

2011: EL4

MEMORANDUM TO: Directors of Education

FROM: Jim Grieve
Assistant Deputy Minister

DATE: June 8, 2011

SUBJECT: **Regulatory Amendments Respecting Full-Day Junior Kindergarten and Kindergarten and Extended Day and Third Party Programs**

ATTACHMENTS: O.Reg.220/11 – Amending O.Reg. 224/10 – Full Day Junior Kindergarten and Kindergarten
O.Reg. 221/11 – Extended Day and Third Party Programs

As you know, the government has made changes with respect to the framework for the Full-Day Early Learning Kindergarten Program (FDK) that involve amendments to the related legislation, regulations and guidelines. This memorandum describes the key elements of the revised framework in the following sections:

1. Overview of Amendments;
2. Operational Framework for Extended Day and Third Party Programs;
3. Safe Schools and FDK; and
4. Broader Implementation of FDK.

The Ministry will also inform child care operators of these amendments.

The revised framework for extended day and third party programs was developed with input from across the early learning and care sector. Furthermore, the content of O. Reg. 221/11 was posted on the Ontario Regulatory Registry website for public comment from April 15, 2011 to May 30, 2011 and comments received were considered when finalizing the regulation.

Submission of Information to the Minister

For ease of reporting, the forms approved by the Minister for submitting the prescribed information and affirmations to the Minister has been condensed from three forms in the 2010-11 school year into a single form. The new form, “Confirmations, Declarations and Affirmations Required Under O.Reg 221/11”, which will be sent under separate cover, is to be used in combination with the Extended Day Fees Excel Workbook. To further simplify the reporting requirements of boards with respect to FDK, the Ministry will work towards a web-based system for submission of information to the Minister.

1. OVERVIEW OF AMENDMENTS

The Education Act

Schedule 10 to Bill 173, the *Better Tomorrow for Ontario Act (Budget Measures), 2011*, amended the *Education Act* to permit boards to enter into agreements with third parties to operate before- and/or after-school programs for junior kindergarten/kindergarten (JK/K) pupils at FDKELP schools. These amendments came into force on May 12, 2011.

Under the *Education Act*, where a board chooses to ensure the operation of a FDK third party program must be:

- Delivered on at least every instructional day;
- Delivered on the school premises;
- Led by a Registered ECE (or by an individual approved by a Director under the *Day Nurseries Act*); and
- A day nursery program licensed under the *Day Nurseries Act*;

Regulations

Amendments were made to O.Reg. 224/10 (Junior Kindergarten and Kindergarten), to add year 3 (2012-13) FDK schools to the implementation phase-in schedule. Future amendments to this table would address recent work on the selection of year 4 and 5 sites.

To set out the operational framework for extended day and FDK third party programs, a new regulation, O. Reg. 221/11 (Extended Day and Third Party Programs), came into force on June 7, 2011. This regulation replaces O. Reg. 225/10 (Extended Day Programs).

O. Reg. 221/11 sets out the following criteria for FDK third party programs and operators:

- The operator must be a not-for-profit corporation or municipality except for in the following two situations:
 - On June 7, 2011, that date that O. Reg. 221/11 came into force, the board had a written agreement with a for-profit operator to operate a before- and/or after-

school program at the relevant school (whether or not this was a FDK school); or

- The board made reasonable efforts to find a not-for-profit or municipal operator that complied with the legislative and regulatory requirements but was unable to do so.

- The operator must be eligible to receive fee subsidy payments for children enrolled in the program;

- The content of the third party program must be the same content that a board is required to include in a board-operated extended day program; and

- The operator must ensure that when its employees or contractors become aware that a pupil of the board may have engaged in an activity for which suspension or expulsion must be considered, that these staff or contractors report the matter to the school's principal (see Appendix A for further information regarding the reporting requirements). Additional information on safe schools provisions can be found at: http://bill157.apandrose.com/en_CA/welcome.

