

Update

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TORIES LEGISLATE QUALIFYING TEST AND REGULAR PERFORMANCE APPRAISALS FOR TEACHERS

BILL 110: QUALITY IN THE CLASSROOM ACT, 2001 First Reading

On Monday October 15 2001, Education Minister Janet Ecker introduced Bill 110, the *Quality in the Classroom Act, 2001* for First Reading in the Legislature.

Bill 110 amends the *Education Act* to bring in two more components of the government's "Ontario Teacher Testing Program" announced in May 2000. The key elements of the program are to be fully implemented by 2004. Elements already in place include "professional learning" requirements for mandatory recertification to be completed by all teachers on a five year cycle (see Bill 80, *Stability and Excellence in Education Act, 2001*), as well as an English or French proficiency test for teachers who have been trained in another language.

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In particular, Bill 110 does the following:

- C establishes a requirement that every new teacher must pass a qualifying test before being certified;
- C introduces a mandatory system for the regular and consistent appraisal of teachers' classroom performance;
- C gives the government the power to make regulations with respect to the content and process of performance appraisals;
- C provides for regulations respecting performance appraisals of principals, vice principals and supervisory officers.

This summary will review the specific changes to the *Education Act* proposed by Bill 110.

I. QUALIFYING TEST FOR NEW TEACHERS

Bill 110 adds Section 10.1 to the *Education Act*, which will require teachers who seek initial certification from the Ontario College of Teachers to first pass a qualifying test. Specifically Section 10.1:

- C requires applicants to pass an approved qualifying test; and
- C gives the government the power to delegate and regulate administration, criteria, content, and process related to the test.

1. The Test

As of the date government passes this legislation and eventually approves a test (no time lines are provided in the legislation), no new applicants for membership in the Ontario College of Teachers will receive a certificate of qualification and registration until they have passed "a qualifying test approved and administered by the Ministry": s. 10.1 (1).

The new qualifying requirement does not replace, and is in addition to, the requirements already set out in the *Ontario College of Teachers Act, 1996*: s. 10.1(2)

The Minister can delegate the power to approve and administer the test to an appropriate person or body: s. 10.1(4); and that power includes the power to make rules related to how the test will be marked: s. 10.1(3).

According to an Ontario Teachers' Federation press release (Communique, October 9, 2001, Volume 7, No. 2) the government has awarded a contract to develop a qualifying test to "the Princeton University-based Education Testing Services (ETS) in partnership with the Ontario Principals' Council (OPC)."

A spokesperson at the Ministry of Education stated that the new test will approved in time to be administered to teachers applying for certification as of Spring 2002.

Specific test results must be given to test writers: s. 10.1(10); and an indication of pass or fail is to be given to the Ontario College of Teachers: s. 10.1(11).

For a period of transition, the Minister may order that it be sufficient for applicants to write the test, regardless of whether they receive a passing grade: s. 10.1(5) To date there is no information as to whether or not such a transition period will be declared.

2. Qualifying Test Regulations: Sections 10.1(7)-(8)

The Bill permits regulations to be made that would:

- C exempt classes of persons or classes of certificates from the test, or from certain components of the test;

- C provide for accommodations to address the needs of certain classes of persons in taking the test;
- C provide an alternate test for certain classes of persons;
- C provide for the number of times the test may be retaken and at what intervals; and,
- C provide for the content, distribution and publication of reports on aggregate test results.

II. PERFORMANCE APPRAISAL SYSTEM

Section 4 of Bill 110 adds Part X.2 to the *Education Act*. The new part will require school boards to subject teachers to regular appraisals of their classroom performance. Specifically the new part:

- C requires teachers currently employed by a board to undergo two performance appraisals during every third year of teaching with a board;
- C requires teachers who are new to a board or new to the profession to undergo two performance appraisals per year for the first two years of teaching with a board;
- C permits regulations concerning the content, results and methodology of the appraisals;
- C lists teacher 'competencies' that may be judged in an appraisal;
- C provides that pupil and parental input may form part of an appraisal;
- C sets out a process to be followed where a teacher's appraisal is unsatisfactory;
- C provides for the termination of teachers whose performance remains unsatisfactory after the appraisal process is followed;

- C provides for boards employing teachers who have previously been employed by other boards to receive any unsatisfactory appraisal results from the previous employer board.

1. Purpose and Interpretation

The stated purpose of the new Part X.2, according to s. 277.14, is:

- C to ensure that pupils receive the benefit of an education system staffed by teachers who are performing their duties satisfactorily;
- C to provide for fair, effective and consistent teacher evaluation in every school; and
- C to promote professional growth.

