

Education Development Charge Guideline

**Capital Programs Branch
Ministry of Education
April 2023**

Table of Contents

OVERVIEW	6
EDUCATION DEVELOPMENT CHARGES	7
1. Introduction.....	7
2. Background	7
3. Imposition of an Education Development Charge	7
4. EDC Rate Increase Restrictions.....	8
5. Alternative Projects	8
6. Examples of Alternative Projects.....	9
7. Development	9
8. Minister Approval of Alternative Projects.....	9
9. Changes to Alternative Projects	10
Background Study and Administrative Considerations.....	10
10. Education Development Charge Background Study	10
11. Minister Approval of Background Study Submission.....	11
12. Stakeholder Participation	12
Eligibility	13
13. Eligibility	13
14. Capacity Trigger.....	13
15. Financial Obligation Trigger	13
Development of Background Study.....	15
16. Process and Methodology.....	15
17. Area to Which By-Law Apply.....	15
18. Demographic Data Sources	16
19. Review Areas.....	16
20. Capacity Determination.....	17
21. Demographic Projections	17
22. Number of New Dwelling Units.....	18
23. New Dwelling Units Exemptions.....	18
24. Institutional Exemptions	19

25.	Non-Residential Development.....	19
26.	Growth-Related Pupils/Yield Factors	20
27.	Inclusion of Holding Students.....	21
28.	Net Growth-Related Pupil Places/Available Pupil Places.....	21
29.	Site Acquisition Needs	22
30.	Alternative Projects	22
31.	Maximum Site Size	22
32.	Growth-Related Net Education Land Costs	23
33.	EDC Eligible Costs/Net Education Land Costs	25
34.	Inflation and Interest Rates	25
35.	Revenue Sources.....	25
36.	Reserve Funds.....	26
37.	Determination of Education Development Charge	26
38.	Appointment of Education Land Costs Across Development.....	27
39.	Uniform Residential EDC	27
40.	Differentiated Residential EDC.....	28
41.	Non-Residential EDC	28
	Policy Statements Required by the School Board.....	29
42.	Policy Statement Required by the School Board.....	29
43.	Alternative Accommodation.....	29
44.	Operating Savings.....	30
	Ministry Submission	30
45.	Ministry Submission	30
46.	Ministry Forms.....	30
	Education Development Charge By-Law.....	31
47.	Education Development Charge By-Law	31
48.	Minister’s Approval Required	31
49.	Alternative Projects or Localized Development Agreements.....	31
50.	Public Meeting(s)	32
51.	Timing of Notice of Public Meeting(s).....	32

52.	Notices	32
53.	Notification of By-Law Adoption	33
54.	Statement of Treasurer	34
55.	By-Law Expiration	34
56.	Non-Statutory Exemptions	34
	Role of Municipality	35
57.	Role of Municipality	35
58.	Credits for Land-Use Conversion	35
	Reporting.....	35
59.	Monthly Reporting by Municipality.....	35
	Complaints and Appeals	36
60.	Complaints Regarding EDCs	36
61.	Complaint Process	37
62.	Complaint Hearing	37
63.	Appeals	37
64.	Appeal Period.....	37
65.	Notice of Appeal.....	38
66.	Appeal Process	38
67.	Powers of the Ontario Land Tribunal	38
68.	Refunds and Interest Rates.....	39
69.	Appeals Against Amended EDC By-Laws.....	40
70.	Appeal of Municipal Decision	40
	Amendments to Existing By-Laws.....	41
71.	Amendments to Existing By-Law.....	41
72.	Limitation on Amendments.....	41
73.	Process to Amend a By-Law	42
74.	Calculation of Amended EDC.....	42
	LOCALIZED EDUCATION DEVELOPMENT AGREEMENTS	42

Definitions 45

OVERVIEW

Please Note: These guidelines are not intended as a legal interpretation of, or opinion on, the *Education Act*, regulations, or any other relevant legislation.

This document provides legislative, regulatory, or other references for your convenience. Regulatory references listed refer to the consolidated and amended version of Ontario Regulation 20/98. A copy is available for download from the Ontario Government e-laws website at: <http://www.e-laws.gov.on.ca>.

On any matter involving the legal interpretation of the legislation governing EDCs, the reader is encouraged to consult their legal advisor.

EDUCATION DEVELOPMENT CHARGES

1. Introduction

Education Development Charges (EDCs) are a revenue source for eligible school boards that need to purchase land for new schools, in order to accommodate students coming from new housing development. EDCs can also support costs related to site preparation and starting in 2019, lower-cost alternatives to site acquisition.

EDC rates are set out in by-laws approved by school boards, which are reviewed every 5 years. Before approving a by-law, school boards are required to submit a background study to the Ministry of Education which outlines, among other things, anticipated enrolment growth from development, the number of school sites required, Alternative Projects, and any capacity exemption requests.

School boards are provided with the general authority to impose EDCs for new school sites in Division E of Part IX of the *Education Act*. Ontario Regulation 20/98 (Education Development Charges – General), as amended, provides requirements for determining a school board's eligibility to impose EDCs on new development, and the calculation of the charges.

2. Background

In response to concerns raised by stakeholders, including developers and school boards, the Ministry of Education announced its intention to review the Education Development Charge framework in October 2018.

Through the Housing Supply Action Plan, the Ministry of Education worked with the Ministry of Municipal Affairs and Housing (MMAH) to consult with representatives from the education and municipal sectors, as well as the housing development industry, on opportunities to improve the EDC framework.

In June 2019, the government amended the *Education Act* through Bill 108 – *More Homes, More Choice Act 2019*. This legislation provided school boards with more flexibility to apply EDC revenue to support lower-cost alternatives to site acquisition and provided EDC eligible school boards the option to enter into a Localized Education Development Agreements (LEDAs).

In November 2019, Ontario Regulation 20/98 (Education Development Charges – General) was amended to operationalize legislative changes made earlier in 2019.

3. Imposition of an Education Development Charge

Before approving an EDC by-law, a school board is required to:

- Demonstrate that the school board's projected 5-year average elementary or secondary enrolment within its board wide jurisdiction exceeds the school board's elementary or secondary capacity; or the school board's current EDC financial obligations exceeds the revenues reported in the EDC Reserve Fund;
- Prepare an EDC background study (which includes details on the calculation of the EDC rate and Alternative Projects);
- Receive written approval from the Minister of Education for the estimated enrolment projections, number of new school sites required, Alternative Projects and the exclusion of any available capacity.

Ontario Regulation 20/98 Section 10

4. EDC Rate Increase Restrictions

In 2019, the government amended Ontario Regulation 20/98 (Education Development Charges – General) to impose annual EDC rate restrictions to the following:

- A maximum yearly increase of the greater of 5% or \$300 per residential unit; and;
- A maximum yearly increase of the greater of 5% or \$0.10 per square foot for non-residential units.

The above does not restrict the ability of school boards to pass by-laws for the full five-year term as set out in the *Education Act*.

Ontario Regulation 20/98 Section 7(9) (9.1) (10) (11) (12)

5. Alternative Projects

Starting in 2019, the *Education Act* was amended to provide school boards with the flexibility to allocate EDC revenue to other means of pupil accommodation beyond the traditional purchase and preparation of land. Thus, school boards may allocate revenue raised by charges imposed by EDC's towards a lower cost alternative to site acquisition (Alternative Project). Alternative projects are expected to lower EDC rates.

Education Act Section 257.53.1

An Alternative Project must have an associated cost that is less than the cost to acquire a site. When determining the cost of Alternative Projects, school boards should consider any on-going operating and renewal costs. Also, school boards should include cost escalation and contingencies in their costing of Alternative Projects.

6. Examples of Alternative Projects

The following provides examples of Alternative Projects a school board could consider as a solution to pupil accommodation and includes:

- Alternative parking arrangements such as underground parking garages or off-site parking;
- Additional construction costs attributed to vertical construction;
- Purpose built space within a larger development;
- Alternative play area enhancements; and
- Pedestrian access improvements.

7. Development

School boards are to consider the acquisition of land as the board's primary means to address pupil accommodation needs; however, at a minimum school boards are required to consider Alternative Projects for those sites expected to be acquired during the term of the proposed by-law.

School boards are encouraged to identify a variety of potential Alternative Projects in the background study to allow for future changes as circumstances require.

The requirement of school boards to consider Alternative Projects is effective November 1, 2019. As such, for sites already under agreement at this date, there is no requirement for to consider Alternative Projects.

School Boards are encouraged to hold on-going conversations with developers regarding potential Alternative Projects. This could be part of a school board's annual meeting held with community partners. As a best practice, school boards are encouraged to inform the ministry of any proposed Alternative Projects early in their development.

