

EDUCATION MEDIATION REGULATION

Authority: *School Act*, section 5 and 175 (6)

B.C. Reg. 250/00 Effective July 7, 2000
B.C. Reg. 388/07 Effective November 23, 2007
OIC No. 140/21 Effective March 11, 2021
Lieutenant Governor in Council Regulation

NOTICE: The following regulation is not the official version. To obtain an official version of this regulation please contact Crown Publications, King's Printer, Telephone (250) 387-6409, Fax (250) 387-1120 or Internet www.crownpub.bc.ca

Definitions

1 In this regulation:

"deliver" means personally deliver or mail by registered mail;

"disputant" means each francophone education authority and board of education engaged in a dispute;

"dispute" means a dispute between one or more boards of education and one or more francophone education authorities in relation to any one or more of the following:

- (a) any matter arising under section 166.29 of the *School Act*;
- (b) the co-management of shared assets;
- (c) the negotiation, implementation or interpretation of any lease of assets or facilities that are not transferred under section 166.29 of the *School Act*;
- (d) any other dispute that may arise between one or more boards of education and one or more francophone education authorities;

"francophone education authority" has the same meaning as in the *School Act*;

"mediation" means a collaborative process in which 2 or more persons meet and attempt, with the assistance of a mediator, to resolve issues in dispute between them;

"mediator" means a neutral and impartial facilitator with no decision-making power who assists persons in negotiating a mutually acceptable settlement of issues in dispute between them;

"mediation session" means a meeting between 2 or more persons during which they are engaged in mediation;

"minister" means the Minister of Education, and includes any person designated by that minister;

"participant" means, in relation to a dispute, each of the disputants and the minister;

"roster organization" means any body designated by the Attorney General to select mediators for the purposes of this regulation.

[am bc Reg. 388]

Delivery of Notice to Mediate

2 (1) Any disputant or the minister may initiate mediation in a dispute by delivering a Notice to Mediate in Form 1 to,

- (a) if the Notice to Mediate is delivered by a disputant, the minister and every other disputant, or
- (b) if the Notice to Mediate is delivered by the minister, every disputant.

(2) A Notice to Mediate must not be delivered under subsection (1) until

- (a) the disputants have made their best efforts to resolve the dispute through informal negotiation, or

EDUCATION MEDIATION REGULATION

- (b) one of the disputants refuses to engage in negotiations in relation to the dispute.

Appointment of mediator

3 (1) Within 14 days after a Notice to Mediate has been delivered under section 2, or, if a disputant has commenced an action in Supreme Court in relation to a dispute, within 14 days after the originating process in that action is first served on a disputant, the participants must jointly appoint a mutually acceptable mediator.

(2) Unless the court otherwise orders, not more than one mediation may be initiated under this regulation in relation to a dispute.

Selection of mediator if participants are unable to agree

4 (1) If the participants do not jointly appoint a mutually acceptable mediator within the time required by section 3 (1), the participants, or any one of them, may, within 5 days after the time required by section 3 (1), apply to a roster organization for an appointment of a mediator under this section.

(2) The following procedure applies if an application is made to a roster organization under subsection (1):

- (a) the roster organization must, within 7 days after receiving the application, communicate to all participants an identical list of possible mediators containing at least 6 names;
- (b) each participant must, within 7 days after receipt of the list referred to in paragraph (a),
 - (i) delete from the list up to 2 names to which the participant objects,
 - (ii) number the remaining names on the list in order of preference, and
 - (iii) deliver the amended list to the roster organization;
- (c) if a participant does not deliver the amended list within the time referred to in paragraph (b), the participant is deemed to have accepted all of the names;
- (d) within 7 days after the expiry of the 7 day period referred to in paragraph (b), the roster organization must select the mediator from the remaining names on the list or, if no names remain on that list, from any available mediators, whether or not the selected mediator was included on the original list provided under paragraph (a), taking into account
 - (i) the order of preference indicated by the participants on the returned lists,
 - (ii) the need for the mediator to be neutral and independent,
 - (iii) the qualifications of the mediator,
 - (iv) the mediator's fees,
 - (v) the mediator's availability, and
 - (vi) any other consideration likely to result in the selection of an impartial, competent and effective mediator.

(3) Promptly after a roster organization selects the mediator under this section, the roster organization must notify the participants in writing of that selection.

EDUCATION MEDIATION REGULATION

(4) The mediator selected by a roster organization is deemed to be appointed by the participants effective the date of the notice sent under subsection (3).

(5) If the mediator selected by the roster organization under subsection (2) (d) is unable or unwilling to act as mediator, the selected mediator or any participant may so notify the roster organization and the roster organization must, within 5 days after receiving that notice, select a new mediator in accordance with subsection (2) (d).

Attendance at mediation

5 (1) After a mediator has been appointed under section 3 or 4 in relation to a dispute, each participant must attend mediation in relation to the dispute.

(2) Subject to subsection (3), each disputant must appoint a representative to attend the mediation on the participant's behalf, and the minister must, unless the minister attends the mediation in person, appoint a representative to attend the mediation on the minister's behalf.

(3) A person must not be appointed as a representative under subsection (2) unless that person

- (a) is familiar with all relevant facts on which the participant, on whose behalf the representative attends, intends to rely, and
- (b) has full authority to settle, or has access at the earliest practicable opportunity to a person who has, or to a group of persons who collectively have, full authority to settle on behalf of that participant.

