



File no. S 79991  
Nanaimo Registry

*IN THE SUPREME COURT OF BRITISH COLUMBIA*

BETWEEN:

CANDICE SERVATIUS

Petitioner

AND:

SCHOOL DISTRICT 70 (ALBERNI)

Respondent

**AFFIDAVIT OF CANDICE SERVATIUS**

I, Candice Servatius, of the Town of Port Alberni, homemaker, SWEAR THAT:

1. I have personal knowledge of the matters and facts hereinafter deposed to by me, except where same are stated to be based upon information and belief, in which cases I believe them to be true.

The Petitioner

2. I am a life-long resident of Port Alberni, B.C. I am the mother of two children who attend John Howitt Elementary School ("JHES") in Port Alberni, B.C. My oldest child is now in grade ■, and my youngest child is now in grade ■, for the 2016-17 school year.

The Respondent

3. School District 70 oversees a total of 11 public schools in Port Alberni and the surrounding area, including JHES. The Superintendent of Schools for School District 70 is Greg Smyth.

4. The Trustees of School District 70 Board of Education are Pam Craig (Board Chair), Pat Dahlquist, Gurmail Aujla, Rosemarie Buchanan, Larry Ransom, John Bennie, and Jane Jones. Pursuant to s. 65(1) of the *School Act*, RSBC 1996, c 412 (attached as **Exhibit “A”** to this affidavit), the Board of Education is a corporation.

5. The *School Act* states, in subsection 76(1) and (2), that:

All schools and Provincial schools must be conducted on strictly secular and non-sectarian principles. The highest morality must be inculcated, but no religious dogma or creed is to be taught in a school or Provincial school.

Relevant Background

6. On September 15, 2015 I received a letter (the “Parent Letter”) (attached as **Exhibit “B”** to this affidavit), dated September 14, 2015 from JHES principal, Stacey Manson. The Parent Letter had been sent home with my son’s grade three class. The Parent Letter stated that Sherri Cook, the JHES Nuu-chah-nulth Education Worker would be hosting a “Traditional Nuu-chah-nulth Classroom/Student Cleansing” (the “Cleansing Ritual”) in the classroom. The Cleansing Ritual was to be performed by a “Nuu-chah-nulth Member”. The letter did not provide a date for when the Cleansing Ritual would occur.

7. The Parent Letter described specific beliefs of the Nuu-chah-nulth, such as the belief that “everything is one, all is connected” and the belief that “everything has a spirit.” In accordance with these beliefs, the Parent Letter described in detail how the cleansing ritual would “cleanse” the classroom of “energy” and cleanse the students’ “spirits.” The Parent Letter implied that until students were “cleansed” they could not engage in new, positive experiences. The Parent Letter further stated that without this cleansing, the classroom and even the furniture would harbour negative “energy” and would not be safe until the “energy” was “released.” The Parent Letter detailed that each student would participate in the ritual by

holding onto a cedar branch while having “smoke from Sage fanned over [their] body and spirit.” This part of the Cleansing Ritual was identified as “Smudging.” The Parent Letter claimed that the Cleansing Ritual was merely a means to learn about “culture and history”.

8. I was concerned about the explicitly religious nature of the Cleansing Ritual. I decided to attend at JHES the next day to discuss my concerns with JHES staff. When I arrived at JHES on the afternoon of September 16, I was shocked to learn that the Cleansing Ritual had already taken place in my son’s classroom. I was further shocked to discover that a Cleansing Ritual had also occurred in my daughter’s grade five class, despite no letter having been sent home or any other notification being issued by JHES.
9. After my children and I arrived home on September 16, my daughter told me that she had been coerced by her teacher to participate in the Cleansing Ritual. My daughter described to me how uncomfortable she felt about the Cleansing Ritual, and how she had told her teacher that she did not want to participate. The teacher told my daughter that “it would be rude” if she did not participate in the Cleansing Ritual, and that “all students are required to participate”. My daughter was unwillingly subjected to being fanned by smoke, and she was told that her “spirit” needed to be “cleaned” of negative “energies.” My daughter received a clear message, from adults who are in a position of trust, that her own religious beliefs were unworthy of respect, and that if she refused to participate in a ritual of a different religion she was being “rude”. My daughter experienced anxiety, shame and confusion as a result of being forced to participate in a religious ritual that conflicted with her own religious convictions.
10. Following the events of September 16, I called Greg Smyth, Superintendent of Schools for School District 70 to express my concerns. I asked Mr. Smyth about what policies and procedures JHES was relying on when it allowed the Cleansing Ritual to take place. I also

asked why I had not been properly notified, and allowed the opportunity to either provide my consent or give instructions that my children not participate in religious activities. Mr. Smyth told me that he would provide me with the relevant policies and procedures.

11. Mr. Smyth, however, did not follow through and provide me with the policies and procedures that he said he would.

12. I decided to write a letter (the “First Letter”) (attached as **Exhibit “C”** to this affidavit) to both Mr. Smyth and the School District 70 Board of Education (the “Board”). In the First Letter I explained my concerns with the Cleansing Ritual. I described how my daughter was treated by her teacher and how upsetting the experience was for both her and our whole family. I also requested that School District 70 act in accordance with s. 76 of the *School Act* and with the obligation under the *Canadian Charter of Rights and Freedoms* (the “Charter”) to respect my family’s religious rights, including the right not to be compelled to participate unwillingly in a foreign (to us) religious ritual.

13. After receiving the First Letter, Mr. Smyth phoned me. During the phone conversation, Mr. Smyth told me that no religious or spiritual exercise would again occur at JHES without giving adequate notice to parents and requiring parental consent to participate. I was relieved by this assurance, and trusted that Mr. Smyth would honour his word.

14. On January 7, 2016 my children came home from school and told me that there had been a school assembly that day, and that at the end of the assembly, a person used a microphone to say an Aboriginal prayer. The prayer was strange and foreign to my children, and was directed to an unspecified “god”. No parental notice of the prayer was issued by JHES. The prayer caused my children to feel very uncomfortable.

15. I was again shocked and frustrated to find out that explicitly religious activities were taking place at JHES. I was also disappointed that the commitment from Mr. Smyth that religious activities would not occur again at JHES (without prior parental consent) was not honoured. I repeatedly attempted to contact Mr. Smyth during the weeks following January 7. Mr. Smyth did not answer or return my calls. Believing there was no other way to have my concerns addressed, I wrote another letter (the "Second Letter") (attached as **Exhibit "D"** to this affidavit) addressed to Mr. Smyth and the Board.
16. In the Second Letter I asked the Board and/or Mr. Smyth to explain why prayer was being practiced at JHES, despite the fact that prayer is not legally permitted in Canadian public schools. I again noted that the facilitation of religious practices, such as prayer, at JHES was in direct contradiction to s. 76 of the *School Act* and the *Charter*. I requested that the Board provide to me in writing the measures the Board would take to ensure that parental consent would first be required before anything of a religious nature occur at any of the schools in School District 70. I also requested written assurance that what happened on January 7 would not happen again.
17. After receiving the Second Letter, Mr. Smyth phoned me. During the phone conversation, Mr. Smyth agreed to provide me with the written measures and written commitment that I requested in the Second Letter. He stated I would receive the documents by the end of April 2016.
18. However, Mr. Smyth failed to provide me with any documents by the end of April, or at any time thereafter. I repeatedly called Mr. Smyth throughout the month of May, but Mr. Smyth did not answer or return my calls. In view of this pattern of disrespectful behaviour on the

part of Mr. Smyth, on June 9, 2016, I decided to attend at the School District 70 offices and wait until Mr. Smyth was available to meet with me.

19. I eventually succeeded in meeting with Mr. Smyth on June 9, 2016 (the “June 9 Meeting”).

Mr. Smyth told me that the prayer on January 7, 2016, was considered by School District 70 to be “culture”, and not religion. Mr. Smyth then proceeded to tell me that “there is more tolerance for Aboriginal religion than your religion”. Mr. Smyth stated that School District 70 would not be giving me any written commitments or any other written documents until at least September 2016 because such documents would be “legal” in nature and take a long time to prepare.

20. I was shocked and frustrated that Mr. Smyth spoke disrespectfully to me, disregarded my concerns as a parent, and apparently ignored JHES’ legal obligations. After the June 9 Meeting, it became clear to me that my concerns were not likely to be addressed by Mr. Smyth without legal assistance.

21. I contacted the Justice Centre for Constitutional Freedoms (the “Justice Centre”) on June 10, 2016. The Justice Centre sent a legal warning letter (the “Demand Letter”) (attached as “**Exhibit E**” to this affidavit) to Mr. Smyth and the trustees of School District 70 Board of Education (the “Board”) on July 12, 2016. The letter explained the illegal actions of School District 70 in allowing religious activities to take place at JHES. The Justice Centre requested a response to the letter by July 29, 2016.

22. On July 28, Mr. Smyth sent an email (attached as “**Exhibit F**” to this affidavit) to the Justice Centre stating that School District 70 would need more time. On July 29, the Justice Centre emailed Mr. Smyth to request that Mr. Smyth provide an estimate on how long School District

70 would need before a substantial response would be received (attached as “**Exhibit G**” to this affidavit).