School boards are required to develop internal policies that outline what criteria/parameters will be used to evaluate submitted Alternative Projects. School boards may receive numerous suggestions for Alternative Projects from the public. Submissions should be reviewed based on the school boards internal policy.

8. Minister Approval of Alternative Projects

Under the *Education Act* school boards are required to seek Minister approval before implementing an Alternative Project. Minister approval can be requested in advance of the development of a background study.

However, the allocation of revenue raised by EDCs cannot be applied until the by-law is granted.

When requesting Minister approval, boards would provide the following information:

- **Provide a Description of Alternative Project:**
 - Description of the project;
 - Advantages/disadvantages of Alternative Projects;
 - List of any external partners;
 - Ownership of Alternative Project;
 - Who will be responsible for construction;
 - Anticipated Parent/community reactions;
 - Risks and liability concerns;
 - Timelines;
 - Impact on EDC charge.

- **Demonstrate that the Alternative Project has a lower cost to site acquisition:**
 - Cost of Alternative Project including capital, renewal and operating costs;
 - Contingencies to address liabilities and risks;
 - Any accounting implications such as amortization period;
 - Savings realized due to avoiding site acquisition.

9. Changes to Alternative Projects

A school board may make a change to a previously approved Alternative Project. However, Minister's approval is required. School boards are required to notify the Minister at least 60 days prior to implementing the change. If denied, the Minister will respond within this timeframe.

Education Act Section 257.53.1(3)

Background Study and Administrative Considerations

10. Education Development Charge Background Study

EDC by-laws are in force for a maximum of five years; however, to better reflect the timing of the need for pupil accommodation resulting from new residential development (as well as minimizing the fluctuation of EDCs over time), the calculation of the charge is based on projected enrolment arising out of new development over a fifteen-year period.

In order to pass an EDC by-law, a school board must first complete a background study.

This study provides information on the methodology used by the school board in determining the calculation of the charge, as well as the assumptions and logic employed in determining development projections, enrolment projections, site requirements and the estimated education land cost.

In addition, all background studies are to include a complete set of ministry forms related to the calculation of the EDC rate. These forms provide Ministry of Education staff and the public with specific calculation-related information required for the analysis of EDC background studies.

For a copy of the Ministry's forms please contact your Capital Analyst.

These guidelines are not designed to constrain school boards in the preparation of a background study. School boards may include additional information as necessary or relevant to their specific circumstances. However, these guidelines provide an outline of the minimum amount detail that is to be included based on the provisions of Ontario Regulation 20/98, as amended.

11. Minister Approval of Background Study Submission

School boards are to submit via email a copy of the EDC background study and Ministry forms to the Director of the Capital Program Branch at the Ministry of Education along with the associated Manager and Capital Analyst.

The Minister of Education's approval of the estimated enrolment projections, estimated number of new sites, Alternative Projects and capacity exclusions are required prior to by-law passage.

Ontario Regulation 20/98 Section 10

As a best practice, school boards are encouraged to inform the ministry of any unique circumstances expected to be included in their background study in advance.

In order to complete the necessary work to issue this approval, the Ministry requires the final version of the background study and Ministry forms at least 90 days prior to the anticipated by-law passage date. Failure to supply the Ministry with the background study at least 90 days in advance may result in the school board not receiving the necessary approval in time, and, consequently, a possible delay in by-law passage.

Ontario Regulation 20/98 Section 10

Ministry staff would be pleased to review draft background studies in order to assist school boards with identifying potential issues or concerns that could delay ministerial approval. In many cases, ministry staff identify issues that require clarification before approval can be issued. It is recommended that school boards provide the ministry with

the names and contact information of staff directly involved in the preparation of the background study.

12. Stakeholder Participation

School boards are encouraged to include stakeholders in their discussions regarding the imposition of EDCs in their jurisdiction, specifically regarding any potential Alternative Projects.

Local developers (or developer associations) should be contacted prior to the commencement of the EDC process to ensure they are made aware of the school boards intent to pass an EDC by-law in the jurisdiction of the school board.

As a best practice, school boards are encouraged to engage local developers (or developer associations) in a conversation regarding potential Alternative Projects well in advance of preparing the background study. As these types of transactions can be complex, early engagement will allow all parties to participate in the development of Alternative Projects. During the development of these agreements, school boards should inform the ministry.

School boards are advised to meet with as many community partners and stakeholders as possible regarding a potential EDC by-law. This could be done through a school board's annual process to engage community partners.

The ministry recommends that school boards work closely with coterminous school boards when developing an EDC submission. Coterminous school boards imposing charges in the same area should agree upon the data and assumptions used in the calculation of the respective charges.

In addition, municipalities should be contacted and advised that the school board is considering an EDC. While municipalities do not have the authority to approve or veto EDC by-laws, they are responsible for collecting EDCs when issuing building permits. In some cases, this means that municipal staff will require additional information on how to calculate and collect the EDC on behalf of the school board (See Section 58). Providing municipalities with as much advance notice as possible of the potential EDC will help the municipality plan their collection and accounting procedures.

Municipalities can supply information on growth projections, official plans, plans of subdivisions, as well as information and policies relating to the imposition of municipal development charges. Consultation with municipalities may also alert a school board to each municipal council's plans for development. This will assist the school board in developing a by-law that is sensitive to municipalities' circumstances and priorities.

The *Education Act* requires school boards to provide the public with a copy of the EDC background study at least two weeks prior to the public meeting; however, school boards are strongly encouraged to make background studies public at least 90 days before the first public meeting. This will allow all interested parties sufficient time to analyze complex background studies in order to fully participate in the public meeting process.

Eligibility

13. Eligibility

EDCs may be collected on new residential or non-residential development and are to be used to support the following costs required to provide accommodation for students resulting from new residential development in the area to which the by-law applies through the following:

- Site acquisition;
- Lower-cost alternatives to site acquisition (Alternative Projects); and
- Site Preparation costs

In order to be eligible to pass an EDC by-law, a school board must submit its background study to the Minister and to its coterminous boards and meet one of the two eligibility criteria outlined below.

Ontario Regulation 20/98 Section 10(2)

14. Capacity Trigger

A school board becomes eligible to pass an EDC by-law if the projected average elementary or secondary enrolment within its jurisdiction, over the five years following the date of by-law passage, exceeds their elementary or secondary capacity (as of the date the by-law is passed) as agreed upon by both the school board and the Ministry.

Ontario Regulation 20/98 Section 10(2)(i), 10(2)(ii)

Capacity for mixed schools should be split between elementary and secondary panels as reflected in the School Facility Inventory System (SFIS). In addition, school boards are to include any capacity approved through the ministry's Capital Priorities Grant program but not yet reflected SFIS that is due to open within the next twelve months of the by-law being passed (See Section 20).

15. Financial Obligation Trigger

A school board becomes eligible to pass an EDC by-law when its projected financial obligations exceed the projected balance of the EDC Reserve Fund. As a result, it is

possible that a school board may have sufficient capacity to accommodate enrolment over the term of the next by-law contemplated (and therefore not meet the eligibility trigger in Section 14), yet still be obligated to pay for sites purchased for new growth.

School boards are required to demonstrate in the background study that an EDC Financial Obligation exists. The following is required to demonstrate that an EDC Financial Obligation exists:

- The school board must have had a previous EDC by-law in effect after September 1, 1999.
- If the school board borrowed any funds out of the EDC Reserve Fund, the original amount of the funds borrowed plus applicable interest must be reconciled back into the EDC Reserve fund before an EDC Financial Obligation determination can be made.
- The school board is to provide a copy of the most recent Appendix D1 (Education Development Charges Report) and Appendix D2 (Supplementary Information on Site Acquisitions and Related Debt Obligations) from the School Board Financial Statement with the background study.
- The school board must include a Transaction History of all EDC-related financial activity since Appendices D1 and D2 of the most recently filed School Board Financial Statement was submitted to the ministry.
- This Transaction History is to include all activity up to the date the background study was officially submitted to the ministry. If there has been no activity since the last Financial Statement was submitted to the ministry, a statement to this effect is to be included in the background study.

The Transaction History or statement of inactivity is to be signed by the school board's independent auditor, treasurer, or director to indicate that it is free of material misstatement.

The school board is also to include a repayment schedule to demonstrate how the EDC Financial Obligation will be eliminated.

The calculation to determine if a school board qualifies under the EDC Financial Obligation eligibility criterion is as follows:

1. Determine the amount reported as Outstanding Principal from Appendix D2 of the last School Board Financial Statement.
2. Adjust the Outstanding Principal to reflect the activity reported on the Transaction History to determine the Adjusted Outstanding Principal.