Binding Policy Guidelines

The Minister's binding policy guidelines pertaining to FDK have been revised to reflect the new provisions and provide greater clarity with respect to the operation of extended day and third party before- and after- school programs. Specifically:

- A new guideline, "Extended Day Program Content", has been issued specifying the program content to be used in extended day programs (under O. Reg. 221/11, this is the same content that must be used in third party programs);

- The guideline "Extended Day Program Unit Staffing Ratios" has been updated to reflect the amended regulatory requirements;

- The guideline "Extended Day Fees Disclosure Process" has been revoked. Boards do not determine third party fees, therefore the disclosure process is no longer relevant.

The binding guidelines will be sent under separate cover and will also be available shortly at: www.forms.ssb.gov.on.ca. Copies of the regulations are attached and will also be available shortly at: www.e-laws.gov.on.ca.

2. OPERATIONAL FRAMEWORK FOR EXTENDED DAY AND THIRD PARTY PROGRAMS

Subject to regulations, policies and guidelines boards now have the choice to either (a) directly operate before- and/or after-school under s. 259 of the *Education Act* for JK/K pupils on at least every instructional day at FDKELP schools; or (b) ensure the operation of third party before- and/or after-school programs for JK/K pupils on at least every instructional day at FDKELP schools.

Exemptions from Obligations Under the Education Act

For the 2011-12 school year, a board is exempt from its obligations pertaining to extended day and third party programs where (a) it has a transitional third party agreement, or (b) where a program is not viable.

(a) Transitional Third Party Agreements

A board is not required to operate an extended day program or ensure the operation of a FDK third party program (or determine the viability of such programs) in 2011-12 if it had a written agreement with a third party to operate a before- and/or after-school program at that school prior to June 7, 2010.

This transitional provision was introduced in O. Reg. 225/10 and has been carried over in O. Reg. 221/11. The criteria for transitional third party agreements are the same as what was set out in O. Reg. 225/10 and communicated to boards in the 2010: EL7 memorandum. All boards with transitional third party agreements must affirm to the Minister that they have complied with these criteria by July 15, 2011.

Please note that 2011-12 is the last school year that this transitional provision will apply.

(b) Non-Viable Programs

Boards are not required to operate an extended day program or ensure the operation of a FDK third party program where they have determined that these programs are not viable. A board with non-viable programs in the 2011-12 school year must submit the information on which this conclusion was based and an affirmation that it was made in good faith to the Minister by July 15, 2011. For the 2012-13 school year and beyond, the deadline for submissions pertaining to viability is May 15 of the preceding school year.

A. Requirements for Both Extended Day and Third Party Programs

While the new operational framework gives boards choice with respect to the delivery of before and/or after school programs, many of the requirements apply regardless of whether or not a board operates an extended day program or ensures the operation of a FDK third party program.

Program Content

The program content for extended day programs is the Ministry's *Extended Day Program* document, which is available online at: www.edu.gov.on.ca/eng/curriculum/elementary/kinderProgram2010.pdf. The requirement that boards use this document has been confirmed in the binding policy guideline "Extended Day Program Content", which was issued on June 7, 2011. Under O. Reg. 221/11, this is the same content that must be used in third party programs.

As O. Reg. 221/11 requires FDK third party operators to use the same program content that boards are required to use for extended day programs, the *Extended Day Program* document is also the program content required for third party programs.

Extended Day Base Fee Determination

For the 2012-13 school year and beyond, all boards must determine their extended day base fees and non-instructional day fees by the first school day in January of the preceding school year (e.g., for a program operating in the 2012-13 school year, fees must be determined by the first school day in January in 2012).

Even if a board has entered into a third party agreement for the upcoming school year, it is still required to determine its extended day base fees as a risk management measure. Base fees will enable the timely implementation of an extended day program in the event that a third party agreement is terminated or a third party program ceases operation, thereby requiring the board to operate an extended day program if an agreement with a new third party to operate a replacement program cannot be established.

The fee determination process is set out in O. Reg. 221/11 (this process is that same as what was set out in O. Reg. 225/10 and was previously communicated in the 2010: EL12 memorandum). Please note that there is no longer a transitional period with respect to the fee calculation provisions that came into force on December 15, 2010. The fee calculation process now applies in the 2011-12 school year and beyond (unless it is otherwise amended).

Posting Fees

For the 2012-13 school year and beyond, all boards must post proposed fees on their websites and communicate them in writing to the relevant parents, by the first school day in January of the preceding school year. The proposed fee will be either a board's extended day base fee or the fee that a third party has advised that board that it will charge for a program under an agreement with the board.