23. Mr. Smyth did not respond to the July 29, 2016 email. On August 12, the Justice Centre phoned Mr. Smyth and left a voicemail message requesting Mr. Smyth to call him at his earliest convenience. The Justice Centre then phoned Pam Craig, Chair of the Board, to request an estimate on when a substantial response to the Demand Letter would be forthcoming. Ms. Craig refused to provide the Justice Centre with an estimate for a response, and instead requested that all communication be directed to Mr. Smyth exclusively.
24. On August 15, the Justice Centre sent an email (attached as “**Exhibit H**” to this affidavit) to Mr. Smyth summarizing the lack of response from Mr. Smyth and requesting a timely reply. The Justice Centre also informed Mr. Smyth that I would prefer an amicable resolution to the matter, but would consider further action if a timely response from the School District was not received. Mr. Smyth did not reply.
25. On September 27, the Justice Centre sent Mr. Smyth a letter (attached as “**Exhibit I**” to this affidavit) advising Mr. Smyth that court documents were being prepared. On October 3, Mr. Smyth sent an email (attached as “**Exhibit J**” to this affidavit) to the Justice Centre stating that the Board would provide a response to the Demand Letter following the October 11 Board meeting.
26. On October 25, as the Justice Centre was preparing to file the Petition, counsel for School District 70 emailed a response to the Demand Letter to the Justice Centre (now attached as “**Exhibit K**” to this Affidavit). School District 70 continues to deny that its actions have violated the religious freedom of myself and my children, and maintains that the Cleansing Ritual and the January 7 prayer are merely cultural activities. It denies that students were

compelled to participate in these rituals against their conscientious and religious beliefs.

School District 70 maintains that religious rituals and ceremonies are permissible in public schools if participation is voluntary.

27. I am dismayed and angered at the broken promises, the lack of respect and professionalism that has been displayed by Mr. Smyth throughout these events, and the unprofessionalism of failing to address my concerns by returning phone calls and written communication. I am asking that School District 70 adhere to its legal obligations under the *School Act* and the *Charter* to cease facilitating or allowing religious activities to occur in School District 70 schools.

28. I swear this Affidavit *bona fide* and for no improper purpose.

SWORN BEFORE ME at Nanaimo,  
British Columbia, on this 01 day of  
November, 2016.

C Moher

A commissioner for taking affidavits  
for British Columbia

My Commission Expires: May 31, 2019

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) Candice Servatius  
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**7J: ;4;F 3**

# School Act, RSBC 1996, c 412, Part 6 — Boards of Education

Current version: in force since May 19, 2016

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## Part 6 — Boards of Education

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This Act has "Not in Force" sections. See the Table of Legislative Changes.

### SCHOOL ACT

#### [RSBC 1996] CHAPTER 412

### Part 6 — Boards of Education

#### Division 1 — Corporate Status and Meetings

##### Board is a corporation

**65** (1) The trustees elected or appointed under this Act for each school district and their successors in office constitute a board of education for the district and are continued as a corporation under the name of "The Board of Education of School District No. 5 (Southeast Kootenay)", or as the case may be.

(1.1) A board is responsible for the improvement of student achievement in the school district.

(2) A board may

(a) establish committees and specify the functions and duties of those committees,

(b) establish a district advisory council comprised of persons representing parents' advisory councils and other organizations in the community, and

(c) delegate specific and general administrative and management duties to one or more of its employees.

(3) Committees of trustees or individual trustees may not exercise the rights, duties and powers of the board.

(4) Unless expressly required to be exercised by bylaw, all powers of a board may be exercised by bylaw or by resolution.

(5) A board may exercise a power with respect to the acquisition or disposal of property owned or administered by the board only by bylaw.

## Quorum

**66** A quorum of a board is a majority of the trustees holding office at the time of the meeting of the board.

## Meetings and chair

**67** (1) After the general local election of trustees in a school district, the secretary treasurer for that school district must convene a first meeting of the board as soon as possible and in any event within 30 days from the date that the new board begins its term of office.

(2) At the meeting convened by the secretary treasurer under subsection (1), the board must elect a chair and may elect a vice chair from among its members.

(3) A board must meet as often as is necessary to transact its business and in any event not less than once in every 3 months.

(4) A majority of the board may elect a new chair or vice chair at any time.

(5) A board must establish procedures governing the conduct of its meetings and must permit any person to inspect those procedures.

(5.1) Without limiting subsection (5), a board may establish procedures respecting the provision of advice by a district parents' advisory council to the board.

(6) A board may allow trustees to participate in or attend a meeting of the board by telephone or other means of communication if all trustees and other persons participating in or attending the meeting are able to communicate with each other.

(7) If a trustee participates in or attends a meeting of the board by telephone or other means of communication as provided under subsection (6), the trustee is to be counted for the purposes of establishing a quorum.

## Passage of bylaws

**68** (1) Before it is passed, a bylaw of the board must be given 3 distinct readings.

(2) Subject to subsection (3), at each of the readings of a bylaw, the bylaw must be read in full.

(3) A reading of a bylaw may, if a written or printed copy of a bylaw is in the possession of each trustee and is available to each member of the public in attendance at the meeting at which the bylaw is to be read, consist of a description of the bylaw by

(a) its title, and

(b) a summary of its contents.

(4) The board may not give a bylaw more than 2 readings at any one meeting unless the members of the board who are present at the meeting unanimously agree to give the bylaw all 3 readings at that meeting.

**Attendance of public and secretary treasurer at meeting**

- 69** (1) Subject to subsection (2), the meetings of the board are open to the public.
- (2) If, in the opinion of the board, the public interest so requires, persons other than trustees may be excluded from a meeting.
- (3) Despite subsection (2), the secretary treasurer or another employee designated by the board under subsection (4) must be present at the time that a decision of the board is rendered and must record any decision.
- (4) If the secretary treasurer is unable to attend a meeting or if the meeting concerns the work performance or employment of the secretary treasurer, the board may designate another employee of the board to attend the meeting in place of the secretary treasurer to perform the duties of the secretary treasurer at the meeting.

**Improper conduct at meetings**

- 70** (1) The chair or other member presiding at a meeting of the board may expel from the meeting a person, other than a trustee, who the presiding member considers guilty of improper conduct.
- (2) A majority of the trustees present at a meeting of the board may expel a trustee from the meeting for improper conduct.
- (3) A person who disturbs, interrupts or disquiets the proceedings of a meeting of a board commits an offence.

**Remuneration and expense allowance**

- 71** (1) A board may
- (a) authorize annually the payment of remuneration to the chair, vice chair and other trustees, and
  - (b) authorize annually the payment of a reasonable allowance for expenses necessarily incurred by trustees in the discharge of their duties.
- (2) The board is responsible for any payments under subsection (1).
- (3) The remuneration for the chair and vice chair may be greater than for the other trustees.

**Minutes**

- 72** (1) The minutes of the proceedings of all meetings of the board must be
- (a) legibly recorded in a minute book,
  - (b) certified as correct by the secretary treasurer or other employee designated by the board under section 69 (4), and
  - (c) signed by the chair or other member presiding at the meeting or at the next meeting at which the minutes are adopted.
- (2) Except for minutes of a meeting from which persons other than trustees or officers of the board, or both, were excluded, the minutes must be open for inspection at all reasonable times by any person, who may make copies and extracts on payment of a fee set by the board.
- (3) A board must prepare a record containing a general statement as to the nature of the matters discussed and the general nature of the decisions reached at a meeting from which persons other than trustees or officers of the board, or both, were excluded, and the record must be open for inspection at all reasonable times by any person, who may make copies and extracts on payment of a fee set by the board.

(4) [Repealed 2000-11-43.]

## **Division 2 — Powers and Duties**

### **Establishment and closure of schools**

**73** (1) A board may

- (a) subject to the orders of the minister, open, close or reopen a school permanently or for a specified period of time, and
- (b) temporarily close a school building if the health or safety of the students is endangered.

(2) The board may operate more than one school in a single building or location.

### **Management of schools and property**

**74** (1) Subject to the orders of the minister, a board is responsible for the management of the schools in its school district and for the custody, maintenance and safekeeping of all property owned or leased by the board.

(2) A board must ensure that a principal, vice principal or director of instruction is responsible for each school in its school district.

### **Video surveillance cameras**

**74 . 01** (1) A board may install and operate a video surveillance camera in a school facility or on school land for the purposes of protecting

- (a) the safety of individuals in a school facility or on school land,
- (b) an individual's belongings in a school facility or on school land, or
- (c) school property

with the prior approval of the parents' advisory council for the school where the board proposes to install and operate a video surveillance camera.

(2) A parents' advisory council may make recommendations to a board to install and operate a video surveillance camera in a school facility or on school land for the purposes set out in subsection (1).

(3) If a board

- (a) has installed and operates a video surveillance camera in a school facility or on school land before the date this section comes into force, or
- (b) installs and operates a video surveillance camera in a school facility or on school land for the purposes set out in subsection (1),

the board must conduct an annual review that assesses if the installation and operation of the video surveillance camera is accomplishing a purpose set out in subsection (1).

(4) Subsections (1) to (3) do not apply to the installation and operation of a video surveillance camera in a school facility or on school land on a temporary basis for a specific investigative purpose.

(5) Subsection (1) does not apply to a video surveillance camera installed in a school facility or on school land before the date this section comes into force.

