minister's opinion, the school fails to meet the requirements of Section 48.

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

**48 (1)** A private school designated as a designated special education private school must continue to meet the requirements in subsection 44(2) and do all of the following:

- (a) at the request of the Minister, provide proof of the school's compliance with subsection 44(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 education entity 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) develop a transition plan with the funded student's education entity for each funded student who intends to
  - (i) return to a public school or a publicly funded school the following school year, or
  - (ii) pursue post-secondary studies the following school year.
- (2) The annual report required by clause (1)(c)(ii) must include all of the following for the funded student:
  - (a) a record of academic progress for the school year;
  - (b) an attendance record for the school year;
  - (c) an individualized program plan or an adaptations plan for the school year.

**Application for registration as registered special education private school**

- 49 (1)** An extra-Provincial private educational institution that is a special education private school that has been in operation for at least one 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 subsection (1) if the Minister is satisfied that the school meets the requirements of clauses 44(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 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 unless suspended or revoked under Section 51.

#### **Refusal of registration**

**50** The Minister may refuse to register or renew the registration of an extra-Provincial private educational institution that applies under Section 49 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 49(2).

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

**51** The Minister may suspend or revoke a registration made under Section 49 if, in the opinion of the Minister, the registered school fails to meet the requirements of Section 52.

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

**52** A registered special education private school must continue to meet the requirements in subsection 49(2) and do all of the following:

- (a) at the request of the Minister, provide proof of the school's compliance with subsection 49(2);
- (b) comply with the ongoing requirements for a designated school in subsection 48(1).

#### **Reviewer**

**53 (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.

#### **Eligibility for applying for funding unit**

- 54 (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) the student has secured a placement at the school any time during the school year for which the funding unit is sought;
  - (d) 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.
- (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) the student has secured a placement at the school any time during the school year for which the funding unit is sought;
- (d) on the date the application is made, the student is a resident of the Province;
- (e) the student is entitled to be provided a French-first-language program of the Conseil under Section 12 of the *Education (CSAP) Act*.

### **Application for funding unit**

- 55 (1)** A student who meets the eligibility criteria for a funding unit set out in Section 54 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 all the eligibility criteria for a funding unit set out in subsection 54(1) or (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, 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**

- 56 (1)** On receiving an application for a student under Section 55, 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 designated special education private school or the registered special education private school in which the funded student is enrolled;
  - (c) the funded student's education entity;
  - (d) the Minister.
- (3) The Reviewer may refuse to grant a funding unit for any of the following reasons:
- (a) in the Reviewer's opinion, all the applicable eligibility criteria for a funding unit set out in subsection 54(1) or (2) are not met;
  - (b) the information required by Section 55 is incomplete;
  - (c) the Reviewer does not consider the programs and services outlined under clause 55(2)(b) to be acceptable;
  - (d) the Reviewer does not consider the rationale prepared under clause 55(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 with the notice the reasons for the refusal.

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

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

#### **Application for supplement**

- 58** (1) A funded student may apply to the Reviewer for a supplement for the same school year that their funding unit applies to, on a form prescribed by the Minister.
- (2) A complete 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 sufficient information to satisfy the Reviewer that additional financial assistance is required, considering 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**

**59** (1) On receiving an application for a student under Section 58, 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 designated special education private school or the registered special education private school in which the funded student is enrolled;
  - (c) the Minister.
- (3) The Reviewer may refuse to grant a supplement for any of the following reasons:
  - (a) the information required by subsection 58(2) is incomplete;
  - (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 refuses 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**

**60** The Reviewer must calculate the amount of a supplement in accordance with guidelines established by the Minister, but a supplement must be less than 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 in which the student is enrolled.

#### **Reapplying for tuition support funding**

**61** For greater certainty, a funded student must reapply for tuition support funding under these regulations for each year of funding availability under Section 62.

#### **Maximum tuition support funding availability**

- 62** (1) Except as provided in subsection (2), 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 4th year of tuition support funding if all of the following requirements are met:
    - (a) the student has been a funded student and meets 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 education entity and the designated special education private school or the registered special education private school in which the student is enrolled.

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

- 63 (1)** A designated special education private school or a registered special education private school in which a funded student is enrolled must provide confirmation of the funded student's enrolment and the tuition support funding invoices to both of the following:
- (a) the funded student's education entity;
  - (b) the Minister.
- (2)** The confirmation and invoices required by subsection (1) must be provided by the following deadlines:
- (a) for a student who is enrolled on or before September 30 of a school year, by September 30 and March 1 of the school year;
  - (b) for a student who is enrolled after September 30 of a school year, no later than 30 days after the date of enrolment.
- (3)** On receiving the confirmation and invoices required by subsection (1), the funded student's education entity must remit the funding unit for the student to the school as follows:
- (a) for a student who is enrolled in the school on or before September 30 of a school year, in the following 2 instalments:
    - (i) 60% of the funding unit must be remitted no later than October 30 of the school year to which it applies, and
    - (ii) the remaining 40% of the funding unit must be remitted no later than April 1 of the school year to which it applies;
  - (b) for a student who is enrolled in the school after September 30 of a school year, in accordance with the directions of the Minister.
- (4)** On receiving the confirmation and invoices required by subsection (1), the Minister must remit the supplement for the student to the school.

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

- 64** (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 65.
- (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 a 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 the Tuition Appeal Board over any application, matter or thing required to be determined by the Board, including the power to complete any unfinished matter and give a decision in that matter as if the person had not resigned or retired or their term of office had not expired or been terminated.

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

- 65** (1) A student may appeal any of the following decisions made by the Reviewer:
- (a) a refusal to grant a funding unit under subsection 56(3);
  - (b) a refusal to grant a supplement under subsection 59(3);
  - (c) the amount of a supplement granted under Section 59 in accordance with Section 60.
- (2) A special education private school may appeal any of the following decisions made by the Minister:
- (a) a refusal to designate or renew the designation of the school under Section 46;
  - (b) a suspension or revocation of the school's designation under Section 47;
  - (c) a refusal to register or renew the registration of the school under Section 50;
  - (d) a suspension or revocation of the school's registration under Section 51.

#### **Appealing a decision of the Reviewer**

- 66** (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 must 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**

- 67** (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 of a decision referred to in clause 65(1)(a), the funded student's education entity.