Ontario Ministry of Education amends public school teacher hiring practices

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A new Policy/Program Memorandum (PPM) from Ontario's Ministry of Education will allow schools to hire teachers based on merit, diversity and the needs of the school, rather than by seniority.

On Oct. 15, 2020, the Ontario Ministry of Education announced its plan to revoke Ontario Regulation 247/12 and to introduce a new PPM on teacher hiring practices for publicly-funded school boards in the province. Regulation 247/12 was revoked effective Oct. 29, 2020. An interim policy is now in place to guide school boards as they develop policies to conform to this new ministerial directive.

Background

Since 2012, Ontario's teacher hiring practices have been largely dictated by Regulation 247/12. The regulation required adherence to procedures that generally prioritize seniority in hiring. For example, when filling long-term assignments of thirty days or less, boards were required to offer the position to one of the five most senior qualified occasional teachers from the long-term occasional teachers list, without an interview.

In 2019, the Ministry of Education consulted with various stakeholders to solicit feedback on Regulation 274/12. Multiple associations, including the Ontario Principals' Council, identified hiring for merit and diversity rather than seniority as a key area for improvement, citing concerns about their inability to hire the best teacher for the position under the existing Regulation. The new Interim Policy and PPM emerged out of these consultations and respond to several concerns identified during the process.

New interim policy and PPM

The Ministry of Education will issue a new hiring PPM in late fall 2020 to provide clear processes and principles that boards can use to develop and finalize their teacher hiring policies. The PPM will include the following principles:

- Promoting diversity, equity and human rights;
- Qualifications and merit;

- Enhanced teacher employment mobility;
- Fair and transparent processes; and
- Monitoring and evaluation.

With the revocation of Regulation 274/12, an Interim Policy for school board hiring practices has taken effect, guiding hiring until school boards develop their own teacher hiring policies consistent with the PPM to be issued in the near future. The Interim Policy provides guidance and introduces changes in the following areas:

Fair hiring process

When selecting teachers for interviews for positions where the job is advertised, boards should consider diversity and equity, merit and additional qualifications and experience, and early-career educators where applicants meet the mandatory requirements of the position.

The Interim Policy says the board should include **one** teacher who has the most seniority on the board's long-term occasional teachers list among the teachers interviewed.

Boards should consider using multiple sources and methods to evaluate teachers during the interview process, and apply the same interview and assessment process to everyone applying for a position (taking into account any accommodation requirements). Boards should also ensure diversity on hiring panels to include individuals who reflect the needs and interests of communities in the school that have been historically under-represented in decision making.

Qualifications and merit

In assigning or appointing a person to a teaching position, boards should:

- Consider merit to include formal qualifications and credentials, as well as professional skills and aptitudes;
- Require hiring panels to review additional qualifications, including lived experiences, skillsets, backgrounds and varied work experience that may be considered valuable to the position; and
- Maintain due regard for the provision of the best possible program as determined by the principal, with evidence of:
    - teaching commitment to students;
    - experience/time spent in a particular school;
    - suitability for a particular assignment; and
    - responsiveness to local needs based on clearly-defined criteria, including qualifications.

Promoting equity and diversity

Equity and diversity are critical factors that can be applied in the interview and hiring process, and boards should consider whether special programs under the Ontario *Human Rights Code* may be implemented to address the effects of systemic discrimination on identified groups.

Enhanced teacher employment mobility

Boards must grant an interview to a relocating permanent teacher who applies to be placed on the long-term occasional teachers list if that teacher is currently, or has been within the last calendar year, employed by a publicly funded school board in Ontario.

Early-career educators

Early-career educators are acknowledged as important to long-term succession planning and should be considered during candidate selection.

Conflict of interest

Boards must avoid any conflicts of interest, including nepotism and favouritism, throughout the hiring process. No board employee may participate in or influence the outcome of the hiring of a candidate with whom that employee has a "relationship." "Relationship" is defined to mean:

- Family (whether related by blood, adoption, marriage, or common-law relationship);
- An intimate and/or financial relationship in the last five years; or
- Past or present interests in connection with a candidate that would conflict with the employee's duties.

Notably, the Interim Policy must be applied in accordance with existing collective agreement obligations, and the terms of the collective agreement will prevail in the event of a conflict between the two. Similarly, nothing in the Interim Policy can be interpreted to interfere with or control the denominational aspects of a Roman Catholic school board or of a Protestant separate school board, or the linguistic or cultural aspects of a French-language district school board.

Takeaways for school boards

The revocation of Regulation 247/12 and the implementation of the new Interim Policy on teacher hiring will provide boards with greater flexibility to hire the best, most qualified candidates based on the unique needs of schools and their communities. This heightened flexibility is particularly crucial now at a time when many schools are facing increased staffing challenges as a result of the COVID-19 pandemic.

BLG will continue to monitor changes in teacher hiring practices as the new hiring PPM is unveiled. Publicly-funded school boards and school authorities have until **Dec. 31, 2020** to develop and post their own teacher hiring policies, conforming to the PPM and existing collective agreements.

Lawyers from BLG's Labour and Employment and Education groups can help publicly-funded school boards in Ontario prepare for changes due to the revocation of Regulation 247/12. Reach out to your current lawyer, or any of the key contacts below, for assistance.

By

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