### **Enrolment in an educational program**

**74 . 1** (1) In this section:

**"catchment area child"** means a person

- (a) of school age, and
- (b) resident in the catchment area of the school;

**"non-catchment area child"** means a person

- (a) of school age,
- (b) resident in the school district, and
- (c) not resident in the catchment area of the school;

**"non-school district child"** means a person

- (a) of school age,
- (b) resident in British Columbia, and
- (c) not resident in the school district;

**"previous school year"** means the school year previous to the school year for which the person is applying to enrol in an educational program;

**"school district child"** means a catchment area child or a non-catchment area child.

(2) A board must enrol all persons who exercise their entitlement to enrol in an educational program under section 2 (1).

(3) A board may refuse to enrol a non-school district child under section 2 (2) if the child is

- (a) a student suspended by a board under section 85 (2) (d), or
- (b) a student to whom a board has refused to offer an educational program under section 85 (3).

(4) A board

- (a) for each school year, must establish a date by which an application to enrol a person in an educational program must be received by the board for the purposes of this section,
- (b) in respect of the date referred to in paragraph (a), may establish different dates for different grades, educational programs, schools or children defined in subsection (1), and
- (c) may dispense with the application referred to in paragraph (a) and establish an alternative procedure to enrol a school district child who was enrolled in an educational program in the school district in the previous school year.

(5) If a board establishes an alternative application procedure under subsection (4) (c), the enrolment of a school district child remains subject to the priorities set out in this section.

(6) If a board determines that space and facilities are available at the school in which the educational program is made available, a person whose application was received by the board by the date established under subsection (4) is entitled to enrol in that educational program in the following descending order of priority:

- (a) a catchment area child who, in the previous school year, attended the school at which the educational program is made available;
- (b) a catchment area child;
- (c) a non-catchment area child;
- (d) a non-school district child.

- (6.1) Despite subsection (6), a board may, subject to subsection (6.2), give priority to
- (a) a catchment area child as if that child were a child described in subsection (6) (a) if, in the previous school year, the child attended a school from which the board reassigns students progressing through their educational program to the school at which the educational program is made available,
  - (b) a non-catchment area child or a non-school district child as if the child were a child described in subsection (6) (a) or (b) if the child, in the previous school year,
    - (i) attended the school at which the educational program is made available, or
    - (ii) attended a school from which the board reassigns students progressing through their educational program to the school at which the educational program is made available, and
  - (c) a sibling of a child described in subsection (6) (a) or paragraph (b) (i) of this subsection as if the sibling were a child described in subsection (6) (a) or (b) if the sibling does not attend school or attends a different school at the time the application under subsection (4) is made.
- (6.2) The board must establish rules governing the exercise of its discretion under subsection (6.1) and must make those rules publicly available.
- (7) If a board determines that space and facilities are available at the school in which the educational program is made available, a non-school district child referred to in subsection (6) is entitled to enrol in an educational program in priority to a school district child whose application was received by the board after the date established under subsection (4).
- (8) A board must establish rules for determining priority between 2 or more persons having the same priority under this section.
- (9) For the purposes of this section, a person's residency is determined as of the date the application to enrol the person is submitted to the board.

### Provision of educational program

- 75** (1) Subject to the other provisions of this Act and the regulations and to any orders of the minister under this Act, a board must make available an educational program to all persons of school age who enrol in a school in the district.
- (2) A board may provide an educational program to persons referred to in subsection (1)
- (a) in its own school district, or
  - (b) with the consent of a parent of the person referred to in subsection (1), in another school district or in a francophone school district.
- (3) A board complies with subsection (1) if
- (a) the educational program is provided by the board,
  - (b) with the approval of the minister, the educational program is provided by a Provincial school, or
  - (c) with the agreement of one or more other boards or a francophone education authority, and with any consent required under subsection (2) (b), the educational program is provided
    - (i) in full by another board or by the francophone education authority, or
    - (ii) in part by one or more other boards or the francophone education authority, and the remainder of the educational program, if any, is provided by the board.

(4) Subject to section 74.1, a board may assign and reassign students to specific schools or to educational programs referred to in subsection (3).

(4.1) A board may provide all or part of an educational program by means of distributed learning only with the prior agreement of the minister.

(5) [Repealed 2002-53-19.]

(6) A board may recognize as part of a student's educational program an educational activity that is not provided by the board.

(7) Subject to the regulations, a board

(a) is responsible for evaluating all of the educational programs and services provided by the board, including services provided under an agreement under section 86 (1) (a), and

(b) must have students assessed and evaluated by a certificate holder.

(8) A board may, in accordance with any terms and conditions specified by the board, permit a person who is older than school age

(a) to attend an educational program, or

(b) to enrol and receive instruction in an educational program sufficient to meet the general requirements for graduation.

### Catchment areas

**75.1** (1) A board must establish for each school in its school district, except for a Provincial resource program, a catchment area consisting of a geographical area around the school that includes all or part of the school district.

(2) A board may amend the catchment area established for a school under subsection (1).

### Conduct

**76** (1) All schools and Provincial schools must be conducted on strictly secular and non-sectarian principles.

(2) The highest morality must be inculcated, but no religious dogma or creed is to be taught in a school or Provincial school.

(3) The discipline of a student while attending an educational program made available by a board or a Provincial school must be similar to that of a kind, firm and judicious parent, but must not include corporal punishment.

### Class size

**76.1** (1) [Repealed 2012-3-14.]

(2) A board must ensure that the size of any primary grades class in any school in its school district does not exceed

(a) for kindergarten, 22 students, and

(b) for grades 1 to 3, 24 students.

(2.1) Subject to subsection (2.4), a board must ensure that the class size of any class for any of grades 4 to 12 in any school in its school district does not exceed 30 students unless

(a) in the opinions of the superintendent of schools for the school district and the principal of the school, the organization of the class is appropriate for student learning, or



(b) the class is in a prescribed category of classes.

(2.2) A board must provide additional compensation, as prescribed, to a teacher of a class that, under subsection (2.1) (a), exceeds 30 students.

(2.3) Subsection (2.2) does not apply with respect to a teacher in a prescribed category of teachers.

(2.4) A board must ensure that the class size of a class in a prescribed category of classes does not exceed the prescribed number of students.

(3-5) [Repealed 2012-3-14.]

### **Repealed**

**76.2 to 76.7** [Repealed 2012-3-15.]

### **Authority of vice principal under section 76.1**

**76.8** If authorized by the principal of a school, the vice principal of the school may perform any duties of the principal under 76.1.

### **Repealed**

**77** [Repealed RS1996-412-77(3).]

### **Repealed**

**78** [Repealed RS1996-412-78(6).]

### **Repealed**

**78.1** [Repealed 2012-3-17.]

### **Student records**

**79** (1) Subject to the orders of the minister, a board must

(a) establish written procedures regarding the storage, retrieval and appropriate use of student records, and

(b) ensure confidentiality of the information contained in the student records and ensure privacy for students and their families.

(1.1) Subsection (1) applies also in respect of records referred to in paragraph (d) of the definition of "student record", even though those records are excluded from that definition.

(2) Despite subsection (1), a board must, if required by the orders of the minister, permit a person providing health services, social services or other support services access to information in student records required to carry out that service.

(3) Subject to the orders of the minister, a board must establish and maintain a record for each student and for each child registered with the board's schools under section 13.

### **Transmitting records**

**79.1** (1) Despite section 79 (1), if a francophone education authority enters into an agreement with a board or with another francophone education authority for the provision of services, including the provision of all or part of an educational program or a francophone educational program, each party to the agreement must provide to the other party access to information in those student records that are necessary for the other party to satisfactorily perform the contract.

(2) Despite section 79 (1), if a student is enrolled with more than one board, each board must provide to the other access to information in those student records that is necessary for the other board to satisfactorily perform its obligations under this Act.

(3) Despite section 79 (1), if a student is enrolled

(a) in an independent school, but takes one or more courses through a school or francophone school by means of distributed learning, or

(b) in a school or francophone school, but takes one or more courses through an independent school by means of distributed learning,

each board, francophone education authority and authority of an independent school with which the student is enrolled must provide to the other access to information in those student records and permanent student records that is necessary for the other board, francophone education authority or authority of the independent school to satisfactorily perform its obligations under this Act or the *Independent School Act* , as applicable.

### Repealed

**79.2-79.4** [Repealed 2015-24-14.]

### Repealed

**80** [Repealed 2002-53-22.]

### Reports

**81** A board must prepare and submit to the minister reports and statements in the form, with the information and at the time required by the minister.

### Repealed

**81.1** [Repealed 2015-24-14.]

### Fees and deposits

**82** (1) A board must provide free of charge to every student of school age resident in British Columbia and enrolled in an educational program in a school operated by the board,

(a) instruction in an educational program sufficient to meet the general requirements for graduation,

(b) instruction in an educational program after the student has met the general requirements for graduation, and

(c) educational resource materials necessary to participate in the educational program.

(2) For the purposes of subsection (1), a student is resident in British Columbia if the student and the student's guardian are ordinarily resident in British Columbia.

(2.1) Subject to subsection (2.2), if a board permits a student who is older than school age and is ordinarily resident in British Columbia to enrol in an educational program leading to graduation, the board must provide free of charge to that student

(a) instruction in an educational program sufficient to meet the general requirements for graduation, and

(b) educational resource materials necessary to participate in the educational program.

