
Subject: **Provision of Legal Advice to District Education Councils**
Effective: September 1, 1986
Revised: *April 1st, 2003*

1.0 PURPOSE

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

2.0 APPLICATION

This policy applies to all New Brunswick school districts.

3.0 DEFINITIONS

None

4.0 LEGAL AUTHORITY

[Education Act](#)

Section 36.11 – Legal Status of District Education Councils

36.11(1) A District Education Council is a body corporate and shall hold those rights and obligations as are provided to the District Education Council under this Act.

36.11(2) A District Education Council, in its name, may sue and be sued.

36.11(3) Where a District Education Council sues or is sued, or is named in a complaint under the Human Rights Act and is alleged to have violated that Act, and the Minister is not a party to the action or named in the complaint, the District Education Council shall immediately notify the Minister of the action or the complaint.

36.11(4) Where the Minister is notified of an action or complaint under subsection (3), the Minister may intervene in the action or complaint if, in the opinion of the Minister, the action or complaint

- (a) might affect the Minister or the Province, or
- (b) might have implications that would extend beyond the school district concerned

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5.0 GOALS / PRINCIPLES

- 5.1** As a body corporate, a District Education Council is considered to be a legal entity, separate and apart from the Department of Education, and has a right to sue and be sued in its own name.
- 5.2** The Office of the Attorney General provides legal counsel for the Province of New Brunswick, including the Department of Education and the Board of Management. Because a solicitor can act for only one client in respect of the same matter, the Office of the Attorney General will provide legal counsel respecting school district matters **only** through the Department of Education and/or Board of Management as the case may be, and **only** when the interests of the Province and the school district coincide.
- 5.3** Legal proceedings and decisions taken in one New Brunswick 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.

6.0 REQUIREMENTS / STANDARDS

6.1 Requirements for Notifying the Department of Education

- 6.1.1** A superintendent or a District Education Council chair must contact the Department of Education whenever legal action or a Human Rights complaint is initiated or threatened by or against a school district.
- 6.1.2** A superintendent or a DEC chair shall not engage in legal negotiations or become party to a settlement unless he/she has either notified and received advice from the Department of Education in accordance with section 6.2 of this policy or received independent legal counsel.

6.2 Requests for Legal Services

- 6.2.1** Requests for legal opinions or other legal services may only be made by a superintendent, a person designated by the superintendent for this purpose, or a DEC chair. These are to be addressed to the attention of the Assistant Deputy Minister (ADM) of Educational Services.
- 6.2.2** School district employees and District Education Council members are not, under any circumstances, to make the initial request for legal opinion or legal services with the Office of the Attorney General. Follow-up communication between the school district and the Office of the Attorney General, as part of the normal course of business, will continue.
- 6.2.3** In accordance with district policy, school district employees and DEC members may address legal questions of a general nature (e.g. interpretation of a section, background information, explanation of terminology) to the attention of the appropriate Department of Education employee(s) or branch(es).

6.3 Receipt of Legal Services

- 6.3.1** When a request for legal services is received at the Department, under section 6.2.1, the ADM will provide the superintendent, DEC chair, or the person designated for this purpose with legal direction, in a timely manner. In providing a response, the ADM may, as required:
- a) seek the advice of the Office of the Attorney General;
 - b) forward the matter to another branch, agency or department;
 - c) authorize the school district to seek provincially-retained independent counsel (see section 6.4); or
 - d) identify, in consultation with the Office of the Attorney General, that a conflict exists between the interests of the Province and the school district. When a conflict is identified, no further legal or financial support will be dispensed by the Province in respect of that matter.

6.4 Provincially-retained Independent Counsel

- 6.4.1** The Province will make independent counsel services available to the school districts to provide necessary legal advice and representation when, in the opinion of the Office of the Attorney General, the legal interests of the Province and the school district do not coincide.

6.5 Costs for Legal Services

- 6.5.1** No fee will be charged to the school districts for legal services provided through the Province under section 6.3.1(a) or (b) when such are initiated in accordance with section 6.1 and 6.2 of this policy.
- 6.5.2** The Department of Education will pay the retainer fees for the independent counsel retained under section 6.4.1.
- 6.5.3** The Department of Education will pay the costs of legal expenses incurred by provincially-retained independent counsel when authorized to seek the services of the counsel under section 6.3.1(c) in respect of a specific matter.

7.0 GUIDELINES / RECOMMENDATIONS

None

8.0 DISTRICT EDUCATION COUNCIL POLICYMAKING

8.1 District Education Councils may make policies respecting the handling of legal matters that are not inconsistent with this policy.

9.0 REFERENCES

[Education Act](#) – section 54 Authority to indemnify and defend

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

Provincial Administration Manual Policies:

[AD-1503](#) – Legal Services

[AD-3108](#) – Personal Liability Protection

10.0 CONTACTS FOR ADDITIONAL INFORMATION

Department of Education, Policy and Planning Branch
(506) 453-3090

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