



Education Development Charges Guidelines

**Facilities Information & Analysis Unit
Business Services Branch
Ontario Ministry of Education**

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1 Introduction

The province's pupil accommodation funding model provides grants to eligible school boards to cover the costs to construct and furnish new schools. School boards are responsible for the provision of sites for new schools. Methods for boards to acquire new sites include selling surplus sites, leasing sites, joint venturing with other parties and imposing Education Development Charges (EDCs).

EDCs may be imposed if a board will need to acquire new school sites to accommodate the students resulting from new residential development. The scheme provides an eligible school board with the option of imposing EDCs on residential and non-residential development.

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, as amended, provides requirements for determining a board's eligibility to impose EDCs on new development, and the calculation of the charges.

This guidelines package may be updated annually. Please ensure you have obtained the most recent copy of this guidelines package. This document, related legislation, and Ministry forms may be obtained from the Ministry's FTP site at:

<ftp://ftp.edu.gov.on.ca/sfis/edc>

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

Please Note: These guidelines are provided solely for purposes of facilitating the administration of the Education Development Charges Program. These guidelines are not intended as a legal interpretation of, or opinion on, the Education Act, regulations, or any other relevant legislation.

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

Pupil Accommodation Grant Technical Paper

1.1 Background

In the spring of 2001, the Minister of Education requested that Ministry staff consult with stakeholders to review the existing Education Development Charge Regulation and recommend amendments, as appropriate, to ensure that it is fair and equitable, and that Boards have the resources they need to purchase land to accommodate pupils arising from new residential growth.

Ministry staff subsequently contacted and invited stakeholders to form a consultation

committee that would review the existing Education Development Charge Regulation and prepare recommendations for change. These stakeholders included: school boards that currently have, or are in the process of implementing an EDC by-law; representatives from the development industry; consultants hired by school boards to prepare Background Studies and calculate EDCs; legal counsel representing school boards; and municipal representation through the Ministry of Municipal Affairs and Housing and the Association of Municipalities of Ontario.

Meetings of this group were convened between June and November 2001. During the committee's meetings, input was solicited from stakeholders regarding changes to the EDC scheme. As a result of the committee's recommendations, the current EDC Regulation, Ontario Regulation 20/98 was amended by Ontario Regulation 95/02 on March 12, 2002.

The consultation committee also assisted in the preparation of these guidelines, which are intended to provide an overview of the procedures for the calculation, imposition and use of EDCs.

1.2 Imposition of an Education Development Charge

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

- Demonstrate that the average elementary or secondary enrolment within its jurisdiction exceeds the board's elementary or secondary capacity; or the board's current EDC financial obligations exceeds the revenues reported in the EDC Reserve Fund
- Prepare a background study (which includes details on the calculation of the EDC)
- Hold at least one public meeting
- Receive written approval from the Minister of Education of the estimated enrolment projections and the estimated number of new school sites needed.

Ontario Regulation 20/98 Section 10

An EDC by-law may only be passed within the one-year period following the completion of the Education Development Charge background study (see section 3).

Education Act Section 257.61 and 257.62

2 Education Development Charge Background Study

Education Development Charge 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 board must first complete a background study.

This study provides information on the methodology used by the 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 estimated education land costs.

In addition, all background studies are to include a complete set of Ministry forms related to the calculation of the EDC. These forms provide Ministry of Education staff and the public with specific calculation-related information required for the analysis of EDC background studies. These forms are an integral part of the text descriptions provided in this section.

Please see the section of this document dealing with Ministry forms for additional information, and refer to the forms when reviewing section 2. The forms are available for download from the Ministry's FTP site at <ftp://ftp.edu.gov.on.ca/sfis/edc>.

Section 2 of this document provides an overview of the various components to be included in an EDC background study. These guidelines are not designed to constrain boards in the preparation of a background study. Boards may include additional information as necessary or relevant to the specific circumstances of their jurisdiction. However, these guidelines provide an outline of the minimum amount of detail that is to be included based on the provisions of Ontario Regulation 20/98, as amended.

2.1 Administrative Considerations

2.1.1 Timing of Background Study Submission

Once completed, three copies of the EDC background study are to be submitted to the Ministry of Education, Business Services Branch at the following address:

Facilities Information and Analysis Unit Business Services Branch
Ministry of Education
21st Floor, Mowat Block 900 Bay Street
Toronto, Ontario M7A 1L2

The Minister of Education's approval of the estimated enrolment projections and estimated number of new sites is required prior to by-law passage. In order to complete the necessary work to issue this approval, boards are to provide the Ministry with the final version of the background study at least forty business days prior to the anticipated by-law passage date. Failure to supply the Ministry with the background study at least

forty days in advance of by-law passage may result in the board not receiving the necessary approval in time, and consequently a possible delay in by-law passage.

Ontario Regulation 20/98 Section 10

Despite the fact that the Education Act requires boards to provide the public with a copy of the EDC background study at least two weeks prior to the public meeting (see section 3.2) boards are strongly encouraged to make background studies public at least four weeks 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.