3. Determine the EDC Reserve Fund Balance from line 4.0 of Appendix D1 of the most recently filed School Board Financial Statement.
4. Adjust the EDC Reserve Fund Balance to reflect the transactions that have taken place in the EDC Reserve Fund since the most recently filed School Board Financial Statement to determine the Adjusted EDC Reserve Fund Balance.
5. From the Adjusted Outstanding Principal, subtract the Adjusted EDC Reserve Fund Balance. If the result of the above calculation is a positive number (the Adjusted Outstanding Principal is greater than the Adjusted EDC Reserve Fund Balance) then the school board qualifies under this eligibility criterion.

Ontario Regulation 20/98 Section 10(2)(iii)

Development of Background Study

16. Process and Methodology

This section of the guidelines package outlines the minimum amount of information that is to be included in an EDC background study; however, school boards may design the background study in whatever manner best presents the information.

17. Area to Which By-Law Apply

The EDC Regulation has divided the jurisdictions of school boards into regions for purposes of Section 257.57 of the *Education Act*. A school board may have one EDC by-law covering an entire prescribed region in which it intends to build a school or a school board may identify sub-areas within a prescribed region and exempt one or more of these sub-areas from its EDC by-law. Similarly, a school board may have different EDC by-laws for different areas within a prescribed region. A school board, however, cannot have one by-law governing more than one prescribed region.

Ontario Regulation 20/98 Section 19

Revenue collected under one EDC by-law that applies to land in a region or sub-area may not be used to meet growth-related land needs arising outside that region or sub-area.

All EDC background studies are to clearly outline the geographic regions in which an EDC by-law will be passed. If more than one by-law will be passed in the jurisdiction of a school board, area-specific calculations of the EDC are to be provided in the background study. Maps to scale are also to be included in the background study to clearly demarcate the area in which an EDC will be levied and to identify sites to be acquired through EDCs.

Although a separate by-law is required for different regions within the jurisdiction of the school board, one consolidated background study may be submitted to the ministry to meet the requirements of the EDC Regulation. School boards are to segregate the information pertaining to different regions into distinct chapters to ensure the study remains easily understandable.

18. Demographic Data Sources

Development and enrolment projections are determined using a variety of methods and sources of data. As part of the enrolment projection process, school boards are required to provide year-by-year enrolment projections for both students from existing housing stock and those arising from new development.

The ministry recognizes that school boards require flexibility when designing enrolment-forecasting models to take into account variables unique to specific jurisdictions.

In the EDC background study, school boards are to outline the methodology employed in determining their growth forecasts, estimated housing starts, and enrolment projections. Detailed information is to be provided to identify/justify data sources and how the data was modelled to achieve the projections contained in the background study.

19. Review Areas

It is possible for a school board to examine its growth-related needs on a review area basis governed by board-imposed boundaries or treat the entire area upon which EDCs are to be imposed as one review area. A map, to scale, of the review area(s) and proposed school sites is to be included in the study.

Review areas are artificial constructs designed to break up the jurisdiction of a school board into smaller zones to make more accurate determinations of where school sites are needed. Typically, these review areas are established by school boards to reflect traditional catchment areas, natural dividers, or major thoroughfares. Generally, these incorporate the entire area served by a school board (within a specified EDC region). Where possible, review areas used in EDC background studies should be consistent with those found in the school board's long-term plan.

Once review areas are established, there is usually minimal need to make changes, with some exceptions (e.g. the extension of a major road or highway which bisects an existing review area, a change in attendance patterns, school openings or closures, etc.). As such, school boards are encouraged to ensure that review areas in subsequent EDC background studies are consistent with the previous study. If the school board opts to modify review areas from the previous background study, an explanation is required.

EDC background studies are to clearly outline the methodology employed by the school board in determining review areas and how the school board addressed attendance issues (e.g. pupils in holding schools, pupils from outside the jurisdiction, pupils residing in one review area but attending school in another, feeder school alignments, variations in program configuration, etc).

20. Capacity Determination

For the purpose of calculating eligibility (See Section 14), the current capacity (as recorded in the Ministry's School Facilities Inventory System) of all capacity of the school board (also known as the "On-The-Ground" Capacity) on the day the by-law comes into force should be used. Adjustments reflecting ministry policy are to be made in such circumstances as outlined below (in consultation with staff from the Capital Program Branch of the Ministry of Education):

- The "On-The-Ground" capacity of schools transferred between panels (e.g. an elementary school being converted into a secondary school) within 12 months of by-law passage may be attributed to the panel the school will be used for after the transfer is complete. In order to shift the "On-The-Ground" capacity between panels in these situations, the school board must have passed a resolution transferring the school from one panel to the other.
- The capacity of all schools/additions that have received ministry approval through the Capital Priorities Grant program that are scheduled to open in the next twelve months but are not reflected in SFIS should be included in the calculation of On-The -Ground capacity.

School boards are required, in the background study, to document all capacity adjustments made that are not consistent with the current information loaded in the Ministry's School Facilities Inventory System. Where applicable, school boards are to ensure that the School Facilities Inventory System has been updated to reflect the current configuration of schools in the school board's real estate portfolio.

Starting in 2019, school boards have the ability to exempt capacity reported in their SFIS. However, minister approval is required to do so.

21. Demographic Projections

In order to calculate the quantum of the EDC, the first mathematical step is to determine, for each of the next fifteen years in the area subject to the EDC by-law, the Number of New Dwelling Units projected to be constructed.

If the school board intends to levy a non-residential EDC, it must also provide estimates of the Non-Residential Board-Determined Gross Floor Area that will occur during the

fifteen-year planning horizon. The area municipalities should be consulted for input on this forecast.

These determinations are to be consistent with the explanation of the use of demographic data sources (See Section 18).

Ontario Regulation 20/98 Section 1

22. Number of New Dwelling Units

Using demographic models (See Section 18) school boards are to determine, for each year of the fifteen years following the day the by-law comes into force, the projected number of New Dwelling Units that will be constructed in the area subject to the EDC by-law. School boards are to determine the number of Projected New Dwelling Units based on the type of development and criteria that is relevant to the school board (e.g. low, medium, and high density; condominiums/apartments, townhouses, detached houses; etc.).

The determination of the varying types of dwelling units is necessary to determine the number of new pupils that will arise from new development (See Section 27) and to calculate the Differentiated Residential EDC based on dwelling type for school boards pursuing Differentiated Residential EDCs (See Section 41).

The Education Act and the EDC Regulation, in certain situations, specify development that is exempt from Education Development Charges.

Ontario Regulation 20/98 Section 7

Education Act Section 257.54(3) and (5)

23. New Dwelling Units Exemptions

The *Education Act* and the EDC Regulation, in certain situations, specify residential development that is exempt from Education Development Charges. These situations include:

- Housing intensification (subject to the limits outlined in the EDC Regulation);
- Enlargement of an existing residential dwelling;
- Replacement dwellings that were destroyed or rendered uninhabitable by fire or demolition (within two years of the date the former dwelling was destroyed, became uninhabitable, or was demolished); and
- Dwellings built on Toronto Railway Lands subject to the terms of Section 6 of the EDC Regulation and the relevant agreement specified therein.

School boards are to ensure that the determination of the number of new units has factored out the number of units that will be excluded from the EDC by-law because of these mandatory exemptions, as applicable.

The number of new units calculated after subtracting mandatory exemptions is referred to as the Number of Net New Dwelling Units. This figure is used in subsequent calculations required by the EDC Regulation.

Ontario Regulation 20/98 Section 3, 4, 6, and 7(1)

24. Institutional Exemptions

The Regulation specifies certain types of institutional development that is exempt from EDC charges and include:

- Long-term care homes;
- Retirement homes;
- Private schools;
- Publicly-assisted universities and colleges;
- Indigenous Institutes;
- Memorial homes, clubhouses or athletic grounds of the Royal Canadian Legion;
- Hospices; and
- Child care

25. Non-Residential Development

School boards opting for a non-residential component to the EDC (See Section 42) are required to provide estimates of the amount of non-residential development that will occur in the area subject to the EDC by-law during the fifteen-year planning horizon. Using demographic models (See Section 18) school boards are to forecast the amount of non-residential development based on the Estimated Board-Determined Gross Floor Area that will be constructed over the fifteen-year planning horizon.

Ontario Regulation 20/98 Section 7(11)

The definition of Estimated Board-Determined Gross Floor Area may be determined by the school board, in which case the definition is included in the EDC by-law. In situations where school boards do not provide a definition in the EDC by-law, the default interpretation is that provided in Section 1 of the EDC Regulation.