- (2.2) Subsection (2.1) does not apply to a student who has
- (a) already met the general requirements for graduation, or
  - (b) completed the requirements for graduation from a secondary school or high school in another jurisdiction.
- (3) Subject to subsections (1) and (2.1), section 82.4 and the orders of the minister, a board may charge fees for goods and services provided by the board.
- (4) A board may require a deposit for educational resource materials provided to students and to children registered under section 13.
- (5) If a board requires a deposit under subsection (4), it must refund all or part of the deposit to the student or child on return of the educational resource materials.
- (6) A board must publish a schedule of the fees to be charged and deposits required and must make the schedule available to students and to children registered under section 13 and to the parents of those students and children before the beginning of the school year.
- (7) Except as provided in an agreement under section 75 (4.1), a board is not responsible to pay for any educational activity undertaken by a student that is not provided by the board.

### Specialty academies

- 82.1** (1) In this section, "**specialty academy**" means an educational program that emphasizes a particular sport, activity or subject area and meets the prescribed criteria set out in the regulations.
- (2) A board may offer a specialty academy if
- (a) the board has consulted with the parents' advisory council for the school where the board proposes to offer the specialty academy, and
  - (b) the board is of the opinion that there is sufficient demand for the specialty academy.
- (3) A board that offers a specialty academy must
- (a) make available sufficient instruction for students enrolled in the specialty academy to meet the general requirements for graduation, and
  - (b) continue to offer a standard educational program in the school district.
- (4) Despite section 82, but subject to section 82.4, a board may charge a student enrolled in a specialty academy fees relating to the direct costs incurred by the board in providing the specialty academy that are in addition to the costs of providing a standard educational program.
- (5) On or before July 1 of each school year, a board that offers a specialty academy must
- (a) establish a schedule of fees to be charged under subsection (4), and
  - (b) make the schedule of fees available to the public.
- (6) Before establishing a schedule of fees under subsection (5), a board must
- (a) consult with the parents' advisory council for the school where the specialty academy is offered, and
  - (b) obtain the approval of that parents' advisory council for the schedule of fees.

### Trades programs

- 82.2** (1) In this section, "**trades program**" means an educational activity that is designed to certify a student for a particular occupation, and includes an apprenticeship for students registered with the Industry Training Authority under the *Industry Training Authority Act* .

(2) Despite section 82, but subject to section 82.4, a board may do the following in relation to a student enrolled in an educational program that has a trades program component:

- (a) charge fees for the purchase or rental of tools, equipment and materials necessary for the student's participation in the trades program;
- (b) require the student to provide his or her own tools, equipment and materials necessary for the student's participation in the trades program.

### **Musical instruments**

**82.3** (1) Despite section 82, but subject to section 82.4, a board may do the following in relation to a student described in subsection (2) of this section:

- (a) charge fees for the purchase or rental of a musical instrument for the student's personal use;
- (b) require the student to provide his or her own musical instrument.

(2) Subsection (1) applies to a student participating in, as part of an educational program,

- (a) a music class, course or program, or
- (b) a fine arts class, course or program with a music component.

### **International Baccalaureate**

**82.31** (1) In this section and section 178, "**International Baccalaureate program**" means an educational program based on a curriculum developed and standards set by the International Baccalaureate Organization, an extraprovincial society registered under the *Society Act* .

(2) A board that offers an International Baccalaureate program must

- (a) make available sufficient instruction for students enrolled in the International Baccalaureate program to meet the general requirements for graduation, and
- (b) continue to offer a standard educational program in the school district.

(3) Despite section 82, but subject to section 82.4, a board may charge a student enrolled in an International Baccalaureate program fees relating to the direct costs incurred by the board in providing the International Baccalaureate program that are in addition to the costs of providing a standard educational program.

(4) If a board that offers an International Baccalaureate program charges fees under subsection (3), the board must, on or before July 1 of each school year,

- (a) establish a schedule of fees to be charged under subsection (3), and
- (b) make the schedule of fees available to the public.

### **Requirement for financial hardship policy**

**82.4** Sections 82 (3), 82.1 (4), 82.2, 82.3 and 82.31 (3) apply only to a board that has established policies and procedures to facilitate participation by students of school age ordinarily resident in British Columbia who would otherwise be excluded from the course, class or program because of financial hardship.

### **Financial assistance**

**83** (1) A board may

- (a) assist in paying the cost of transportation, board or lodging of a student, or

(b) subject to the orders of the minister, assist in paying the cost of transportation, board, lodging or tuition fees of a person attending an educational institution outside of British Columbia.

(2) If a student is enrolled in an educational program that is delivered, in whole or in part, through distributed learning, the board may provide any financial assistance to the student that is authorized under an agreement under section 75 (4.1).

## Insurance

**84** (1) A board must maintain insurance in accordance with this Act and the regulations.

(2) A board may maintain insurance, other than insurance referred to in subsection (1), that the board considers necessary.

(3) Subject to the regulations, if the board maintains insurance, the board must be the named beneficiary of the insurance.

## Power and capacity

**85** (1) For the purposes of carrying out its powers, functions and duties under this Act, a board has the power and capacity of a natural person of full capacity.

(1.1) Without limiting subsection (1), a board must, subject to this Act and the regulations, and in accordance with Provincial standards established by the minister, establish a code of conduct for students enrolled in educational programs provided by the board.

(2) Without limiting subsection (1), a board may, subject to this Act and the regulations, do all or any of the following:

(a) determine local policy for the effective and efficient operation of schools in the school district;

(b) subject to the orders of the minister, approve educational resource materials and other supplies and services for use by students;

(c) make rules

(i) [Repealed 2007-16-4.]

(ii) respecting suspension of students and the provision of educational programs for suspended students,

(iii) respecting attendance of students in educational programs provided by the board,

(iv) respecting the establishment, operation, administration and management of

(A) schools operated by the board and educational programs provided by the board, and

(B) transportation equipment used for the purposes of the board,

(v) respecting the provision of volunteer services,

(vi) respecting the management of student housing facilities and the supervision of students accommodated in them, and

(vii) respecting any other matter under the jurisdiction of the board;

(d) suspend students, in accordance with the rules under paragraph (c) (ii), so long as the board continues to make available to those students an educational program;

(e) if approved by the council of the municipality in which the school is located, provide a system of traffic patrols to assist in the control of motor vehicle traffic on

highways or elsewhere in that municipality so far as the traffic may affect students going to or from school;

(f) provide housing accommodation for students;

(g) subject to the orders of the minister, permit persons other than students to utilize board facilities, equipment and personnel;

(h) subject to the orders of the minister, evaluate and recognize educational activities of an educational program undertaken by a student outside of the school;

(i) develop and offer local programs for use in schools in the school district;

(j) subject to the orders of the minister, cause an educational assessment to be made of students or groups of students;

(k) establish loan funds or bursaries for students enrolled in an educational program in the school district and spend money received by donation.

(3) Despite any other provision of this Act, a board may refuse to offer an educational program to a student 16 years of age or older if that student

(a) has refused to comply with the code of conduct, other rules and policies referred to in section 6, or

(b) has failed to apply himself or herself to his or her studies.

(4) A rule made under subsection (2) (c) (v) must not permit volunteers to provide services that would result in the displacement of an employee.

(5) A rule that conflicts or is inconsistent with subsection (4) is void.

## Use of board property

**85.1** (1) In this section:

**"board property"**, in relation to a board, means board-owned land or improvements in the board's school district that are or have been used, or are intended for use, for educational activities;

**"business day"** means any day that is not a Saturday or a holiday;

**"care program"** has the same meaning as in the Child Care Licensing Regulation, B.C. Reg. 332/2007;

**"educational activities"** means the provision of educational programs, and includes early learning programs and extracurricular school activities;

**"licensed child care provider"** means a person who is licensed under the *Community Care and Assisted Living Act* to provide one or more of the following care programs:

(a) Group Child Care (Under 36 Months), being a program that provides care to children who are younger than 36 months old;

(b) Group Child Care (30 Months to School Age), being a program that provides care to preschool children;

(c) Preschool (30 Months to School Age), being a program that provides care to preschool children who are at least

(i) 30 months old on entrance to the program, and

(ii) 36 months old by December 31 of the year of entrance;

(d) Group Child Care (School Age), being a program that provides, before or after school hours or during periods of school closure, care to children who attend school,

including kindergarten;

(e) Occasional Child Care, being a program that provides, on an occasional or short-term basis, care to preschool children who are at least 18 months old;

(f) Multi-Age Child Care, being a program that provides, within each group, care to children of various ages.

(2) Subject to subsection (3), a board must establish a policy promoting the use of board property by licensed child care providers on business days between the hours of 7 a.m. and 6 p.m.

(3) The board must ensure that

(a) any use referred to in subsection (2) does not disrupt or otherwise interfere with the provision of educational activities, and

(b) subject to subsection (4), any revenue obtained by the board from the use referred to in subsection (2) is not more than the direct and indirect costs incurred and to be incurred by the board as a result of making that use available.

(4) Subsection (3) (b) does not apply to any arrangement in place at the time of the coming into force of this section under which board property is being made available to a licensed child care provider but does apply to any renewal or extension of that arrangement.

## Agreements

**86** (1) A board may, subject to this Act, the regulations and the orders of the minister,

(a) enter into an agreement to purchase or provide procurement, managerial, administrative or other services,

(a.1) enter into an agreement to purchase educational services that will be under the general supervision of an employee of the board who is a certificate holder, and

(b) enter into an agreement concerning the promotion, development or operation of recreational and community services.