A board will post its extended day base fee where it:

- Intends to operate an extended day program in the upcoming school year;
- Has not determined if it will either operate an extended day program or ensure the operation of third party program in the upcoming school year; or

- Intends to enter into a third party agreement in the upcoming school year but has not yet been advised by the third party with respect to the fee that would be charged for the program.

A board will post the fee for a FDK third party program where it has entered into an agreement with a third party that has advised the board as to its fees.

When posting fees, boards must note that the proposed fees are subject to change. Additionally, boards are required to clearly state that extended day programs or third party programs may not operate in the upcoming school year if they are non-viable (i.e. notice that program operation is subject to sufficient demand).

Collection of Information

For the 2012-13 school year and beyond, all boards must begin collecting information from the prescribed groups of parents pertaining to their interest and preferences with respect to extended day and/or third party programs by the first school day in January of the preceding school year (see 2010: EL12 for further detail). Under O. Reg. 221/11, this information is used to determine the viability of both extended day and third party programs.

Viability Determination

The viability threshold has been simplified from the previous regulatory provision. Under O. Reg. 221/11, an extended day or FDK third party program is not viable where: (a) the projected enrolment in the program is less than 20 pupils; and (b) a projected enrolment of 20 pupils cannot be reached by including up to 5 pupils who will be enrolled in Grade 1 or 2 in the school in the upcoming school year. (The use of older pupils to support viability is still only required where a school does not have an onsite third party operating a before- and/or after-school program for pupils in Grades 1 and 2).

For the 2012-13 school year and beyond, all boards must determine the viability of their extended day and/or third party programs by the day before the last school day in April of the preceding school year (see the 2010: EL12 memorandum for further detail).

For the 2011-12 school year, boards must submit to the Minister a list of the schools where extended day and/or third party programs are not viable, the information on which these conclusions were based and an affirmation the conclusions was reached in good faith by July 15. For the 2012-13 school year and beyond, this deadline is May 15 of the preceding school year.

Planning Extended Day and Third Party Programs

Consistent with O. Reg. 225/10, all boards must consider the information they collected from parents when they plan their extended day and/or FDK third party programs.

Posting Actual Fees and Program Information

For the 2011-12 school year, all boards must post the following information on their websites,

and communicate this information in writing to the relevant parents, by the last school day of the 2010-11 school year (see 2010: EL12 memorandum for further detail):

- Which of the board's schools will have extended day and/or third party programs in the upcoming school year;
- Which schools will not have extended day and/or third party programs in the upcoming school year because the board has determined such programs are not viable;
- The operating hours of extended day and/or third party programs;
- The times of day that the before and/or after school portions of the extended day and/or third party program will operate;
- The non-instructional days on which the extended day and/or third party programs will operate;
- The actual fees for extended day and/or third party programs and non-instructional day fees (where applicable);
- Whether the extended day and/or third party programs will include older pupils (e.g. grades 1 to 6);
- Information regarding how to apply for fee subsidies for extended day and/or third party programs; and
- Any other information that the board considers relevant.

Please note that for the 2012-13 school year and beyond, the above information must be posted by the day before the last day of April of the preceding school year.

B. Requirements for Extended Day Programs

For the 2011-12 school year, all boards are required to submit the following information pertaining to 2011-12 extended day programs by July 15, 2011:

- A list of the schools in which the board will operate extended day programs; and
- The calculations for extended day actual fees and actual non-instructional day fees (where applicable);

Please note that for the 2012-13 school year and beyond, the above information must be submitted by May 15 of the preceding school year.

C. Requirements for Third Party Programs

Provision of Additional Program Information

For the 2011-12 school year, by the day before the last day of the 2010-11 school year a board

must post on its website and communicate in writing to relevant parents that, if a planned third party program is cancelled, an extended day program or another third party program will be operated in the school but that the fees, days and times of operation may change.

Please note that for the 2012-13 school year and beyond, the above information must be posted by the day before the last day of April of the preceding school year.