Also, the *Education Act* and the EDC Regulation, in certain situations, specify other non-residential development that is exempt from Education Development Charges and include:

- Enlargement of an existing industrial building (subject to the limits outlined in the *Education Act*);

Education Act Section 257.55

- Replacement of non-residential buildings that were destroyed or rendered unusable by fire or demolition (within five years of the date the former building was destroyed, became unusable, or was demolished subject to the limits outlined in the EDC Regulation),
- Buildings built on Toronto Railway Lands subject to the terms of Section 1 of the EDC Regulation and the relevant agreement specified therein.

In calculating the Estimated Board-Determined Gross Floor Area using municipal forecasts, school boards are to ensure that their definition of Board-Determined Gross Floor Area is consistent wherever possible with that used by the area municipalities in the proposed by-law area.

Ontario Regulation 20/98, Section 5, 6, and 7.11

26. Growth-Related Pupils/Yield Factors

The second mathematical step in determining the amount of the EDC is to determine the number of Growth-Related Pupils that will be generated from the new development described in Section 23. This is accomplished with the use of pupil yield factors that are applicable to each type of development.

Pupil yields are mathematical representations of the number of school-aged children that will be generated by a particular dwelling unit type cumulatively over the fifteen-year planning horizon, and who will attend schools of the school board in question. Elementary and secondary yield factors should be based on historical data and trends as outlined in Section 18.

Consultation between coterminous boards is strongly recommended to ensure that data and assumptions for pupil yields are justifiable and reasonable. The background study should include an explanation of how the pupil yields were determined.

In order to determine the number of Growth-Related Pupils:

1. Determine the Elementary and Secondary Yield Factor for each type of development represented in the determination of the total number of net new dwelling units.
2. For each of the fifteen years in the forecast period, and for each type of development represented, multiply the appropriate Elementary and Secondary Yield Factor by the number of Net New Dwelling Units.
3. Add together the total number of elementary pupils that will be generated over the fifteen-year period to determine the Elementary Growth-Related Pupils arising from new development.

4. Add together the total number of secondary pupils that will be generated over the fifteen-year period to determine the Secondary Growth-Related Pupils arising from new development.

For further information, see Section 47 regarding Ministry forms.

Ontario Regulation 20/98 Section 7(3)

27. Inclusion of Holding Students

Students residing in development areas identified in previous background studies and are not accommodated in permanent structures are to be identified as holding students. School boards may include these holding students in determining their Net Growth-Related Pupils.

28. Net Growth-Related Pupil Places/Available Pupil Places

School boards are required to offset the total Growth-Related Pupils described in Section 28 by any Available Pupil Places that are not required by existing pupils of the school board in year fifteen of the planning horizon. If the school board opts for a 'review area' approach in its EDC calculations, this determination is done independently for each review area of the school board.

School boards are expected to consider all available "On-The-Ground" capacity when determining the Available Pupil Places including:

- Leased space in which the lease term is longer than the duration of the background study;
- Closed schools; and
- Sites declared surplus.

School boards may however, request that the Minister approval exempt specific facilities from the calculation of Available Pupil Places. This approval will be granted at the same time as the background study is approved. School boards should inform the Capital Program Branch in advance if they are seeking approval.

School boards are to provide, for each existing facility, the capacity as recorded in the Ministry's School Facilities Inventory System (as adjusted in accordance with Section 20), as well as the Average Daily Enrolment for the current year (as documented in Schedule 13 of the last Financial Statement, Revised Estimate, or Estimate the school board filed with the Ministry). Also, enrolment projections for each year of the fifteen-year planning horizon when determining the availability of existing pupil places within review areas. For a definition of Average Daily Enrolment, please see the Average Daily Enrolment Regulation for the academic year in which the background study is being prepared.

By subtracting Available Pupils Places from the Growth-Related Pupils, the school board has determined the Net Growth-Related Pupil Place Requirements.

For further information, see Section 47 regarding Ministry forms.

Ontario Regulation 20/98 Section 7(3)

29. Site Acquisition Needs

Once the school board has determined its Net Growth-Related Pupil Place Requirements in accordance with Section 29, the next step is an analysis of where new schools will need to be built, what size each facility will be, when the land will be acquired for school construction, and if an Alternative Project could be implemented. The background study is to provide detailed information on each of these components, in conjunction with the Ministry forms (See Section 47).

Since the study encompasses 15-year planning horizon, site-specific locations may not be known at the time of background study. Nevertheless, a school board should provide the general location of all sites whose cost the school board intends to include in its EDC calculation.

Ontario Regulation 20/98 Section 7

30. Alternative Projects

School boards are now required to consider Alternative Projects where site acquisition is expected to occur within 5 years of the date of the by-law. If an Alternative Project is not the suggested solution to pupil accommodation, a rationale needs to be provided (as per Section 15).

31. Maximum Site Size

The regulation provides a table of maximum site sizes depending on the number of pupil places that will be constructed. This table is reproduced below. However, the EDC Regulation also recognizes specific situations in which a site size may exceed the sizes specified in the table.

When the area of any of the proposed sites exceeds the site designations in this table, justification as to the need for the excess land is required.

Maximum Site Sizes

Elementary Schools		Secondary Schools	
Number of Pupils	Maximum Area (acres)	Number of Pupils	Maximum Area (acres)
1 to 400	4		
401 to 500	5	1 to 1000	12
501 to 600	6	1001 to 1100	13
601 to 700	7	1101 to 1200	14
701 or more	8	1201 to 1300	15
		1301 to 1400	16
		1401 to 1500	17
		1501 or more	18

32. Growth-Related Net Education Land Costs

To determine Growth-Related Net Education Land Costs:

1. Determine the number of Elementary and/or Secondary School sites or Alternative Projects required to accommodate the estimated Net Growth-Related Pupils determined in Section 29 over the fifteen-year planning horizon being considered in the background study.

Note: This may include school sites or Alternative Projects considered under a previous by-law but not yet acquired.

Ontario Regulation 20/98 Section 7(4)

2. Determine the total costs to acquire and service the land or implement an Alternative Project, adjusted by the percentage of each site that can be financed through the EDC (determined by the percentage of Net Growth-Related Pupil Places that will be accommodated in the new school (or addition) to be built on the site compared to “existing” students of the board).
3. Add to the total land and Alternative Project cost, the Total Outstanding Education Development Charge Financial Obligations (principal and interest)

incurred by the school board under a previous by-law, if any, to determine the Net Education Land Cost.

Note: A negative balance in an existing Education Development Charges Reserve Fund, established for the area to which the proposed by-law will apply, is considered to be part of the Total Outstanding Education Development Charge Financial Obligations.

4. To arrive at the Growth-Related Net Education Land Cost, subtract from the total Net Education Land, all contributions to site costs, which the school board has received or to which it is entitled, that defray, or will defray, the Net Education Land Cost.

- Note: A school board is to report all contributions from the sale of any sites and not just the portion funded by EDCs. This applies to any site that was purchased after January 2019. Thus, the gain on any sale cannot be reported as Accumulated Surplus on the school board's financial statements.

A positive balance in an existing Education Development Charges Reserve Fund, established for the area to which the proposed by-law will apply, is considered to be an amount that defrays the Net Education Land Cost.

5. At the calculation stage, the costs to prepare and distribute the EDC background study may also be included as an eligible cost that can be recovered through a school board's EDC by-law. By adding the Growth-Related Net Education Land Costs and the EDC Background Study Costs the school board has determined the Total Growth-Related Net Education Land Costs.

Please Note: These instructions are in not intended to create a situation where a school board has "double-counted" education land costs and is in effect recovering monies in excess of those permitted by the *Education Act*. School boards are to ensure that a common-sense approach to these calculations is undertaken to ensure that no ineligible amounts are factored into the determination of Total Growth-Related Net Education Land Costs. Special care is to be taken when incorporating Outstanding Education Development Charge Financial Obligations and reserve fund balances into the determination of Total Growth-Related Net Education Land Costs.

33. EDC Eligible Costs/Net Education Land Costs

In addition to the amount of money required to acquire sites or implement Alternative Projects, to accommodate new growth, there are certain other costs that a school board may include in the determination of Net Education Land Costs.

Education Act Section 257.53

Other costs may include:

- All interest and borrowing costs related to site acquisition
- Land escalation considerations used to establish future values of land
- Costs related to the preparation and distribution of EDC background studies
- Costs related to studies of land being considered for acquisition (environmental assessments, soil analysis, etc.)
- Costs to service land in preparation for construction (environmental remediation, municipal service lines, grading, etc.)

School boards are advised to use discretion when attributing items as education land costs and are only to include such costs when they are directly attributed to acquiring and servicing the land indicated in the EDC background study.