(1.1) A board may, subject to this Act, the regulations and the orders of the minister, enter into an agreement with a francophone education authority to provide all or part of a francophone educational program and health and support services, including busing and educational resources, to one or more francophone students enrolled with that authority.

(1.2) A board may, subject to this Act, the regulations and the orders of the minister, enter into an agreement with one or more boards to provide health and support services, including busing and educational resources, to one or more students enrolled with that board.

(2) With the approval of the minister, a board may enter into an agreement with the government of Canada or any agency of the government of Canada with respect to the education of

(a) Indian children, or

(b) children of members of the Canadian Forces or other persons employed by the government of Canada.

(3) A board may enter into an agreement,

(a) with respect to the education of Indian children, with

(i) a council of a band as defined in the *Indian Act* (Canada), or

(ii) the council of an Indian band established by another Act of the government of Canada, and

- (b) with respect to matters relating to education, with
  - (i) a participating First Nation or a Community Education Authority established by one or more participating First Nations under the *First Nations Jurisdiction over Education in British Columbia Act* (Canada), or
  - (ii) the First Nations Education Authority.

(3.01) In subsection (3) (b), "**education**" has the same meaning as in the *First Nations Jurisdiction over Education in British Columbia Act* (Canada).

(3.1) With the approval of the minister, a board may enter into an agreement with the Nisga'a Lisims Government with respect to the education of a Nisga'a child.

(3.2) [Repealed 2014-32-57.]

(3.3) A board may enter into an agreement with a treaty first nation with respect to the education of

- (a) a treaty first nation member or constituent of the treaty first nation, or
- (b) a student who is
  - (i) not a treaty first nation member or constituent of the treaty first nation, and
  - (ii) attending an educational institution operated by the treaty first nation under its own laws.

(4) A board may operate a Provincial resource program in accordance with an agreement with the minister.

(5) A board may operate an early learning program with the prior agreement of the minister.

(6) For the purposes of subsection (1), if the minister has made an applicable order under section 168 (2) (s.3), a board may enter into an agreement only with a designated service provider.

### Training of student teachers

- 87** (1) If a board receives a request from a university established under the *University Act* or an institution for the training of teachers established under any other Act for permission for student teachers to practise and observe teaching, the board must permit student teachers enrolled at the university or institution reasonable access to all classrooms and other school accommodation in accordance with arrangements made by the superintendent of schools for the purposes of practising teaching, supervising, observing teaching and any related duties.
- (2) A student teacher engaged in any of the duties referred to in subsection (1) has the same disciplinary authority as a teacher in the school.

## Division 2.1 — School Calendars

### School calendar

**87.01** (1) In this section, "**school calendar year**" means either of the following:

- (a) the school year;
- (b) subject to subsection (4), a period of 12 consecutive months covered by a school calendar, if the school calendar is not based on the school year.

(2) A board must, in accordance with the regulations of the minister, prepare a school calendar for each school in its school district for each school calendar year.

(3) A school calendar prepared by a board under subsection (2)



- (a) need not be based on the school year but, subject to subsection (4), must cover a period of 12 consecutive months,
- (b) must set out all of the information prescribed by the minister,
- (c) may include variations for one or more groups of students in a school, and
- (d) may include any other information that the board considers necessary.

(4) A school calendar must cover a period of more than 12 consecutive months if necessary to ensure that it applies immediately on the expiration of the previous school calendar.

(5) A board must submit to the minister a school calendar prepared under subsection (2) at least 3 months before the expiration of the current school calendar unless the board has made available to the public a school calendar under subsection (9) for the next school calendar year.

(6) A board may, at the same time, submit to the minister up to 3 school calendars prepared under subsection (2) for each of up to 3 consecutive school calendar years.

(7) Before submitting a school calendar or school calendars, as applicable, under subsection (5) or (6), the board must, in accordance with the regulations of the minister, consult with parents of the students enrolled in the school and representatives of employees of the board assigned to the school.

(8) If, in the opinion of the minister, a school calendar or school calendars, as applicable, submitted by a board under subsection (5) or (6) do not comply with the regulations of the minister, the minister

- (a) may amend the school calendar or school calendars, as applicable, within 30 days of receiving the school calendar or school calendars, as applicable, under subsection (5) or (6), and
- (b) must notify the board of any amendments made under paragraph (a) as soon as practicable.

(9) Subject to subsection (10), a board must, at least one month before the expiration of the current school calendar, make available to the public the school calendar or school calendars, as applicable, submitted to the minister under subsection (5) or (6).

(10) If the minister amends a school calendar under subsection (8), a board must, at least one month before the expiration of the current school calendar, make available to the public the school calendar amended under that subsection.

(11) Subsections (9) and (10) do not apply to a board if the board has previously made available to the public a school calendar under subsection (9) for the next school calendar year.

### **School calendar – amendment**

**87.02** (1) A board may, in accordance with the regulations of the minister, amend a school calendar made available to the public by the board under section 87.01 (9) or (10) if, in the opinion of the board, an amendment is necessary.

(2) A school calendar amended under subsection (1) must comply with section 87.01 (3) and the regulations of the minister.

(3) The board must, as soon as practicable and, in any event, within 30 days of amending a school calendar under subsection (1), make available to the public the amended school calendar.

### **Requirement to comply with school calendar**

**87.03** A board must operate each school in its district in accordance with the following:

- (a) the applicable school calendar made available to the public under section 87.01 (9) or (10);
- (b) if the board amended the school calendar under section 87.02, the amended school calendar made available to the public under section 87.02 (3).

### **Division 3 — Health and Other Support Services**

#### **Definitions for this Division**

**87.1** In this Division:

**"minister of health"** means the minister responsible for the administration of the *Public Health Act* ;

**"school medical officer"** means a medical health officer under the *Public Health Act* who is designated as a school medical officer under section 89 (1) of this Act.

#### **Support services for schools**

- 88** (1) A board must provide health services, social services and other support services for schools in accordance with any orders made by the minister.
- (2) [Repealed 2008-28-156.]

#### **School medical officer**

- 89** (1) Each regional health board under the *Health Authorities Act* must designate a school medical officer for each school district.
- (2) The minister of health may appoint persons other than school medical officers to perform any duties that he or she considers advisable in respect of the health inspection of schools, francophone schools and the students and francophone students of those schools.
- (3) A school medical officer designated under subsection (1) has the same rights, powers and duties in respect of francophone schools located in the school district as that medical officer has for other schools in that district.

#### **Inspection and closure of school**

- 90** (1) A school medical officer must, as required by the minister of health, cause an inspection to be made of school buildings and school surroundings and must report to the board and the minister of health fully and in detail the result of all examinations and set out any recommendations in the report.
- (2) A school medical officer may require a board to close a school when the school medical officer considers that the health or safety of students is at risk.

#### **Examinations and reports by school medical officer**

- 91** (1) A school medical officer may and when required by the minister of health must examine or cause examinations to be made as to the general health of students of the schools in the school district.
- (2) If the school medical officer considers that the health condition of any student is such as to endanger the health or welfare of the students of a school or the employees of the board, the school medical officer must so report to the board, giving the name of the student concerned.
- (3) The board must promptly act on a report under subsection (2) and must remove from a school a student whose health condition is reported by the school medical officer as being

dangerous.

(4) A student who is removed from a school under subsection (3) must not be permitted to return to the school until he or she delivers to the board a certificate signed by the school medical officer permitting the student to return to the school.

(5) If a teacher, principal, vice principal or director of instruction suspects a student is suffering from a communicable disease or other physical, mental or emotional condition that would endanger the health or welfare of the other students, the teacher, the principal, the vice principal or the director of instruction

(a) must report the matter to the school medical officer, to the school principal and to the superintendent of schools for the district, and

(b) may exclude the student from school until a certificate is obtained for the student from the school medical officer, a private medical practitioner or a private nurse practitioner permitting the student to return to the school.

(6) If a student is removed or excluded from school under subsection (3) or (5), the board must continue to make available to the student

(a) if the student is enrolled in more than one educational program, the educational program for which the board is responsible, or

(b) in any other case, an educational program.

#### **Board may require employee to undergo examination**

**92** (1) In this section, "**contractor**" means a person who is not an employee of a board and

(a) is present at a school, or

(b) has contact with one or more students,

because of a contract with a board.

(2) On the advice of the school medical officer, a board may, by notice to an employee of the board or to a contractor, require the employee or the contractor to undergo an examination

(a) by a medical practitioner, and to submit to the school medical officer a certificate signed by the medical practitioner setting out the medical practitioner's conclusions regarding the physical, mental and emotional health of the employee or contractor, or

(b) by a qualified person designated by the minister of health, and to submit to the school medical officer a certificate signed by the person conducting the examination setting out the person's conclusions regarding the physical, mental and emotional health of the employee or contractor.

(3) If an employee fails without reasonable excuse to take the examination required under subsection (2) within 14 days from the date of receiving notice from the board under that subsection, the board may summarily dismiss the employee.

(4) If a certificate submitted to the school medical officer under subsection (2) shows that the physical, mental or emotional health of the employee examined is such as to endanger the health or welfare of the students of the school, the board must

(a) suspend the employee and not permit the employee to return to his or her duties until the board receives from the employee a certificate signed by the school medical officer permitting the employee to return to his or her duties, and

(b) if the employee is a certificate holder, report the circumstances to the commissioner.