Termination or Cessation of Third Party Programs or Agreements

If a board's agreement with a third party operator is terminated during the school year, or if a third party program ceases to operate during a school year, the board must ensure that, within seven days, a replacement program is in place for the remainder of the school year. The replacement program must operate during the same hours and on the same non-instructional days during the school year (where applicable) as the original program (there is no obligation to operate a replacement program during the summer). The replacement program may be operated by either a board, a not-for-profit third party or a municipality.

Use of For-Profit Third Parties

For the 2011-12 school year, where a board enters into an agreement with a for-profit third party, it must affirm to the Minister by July 15, 2011 that it had a pre-existing agreement in place with a for-profit operator at the time the regulation was filed, or that it made all reasonable efforts to find a not-for-profit or municipal operator and but was unable to do so.

For the 2012-13 and beyond, where a board enters into an agreement with a for-profit third party, it must affirm to the Minister by May 15 of the preceding school year that it had a pre-existing agreement in place with a for-profit operator at the time the regulation was filed, or that it adhered to the following process and was unable to locate a qualifying not-for-profit operator:

- After the first day of the preceding school year the board advertised for expressions of interest from not-for-profit operators for a period of at least 45 days:
 - (a) On the board's website;
 - (b) In a newspaper with provincial distribution for at least 5 days during the board's website posting period, with at least one of these days being within the first 10 days of the board's posting;
 - (c) On a publicly accessible website approved by the Minister (e.g. charityvillage.ca) for at least 10 days during the board's website posting period;
- The board must also communicate its notice of expressions of interest to the relevant CMSM/DSSAB on the day that the notice was posted on the board's website.

Agreements with for-profit operators are "grandparented", thus if a board had such an agreement in place at the time the regulation was filed, i.e. June 7, 2011. If a board entered into an agreement with a for-profit operator because it was unable to find a not-for-profit or municipal operator, the board may enter into successor agreements in consecutive years with the same for-

profit third party to operate a program at the relevant school.

In either case, a board is required to affirm to the Minister each year that an agreement with the for-profit operator has been in place since it was initially established. Should the for-profit operator cease to operate at that location, the board would be required to follow the applicable steps above in order to secure a not-for-profit operator, or to demonstrate that no qualifying not-for-profit operator could be found.

Submission of Information to the Minister

For the 2011-12 school year, all boards are required to submit the following information by July 15, 2011:

- A list of the schools in which the board will ensure the operation of a third party program in the upcoming school year;
- The name of the operator of the third party program at each school;
- The daily fees and non-instructional day fees (where applicable) that a third party has advised a board that it will charge;
- Affirmation that a third party program meets the requirements under the *Education Act*; and
- Affirmation that, if a board has entered into an agreement with a for-profit operator, it did so in compliance with the requirements set out in O. Reg. 221/11.

The above information can be entered in the Extended Day Fees Excel Workbook and the Confirmations, Declarations and Affirmations Form Required Under O.Reg 221/11.

Please note that for the 2012-13 school year and beyond, the above information is to be submitted by May 15 of the preceding school year.

3. SAFE SCHOOLS AND FDK

To align FDK with the safe schools provisions under Part XIII (Behaviour, Discipline and Safety) of the *Education Act*, the following provision has been added:

Principals' Delegation of Authority with respect to Board-Operated Extended Day Programs

Principals can now delegate their authority under Part XIII of the *Education Act*, in specified circumstances, to ECEs working in board-operated extended day programs and their supervisors. This ensures alignment and consistency between a principal's authority to delegate to ECEs in extended day programs and to other persons in the board during the regular school day and reflects the approach for the delegation of a principal's duties under s. 260.2 of the *Education Act*.

4. BROADER IMPLEMENTATION OF FULL-DAY KINDERGARTEN

In addition to the revisions to the FDEKLP operational framework, the following regulatory amendments were made to enable the implementation of FDK in year 3.

Operation of Full-Day JK/K

Schedule 1 of O.Reg. 224/10 (Full Day Junior Kindergarten and Kindergarten) had been amended to include the schools in which boards are required to operate full-day JK/K classes in the 2012-13 school year. This is in addition to the schools that became subject to the duty to operate full-day JK/K in 2010-11 and 2011-12. Further regulatory amendments would address recent work on selection of year 4 and 5 sites.