34. Inflation and Interest Rates

Background studies are to include information regarding the assumed interest rates that are used in cash-flow assumptions. Interest rates are applicable to both interest earned by the school board on the balance of the EDC reserve fund and interest payable on financing used to pay for land purchases.

School boards are entitled to include in the determination of Net Education Land Costs the increased costs of acquiring land in the future. Generally termed “land escalation factors”, these accelerators factor in the effects of inflation on the cost of school sites to be purchased in the future.

Typically, school boards only apply escalation factors to site purchases in the first five years of the fifteen-year planning horizon. This ensures that short-term site cost increases will be considered and allows the school board to review the future cost of sites to be purchased beyond the first five years in a subsequent background study.

35. Revenue Sources

In some cases, school boards will need to purchase sites or construct Alternative Projects prior to collecting sufficient EDC revenue to pay for them. School boards are required to arrange their own financing in order to pay for sites, if required.

Education Act Section 241

Additionally, school boards may borrow from other reserves subject to the provisions of the *Education Act*.

36. Reserve Funds

The EDC legislation outlines the requirements regarding the establishment of an Education Development Charge Reserve Fund by a school board for the area to which an EDC by-law applies.

School boards establish EDC Reserve Funds with the initial passage of a by-law. Separate reserve funds are required for each area to which a by-law applies within a school board's jurisdiction. All EDC revenue forwarded from a municipality to a school board is to be placed in the appropriate EDC Reserve Fund. These reserve funds continue to exist as the school board passes subsequent by-laws in the same area.

Ontario Regulation 20/98 Section 16

Monies deposited into a reserve fund for one area of the school board's jurisdiction cannot be used to purchase sites in another area.

Ontario Regulation 20/98 Section 16

The *Education Act* and the EDC Regulation prescribes the only authorized expenditures from the EDC Reserve Fund:

- For growth-related net education land costs in the area in which the EDC by-law applies (See Section 33);
- To pay for bank charges related to maintaining the reserve fund;
- To reimburse building permit holders if a permit is revoked (including interest);
- For refunds.

Ontario Regulation 20/98 Section 16
Education Act Section 225.69, 357.78, and 257.90

In addition, school boards may borrow or invest monies from their EDC reserve fund to help cash flow other school board operations. However, interest is payable on all monies borrowed at the prescribed rate as defined in the EDC Regulation.

Education Act Section 241 and 257.99

37. Determination of Education Development Charge

The EDC Regulation prescribes that the study include the steps used in the calculation of the residential and, if employed, the non-residential charge as outlined below. A non-residential charge is optional, and at the discretion of the school board (See Section 40). The ministry has standard forms that school boards are to complete for all

calculations required as part of the background study. Please see the section in this document dealing with ministry forms.

Ontario Regulation 20/98 Section 7(9) and 7(10)

The EDC regulation allows school boards to determine the type of EDC the school board will impose on new residential development. School boards are entitled to choose between a Uniform Residential EDC (where the quantum of the EDC is exactly the same regardless of the type of development) or a Differentiated Residential EDC (where there is a different EDC rate applied to different dwelling unit types). The following subsections outline the steps in calculating both types of EDCs as well as the determination of the non-residential EDC, if any.

Ontario Regulation 20/98 Section 7(9) and Section 7(9.1)

38. Appointment of Education Land Costs Across Development

At the discretion of the school board, an EDC may be imposed on non-residential development as well as residential development. No more than 40% of the Growth-Related Net Education Land Costs may be attributed to non-residential development. Prior to proceeding with the determination of the residential EDC, school boards are to apportion the Growth-Related Net Education Land Costs across development:

1. Multiply the Growth-Related Net Education Land Costs by the percentage that will be attributed to non-residential development (no more than 40%) to determine Non-Residential Growth-Related Net Education Land Costs.
2. The balance remaining of the Growth-Related Net Education Land Costs after determining the non-residential component is termed the Residential Growth-Related Net Education Land Costs.

Ontario Regulation 20/98 Section 7(8)

39. Uniform Residential EDC

This section outlines the calculation steps in determining the Uniform Residential EDC. This type of residential charge results in a consistent EDC across the by-law area. Please review this section in conjunction with the ministry forms.

To determine the Uniform Residential EDC:

- Divide the Residential Growth-Related Net Education Land Costs (Section 33) by the Number of Net New Dwelling Units (Section 2) estimated to be built over the fifteen-year period to arrive at the Uniform Residential Education Development Charge per Dwelling Unit.

It is important to note that the annual EDC rate increase for residential units is restricted (See Section 4).

Ontario Regulation 20/98 Section 7(9)

40. Differentiated Residential EDC

A differentiated residential EDC rate results in different charges based on dwelling unit types defined by the school board and is apportioned on the basis of the distribution of pupils arising from different types of dwelling units.

School boards may define dwelling unit types based on the nature of development and criteria that is relevant to the school board (e.g. low, medium, and high density; condominiums/apartments, townhouses, detached houses; etc.). School boards are encouraged, where possible, to rely on the categories of development used by the municipalities impacted by the EDC by-law.

Please review this section in conjunction with the ministry forms.

To determine the Differentiated Residential EDC:

1. Determine the distribution of total Growth-Related Pupils (Section 27) arising from Net New Dwelling Units (this is a blending of total new elementary and secondary needs) amongst the various dwelling unit types defined by the school board. This is known as the Distribution Factor.
2. Multiply each Distribution Factor by the Residential Growth-Related Net Education Land Costs (Section 33) to determine the Apportionment of Residential Net Education Land Costs By Development Type.
3. Divide each amount representing the Apportionment of Residential Net Education Land Cost By Development Type by the number of Net New Dwelling Units (Section 22) for the particular development type to arrive at the Differentiated Residential EDC Per Unit By Development Type.

Ontario Regulation 20/98 Section 7(9.1)

41. Non-Residential EDC

If charges are to be imposed on non-residential development, a school board shall calculate the amount of an EDC on non-residential development projected over the fifteen-year period, expressed as an amount per square foot of gross floor area (See Section 40).

If the school board chooses to express the charge as an Amount Per Square Foot of Board-Determined Gross Floor Area, the following is the method used to calculate this amount:

- Divide the Non-Residential Growth-Related Education Land Cost (Section 39) by the Estimated Total Board-Determined Gross Floor Area (Section 23) of all non-residential development for which building permits will be issued during the 15-year period, other than non-residential development(s) that are exempt from EDCs under the Act or Regulation.

It is important to note that the annual EDC rate increase for non-residential units is restricted (See Section 4).

Ontario Regulation 20/98 Section 7(10)

Policy Statements Required by the School Board

42. Policy Statement Required by the School Board

The school board is required to present in the background study, copies of board-approved policy statements dealing with alternative accommodation and savings from operating budgets.

School boards are required to develop internal policies that outline what criteria/parameters will be used to evaluate submitted Alternative Projects. School boards may receive numerous suggestions for Alternative Projects from the public. Submissions should be reviewed based on the school boards internal policy.

For all subsequent by-laws, school boards are required to review EDC policies in a public meeting of the school board (See Section 51). However, a policy review is not required for an initial by-law. For initial by-laws, school boards are required only to include copies of the policy statements in the background study.

Education Act, Section 257.60(3)

43. Alternative Accommodation

The school board must include in the study a statement of its policies regarding alternative arrangements to provide pupil accommodation, which could reduce the proposed EDC or eliminate the need for such a charge.

If a previous background study was prepared, the school board is to indicate how Alternative Accommodation policies were implemented (or not implemented) in the subsequent background study. School boards are also required to provide an overview of the end result of the previous policy. Documentation of the school board's efforts to

provide such arrangements is to be kept on file by the school board and is to be made available, if requested, by stakeholders.

44. Operating Savings

A statement from the school board indicating that it has also reviewed its operating budget for savings that could be applied to reduce the Growth-Related Net Education Land Costs is to be included in the study as one consideration in the school board's decision to impose EDCs. The amount of the savings, if any, is to be included in the calculation of the charge.

Ontario Regulation 20/98 Section 9(1)(8)

Ministry Submission

45. Ministry Submission

School boards are required to submit the following information for review 90 days prior to the adoption date of the EDC by-law:

- Background study; and
- Ministry forms.

This documentation allows ministry staff to analyze the EDC submission in a consistent manner for all school boards. School boards are encouraged to submit earlier than the 90 days in order to ensure that ministry review is completed in a timely manner.

46. Ministry Forms

The ministry has prepared standardized forms that are to be included with all EDC submissions. These forms are to be completed in their entirety by school boards. The ministry will not accept any forms in any other format.