(5) An employee who fails to take an examination required under subsection (2) or who is suspended under subsection (4) must not be offered or accept a position with a board or a francophone education authority until the employee submits to the board or francophone education authority a medical certificate satisfactory to the board or francophone education authority or, if the employee is a certificate holder, satisfactory to the director of certification..

(6) An employee who is granted a superannuation allowance on medical evidence of total and permanent disability must not be offered or accept a position with a board or a francophone education authority until he or she submits to the minister a medical certificate, satisfactory to the minister, that the disability no longer exists.

(7) If a contractor fails to take the examination required under subsection (2) within 14 days from the date of receiving notice from the board under that subsection, the board may require the person who entered into the contract with the board to provide a replacement contractor.

(8) Expenses necessarily incurred by a board under this section must be included in the operating expenses of the board.

### **Division 4 — Limitation of Actions and Indemnification**

#### **Interpretation**

**93** In this Division, a reference to a trustee, officer or employee includes a former trustee, officer or employee.

#### **Actions against board**

**94** (1) No action for damages lies or may be instituted against a trustee, an officer or an employee of a board for anything said or done or omitted to be said or done by him or her in the performance or intended performance of his or her duty or the exercise of his or her power or for any alleged neglect or default in the performance or intended performance of the duty or the exercise of the power.

(1.1) No action for damages lies or may be instituted against a volunteer for anything said or done or omitted to be said or done by him or her in the provision of volunteer services for a board, or for any alleged neglect or default in the provision of volunteer services for the board by the volunteer.

(2) Subsections (1) and (1.1) do not provide a defence if

(a) the trustee, officer, employee or volunteer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct, or

(b) the cause of action is libel or slander.

(3) No action may be brought against a trustee, an officer or an employee of a board or a student or volunteer in respect of personal or other injuries sustained by a person arising out of the operation by the board of traffic patrols.

(4) Subsections (1), (1.1) and (3) do not absolve a board from vicarious liability arising out of a tort committed by a trustee, officer, or employee of the board, a student or a volunteer for which the board would have been liable had subsections (1), (1.1) and (3) not been in force.

#### **Indemnification against proceedings**

**95** (1) A board may, by bylaw, provide that the board will indemnify a trustee, an officer or an employee of the board

(a) against a claim for damages against a trustee, officer or employee of the board arising out of performance of his or her duties, or

(b) if an inquiry under the *Public Inquiry Act* or other proceeding involves the administration and conduct of the business of the school district

and, in addition, may pay legal costs incurred in proceedings arising out of the claim or inquiry or other proceeding.

(2) A board may, by an affirmative vote of not less than 2/3 of all its members, pay

(a) any sum required to indemnify a trustee, an officer or an employee of the board if a prosecution arises out of the performance of his or her board duties, and

(b) costs necessarily incurred,

but the board must not pay a fine imposed on a trustee, officer or employee as a result of his or her conviction.

(3) A board must not seek indemnity against a trustee, an officer or an employee of the board in respect of any action of the trustee, officer or employee that results in a claim for damages against the board, but the board may seek indemnity

(a) against a trustee, officer or employee if the claim for damages arises out of the gross negligence of the trustee, officer or employee, or

(b) against an officer or employee if, in relation to the action that gave rise to the claim for damages against an officer or employee, the officer or employee wilfully acted contrary to

(i) the terms of his or her employment, or

(ii) an order of a superior.

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# **EXHIBIT B**



# John Howitt Elementary School

3867 Marpole Street, Port Alberni, B.C., V9Y 6Y3

Telephone 723-7521

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September 14, 2015

Dear Parent(s)/Guardian(s);

A great welcome to 2015/2016 opportunity has been offered to our class. It is a Traditional Nuu-chah-nulth Classroom/Student Cleansing. We will have a guest Nuu-chah-nulth Member, along with our Nuu-chah-nulth Education Worker, Sherri Cook, in our classroom to teach us about Nuu-chah-nulth Culture and History.

Nuu-chah-nulth People believe strongly that "Hii-Shuukish-Tsawalk" (everything is one; all is connected). Everything has a spirit and energy exists beyond the end of school one year and into the next. This will be our opportunity to learn about Nuu-chah-nulth Traditions and experience cleansing of energy from previous students in our classroom, previous energy in our classroom and cleanse our own spirits to allow GREAT new experiences to occur for all of us.

All participants will hold on to cedar branches (each student will feel the bristles of each branch to remind them that they are alive and well to embrace life and all that it offers) and/or "Smudged" (smoke from Sage will be fanned over the body and spirit).

Classroom and furniture will also be cleansed to allow any previous energy from: falls, bad energy, bullying, accidents, sad circumstances, etc. to be released and ensure the room is safe for all and only good things will happen.

If you have any questions about the "Cleansing" or would like to observe please contact Sherri Cook 250-723-7521 or [scook@sd70.bc.ca](mailto:scook@sd70.bc.ca)

Thanks for your time and consideration, we look forward to this teaching and experience with your child.

A handwritten signature in black ink, appearing to read 'SJM', is written over a light blue horizontal line.

Mrs. S. Manson

Principal

John Howitt Elementary

3867 Marpole St

Port Alberni, BC V9Y 6Y3

(250) 723-7521

# EXHIBIT C



To: Greg Smyth (District Superintendent of School District 70)

We are writing you regarding the smudging ceremony that took place at John Howitt Elementary on September 16, 2015. I received a letter from the school the evening of September 15<sup>th</sup>. The letter stated that a traditional Nuu-Chah-Nulth classroom/ student cleansing was going to take place; the provided letter did not indicate when this ceremony of a spiritual nature was going to take place in the school nor did it indicate which classes would be participating. There was a section at the bottom that indicated questions were welcomed and an opportunity to observe was extended; unfortunately as this letter was presented a day before the event there was not adequate time given to ask questions or to opt out of this classroom activity. I would like to note that the letter I received was provided to my son's grade 3 class and in some cases no letters were sent home at all as in the case of my daughter's grade 5 class.

We attended John Howitt School on September 16<sup>th</sup> at the end of the school day. We spoke with Mrs. Manson to get more information on the "Cleansing", to our total shock we were advised that the smudging/cleansing had already taken place. We clearly expressed our concern and frustration in the lack of information provided (date, time, classes?), the fact that no adequate response time was provided and the lack of consideration towards others beliefs.

It appears clear to us that this smudging is a spiritual practice, as per the following statements provided in the letter; *".... and cleanse our own spirits to allow great new experiences to occur."* and *"smoke from sage will be fanned over body and spirit"*.

The children in the participating classrooms were not simply taught about this spiritual practice, they were directly involved in it. My daughter's classroom was instructed before hand that **everyone** would participate and it would be disrespectful if they did not. Sadly, my nine year old experienced great anxiety regarding this as she did not wish to participate but feared the consequences and was told that it would be rude.

We question why this type of ritual/spiritual ceremony took place in school district classrooms to begin with. Section 76 of the School Act states: ***All schools and provincial schools must be conducted on strictly secular and non-sectarian principles.*** It also says: ***Highest morality must be inculcated, but no religious dogma or creed is to be taught in a school or provincial school.*** The school district claims to be secular, *being separate from religion, not exclusively allied with or against any particular religion.* Examples of non secular practice are: saying a prayer, worshiping through context of a religion. It also states that secularism is remaining separate from religious institutions, beliefs, and dignitaries. Next, no religious dogma or creed has a place in the schools. Dogma is an established belief, doctrine or theological tenet. This Nuu-Chah-Nulth practice of cleansing/ smudging is clearly a part of their spiritual belief system. A creed is: a confession, symbol, or statement of faith. There are many symbols that are represented in this First Nations ceremony; sage, cedar branches, smoke fanning.

We would like to be clear that we support our children learning about other cultures and traditions. However, we do not agree with the forced participation in spiritual/religious practices and without parents written consent and further more believe that these types of practices do not have a place in the regular classroom curriculum.

Contact was made with Mr. Smyth, District Superintendent requesting the district's policy, procedure and consent concerning activities of a spiritual nature in SD70 schools. Mr. Smith agreed to get back to me with that information, unfortunately we have yet to hear back.

The Canadian Charter of Rights and Freedoms states that each individual has the freedom of thought, belief, conscience and religion. The problem with the smudging activity is it took away the freedom of belief and religion from these children and their families that have other beliefs and practices that may conflict with this smudging/cleansing beliefs and practice. We did not have adequate time to gather more information, request that our children be excused, or raise any concerns we had. We feel that our right to choose was violated.

We would like the School Board to assure us this will not happen again. We expect that from now on written consent will be required before anything of a spiritual/religious nature takes place in any of the classrooms in the district. I think an apology is due to my child who was told she had to participate in the smudging even though she didn't want to participate and felt anxious about it.

Please see the attached letter that was sent home regarding the ceremony.

Sincerely,

Candice & Dan Servatius

# **EXHIBIT D**

To: Greg Smyth (District Superintendent of School District 70), & board members

We are writing you regarding the prayer that took place at John Howitt Elementary on Thursday January 7<sup>th</sup>. My children came home from school that day explaining that there was an assembly that took place that included hoop dancing and a prayer. The children went on to tell me that the hoop dancing was interesting and impressive but they felt uncomfortable with the prayer. We asked them about the prayer and what made them feel uncomfortable about it and they said, "he was praying to a god but not the same God that we pray to". We have really struggled with this over the last week while trying to contact Greg Smyth to discuss this issue.