(4) A participant satisfies subsection (1) if the representative appointed by the participant under this section attends the mediation.

(5) A participant or representative who attends the mediation may be accompanied by counsel.

(6) Any other person may attend the mediation if that attendance is with the consent of all participants.

(7) A participant may withdraw from a mediation at any time if that withdrawal is with the consent of all participants and, in conjunction with that withdrawal, the participants may vary the fee declaration completed under section 8 (1) to account for that withdrawal.

Scheduling of mediation session

6 Unless a later specified date is agreed on in writing by all of the participants, the first mediation session must occur within 21 days after the appointment of the mediator.

EDUCATION MEDIATION REGULATION

Pre-mediation disclosure of information

7 (1) At least 10 days before the first mediation session is to be held, each disputant must deliver to the mediator a written Statement of Facts and Issues in Form 2 setting out the facts on which the disputant intends to rely and the matters in issue in the dispute.

(2) Promptly after receipt of all of the Statements of Facts and Issues required to be delivered under subsection (1), the mediator must deliver each disputant's statement to each of the other participants.

Cost of mediation services

8 (1) Before or at the first mediation session, the disputants must complete a fee declaration that complies with subsection (2).

- (2) A fee declaration under subsection (1) must be in Form 3 and must
- (a) disclose the cost of the mediation services, and
 - (b) contain a declaration by the disputants that the cost of the mediation will be paid
 - (i) equally by the disputants, or
 - (ii) on any other specified basis agreed by the participants.

(3) A fee declaration completed under this section or varied under section 5 (7) is binding on the participants.

Conduct of a mediation

9 The mediator may conduct the mediation in any manner the mediator considers appropriate to assist the participants to reach a resolution that is timely, fair and cost-effective.

[am. OIC No. 140/21, March 11, 2021]

Confidentiality and compellability

10 (1) Subject to subsection (2), a person must not disclose, or be compelled to disclose, in any civil, criminal, quasi-criminal, administrative or regulatory action or proceeding,

- (a) any oral or written information acquired in anticipation of, during or in connection with a mediation session,
- (b) any opinion disclosed in anticipation of, during or in connection with a mediation session, or
- (c) any document, offer or admission made in anticipation of, during or in connection with a mediation session.

(2) Nothing in this section precludes a party from introducing into evidence in any civil, criminal, quasi-criminal, administrative or regulatory action or proceeding any information or records produced in the course of the mediation that are otherwise producible or compellable in those proceedings.

EDUCATION MEDIATION REGULATION

Concluding a mediation

- 11** Subject to section 5 (7), the participants must not withdraw from the mediation until
- (a) all issues are resolved and a written settlement agreement has been signed by all participants,
 - (b) the mediator determines that the process will not be productive and so advises the participants, or
 - (c) all participants agree to terminate the mediation process.

Mediator recommendation

- 12** (1) If a mediation is concluded and the participants have not reached agreement on all issues in dispute, the mediator may, at the request of all participants, prepare a written non-binding recommendation for settlement.
- (2) a mediator may decline a request under subsection (1) without reason.

EDUCATION MEDIATION REGULATION

FORM 1 - SECTION 2 (1) NOTICE TO MEDIATE

TO THE PARTICIPANTS: *[List participants]*

TAKE NOTICE that the dispute respecting.....*[insert nature of dispute]* is to be mediated in accordance with the Education Mediation Regulation (B.C. Reg. 250/2000).

WITHIN 14 DAYS after delivery of this Notice to all participants, the participants must jointly appoint a mutually acceptable mediator. Otherwise, any of those participants may apply to a roster organization for appointment of a mediator.

Date: *[Day]* *[Month]* *[Year]*.

.....
Participant *[or participant's solicitor]*

Participant delivering this Notice:

.....
.....
.....

FORM 2 - SECTION 7 (1) STATEMENT OF FACTS AND ISSUES

THESE ARE THE FACTS on which we intend to rely in this mediation:

[Set out a brief summary of the facts in numbered paragraphs]

1.

THESE ARE THE MATTERS IN ISSUE in this mediation:

[Set out a brief summary of the issues in numbered paragraphs]

1.

This mediation takes place under the Education Mediation Regulation (B.C. Reg. 250/2000)

Date: *[Day]* *[Month]* *[Year]*.

.....
Participant *[or participant's solicitor]*

EDUCATION MEDIATION REGULATION

FORM 3 - SECTION 8 (2)
MEDIATION FEE DECLARATION

WHEREAS:

- (a) we, or our representatives, are participating in a mediation under the Education Mediation Regulation (B.C. Reg. 250/2000);
- (b) the mediator will be of B.C.;
- (c) the cost of the mediation services will be \$..... for a completed mediation session, or will be calculated at \$..... per hour plus necessary disbursements, or will be calculated as follows:

WE WILL, subject to any agreement reached during mediation, pay the cost of the mediation services:

1. ☐ In equal shares OR 2. ☐ As follows:

WE MAKE THIS DECLARATION under section 8 of the Education Mediation Regulation (B.C. Reg. 250/2000).

Date: [Day] [Month] [Year].

Participant [or participant's solicitor]

Participant *[or participant's solicitor]*