

## **EDUCATION AMENDMENT ACT 2008**

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**BERMUDA**

**2008 : 37**

### **EDUCATION AMENDMENT ACT 2008**

Date of Assent: 8 August 2008

Operative Date: 8 August 2008 (except Section 13: 1 September 2010)

WHEREAS it is expedient to amend the Education Act 1996;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

#### **Short title**

1 This Act, which amends the Education Act 1996 (the "principal Act"), may be cited as the Education Amendment Act 2008.

#### **Amends section 2**

- 2 (1) Section 2(1) of the principal Act is amended by—
- (a) repealing the definition "Chief Education Officer"; and
  - (b) inserting the following definitions in the appropriate alphabetical order—
    - "Commissioner of Education" means the Commissioner of Education referred to in section 5;
    - "principal" means the person who has overall leadership and responsibility for the provision of education at a school;

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"suitable education" in relation to any child, means education that, in the opinion of the Minister, is suitable for the child having regard to—

- (a) the child's aptitude, ability and special needs (including the needs of those with learning difficulties and those who are gifted);
- (b) the curriculum and method of instruction appropriate to that child;
- (c) the most appropriate and least restrictive environment that will meet the educational needs of the child; and
- (d) the availability of resources;".

### **Repeals and replaces sections 3 and 4**

3 Sections 3 and 4 of the principal Act are repealed and replaced by the following—

#### **“Appointment of Board of Education**

3 (1) The Minister shall, by notice published in the Gazette, appoint a board to be called the Board of Education which shall consist of 15 members, as follows—

- (a) 5 persons who are representative of schools, other than senior schools, in different areas of Bermuda;
- (b) 2 persons, one from the Berkeley Institute and one from CedarBridge Academy, appointed after consultation with their boards of governors;
- (c) 4 persons, one from the Association of School Principals, one from the Bermuda Public Services Union and two from the Bermuda Union of Teachers, appointed after consultation with each of them;
- (d) 2 persons appointed after consultation with organizations representing the business community as determined by the Minister; and
- (e) 2 persons who are representative of parents or the education community, appointed after consultation with any national organization representing parent-teacher associations;

(2) The Commissioner of Education and a person to be chosen by the Bermuda College shall receive notices of meetings

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of the Board and they shall be entitled to attend meetings and take part in proceedings but they may not vote.

(3) The Minister shall appoint one of the members to be Chairman of the Board.

(4) Subject to subsection (5), each member shall be appointed for a term of 3 years unless their appointment is terminated earlier for cause.

(5) The initial term of appointment for members shall be as follows—

- (a) 3 years in the case of members appointed under subsection (1)(a);
- (b) 2 years in the case of members appointed under subsections (1)(b) and (c); and
- (c) 1 year in the case of members appointed under subsections (1)(d) and (e).

(6) The term of appointments shall begin on September 1 of the relevant year of appointment.

(7) The provisions set out in Schedule 1 apply to the Board and its members.

### **Functions of Board of Education**

4 (1) The functions of the Board are to—

- (a) make recommendations to the Minister regarding the evaluation of the Commissioner of Education and directors of the Department;
- (b) make recommendations to the Public Service Commission regarding the appointment of the Commissioner of Education, directors of the Department and principals;
- (c) make recommendations to the Minister regarding educational policy;
- (d) make recommendations to the Minister regarding a statement of vision, values and strategy for education;
- (e) make recommendations to the Minister regarding its budget, the budget for schools and the allocation, within the budget for schools, of funds for individual schools;

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- (f) evaluate, in conjunction with the Commissioner of Education, the performance of schools and boards of governors;
  - (g) make recommendations to the Minister regarding the curriculum for schools;
  - (h) make recommendations to the Minister regarding methods for assessing the performance of the educational system and monitoring the implementation of plans for improving the system;
  - (i) make recommendations to the Minister for the design and implementation of an effective risk management strategy for schools, including policies and measures to control risks relating to the provision of education, security of persons and property and health and safety.
  - (j) provide monthly reports to the Minister on its activities.
- (2) The Board shall have such other functions as may be assigned to it by this Act or any other enactment.