We were surprised and disappointed this took place in the school since Greg Smyth assured me, back in September, that nothing of a spiritual nature would take place in a district school without prior consent and knowledge. This conversation took place in response to a letter I sent regarding the smudging ceremony at John Howitt.

Having had that assurance from Greg Smyth, we felt he understood the issue and that appropriate action would be taken to ensure this would not happen again. Unfortunately, we find that we are again writing a letter and feeling frustrated for the children and families that had no notice, or knowledge that this prayer was going to occur. No information was provided about this activity and this shows a lack of consideration towards others beliefs.

In Canada, school prayer is disallowed under the concept of freedom of conscience as outlined in the Canadian Charter on Rights & Fundamental Freedoms. For many years it has been against the law to have prayer in schools. So I find myself asking the question, why is it okay for this prayer to take place when no other groups are allowed to pray in district schools?

The children in the participating assembly were not simply taught about this spiritual practice of prayer, but they were directly involved in it. So I ask again why a prayer took place in a district school when Section 76 of the School Act states: ***All schools and provincial schools must be conducted on strictly secular and non-sectarian principles.*** It also says: ***Highest morality must be inculcated, but no religious dogma or creed is to be taught in a school or provincial school.*** The school district claims to be secular, *being separate from religion, not exclusively allied with or against any particular religion.* Examples of non secular practice are: saying a **prayer**, worshiping through context of a religion. It also states that secularism is remaining separate from religious institutions, beliefs, and dignitaries. Next, no religious dogma or creed has a place in the schools. Dogma is an established belief, doctrine or theological tenet. This Nuu-Chah-Nulth prayer is clearly a part of their spiritual belief system.

We would like to be clear that we support our children learning about other cultures and traditions. My children really enjoyed the hoop dancing cultural aspect, and had that

been the only part that took place we would have no issue at all. However, we do not agree with the forced participation in spiritual/ religious practices and without parents written consent. Further more we believe that these types of practices do not have a place in the regular classroom curriculum.

The Canadian Charter of Rights and Freedoms states that each individual has the freedom of thought, belief, conscience and religion. The first issue is that prayer is disallowed in district schools. The second issue is that we were not informed this was going to take place. As a result we did not have the option of requesting our children be excused, or have a chance to raise any concerns about the prayer. Once again, we feel that our right to choose was violated.

The disappointing thing about this scenario is that it all could have been avoided, if there was a plan in place on how to address this type of situation before it happened . All it would take is a discussion with guest speakers about what is acceptable and what is not in the schools. It is unfortunate that such a simple step was not taken after the first incident.

We would like **in writing** from the school board what measures will be taken to address this repeated offence, as well as the **written** assurance this will not happen yet again in **ANY** of the district schools. We expect that from now on written consent will be required before anything of a spiritual/religious nature takes place in any of the classrooms in the district.

Sincerely,

Candice & Dan Servatius

**7J: ;4;F 7**



# Justice Centre for Constitutional Freedoms

July 12, 2016

Pam Craig  
Chair, Board of Education  
School District 70  
4690 Roger Street  
Alberni, BC, V9Y 3Z4

VIA EMAIL: [pcraig@sd70.bc.ca](mailto:pcraig@sd70.bc.ca)  
(hard copy to follow by ordinary mail)

Dear Ms. Craig,

**RE: Violation of *Charter* Right to Religious Freedom – “Cleansing” Ceremony and Prayer**

We write on behalf of Mrs. Candice Servatius, who is the mother of two students currently attending John Howitt Elementary School (“JHES”).

### **Background**

On September 16, 2015, JHES hosted a series of “Traditional Nuu-chah-nulth Classroom/Student Cleansing” ceremonies in its classrooms. As per the parent letter dated September 14, 2015 (the “Parent Letter”), these cleansing ceremonies involved the “cleansing” of students’ “energy” and “spirits,” and required students to directly participate in the ceremony by holding cedar branches and having smoke “fanned” over their “spirits”. The Parent Letter did not inform parents as to the date on which the ceremony would take place.

Mrs. Servatius received the Parent Letter on the afternoon of September 15 when it was sent home with her son’s grade █ class. Mrs. Servatius was concerned about her son participating in what appeared to be an explicitly religious and spiritual ceremony. As such, she decided to attend in person at JHES the next day. When Mrs. Servatius arrived at JHES on the afternoon of September 16, 2015 she was informed that the ceremony had already taken place in her son’s class that

morning. Mrs. Servatius was surprised and frustrated that the school had failed to provide her with adequate prior notice about requiring her children to participate in a religious ceremony.

Later that same day, September 16, Mrs. Servatius learned that her daughter was coerced by her teacher into participating in the same “cleansing” ceremony in her daughter’s grade 5 class. When Mrs. Servatius’ daughter expressed to her teacher that she did not want to participate, the teacher told Mrs. Servatius’ daughter that it would be “rude” not to participate and that “all” the students were required to participate. Mrs. Servatius’ daughter experienced anxiety as a result of being forced to participate in what she reasonably perceived to be – and which in fact was – a religious and spiritual ceremony. Neither Mrs. Servatius nor her daughter were informed beforehand that a “cleansing” ceremony would be occurring in the grade 5 class on September 16, 2015.

In response to the events of September 16, Mrs. Servatius made oral and written requests to JHES staff and Greg Smyth, Superintendent of Schools for School District 70 (the “School District”) that she be provided with adequate prior notice of any future events occurring at JHES that are of a religious nature, and that she be given the opportunity to either provide her consent for her children to participate, or withdraw her children for the duration of the religious event. Mrs. Servatius also reminded JHES and Mr. Smyth of their obligation to refrain from facilitating religious practices in the school. She was given oral assurances by JHES staff and by Mr. Smyth that her requests would be followed.

On January 7, 2016 a prayer invoking Aboriginal spirituality was performed at a JHES student assembly. The individual performing the prayer made explicit references to a “god”. No notice that a prayer would take place at JHES on January 7, 2016 was given to parents or students. Despite assurances to the contrary, Mrs. Servatius was not informed that her children would again be exposed to religious practices at JHES.

In response to the events of January 7, 2016 Mrs. Servatius wrote to Mr. Smyth requesting that she be provided with written assurance that she would be notified in advance of the occurrence of religious practices at JHES and that her consent would be required before her children would be allowed to participate in any religious events at JHES or any other school. Mr. Smyth orally agreed to provide Mrs. Servatius with a document by the end of April, 2016.



Mr. Smyth failed to provide the requested written assurance by the end of April. Throughout the month of May 2016, Mrs. Servatius telephoned Mr. Smyth many times, and left him several messages. Her calls were not returned. On June 9, 2016 (the “June 9 meeting”), Mrs. Servatius attended at the School District office and waited until Mr. Smyth was available to meet with her.

At this June 9 meeting, Mr. Smyth stated to Mrs. Servatius that the prayer on January 7, 2016 was considered by the School District to be “culture”, not religion. Mr. Smyth further stated “there is more tolerance for Aboriginal religion than your religion”. Mr. Smyth then informed Mrs. Servatius that the School District would not be giving her any written statements about parental consent until at least September 2016.

The actions of JHES staff and Mr. Smyth are unreasonable, violate the section 2(a) *Charter* rights of both Mrs. Servatius and her children, and are in breach of the School District’s duty of religious neutrality. JHES and the School District do not have the authority or the discretion to deem ceremonies and prayers that are clearly religious practices as “culture”.

### *Charter Requirements*

All government institutions, including public schools such as JHES, have a legal duty to remain neutral regarding religion. The *Canadian Charter of Rights and Freedoms* (the “*Charter*”) requires that the School District and JHES remain neutral and neither “favour nor hinder any particular belief, and the same holds true for non-belief”: *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 [*Saguenay*] at para 72. The Supreme Court has ruled that state sponsorship of one religion discriminates against other religions: *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7, para 17. The Court further found that it is only through government religious neutrality that true freedom and equality can be achieved. Public schools have a *Charter* obligation to be a “neutral public space free from coercion, pressure and judgment on the part of public authorities in matters of spirituality”: *Saguenay*, at para. 74 [Emphasis added]

ceremony and observe the January 7 prayer. In the future, JHES and School District 70 must respect the freedom of religion of its students and parents, and adhere to its duty of neutrality.

We demand that JHES and the School District cease the facilitation of religious practices and refrain from characterizing such practices as "culture" in an attempt to shirk its duty of neutrality. We request JHES and the School District develop and implement policies and procedures that will bring JHES and the School District in compliance with the requirements of the *Charter*, and to share those policies and procedures with Mrs. Servatius.

We have every hope that this can be resolved amicably, but if not we will be compelled to take further steps, up to and including the commencement of court action pursuant to sections 24(1) and 52 of the *Charter*.

We expect a detailed response to this matter by Friday, July 29, 2016.

If no response is received, further action will be taken.