Please contact your ministry Capital Analyst for a copy of the forms. These forms are considered an integral component of the background study review. Readers are encouraged to download and print these forms and review them in conjunction with the sections above.

There are eight forms for completion:

Form A1 and Form A2	Eligibility to Impose an EDC: Capacity Trigger and Eligibility to Impose an EDC: EDC Financial Obligations
Form B	Net New Dwelling Units
Form C	Net New Dwelling Units – By-Law Summary
Form D	Non-Residential Development

Form E	Growth-Related Pupils
Form F	Growth-Related Pupil Place Requirements
Form G	Growth-Related Net Education Land Costs
Form H1 or Form H2	EDC Calculation - Uniform Residential and Non-Residential or EDC Calculation - Differentiated Residential and Uniform Non-Residential

EDC-related terms used in these forms are defined in this guideline document.

Education Development Charge By Law

47. Education Development Charge By-Law

The passage of an Education Development Charge by-law by a school board authorizes the imposition and collection of EDCs. Each EDC by-law has a maximum term of 5 years. An EDC by-law can come into force on the fifth day after the date the school board passed the by-law. A school board may choose to specify an effective date beyond the fifth day after the by-law passage.

Education Act Section 257.56

EDC by-laws must be passed within one year of completion of the EDC background study. For clarification, the background study is considered complete once it has been received in a public session of the school board (and has been released to the public). If for some reason the school board has not received the background study in a public session, the one-year period is considered to begin the date of the last public meeting on EDCs prior to receiving Minister's approval (See Section 40).

Education Act Section 257.62

48. Minister's Approval Required

Before proceeding with the passage of an EDC by-law, the school board must be in receipt of a letter from the Minister of Education, or designate, acknowledging receipt of the background study and approving the enrolment projections, the number of sites, Alternative Projects, and the exclusion of any capacity if applicable.

Ontario Regulation 20/98 Section 10

49. Alternative Projects or Localized Development Agreements

School boards are encouraged to engage developers in the conversation of possible Alternative Projects or Localized Education Development Agreements well in advance of preparing the background study. This will enable the school board and owners to fully develop Alternative Projects or LEDAs.

50. Public Meeting(s)

Before passing an EDC by-law, the *Education Act* requires school boards to hold at least one public meeting so that input from the community can be provided and considered, and other interested parties with respect to the proposed charge, can be voiced.

However, as a best practice school boards are encouraged to hold at least two meetings. This will ensure the public have a chance to present any Alternative Projects at the first meeting, and school boards will have sufficient time to review submitted proposals. School boards could also take out an ad in the local newspaper to inform owners they will receive Alternative Projects during a certain time period.

The public meetings are also an opportunity for the school board to address issues raised by the community. Land owners should also be invited to attend the public meeting or be given the option to submit an Alternative Project independently either in person or through email.

The policy statement review required by the school board may be addressed by the school board during this public meeting.

Education Act Section 257.63

51. Timing of Notice of Public Meeting(s)

The school board is required to provide at least 20 days notice prior to the meeting date and ensure that the EDC background study and proposed by-law are made available to the public at least 2 weeks prior to the first meeting.

However, as a best practice the ministry recommends that school boards release background studies to the public at least 90 days prior to the first public meeting to provide enough time for the public to review.

As a best practice school boards are encouraged to provide an alternative date in which the by-law will be adopted.

52. Notices

The EDC Regulation requires school boards to prepare detailed notices of public meetings which are to include:

- Location of the meeting;
- Time and date of the meeting and;
- Opportunities for owners to submit Alternative Projects or LEDAs.
- Notice of the passage of the EDC by-law;

- Notice of proposed amendment to an EDC by-law; and
- Notice of passage of an amending by-law

Please refer to the Regulation for further information on what is to be included in each type of notice.

These notices are provided to various individuals depending on which section of the Regulation applies. The list of potential recipients of notices include:

- Every owner of land in the area in which the by-law will apply;
- Any person or organization that has provided the school board with a written request for information on the by-law and has provided a return address;
- The Minister of Education;
- The clerk of every municipality having jurisdiction in the area in which the by-law will apply; and
- The secretary of every school board having jurisdiction in the area in which the by-law will apply

For notices provided to every owner of land, this determination is made with reference to the last revised assessment roll, subject to any written notice of a change in ownership.

Notices provided to owners of land may be provided by email or by publishing notice in a newspaper having general circulation in the area to which the by-law will apply.

Ontario Regulation 20/98 Sections 11, 12, 14

Notices provided to other parties are to be done by either a posting to the school board's website or by publication in a newspaper. The requirements vary depending on the type of notice, and the group involved. Please refer to the text of the Regulation for further instructions.

53. Notification of By-Law Adoption

Once an EDC by-law has come into force, the school board is to post to their website the following information:

- The general purpose for which EDC by-laws are imposed; and
- The rules for determining if an EDC is payable in a particular case, and for determining the amount of the charge.

If the EDC by-law is appealed before the Ontario Land Tribunal, the above information is to be posted on the board's website within sixty days after the appeal decision or after the by-law is amended.

School boards are encouraged to provide copies of all published documents to municipalities administering the charge and to local developers.

Ontario Regulation 20/98 Section 21

54. Statement of Treasurer

The Treasurer of the school board is to provide an annual financial statement to the school board on a date specified by the school board, regarding the EDC Reserve Fund. A copy of the report is to be forwarded to the Minister of Education no later than 60 days from the date of the report. The statement is to include the opening and closing balances of the fund and the transactions that have taken place. In practice, this financial statement is provided to the Financial Analysis and Accountability Branch of the Ministry with the annual school board Financial Statement package.

Education Act Section 257.98

55. By-Law Expiration

School boards may specify any date for the expiration of an EDC by-law, with two exceptions:

- The maximum by-law term is five years; and
- A by-law of one school board automatically expires on the same date as an existing by-law of a coterminous school board if they are in force in any part of the same area.

Ontario Regulation 20/98 Section 17

56. Non-Statutory Exemptions

In addition to statutory exemptions, a school board may designate types of development that will be exempt from the EDC. For instance, a school board may decide to exclude senior citizens' complexes, subsidized housing, institutional, or recreational development. Non-statutory exemptions may also apply to non-residential development. These decisions are entirely at the discretion of the school board.

It should be noted that EDC revenues lost due to non-statutory exemptions cannot be recovered through revenues collected on non-exempt development. Including non-statutory exemptions in an EDC by-law may result in revenues shortfalls.

Role of Municipality

57. Role of Municipality

The role of the municipality is outlined in the EDC Regulation. It is the responsibility of municipalities to: collect EDCs on behalf of the school board, transfer EDC revenue to the school board, and to provide monthly reports to the school board regarding amounts collected and refunded.

Municipalities are not entitled to charge a school board for collection of an EDC. Remuneration to the municipality is considered to be provided in the form of interest the municipality earns on the monthly balance of the collected EDCs.

In unorganized areas of Ontario, there is no municipal structure. In these cases, please refer to Section 257.92 of the *Education Act* for information on the collection process.

Education Act Section 257.80 and Section 257.81

58. Credits for Land-Use Conversion

School board by-laws may include provisions for credits for land use conversion. Typically, this situation would arise if an EDC is paid for one type of development (i.e. residential) and shortly thereafter (the period of time defined in the school board's EDC by-law), the land is rezoned, and a new building permit issued for redevelopment (i.e. non-residential). EDC by-laws may include provisions for providing credits in this situation, to take into account the EDC amount paid on the original development (generally by offsetting the EDC amount payable on the redevelopment).

Reporting

59. Monthly Reporting by Municipality

The *Education Act* requires municipalities collecting EDCs on behalf of a school board to prepare a monthly report regarding EDC-related activity.

Education Act Section 257.97

These reports are to include the following details:

- The total EDCs collected for residential development; and
- The number of building permits issued for each type of residential development;
- The location of lands to which the residential building permits were issued; and

- The number of building permits issued for residential development for which no EDC was collected.

And, if the school board has a non-residential EDC:

- The total EDCs collected for non-residential development;
- The total board-determined gross floor area of the non-residential and development used to generate the non-residential EDCs collected;
- Information regarding exemptions from industrial development (enlargement of 50 per cent or less), including:
 - The total gross floor area of each existing building;
 - The gross floor area of each enlargement; and

Information regarding exemptions from non-residential development (replacement buildings), including:

- The board-determined gross floor area of the part of the building being replaced;
- The board-determined gross floor area of the replacement component of the building;
- The number of building permits issued for non-residential development for which no EDC was collected.

Each report begins the day after the previous report period ended (unless there was no previous report, in which case it begins the day the EDC by-law came into force) and ends on the twenty-fifth day of each month.

These reports are to be provided by the municipality to the school board by the fifth day of the following month.