### **Amends section 5**

4 Section 5 of the principal Act is amended—

- (a) in subsection (2), by deleting the word “continue”, and the word “to” at the beginning of paragraphs (a) and (b); and by replacing the words “Chief Education Officer” with the words “Commissioner of Education”;
- (b) by adding after subsection (2) the following—
  - “(2A) The Commissioner of Education shall be the Head of the Department.
  - (2B) The Commissioner of Education shall—
    - (a) supervise the activities, and evaluate the performance, of directors of the Department;
    - (b) be responsible within the Department for human resources, finance, information technology and communications;
    - (c) prepare for the Board a draft statement of vision, values and strategy for education to assist the Board in making recommendations to the Minister;

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- (d) liaise with boards of governors and facilitate communication and cooperation among them, and between them and the Department;
  - (e) create methods and protocols for the sharing of best practices among boards of governors, principals and teachers;
  - (f) prepare material for the Board of Education and the boards of governors on curriculum for schools;
  - (h) be responsible for the assessment, on an ongoing basis, of the performance of the educational system and implementation of plans for improving the system;
  - (i) be responsible for the development of the curriculum for schools;
  - (j) develop pay scales and an incentive plan for principals and teachers; and
  - (k) be responsible for negotiating with unions on matters concerning education.”; and
- (c) in subsection (3), by deleting the words “Permanent Secretary” wherever they appear and replacing them with the words “Head of the Department”.

### **Amends section 8**

5 Section 8 of the principal Act is amended—

- (a) by repealing subsection (2)(b); and
- (b) in subsection (2I), by replacing the words “Chief Education Officer” with the words “Commissioner of Education” in the definition “counselling programme” and in the definition “Manager”.

### **Amends section 9**

6 Section 9 of the principal Act is amended by adding next after the word “education” the word “only”.

### **Amends section 18 and Schedule 2**

7 Section 18(2) of the principal Act is amended by replacing the word “Schedule” with the words “Schedule 2”. The renumbered Schedule 2 is amended by deleting the words “Chief Education Officer” wherever

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they appear and replacing them with the words “Commissioner of Education”.

### **Inserts new sections**

8 The principal Act is amended by inserting the following next after section 25—

#### **“School based accountability**

25A (1) The Commissioner of Education, in consultation with the Board, shall design and implement an accountability system that sets annual performance standards for schools in order to measure the performance of the students in each school.

(2) The accountability system shall—

- (a) focus on student performance in English/language arts/reading, mathematics, science and social studies, from primary 3 level through to senior 2 level, inclusive;
- (b) set minimum performance standards for schools generally;
- (c) set levels of growth in performance expected for each school;
- (d) make principals and teachers accountable for the educational growth of students in their schools.

(3) Notwithstanding subsection (2)(a), the Commissioner of Education may extend the accountability system to include subjects and grades other than those mentioned in that subsection.

#### **Performance recognition**

25B Where in any school year a school exceeds its expected level of growth by a margin to be determined by the Commissioner of Education, in consultation with the Board, and communicated to the principal and teachers of that school in advance of the school year, any or all of the principal and teachers of that school shall be eligible for financial awards in amounts, and in accordance with guidelines, established by the Commissioner of Education in consultation with the Board.

#### **Low performing schools**

25C (1) The Commissioner of Education, in consultation with the Board, shall design and implement a procedure to identify low performing schools on an annual basis.

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(2) Where a school has been identified as a low performing school, the manager of the school, in consultation with the principal and teachers of the school, shall prepare and implement a plan for improvement of the school, and the plan shall be submitted to the Commissioner of Education for the Commissioner's approval.

(3) Where a school has been identified as a low performing school for two consecutive school years, the Commissioner of Education shall take measures aimed at the improvement of student performance at the school. Measures may include provision of additional resources, adoption of new programs or changes in the principal or teaching staff.

(4) For the purposes of this section, a "low performing school" in any school year is one that fails to meet the minimum performance standards or the expected level of growth referred to in section 25A(2), or one in which a majority of the students in the school perform below grade level according to the curriculum standards referred to in section 25F, in that school year.

### **Students at risk of academic failure**

25D (1) Every school shall identify each of its students who is at risk of academic failure.