Operation of Extended Day Programs and/or Third Party Programs

Schedule 1 of O. Reg. 221/11 (Extended Day and Third Party Programs) identifies the schools in which boards are required to operate extended day programs or ensure the operation of a FDK third party program in the 2012-13 school year. This is in addition to the schools that became subject to the duty to operate extended day programs in 2010-11 and 2011-12. Further regulatory amendments would address recent work on selection of year 4 and 5 sites.

The legislative and regulatory amendments and revised guidelines outlined in this memorandum create a flexible framework for the future stages of implementation of FDK and help ensure optimal delivery of before- and/or after school programs for JK/K pupils. As always, thank you for your ongoing hard work and commitment to this initiative.

Sincerely,



Jim Grieve

Assistant Deputy Minister

Copy: Consolidated Municipal Service Managers/District Social Services Administration
Boards Chief Administrative Officers
Early Learning Implementation Advisory Group
Ministry of Education, Executive Team

Appendix A: Fact Sheet Reporting to the Principal

Requirements for Employees and Contractors of Third Party Operators of before- and/or after-school programs supporting the Full-Day Early Learning Kindergarten Program

Under O. Reg. 221/11, when employees and contractors of third party operators are required to report to a school's principal when they become aware that a pupil of a school of the board may have engaged in an activity for which suspension or expulsion must be considered, these employees and contractors must report the matter to the school's principal. This fact sheet provides an overview of this requirement.

What am I required to do?

- You must report serious student incidents to the principal.
- These incidents could include students in any grade, not just students in junior kindergarten/kindergarten.

What types of incidents am I required to report?

- You must report any incidents which could lead to a student being suspended or expelled.

Incidents which a principal must consider for *suspension* include:

- Uttering a threat to inflict serious bodily harm on another person;
- Possessing alcohol or illegal drugs;
- Being under the influence of alcohol;
- Swearing at a teacher or at another person in a position of authority;
- Committing an act of vandalism that causes extensive damage to school property at the pupil's school or to property located on the premises of the pupil's school;
- Bullying; and
- Any other activities identified in school board policy (ask the principal to explain what they are).

Incidents which a principal must consider for *expulsion* include:

- Possessing a weapon, including possessing a fire-arm;
- Using a weapon to cause or to threaten bodily harm to another person;
- Committing physical assault on another person that causes bodily harm requiring treatment by a medical practitioner;
- Committing sexual assault;
- Trafficking in weapons or in illegal drugs;

- Committing robbery;
- Giving alcohol to a minor; and
- Any other activities identified in school board policy (ask the principal to explain what they are).

These activities can lead to suspension or expulsion even if they do not occur on the school premises. If these activities happen on the way to and from school, going to and from school related activities, or in situations where the activity will have a negative impact on school climate, they must be reported.

How do I report?

- Tell the principal about the incident, as soon as reasonably possible.
- Confirm all reports to the principal in writing using the Safe Schools Incident Reporting Form – Part I (provided to you by the principal or your employer).

What happens when I report an incident to the principal?

- The principal will provide a written acknowledgement (Safe Schools Incident Reporting form – Part II) that your report was received and whether he or she has taken any action regarding the incident you reported.

Who else has to report?

- Vice principals
- Teachers and educational assistants
- All non-teaching staff, such as those involved in social work, child and youth work, psychology and other related disciplines
- Administrative and custodial staff
- Bus drivers

Who do I contact if I have questions?

- The school principal
- Your employer

Appendix B: Timelines

Timelines for the 2011-12 School Year

June – by the last day of the 2010-11 school year, boards must:

- Determine the viability of its extended day and/or third party programs;
- Determine actual extended day fees, where a board intended to operate extended day programs;
- Post the following information on its website and provide the information in writing to parents:
 - Which of the board's schools will have extended day and/or third party programs in the upcoming school year;
 - The minutes of operation of the extended day and/or third party programs;
 - The times of day that the before and/or after school portions of the extended day and/or third party program will operate;
 - Whether the extended day and/or third party programs will be operated for older pupils (e.g. grades 1 to 6);
 - The non-instructional days, if any, on which the extended day and/or third party programs will operate;
 - Information regarding fee subsidies for extended day and/or third party programs;
 - Notice that if a planned third party program is cancelled, that an extended day program or another third party program will be operated in the school but that the fees, days and times of operation may change; and
 - Any other information that the board considers relevant.

