

Policy 126



LEGAL SERVICES FOR DISTRICT EDUCATION COUNCILS

DEPARTMENT OF EDUCATION AND EARLY CHILDHOOD DEVELOPMENT

Effective: September 1, 1996

Revised: April 1, 2003; December 22, 2023

1. Purpose

This policy outlines the requirements and process to be followed by District Education Councils and school districts when dealing with legal matters.

2. Application

This policy applies to all District Education Councils (DEC) and school districts when dealing with legal matters.

3. Definitions

N/A

4. Legal Considerations and Authority

EDUCATION ACT

Section 36.11 – Legal Status of District Education Councils

5.Goals/Principles

5.1.

The Office of the Attorney General provides legal counsel for the Province of New Brunswick, including the Department of Education and Early Childhood Development (the Department).

5.1.1. The Office of the Attorney General will provide legal counsel respecting DEC and school districts' litigated matters **only** through the Department and **only** when the interests of the Province and the DEC or school district coincide.

5.1.2. Despite 5.1.1., the Office of the Attorney General will provide legal counsel to DEC and school districts respecting all employment and labour law matters.

5.2

Legal proceedings and decisions taken in a school district have the capacity to set precedent for the handling of similar matters across the province. As such, it is important that legal matters be approached in an expert and consistent manner with a view to the impact on the public education system as a whole.

6.Requirements/Standards

6.1. NOTIFYING THE DEPARTMENT

6.1.1. A DEC chair or superintendent must contact the Department whenever legal proceedings, labour and employment related proceedings or a Human Rights complaint is initiated or threatened by or against a DEC or school district.

6.1.2. A superintendent or a DEC chair shall not engage in legal negotiations or become party to a settlement unless they have either notified and received advice from the Department in accordance with section 6.2. of this policy or received independent legal counsel in accordance with section 6.2.4. or 6.3. of this policy.

6.2. REQUESTS FOR LEGAL SERVICES

6.2.1. Requests for legal services may only be made by a superintendent or a DEC chair. These are to be addressed to the attention of the Executive Director of Policy and Planning, with the exception of employment and labour law matters, which are to be addressed to the attention of the Director of Human Resources.

6.2.2. School district employees and DEC members are not, under any circumstances, to make the initial request for legal services, including legal opinions, to the Office of the Attorney General. Follow-up communication between a DEC or a school district and the Office of the Attorney General will follow approved process.

- 6.2.3.** School district employees and DEC members may address questions of a general nature (e.g. interpretation of a section, background information, explanation of terminology) to the attention of the appropriate departmental employee(s) or branch(es).
- 6.2.4.** When a request for legal services is received at the Department, under section 6.2.1., the Executive Director of Policy and Planning, or Director of Human Resources as the case may be, will provide the superintendent or DEC chair with direction, in a timely manner. Should it be determined that legal services are required, the Executive Director or Director will:
- a) determine, in consultation with the Office of the Attorney General, if a conflict exists between the interest of the Province and the DEC or school district. When a conflict is identified, and subject to paragraph 6.3., no further legal or financial support will be dispensed by the Province in respect of that matter;
 - b) seek legal services, including legal opinions and advice from the Office of the Attorney General; or
 - c) authorize the DEC or school district to retain independent counsel.

6.3. INDEPENDENT COUNSEL WHEN LEGAL PROCEEDINGS ARE INITIATED AGAINST A DEC

- 6.3.1.** The Department will make provincially-retained independent legal counsel services available to a DEC to provide necessary legal advice and representation when proceedings are commenced by a third party against a DEC or a school district when, in the opinion of the Office of the Attorney General, it is appropriate that the DEC be represented by independent counsel.

6.4. COSTS FOR LEGAL SERVICES

- 6.4.1.** The Department will cover the costs of legal services provided to DEC's and school districts when such services are authorized and provided through the Department under paragraphs 6.2.4. (b) or (c).
- 6.4.2.** The Department will cover the costs of legal services when such services have been authorized under paragraph 6.3.

7.Guidelines/Recommendations

N/A

8.District Education Council (DEC) Policy Making

N/A

9. References

[*Education Act*](#)

[Policy 214 – Indemnification of Employees, District Education Council Members, Parent School Support Committee members, Volunteers and Student Teachers](#)

[Provincial Administration Manual Policy - 3108 – Personal Liability Protection](#)

10. Contacts for Additional Information

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Original signed by

Minister