(2) Identification shall occur as early as possible and may be based on grades, observations, curriculum-based assessment and other factors that impact student performance as considered appropriate by principals and teachers at any time, without having to wait for testing at the end of a school year.

(3) As soon as a student is identified as being at risk of academic failure, and at the beginning of every school year while the student remains at risk, the principal shall ensure that an individual education plan for academic improvement, with focused intervention and performance benchmarks, is developed for that student.

(4) In this section, a "student who is at risk of academic failure" means a student who is not at least at grade level according to the curriculum standards referred to in section 25F.

### **Academic performance standards**

25E (1) The Commissioner of Education shall develop academic performance standards for students from preschool level through senior school level.

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(2) The standards shall, where possible, align with international standards for measuring the academic performance of students.

### **Curriculum standards**

25F (1) The Commissioner of Education, in consultation with the Board, shall develop curriculum standards from the preschool level through to the senior school level, inclusive.

- (2) The development of the standards shall include—
- (a) provision for periodic evaluation of the standards;
  - (b) identification of persons or groups affected by the standards;
  - (c) provision of timelines for evaluations of the various parts of the curriculum;
  - (d) development of methods for assessing the standards;
  - (e) provision for benchmarking the standards against international curriculum standards; and
  - (f) provision for review of the standards every 5 years.

### **Testing of students**

25G (1) The Commissioner of Education shall develop tests for assessing on an annual basis the performance of students from primary 3 level through to senior 2 level, inclusive, in English/language arts/reading, mathematics, science, and social studies.

(2) Tests shall be benchmarked against international assessment standards where possible.

(3) The Commissioner of Education shall develop, or otherwise provide, formative and diagnostic tests, aligned with annual tests, for use during the year to assist in the delivery of instruction.

(4) In order to ensure proper administration of annual tests, the Commissioner of Education, in consultation with the Board, shall develop guidelines for the appropriate actions of persons involved in administering tests, including appropriate disciplinary measures for breach of the guidelines. Guidelines are not statutory instruments within the meaning of the Statutory Instruments Act 1977.



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(5) Notwithstanding subsection (1), the Commissioner of Education may develop tests for assessing subjects and grades other than those mentioned in that subsection.”.

### **Amends section 29**

9 Section 29 of the principal Act is amended by replacing the words “Chief Education Officer” with the words “Commissioner of Education”.

### **Repeals and replaces section 30**

10 Section 30 of the principal Act is repealed and replaced by the following—

#### **“Persons authorized to inspect schools**

30 The Minister, the Permanent Secretary, the Commissioner of Education or any officer of the Department authorized by the Commissioner of Education, and any person authorized by the Board, may, at all reasonable hours, visit or inspect any aided or maintained school.”.

### **Amends section 32**

11 Section 32(1) of the principal Act is amended by—

- (a) inserting next after the word “Minister” in the three places where it occurs the words “, Board or Commissioner of Education”; and
- (b) replacing the words “afford him” with the word “provide”.

### **Amends sections 33 to 37 and the heading immediately before section 33**

12 Sections 33 to 37 and the heading immediately before section 33 are amended by replacing the words “Prospect Senior School” wherever they occur with the words “CedarBridge Academy”.

### **Amends section 40**

13 Section 40 of the principal Act is amended—

- (a) in subsection (1), by replacing the words “sixteen years” in the two places where they occur with the words “eighteen years, unless the child has met the requirements for graduation from senior school at an earlier age”; and
- (b) in subsection (4), by replacing the word “fifteen” with the word “sixteen”.

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### **Repeals section 41**

14 Section 41 is repealed.

### **Amends section 50**

15 Section 50(1) of the principal Act is amended by deleting the long dash and—

(a) in paragraph (a), by deleting the words “(a)” and “; and”;  
and

(b) by deleting paragraph (b).

### **Amends section 51**

16 Section 51(6) of the principal Act is amended by deleting the long dash in the introductory words, paragraph (a) and the words “(b)”.

### **Amends section 60**

17 Section 60(1) and (2) of the principal Act are amended by deleting the words “Chief Education Officer” wherever they occur and replacing them with the words “Commissioner of Education”.

