Exercising provincial interest in education

June 06, 2025

It goes without saying that Ontario has an “interest in education.” The more important question is to what extent the province can use this broad interest to exert control over local board governance, pursuant to the *Education Act* and its regulations.

One such tool at Ontario’s disposal is *O Reg 43/10: Provincial Interest in Education* (the “Regulation”), which confers broad powers on Ontario to insert itself into the affairs of school boards.

How does the Regulation work?

The Regulation allows the Minister of Education and Training (the “Minister”) to conduct a review of a board’s performance if it has concerns with one of the following issues:

1. The academic achievement of students or classes;
2. The health and safety of students or classes, which may be indicated by attendance records;
3. The co-operation among the board’s members, and between the board and the board’s director of education in providing good governance;
4. The performance of the board or the board’s director of education in carrying out their respective duties under the Education Act; and
5. The level of involvement by parents of students.

These criteria were crafted broadly, allowing the province to conduct a review with respect to a variety of matters — essentially, it can review anything within the purview of a board’s authority under the *Education Act*.

A review is conducted by an individual or committee appointed by the Minister, or a committee comprised of officials appointed by the board and other persons appointed by the Minister. The review culminates in a report that describes the board’s performance and, where appropriate, recommends measures to improve the board’s performance.

After the board is provided an opportunity to comment on the draft report, a final version is sent to the Minister. The Minister then provides comments and recommendations to the Board.

The Regulation doesn't explicitly *require* a board to implement the Minister's recommendations. Nevertheless, the Regulation makes it difficult for a board to ignore the province's comments.

The Regulation requires a board to give "full and fair consideration" of the report and the Minister's comments, taking them into account when carrying out its duties. It is unclear exactly what this means. Can a board consider the recommendations, take them into account, and ultimately decide to reject them? Given the general wording of the Regulation, yes. However, the board should be prepared to explain this decision.

At its discretion, the Minister can require a board to submit a report to the Minister regarding:

> **(a)** how the board complied with its duties under the Regulation;
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> **(b)** steps taken to implement the recommendations;
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> **(c)** the basis of the board's decisions with respect to implementing the recommendations; and
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> **(d)** any improvements that it has observed or anticipates relevant to the review.

While it does not create binding recommendations, the Regulation creates room for remedial action or consequences in the event of any wrongdoing by a school board.

Other tools at Ontario's disposal

The Regulation is not the only tool the province can use to drive local governance.

If the province has concerns with a board's performance, section 8 of the *Education Act* allows the Minister to issue policies and guidelines regarding a variety of subjects. For example, in 2023, the *Better Schools and Student Outcomes Act*, 2023, SO 2023, c 11 amended section 8 to allow the Minister to create policies and guidelines regarding training to be completed by board members, directors of education, supervisory officers, and superintendents.

With this new statutory authority, the Minister has worked with the Ontario Education Services Corporation to create a training program for school board trustees, including six mandatory training modules.

In the Regulation, the Minister's enforcement power is limited to requiring boards to prepare a report explaining why they did not comply with its recommendations. In contrast, the statutory amendment explicitly allows the Minister to "require" those individuals to comply with the training guidelines, leaving the door open to enforcement through direct action.

In tandem, the legislation and regulations give the Minister broad powers to: (a) identify an issue it is concerned about, and (b) create binding guidelines to address the issue.

Announcement

On May 29, 2025 the Minister announced that further legislation for school board oversight will be tabled in the fall. It is anticipated to include requirements for expense policies.

School boards would benefit from reviewing all reports and their recommendations, and where reasonable taking proactive measures to ensure their processes are meeting the expectations communicated.

Contact us

If you have any questions about how your school board may consider recommendations made by the province, please contact John-Paul Alexandrowicz and Melissa Eldridge, the Co-Chairs of BLG's national School Boards practice.

By

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