The appraisal requirement does *not* apply to occasional or continuing education teachers, to schools established under s. 13 of the *Education Act* (demonstration schools or schools for the deaf or blind) or to schools operated by the Ministry under the *Provincial Schools Negotiations Act*, unless provided for by regulation: s. 277.16.

Appraisal of principals, vice-principals and supervisory officers is covered by the new Part XI.1 (see below).

2. Application to Boards and Teachers

Upon the coming into force of this new part, the Minister may designate certain boards, who in turn may designate certain teachers, for whom application of the appraisal system will begin upon a date chosen by the Minister: s. 277.24.

Any boards not designated, or any teachers in designated boards who were themselves not designated, will be phased into the appraisal system as follows:

- C Section 277.25 provides that boards and teachers whose collective agreements expire as of August 2001 (if no new agreement has been ratified as of the date Bill 110 is proclaimed) or August 2002, must begin the appraisal process on September 1, 2002;
- C Section 277.26 provides that boards and teachers whose collective agreements expire as of August 2003, must begin the appraisal process on September 1, 2003; and
- C Section 277.27 provides that any remaining boards or teachers will start appraisals on September 1, 2004.

Boards and teachers may agree to begin the appraisal process prior to the expiration of their collective agreements: s. 277.25/277.26 (3) & (7).

3. Frequency and Timing of Appraisals

Once boards have been phased into the appraisal process, teachers employed by the board must have **one "evaluation year" in any three consecutive years**: s. 277.28 (1).

In an evaluation year the teacher must receive *at least two* performance appraisals: s. 277.28(2).

Except in the case of new teachers as described below, evaluation years must be separated by at least two years: s. 277.28(3).

Teachers who are new to a board or new to the profession must be subjected to at least 2 appraisals per year for their first 2 years as an employee of the board: 277.29(3).

Teachers are to receive written notice of their rating on each performance appraisal: s. 277.28(6) and 277.29(7).

Additional appraisals may be conducted at the discretion of the principal, or in certain cases at the request of the teacher: s. 277.30(1)-(3).

Regulations may be made under s. 277.21 to exclude periods of time from appraisal timelines; to make rules regarding how secondments and absences affect appraisals; and, to provide for exemptions under the appraisal process.

4. Unsatisfactory Appraisal Results

Under s.277.36, when a teacher receives an unsatisfactory rating on a performance appraisal the principal shall, within 15 school days:

- C explain to the teacher the reasons for the rating, what areas of performance are lacking and what is expected in those areas;
- C with input from the teacher develop a plan for improvement; and
- C provide the teacher and the appropriate supervisory officer with written copy of all of the above, including the actual appraisal.

A teacher who receives an unsatisfactory rating must then undergo a second appraisal within 60 school days: 277.36(3).

Where a teacher receives a *second consecutive unsatisfactory rating*, s.277.37 requires the principal to go through a similar process to the one described above under s. 277.36, within 15 school days. The teacher will be placed on "**review status**". The principal is also required to

- C explain to the teacher the ways, if any, in which performance has changed since the last appraisal; and
- C provide the teacher with all documents relied upon in conducting the appraisal.

The second improvement plan must be in consultation with the appropriate supervisory officer: s. 277.37(3).

While a teacher is on “review status” after a second unsatisfactory review, the principal must monitor the teacher’s performance, and consult the teacher regularly to give feedback and provide suggestions for improvement: 277.38(1).

A third performance appraisal must be conducted within 120 days: s. 277.38(3); unless the principal and supervisory officer jointly determine that further delay is not in the *best interests of the pupil*, in which case they shall make a recommendation to the board that the teacher be *terminated*: s. 277.38(5).

A teacher who achieves a satisfactory rating on the third appraisal will cease to be on review status: s. 277.38(4). **A teacher who receives a third consecutive unsatisfactory rating must immediately be recommended by the principal for termination:** s. 277.38(9).

Upon making the recommendation the principal is required to provide both the board and the teacher with written reasons, all appraisals, and copies of all documents relied upon: s. 277.38(10) & (11).

The teacher will be suspended with pay or reassigned to appropriate duties pending the board’s decision: s. 277.38(12) & (14).

Under s. 277.39, once a board receives a recommendation it shall, within 60 days, determine according to the criteria under this new part, and by majority vote, whether the teacher’s performance is unsatisfactory. If the teacher’s performance is judged unsatisfactory, *the teacher must be terminated*.

Where a teacher is terminated under these provisions, or resigns while on “review status”, the board must promptly

file a complaint under s. 26 of the *Ontario College of Teachers Act, 1996*: s. 277.40.

5. Standards, Methods and Rating of Performance Appraisals

Sections 277.31 - 277.34, which deal with the actual constitution of a performance appraisal, are primarily a framework for regulations in this area, with minimal guidance as to the construction and evaluation of performance appraisals.