Sincerely,



for Jay Cameron  
Barrister and Solicitor  
jcameron@jccf.ca

cc: Trustees, School District 70  
Greg Smyth, Superintendent of Schools  
Stacey Manson, JHES Principal  
Candice Servatius

**7J: ;4;F 8**

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**Re Candace Servatius**

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**Greg Smyth** <gsmyth@sd70.bc.ca>

Thu, Jul 28, 2016 at 11:23 AM

To: "jkitchen@jccf.ca" &lt;jkitchen@jccf.ca&gt;

Cc: Pam Craig &lt;pamcraig@shaw.ca&gt;, Lindsay Cheetham &lt;LCheetham@sd70.bc.ca&gt;

Dear Mr. Kitchen,

I confirm receipt of the July 12, 2016 email which you sent to the Board of Education of School District No. 70 (Alberni) regarding Candace Servatius. We are considering your correspondence and plan to provide you with a response. Please note that we will not be in a position to respond by the July 29, 2016 deadline set out in your correspondence.

Sincerely,

Greg Smyth

Greg Smyth

Superintendent

SD70 (Alberni)

p. 250.720.2770

**7J: ;4;F 9**

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**Complaint of Candace Servatius**

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**Jay Cameron** <jcameron@jccf.ca>  
To: gsmyth@sd70.bc.ca  
Cc: James Kitchen <jkitchen@jccf.ca>

Fri, Jul 29, 2016 at 10:59 AM

Hi Greg,

Thank you for your email.

I understand that you may require some time to ascertain the particulars regarding our client's complaint.

As you can imagine, we would like to have this matter addressed and resolved prior to the commencement of the new school year.

Are you able to provide me with a timeline for your response and/or availability to discuss the matter?

Thank you,

Jay

Jay Cameron, BA, LLB  
Barrister and Solicitor  
Justice Centre for Constitutional Freedoms  
#253, 7620 Elbow Drive SW  
Calgary, AB, T2V 1K2  
Direct line: (403)909-3404

**7J: ;4;F:**

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**Servatius**

1 message

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**Jay Cameron** <jcameron@jccf.ca>

Mon, Aug 15, 2016 at 11:07 AM

To: gsmyth@sd70.bc.ca, James Kitchen &lt;jkitchen@jccf.ca&gt;

Mr. Smyth,

Thank you for your email which you sent to my colleague, Mr. Kitchen, a moment ago. I would ask that in the future you include me on all correspondence as I am the lawyer handling this matter.

To be clear, we did receive your July 28, 2016 email. I called last week requesting a phone call from you, and I have not yet had the courtesy of a response despite my request for one. Instead you emailed my colleague, and did not copy me on the correspondence. I had also asked that you kindly inform me when we might expect to hear from you, as the school year is about to start, and my client wants certainty and a resolution (if possible) to this issue prior to the commencement of the new year.

It is appropriate for counsel to observe certain professional courtesies, such as returning phone calls to the person who placed them and responding in a timely fashion. In accordance with the foregoing, I again request that you provide me with a timeline as to when we might expect to hear from your client on this matter, and I would ask that you call me to discuss next steps. My phone number is 403-909-3404.

If I have not heard from you shortly I am going to seek my client's further instructions on the assumption that you have decided to ignore my invitations to resolve this matter amicably.

Govern yourself accordingly.

Jay

Jay Cameron, BA, LLB  
Barrister and Solicitor  
Justice Centre for Constitutional Freedoms  
#253, 7620 Elbow Drive SW  
Calgary, AB, T2V 1K2  
Direct line: (403)909-3404



**7J: ;4;F ;**



# Justice Centre for Constitutional Freedoms

September 27, 2016

VIA EMAIL (hard copy to follow by regular mail)

School District 70 (Alberni)  
4690 Roger Street  
Port Alberni, BC  
V9Y 3Z4

ATTENTION: GREG SMYTH, Superintendent

Dear Sir,

**RE: Candice Servatius and Illegal School Prayers**

As you are aware, we are counsel for Mrs. Servatius. Two months ago, on July 28, 2016, you wrote to advise that you were considering our correspondence of July 12, 2016, in regard to the above captioned matter, and “planned to provide us with a response.” Despite this assurance, we have heard nothing from you by way of response since then, which is consistent with your pattern of inaction and avoidance in dealing with our client on this matter.

We are consequently in the process of preparing court documents to commence legal proceedings against School District 70, in respect of its violation of the *Charter* freedoms of Mrs. Servatius and her children.

In the interim, please be advised that the imposition of further religious ceremonies or practices on children within the care of School District 70 will be added to the *Charter* infringements detailed in the pending court documents.

Govern yourself accordingly.

Sincerely,

for Jay Cameron, Barrister and Solicitor  
Counsel for Candice Servatius

**7J: ;4;F <**

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**From:** Greg Smyth <[gsmyth@sd70.bc.ca](mailto:gsmyth@sd70.bc.ca)>  
**Date:** October 3, 2016 at 7:54:45 AM PDT  
**To:** "[jcameron@jccf.ca](mailto:jcameron@jccf.ca)" <[jcameron@jccf.ca](mailto:jcameron@jccf.ca)>  
**Cc:** Pam Craig <[PCraig@sd70.bc.ca](mailto:PCraig@sd70.bc.ca)>, "[kmitchell@harrisco.com](mailto:kmitchell@harrisco.com)" <[kmitchell@harrisco.com](mailto:kmitchell@harrisco.com)>  
**Subject:** Candace Servatius

Mr. Cameron,

Your letter of July 12, 2016 was brought to the Board of Education for School District 70 (Alberni) on September 13, 2016. After considering the particulars of Mrs. Servatius' complaint the Board directed staff to look further into the aspects of the complaint and to review District processes regarding cultural change in an attempt to clarify and resolve this matter. We are currently working with legal counsel from Harris and Company and will reply to your complaint following the October 11, 2016 Board meeting.

Greg Smyth  
Superintendent  
SD70 (Alberni)  
p. 250.720.2770

# EXHIBIT K



Harris & Company <sup>LLP</sup>  
14th Floor, 550 Burrard Street  
Vancouver, BC  
Canada V6C 2B5

T/ 604 684 6633  
F/ 604 684 6632  
harrisco.com  
info@harrisco.com

October 25, 2016

Keith E. W. Mitchell  
D/ 604 891 2217

By EMail  
Without Prejudice

kmitchell@harrisco.com  
Our file 666070.500

Workplace Law  
& Advocacy

Justice Centre for Constitutional Freedoms  
253-7620 Elbow Drive SW  
Calgary, AB T2V 1K2

Attention: Jay Cameron

Dear Sirs and Mesdames:

Re: Board of Education of School District No. 70 (Alberni) and Candace Servatius

We represent the Board of Education of School District No. 70 (Alberni). Your letter of July 12, 2016 has been referred to us for reply. We will not be responding to your correspondence line by line, but below set out the School District's position.

The Alberni School District is fully committed to ensuring that its educational programs are delivered in a manner consistent with both the *Charter* and section 76 of the *School Act*. Your client has raised concerns with respect to two activities that occurred in the School, one in September 2015 (the "cleansing") and one in January 2016, in which a cultural performer presented to the school and commenced his performance with the recitation of a prayer. You have taken the position that both these activities are constitutionally impermissible.

As you know, in Canada it is permissible for schools to teach about religion, but not to indoctrinate students in any particular religion. It is the mandate of the school system to "inform the student about various beliefs, but...not seek to conform him or her to any one belief." The School District recognizes that Canada is a multicultural society where diversity is valued, and teaching students about that cultural and religious diversity is consistent with the goals of the public education system.

The School District does not agree that either of the activities were impermissible, but does agree, with respect to the cleansing, that it could have been made clearer to students and parents the voluntary nature of participation and that students were free to opt out. While the School Principal wrote to parents advising of the cleansing and explaining its educational purpose relating to Nuu-chah-nulth culture and history, we acknowledge that correspondence

did not clearly state that students need not participate. For that lack of clarity, the School Principal has already apologized to the Servatius children and the School District has shared with Mrs. Servatius its commitment to reviewing its practices.

As to the Hoop Dance performance by Teddy Anderson, the School District does not agree that his recitation of a short prayer at the commencement of his performance in any way violates the *School Act*. Student participation in the prayer was neither required nor expected. As you will undoubtedly be aware, school districts in British Columbia have been mandated to integrate authentic Aboriginal content into the curriculum, including through the participation of Aboriginal Elders and other knowledgeable community members as guest speakers and presenters. The Ministry has recognized that it is consistent with the curriculum for a school to invite an Elder from an Aboriginal group into the school, to welcome them appropriately, invite them to say a prayer, and to thank them in culturally appropriate ways. To do so does not violate either the *School Act* or Constitution. Likewise, the recitation of a prayer by Mr. Anderson did not violate the *Act* or Constitution.

While we appreciate Ms. Servatius bringing her concerns to the School District's attention, the actions of the School do not constitute it professing, adopting or favoring one belief to the exclusion of all others, nor did such actions amount to an interference with Ms. Servatius's beliefs in a manner that is more than trivial or insubstantial (*MLQ v. Saguenay (Ville)* 2015 SCC 16 at para. 83-85). Thus, while the School District does not agree that there has been any violation of Ms. Servatius's rights, we can assure you that the School District is committed to ensuring best practices in informing parents about cultural performances and processes by which students may opt out of direct involvement in activities that may conflict with their or their family's beliefs. As well, the School District is committed to ensuring that when cultural speakers or performers are presenting within the School District, they are made aware of what is acceptable communication within the public school system.

Thank you for bringing these concerns to the School District's attention.

Yours very truly,  
Harris & Company LLP

Per:



Keith E. W. Mitchell

KEM/tnh

cc Client  
GENERAL/666070.500/2111973.1