Ontario Regulation 20/98 Section 20

Complaints and Appeals

60. Complaints Regarding EDCs

The process to handle complaints by either a school board or a landowner subjected to an EDC is handled by the municipality. A complaint is not an appeal of an EDC by-law – it is an objection to the application of the by-law in a particular case.

Education Act Section 257.85

61. Complaint Process

Any person subject to an EDC or a school board has the option of complaining to the council of a municipality if they believe that:

- The amount of the EDC was incorrectly determined in a particular case;
- A credit was incorrectly determined or applied in a particular case; or
- There was an error in the application of an EDC by-law.

A complaint may only be made within 90 days after the day the EDC (or any part of it) becomes payable.

A complaint must be in writing, and is to include the following information:

- Name of complainant;
- Address where notice can be given; and
- Reasons for the complaint

62. Complaint Hearing

The municipal council is to hold a hearing into the complaint and will give the parties an opportunity to make representations. The parties are considered to be the owner of land subject to the EDC and the school board. Municipal clerks are to provide written notice of a hearing at least 14 days in advance of the hearing date.

After hearing the evidence, municipal council's powers with respect to the complaint include dismissing the complaint or rectifying the incorrect determination. The decision of the council is to be mailed to the parties within 20 days after the day the decision is made.

Education Act Section 257. 91 and 257.90

63. Appeals

Education Development Charge by-laws are subject to appeal by any individual or organization in accordance with the provisions of the *Education Act*. This section provides information regarding the appeal process.

64. Appeal Period

An EDC by-law is subject to appeal during the forty days immediately following the date of passage. The board is required to provide written notice that the by-law is in effect (See Section 53) not more than twenty days after by-law passage. The notice must also state how to file an appeal.

Education Act Section 257.64

65. Notice of Appeal

Any person or organization may appeal an EDC by-law to the Ontario Land Tribunal. To appeal a by-law, a Notice of Appeal setting out the objection to the by-law must be filed with the secretary of the school board that passed the by-law. Notice of Appeal must be received by the school board on or before the last day of the appeal period. The school board should make arrangements to receive an appeal of the by-law on the last day of the appeal period if the board offices would normally be closed to the public on that day. The reasons for supporting the objection are to be included in the Notice of Appeal.

Education Act Section 257.65

66. Appeal Process

In the event of an appeal, the secretary of the school board must forward a copy of the Notice of Appeal and the following documents to the Ontario Land Tribunal within thirty days after the last day of the appeal period:

- A copy of the by-law certified by the secretary;
- A copy of the EDC Background Study;
- An affidavit or declaration certifying that notice of the passing of the by-law was provided in accordance with the *Education Act*; and
- The original or a true copy of all written submissions and material relevant to the by-law (and received before it was passed).

Education Act Section 257.66

The determination of who qualifies as an interested party is at the discretion of the Ontario Land Tribunal. The Ontario Land Tribunal will also decide the manner that notices regarding the hearing will be provided to interested parties.

Education Act Section 257.67(2)

The Ontario Land Tribunal may also dismiss an appeal without a hearing if it is of the opinion that the reasons for the objection to the by-law set out in the Notice of Appeal are insufficient. However, the Ontario Land Tribunal must first notify the appellant and give the appellant the opportunity to make representations in support of the appeal.

Education Act Section 257.67(5)

67. Powers of the Ontario Land Tribunal

Following a hearing on the appeal of an EDC by-law, the Ontario Land Tribunal may decide to:

- Dismiss the appeal in whole or in part;
- Order the school board to repeal or amend the by-law in accordance with the order of the Ontario Land Tribunal; or
- Repeal or amend the by-law itself

However, the Ontario Land Tribunal is not permitted to:

- Increase the quantum of an EDC;
- Remove or reduce the scope of a discretionary exemption; or
- Change the expiration date of an EDC by-law

Education Act Section 257.67(3) and (4)

68. Refunds and Interest Rates

If an EDC by-law is repealed (whether by the school board under an order from the Ontario Land Tribunal or by the Ontario Land Tribunal directly) the EDC paid shall be refunded. If the by-law is amended and the amendment results in a lower EDC, the difference between the previous EDC and the new EDC shall be refunded.

Refunds are due within 30 days if the LPAT repeals or amends a by-law itself. If the Ontario Land Tribunal directs the school board to repeal or amend a by-law, the refund is due within 30 days of the repeal or amendment by the school board.

Education Act Section 257.69 and 257.90

Refunds are to be issued from the appropriate EDC Reserve Fund. Refunds are paid directly by the school board based on information provided by the area municipality (who the refund is payable to, the date the original EDC was paid, etc.).

Interest is payable on refunds retroactively from the time the EDC was paid until the refund was issued. The EDC Regulation specifies the manner that interest is to be calculated. If a school board is obligated to pay interest, the interest rate applicable is dependent on the period the interest is being paid for.

For all periods prior to Ontario Regulation 95/02 coming into force (March 12, 2002) the interest rate payable is determined by Ontario Regulation 20/98 Section 18(1). For all periods on or after March 12, 2002, the interest rate applicable is determined by Ontario Regulation 20/98 Section 18(2) and Section 18(3).

Ontario Regulation 20/98 Section 18

School boards obligated to provide refunds under Section 18(1) are to calculate the interest rate payable as the lowest prime rate reported to the Bank of Canada by any of

the banks listed in Schedule 1 to the Bank Act (Canada) at the beginning of the period for which interest is to be paid.

School boards obligated to provide refunds under Section 18(2) and Section 18(3) are to use the Bank of Canada Rate in effect on the date the by-law comes into force (or adjusted if the school board desires in accordance with Section 18(3)(b).

For the Bank of Canada, see <http://www.bankofcanada.ca>

69. Appeals Against Amended EDC By-Laws

Appeals to by-law amendments are subject to the same restrictions and procedures as given above for appeals to original by-laws. However, in the case of an appeal to an amended EDC by-law, the scope of the appeal is limited to the amended provisions only.

Education Act Section 257.74(2)

70. Appeal of Municipal Decision

The decision of a municipal council regarding a complaint (See Section 62) may be appealed by any of the parties to the Ontario Land Tribunal within 40 days after the decision of council is made. An appeal to the Ontario Land Tribunal is filed by submitting a Notice of Appeal to the clerk of the municipality on or before the last day in the appeal period.

Education Act Section 257. 87

In the event of an appeal, municipal clerks are required to compile a record that includes:

- A copy of the EDC by-law certified by the clerk;
- An original or true copy of the complaint and all materials submitted by the parties;
- A certified copy of the decision of the municipal council; and
- An affidavit or declaration certifying that the notification of the council's decision was rendered in accordance with the *Education Act*.

In addition, a complainant may also appeal to the Ontario Land Tribunal if the municipality fails to deal with the complaint within 60 days after the complaint is made. This is also done by filing a Notice of Appeal with the municipal clerk. Upon receipt of an appeal in this situation, the municipal clerk is to compile a record that includes:

- A copy of the EDC by-law certified by the clerk; and

- An original or true copy of the complaint and all materials submitted by the parties.

In all situations where a Notice of Appeal to the Ontario Land Tribunal is filed with the clerk of a municipality, the clerk is to forward all documents to the secretary of the Ontario Land Tribunal within 30 days after the Notice of Appeal is received. Furthermore, the municipal clerk is to provide all information and materials requested by the Ontario Land Tribunal.

Education Act Section 257. 88

The Ontario Land Tribunal will hold a hearing into the matter and has the authority to do anything that the municipality could have done under the complaint process. If a refund is owed to an individual that has paid an incorrectly calculated EDC, see Section 69 for information regarding the determination of refunds and interest owing.

Education Act Section 257. 89

If an EDC increases as a result of an Ontario Land Tribunal determination, the amount is immediately payable by the person who paid the EDC.

Education Act Section 257. 91

Amendments to Existing By Laws

71. Amendments to Existing By-Law

School boards may need to amend an EDC by-law for various reasons. In certain situations, a school board may decide it is necessary to adjust the quantum of the EDC to reflect changes in the estimated acquisition price of land or Alternative Project Cost, to reduce or increase the scope of discretionary exemptions (See Section 22), or to effect other changes deemed appropriate by the school board.

School boards are not required to seek approval of the Ministry of Education in order to amend an EDC by-law. School boards are required, as part of the notice process (See Section 53) to ensure that the Ministry has been provided with notices regarding a proposed amendment and notice of an amended by-law. This section outlines the requirements of a school board wishing to amend an existing by-law.

72. Limitation on Amendments

Within the one-year period of a by-law coming into force, a school board may not amend a by-law more than once to effect the following changes:

- Increase the quantum of the EDC that is payable; or

- Extend the term of a by-law.