July – by July 15, 2011, boards are required to submit the following to the Minister:

- A list of the schools in which the board will operate extended day programs in the upcoming school year and the calculations for extended day actual fees and actual non-instructional day fees (where applicable);
- A list of the schools in which the board will ensure the operation of a third party program in the upcoming school year, the name of the third party operating at the school, and the fees that the third party has advised the board it will charge;
- A list of the schools where the board has determined that extended day and/or third party programs are not viable, as well as the information on which this conclusion was based and an affirmation that this conclusion was reached in good faith;
- Affirmation that, where a board has a transitional third party agreement, it complied with the prescribed requirements;

- Affirmation that any third party programs meet the requirements under the *Education Act*; and
- Affirmation that, if a board has entered into an agreement with a for-profit operator, it did so in compliance with the requirements set out in O. Reg. 221/11.

Timelines for the 2012-13 School Year and Beyond

January – by the first school day in January of the preceding school year, a board must:

- Determine its extended day base fees;
- Post extended day base fees and/or proposed third party fees on its website and communicate fees to parents;
- Post on its website and communicate in writing to the relevant parents that the proposed fees are subject to change and that boards will provide notice that they may not operate an extended day program or ensure the operation of a third party program in the upcoming school year if such programs are non-viable.
- Begin collecting information from parents regarding their interest and preferences with respect to extended day and/or third party programs.

April -- by the day before the last day of April of the preceding school year, a board must:

- Determine the viability of its extended day and/or third party programs;
- Determine actual extended day fees, where a board intended to operate extended day programs;
- Post the following information on its website and provide the information in writing to parents:
 - Which of the board's schools will have extended day and/or third party programs in the upcoming school year;
 - The minutes of operation of the extended day and/or third party programs;
 - The times of day that the before and/or after school portions of the extended day and/or third party program will operate;
 - Whether the extended day and/or third party programs will be operated for older pupils (e.g. grades 1 to 6);
 - The non-instructional days, if any, on which the extended day and/or third party programs will operate;
 - Information regarding fee subsidies for extended day and/or third party programs;
 - Notice that if a planned third party program is cancelled, that an extended day program or another third party program will be operated in the school but that the fees, days and times of operation may change; and
 - Any other information that the board considers relevant.

May – by May 15 of the preceding school year, every board must submit the following to the

Minister:

- A list of the schools in which the board will operate extended day programs in the upcoming school year and the calculations for extended day actual fees and actual non-instructional day fees (where applicable);
- A list of the schools in which the board will ensure the operation of a third party program in the upcoming school year, the name of the third party operating at the school, and the fees that the third party has advised the board it will charge;
- A list of the schools where the board has determined that extended day and/or third party programs are not viable, as well as the information on which this conclusion was based and an affirmation that this conclusion was reached in good faith.
- Affirmation that any third party programs meet the requirements under the *Education Act*;
- Affirmation that, if a board has entered into an agreement with a for-profit operator, it did so in compliance with the requirements set out in O. Reg. 221/11.

September – after the first day of the preceding school year, a board that has been unable to locate a qualifying not-for-profit operator must advertise on its website for expressions of interest from not-for-profit operators for a period of at least 45 days:

- On the board's website;
- In a newspaper with provincial distribution for at least 5 days during the board's website posting period, with at least one of these days being within the first 10 days of the board's posting;
- On a publicly accessible website approved by the Minister (e.g. charityvillage.ca) for at least 10 days during the board's website posting period; and
- In writing to the relevant CMSM/DSSAB on the day that the notice was posted on the board's website.

Appendix C: Ministry of Education Regional Officers

Barrie Regional Office

Ana Marie Prokopich

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Sudbury/North Bay Regional Office

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Toronto and Area Regional Office

Dolores Cascone (English Language Boards)

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Appendix D: Early Learning and Child Care Implementation Branch Child Care Advisors

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*Regulatory Amendments for Full-Day Junior Kindergarten and Kindergarten and
Extended Day and Third Party Programs*

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