The government may make regulations concerning:

- C which “competencies” will be evaluated;
- C the standards, methods, timelines and process to be followed, as well as what materials can be taken into account;
- C the final rating scale to be used, including what rating is considered unsatisfactory;
- C the process to be followed in the case of an unsatisfactory appraisal result; and
- C the results of a satisfactory appraisal.

Competencies may include:

- C commitment to pupil learning;
- C communication with pupils and parents;
- C professional knowledge and teaching practices; and
- C participation in “the life of the school and school community” and professional learning.

Regulations may provide for parental and pupil input, including “survey forms”: s. 277.31(5); however, this input cannot be the “sole factor” for an unsatisfactory rating: s. 277.31(8).

Teachers will be given the opportunity to review any such input: s. 277.31(6); **however, where requested, the pupil or parent's name will be removed from the document: s. 277.31(7).**

The Minister may issue performance appraisal guidelines: s. 277.33; and, may approve any relevant performance appraisal documents: s s. 277.34.

6. Who Conducts Appraisals

Performance appraisals will normally be conducted by the principal of the teacher's school (s. 277.28(4)), although in some situations they may be conducted by vice-principals or supervisory officers

Every board must establish rules respecting which principals and supervisory officers will exercise appraisal powers and duties for teachers who teach at more than one school: s. 277.20.

7. Other Board Powers and Duties

Boards are also charged with establishing rules and policies necessary for, and consistent with, the implementation of the performance appraisal system set out in Part X.2: s. 277. 22. This includes ensuring timelines are adhered to and providing for consequences where they are not.

Boards are also permitted by s. 277.32 to provide for *additional* competencies, standards, methods, timelines, or consequences relating to performance appraisals, including provisions for parental and pupil input.

Boards may not however, provide for anything that conflicts with the appraisal system set out in this part, and specifically *they may not require or permit any additional performance appraisals*, other than those authorized by this part: s. 277.32(7).

Section 277.15(5) provides that "Nothing in this Part... shall be interpreted to limit

rights otherwise available to a board relating to discipline of any of its employees or to suspension or termination of the employment of any of its employees."

8. Appraisals and Arbitration

Section 277.41 provides:

A collective agreement between a board and a designated bargaining agent for a teachers' bargaining unit may provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of this Part or any regulation, guideline, rule or policy under it, including any question as to whether a matter is arbitrable.

Section 277.23 states, however, that no arbitration decision can alter the statutory timelines for performance appraisals: 277.23.

9. Records and Exchanging Information

Section 277.43 requires that a Board contemplating a new hire must contact the last Board that employed the teacher candidate and request the candidate's:

- C last two performance appraisals, if either resulted in an unsatisfactory rating;**
- C any documentation related to the above; and**
- C any documentation relating to termination, recommendations for termination, or resignations while on review status.**

Upon request, the prior employer must provide the information. Regulations will govern the period for which boards are

required to retain records related to the appraisal system: s. 277.44.

Boards are required to make information relating to the performance appraisal system available to teachers, pupils, parents and school councils, and the Minister may make regulations with respect to this requirement: s. 277.45.

III. PERFORMANCE APPRAISAL SYSTEM - Principals, Vice-Principals and Supervisory Officers

Section 5 of Bill 110 adds Part XI.1 to the *Education Act* setting out the blueprint for a performance appraisal system similar in some respects to the one for teachers described above. The system for this group of educators, however, will be established almost entirely by regulation. Section 287.4 permits regulations on the timing, frequency, and consequences of performance appraisals.

The Bill also contemplates regulations requiring or empowering Boards to require performance contracts for principals, vice-principals and supervisory officers as a condition of employment: s. 287.4(1)(e).

Parental and pupil input can also be a component of any future appraisals under this part: s. 287.4(4) - (8).

IV. KEY ADDITIONAL AMENDMENTS

Section 2(1) of Bill 110 adds paragraph 25 to the regulatory powers under s. 11(1) of the *Education Act*. The new paragraph permits the Ministry to make regulations respecting “teachers’ learning plans” for teachers and temporary teachers. The power includes setting out regulations requiring boards to develop these “learning plans” and periodically review them.

The term “learning plans” is not defined, or otherwise used, in Bill 110 or the *Education Act*. A spokesperson at the Ministry indicated that learning plans will be defined by regulation.

Part II of Bill 110 also contains amendments to the *Ontario College of Teachers’ Act, 1996* to make certain provisions of that act

consistent with aspects of the Ontario Teacher Testing Program.

PLEASE NOTE THAT THIS UPDATE REVIEWS THE BILL AFTER FIRST READING. FURTHER INFORMATION WILL BE PROVIDED AS THE BILL MAKES ITS WAY THROUGH THE LEGISLATURE.