Education Act Section 257.70

73. Process to Amend a By-Law

School boards wishing to amend an existing EDC by-law do so by passing an Amending By-Law. Amending By-Laws come into force on the fifth day after by-law passage.

School boards wishing to pass an Amending By-Law are required to provide notice to the public (See Section 53). In addition, school boards are required to ensure that the original background study and any information that would allow the public to understand the proposed amendment are made available to anyone interested.

School boards are encouraged to hold at least one public meeting prior to passing an amendment. The school board is further encouraged to give at least 20 days notice of the meeting. For further information on public meetings, see Section 52.

Education Act Section 257.70 and 257.71 & Education Act 257.72

74. Calculation of Amended EDC

The EDC Regulation specifies that adjustments to the original calculation are to be made by a school board amending the quantum of the EDC. This provision requires school boards to make “necessary modifications” to the application of Section 7 of the EDC Regulation when determining an amended EDC. Estimates of the EDC Reserve fund used in the calculation are to be made as of the day before the Amending By-Law comes into force.

Ontario Regulation 20/98 Section 13

LOCALIZED EDUCATION DEVELOPMENT AGREEMENTS

1. Introduction

A Localized Education Development Agreement (LEDA) is a Minister approved alternative to the traditional EDC revenue supported purchase of land for pupil accommodation. This provides more flexibility to EDC eligible school boards where a developer may provide sites.

A LEDA is an agreement between a school board and an owner, such as a developer, in which the owner provides a means for pupil accommodation or other benefit to be

used to provide pupil accommodation. In exchange, the geographical area that the LEDA will service will be exempt from the collection of EDCs.

School boards are expected to consult with co-terminus boards when developing a LEDA to determine if a joint project is feasible.

Any area serviced by a LEDA should be excluded from the EDC Background Study.

2. Examples of Localized Education Development Agreements

Examples of LEDAs include but are not limited to:

- Providing access to land (either through a long-term lease or gift);
- Owner constructs and provides facilities (e.g. podium builds).
 - This could result in many different types of agreements including:
 - Owner provides podium space only in a condo building. Ministry provides funding through the Capital Priorities Grant program to support the construction of the school. Any cost over and above the benchmark would be provided by owner; and
 - Owner provides podium space and funds to construct a new school within a podium.

3. Minister Approval

Under the *Education Act* school boards are required to seek Minister approval before finalizing a LEDA. Minister approval can be requested in advance of the development of a background study.

When requesting Ministry approval to enter into a LEDA, the following information is required:

- **Description of the LEDA:**
 - Description of the project, specifically what the owner/developer will provide;
 - List of any external partners (including municipalities);
 - Ownership agreement;
 - Who will be responsible for construction;
 - How pupil accommodation will be supported;
 - Parents/community reactions;
 - Risks and liability concerns;
 - Advantages/disadvantages;
 - Exit Conditions;

- Timing of the project; and
- Impact on EDC charge.
- **Define region to which the LEDA will apply:**
 - Provide specifics for the proposed geographic area that will be exempt from the collection of EDCs.
- **Cost/Benefit Analysis:**
 - Cost of LEDA to a school board including capital and operating cost;
 - Contingencies to address liabilities and risks;
 - Any accounting implications such as amortization period;
 - Savings realized due to avoiding site acquisition.
- **Enrolment Projections (if a new school is to be constructed):**
 - 15-year enrolment projections for surrounding schools along with the impact a new school will have on enrolment projections.

The ministry recognizes that these types of agreements can be very complex, as such, school boards are encouraged to inform the ministry as negotiations proceed.

Definitions

Alternative Projects (AP): A lower-cost alternative or alternative project allows for the application of EDC for project costs that would address the needs of the board for pupil accommodation. Alternative projects are expected to lower EDC rates. Examples of alternative projects include but are not limited to:

- Underground parking garages;
- Existing facilities access;
- Purpose built space within a larger development;
- Trading options for land;
- Artificial turf which results in a smaller site size.
- Lease of land for providing parking;
- Long-term lease of land in place of site acquisition; and
- Additional construction costs to allow for the construction of 3rd floors such as deeper foundations, additional elevator costs etc.

Capacity Trigger: This is one of the two eligibility triggers to qualify for an EDC. If a school board's average elementary or secondary enrolment on a jurisdiction wide basis over the five years following proposed by-law passage is greater than the board's elementary or secondary On-The-Ground capacity than it is eligible to impose an EDC.

Demographic Projections: The demographic projections for an EDC consist of both forecasts of new housing development and projections of school enrolment. Projections of both new housing and enrolment must be provided on an annual basis for a 15-year period following by-law imposition. These projections ultimately determine eligibility, need and the final quantum of the charge.

Differentiated Residential EDC: This is the type of residential EDC which results in different charges based on dwelling unit types defined by the board. It is apportioned on the basis of the distribution of pupils arising from different types of dwelling units. Boards may define dwelling unit types based on the nature of development and criteria that is relevant to the board (e.g. low, medium, and high density; condominiums/apartments, townhouses, detached houses; etc.).

Financial Obligations: This financial obligation eligibility trigger was added to the original capacity trigger criteria with an amendment to O.Reg 20/98 and came into force on March 12th, 2002. A school board that has an existing EDC by-law in place and has outstanding financial obligations related to its existing by-law that exceed the balance of the EDC reserve fund, is eligible to impose EDCs.

Education Development Charges (EDC): EDCs are a revenue source for eligible school boards that need to purchase land for new schools, in order to accommodate students coming from new housing development. In order to pass an EDC by-law, a board must first complete a background study.

EDC Background Study: An Education Development Charge background study must be completed by a school board that wishes to pass an EDC by-law. The intention of the background study is to provide information on the process and methodology of calculating an EDC, as well as the background and assumptions that make up the estimates of the enrolment projections and site needs.

EDC Reserve Fund: The reserve fund analysis summarizes the EDC collections (both actual and estimated) as well as the EDC costs that have been expended (both actual and estimated) and the estimated EDC reserve fund balance. The EDC reserve fund must also include certain estimates respecting revenues and expenditures to account for the most recent actual balance and the balance estimated to the new EDC by-law date.

Growth Related Net Education Land costs (GRNELC): Growth Related Net Education Land costs are costs incurred or proposed to be incurred where the level of new residential development is sufficient to warrant the acquisition of a site for the construction of a new school. Any outstanding education development charge financial obligations that have been incurred by the Board under previous by-laws are added to the total land costs to determine the growth-related net education land costs for which EDCs may be collected.

Localized Education Development Agreement (LEDA): A LEDA is an agreement between a school board and an owner such as a developer in which the owner provides a lease, real property or other benefit to be used to provide pupil accommodation. In exchange the geographical area that the LEDA will service will be exempt from the collection of EDCs. School boards must consult with co-terminus boards when developing a LEDA to determine if a joint project is possible.

On-The-Ground (OTG) capacity: The capacity of the school as determined by the Ministry of Education by loading all instructional spaces within the facility to current Ministry standards for class size requirements and room areas.

Public meeting: The purpose of the public meetings are to review the existing EDC policies of the Board and to also advise any interested stakeholders and the public at

large of the board's intentions and address the new proposed EDC by-law. The public meeting also gives the community and stakeholders the opportunity to voice any issues or concerns they have with regard to the proposed by-law.

Residential and Non-residential Rates: The regulation provides that EDCs may be collected on new residential and non-residential development and are to be used only to acquire new school sites needed to accommodate students resulting from new residential development in the school board's jurisdiction. No more than 40% of the Growth- Related Net Education Land Costs may be attributed to non-residential development. The amount determined to be borne by residential development (between 60% and 100%) is divided by the total net new units to determine a residential charge by unit. The portion of costs allocated to non-residential development is divided by the net non-residential GFA forecast to derive a non-residential EDC charge per square foot.

Review Areas: Review areas are artificial constructs intended to divide the board's jurisdiction into sub-areas in order to more accurately determine the location of new school sites. Board review areas are likely to reflect attendance boundaries for families of schools, natural dividers such as rivers, creeks etc. or man-made barriers such as major thoroughfares. The Ministry of Education's EDC Guidelines recommend that review areas are consistent with Board review areas used for capital planning purposes and that they also maintain consistency with review areas of subsequent EDC by-laws.

Total Net Education Land Costs: The total net education land costs include the site acquisition costs, the escalation of land over the term of the by-law (5 years), the site development/servicing costs, as well as associated financing costs and study costs.

Uniform Residential EDC: This is the type of residential charge which results in a consistent EDC across the by-law area. The rate of the EDC is exactly the same regardless of the type of development.