### **Inserts new schedule**

18 The following Schedule is inserted next after section 74 of the principal Act—

#### **“SCHEDULE 1 (section 3)**

1 A person may not be appointed as a member of the Board for more than two consecutive terms.

2 (1) A failure of a member of the Board to attend three consecutive meetings of the Board, without reasonable excuse, is cause for termination of their appointment.

(2) If a member of the Board becomes, in the opinion of the Minister, unfit to continue in office or incapable of performing their duties, the Minister shall forthwith declare their office vacant, and shall notify the fact in such manner as the Minister thinks fit, and thereupon the office shall become vacant.

(3) A member of the Board may at any time resign by instrument in writing addressed to the Minister, and upon the date of receipt by the Minister of the instrument, the member ceases to be a member.

3 (1) The Minister may, in accordance with section 3 appoint a person to fill a vacancy in the membership of the Board and the person so appointed shall hold office for the unexpired term of the former member.

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(2) Any changes in the membership of the Board shall be published in the Gazette.

(3) The powers of the Board may be exercised notwithstanding any vacancy in their number.

4 The members of the Board may from time to time appoint one of their number (other than the Chairman) as Deputy Chairman of the Board.

5 (1) The Board shall meet at least monthly and meetings shall be held at such places, on such dates and at such times as the Board considers necessary or expedient for the transaction of the business of the Board.

6 (1) The Chairman may, at any time, call a meeting of the Board and shall call a special meeting within fourteen days of receiving—

(a) a request in writing signed by any three members; or

(b) a direction in writing signed by the Minister.

(2) A notice convening a special meeting of the Board shall state the purpose for which the special meeting is being convened.

7 Notice of the place, date and time of meetings shall be given in writing, to each member of the Board, at least forty-eight hours before the time fixed for such meeting. Notice shall be given in the same manner to the persons referred to in section 3(2) of the Act.

8 (1) The Chairman, or in his or her absence the Deputy Chairman, shall preside at a meeting of the Board.

(2) In the absence of the Chairman or Deputy Chairman, or in the case of the inability to act of the Chairman or Deputy Chairman, the members of the Board present and constituting a quorum shall elect one of their number to preside at that meeting.

9 The quorum of the Board at any meeting is the majority of the members of the Board.

10 The decisions of the Board shall be by a majority of the votes; and in any case in which the voting is equal, the Chairman, Deputy Chairman or other member presiding at the meeting has, in addition to an original vote, a second or casting vote.

11 (1) Minutes of every meeting of the Board shall be kept by such person as the Board appoints for the purpose. The minutes must be confirmed by the Board at its next meeting.

(2) A certified copy of the confirmed minutes of each meeting shall be forwarded to the Minister within fourteen days after the meeting at which they were confirmed.

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12 (1) The Board may appoint a committee for any of the purposes of the Board, and delegate any of its functions to such a committee with or without restrictions or conditions.

(2) The number of members of a committee appointed under this paragraph and their term of office shall be fixed by the Board.

(3) The Board shall appoint one of its members to be chairman of the committee.

(4) A committee appointed under this paragraph may include persons who are not members of the Board, but the chairman and at least one half of the other members of every committee must be members of the Board.

13 (1) A member of the Board who is in any way directly or indirectly interested in any matter which falls to be considered by the Board shall disclose the nature of their interest at a meeting of the Board, and the disclosure shall be recorded in the minutes of the meeting.

(2) The member shall not take part in any deliberation or decision with respect to the matter if the Board decides that the interest in question might prejudicially affect the member's consideration of the matter.

(3) For the purposes of this paragraph, a notice given by a member at a meeting to the effect that they are a member of a specified body corporate or firm and are to be regarded as interested in any matter concerning that body or firm which falls to be considered after the date of the notice shall be sufficient disclosure of their interest.

14 Fees shall be paid to members of the Board in accordance with the Government Authorities (Fees) Act 1971.”.

### **Replaces heading to Schedule**

19 The heading of the Schedule to the principal Act is repealed and replaced by the following—

## **“SCHEDULE 2 (section 18)”**

### **Commencement**

20 Section 13 of this Act comes into operation on a day to be appointed by the Minister of Education by Notice published in the Gazette.

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