In many cases, Ministry staff identify issues that require clarification before approval can be issued. As such, all boards are encouraged to provide the Ministry with “draft” or “working” copies of their background studies before their official submission is offered. Ministry staff would be pleased to review draft background studies in order to assist school boards with identifying potential problems that could delay Ministerial approval. It is recommended that boards provide the Ministry with the names and contact information of staff directly involved in the preparation of the background study.

2.1.2 Stakeholder Participation

School boards are also encouraged to include stakeholders in their discussions regarding the imposition of EDCs in their jurisdiction. Local developers (or developer associations) should be contacted prior to the commencement of the EDC process to ensure they are made aware of the potential for an EDC in the jurisdiction of the board. This will help ensure that all stakeholders are not surprised when a background study is released, and may assist the board in ensuring a smooth passage of its by-law. Boards are encouraged to meet with developers (or developer associations) to outline why an EDC is being contemplated, and to listen to the concerns of the development industry.

Other potential interested parties include (but are not limited to): ratepayer groups, agricultural organizations, business improvement commissions, chambers of commerce, retirement homes, and hospitals. It is the position of the Ministry of Education that as many community partners and stakeholders as possible should be consulted in a timely manner with respect to a potential EDC by-law.

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

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 will also alert a board to each municipal council’s plans for development. This will assist the board in developing a by-law that is sensitive to municipalities’ circumstances and priorities.

In addition, municipalities should be contacted and advised that the 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 board (see section 4). Providing municipalities with as much advance notice as possible of the potential EDC will help the municipality plan their collection and accounting procedures.

2.2 Eligibility

EDCs may be collected on new residential or non-residential development and are only to be used for the acquisition of land needed to provide accommodation for students resulting from new residential development in the area to which a by-law applies.

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 two eligibility criteria outlined below.

Ontario Regulation 20/98 Section 16(2)(a)

2.2.1 Capacity Trigger

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

See section 2.3.4 regarding the capacity of school facilities.

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

2.2.2 EDC Financial Obligations

A school board with an existing EDC by-law in effect may have financial obligations that exceed the current balance in the EDC Reserve Fund if it elects to fast track the purchase of sites and construct schools earlier than originally anticipated. As a result, it is possible that a 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 2.2.1), yet still be obligated to pay for sites purchased for new growth.

Allowing boards the flexibility to buy sites and construct schools earlier than projected can create greater efficiency in providing for pupil places in growth areas. As such, a new eligibility criterion has been established to allow a school board with EDC financial obligations in excess of its EDC Reserve Fund balance to become eligible to pass a subsequent EDC by-law. This eligibility criterion came into force with the amendment to Ontario Regulation 20/98 on March 12, 2002.

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 board must have had a previous EDC by-law in effect after September 1, 1999.
- If the 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 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 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 board's independent auditor, treasurer, or director to indicate that it is free of material misstatement.
- The board is also to include a repayment schedule to demonstrate how the
- **EDC Financial Obligation** will be eliminated.

The calculation to determine if a board qualifies under the **EDC Financial Obligation** eligibility criterion is as follows (see section 2.5):

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
3. **Transaction History** to determine the **Adjusted Outstanding Principal**.
4. Determine the **EDC Reserve Fund Balance** from line 4.0 of Appendix D1 of the most recently filed School Board Financial Statement.
5. 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**.
6. 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 board qualifies under this eligibility criterion.

2.3 Process and Methodology

School boards may design the background study in whatever manner best presents the information. Section 2.3 of this guidelines package outlines the **minimum** amount of information that is to be included in an EDC background study.

2.3.1 Area in Which By-Law May Apply

The EDC Regulation has divided the jurisdictions of school boards into regions for purposes of Section 257.57 of the *Education Act*. A board may have one EDC by-law covering an entire prescribed region in which it intends to build a school or a 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 board may have different EDC by-laws for different areas within a prescribed region. A 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. See section 2.3.8.4 for more information.

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 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 board, one consolidated background study may be submitted to the Ministry to meet the requirements of the EDC Regulation. Boards are to segregate the information pertaining to different regions into distinct chapters to ensure the study remains easily understandable.

Ontario Regulation 20/98 Section 16(2)(a)

2.3.2 Demographic Data Sources

Development and enrolment projections are determined using a variety of methods and numerous sources of data. As part of the enrolment projection process, boards are required to provide year-by-year projections of existing enrolments as pupils move through the system, and forecasts of new pupils arising from new development.

The Ministry recognizes that boards require flexibility when designing enrolment-forecasting models to take into account variables unique to specific jurisdictions. However, boards are still encouraged to ensure that projections for growth are consistent with that of municipalities.

In the EDC background study, 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.

2.3.3 Review Areas

It is possible for a 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 board (within a specified EDC region). Where possible, review areas used in EDC background studies should be consistent with those found in the board's long-term plan (a component of the Accountability Framework for Pupil Accommodation Grants).

Once review areas are established, there usually is minimal need to change them 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, boards are encouraged to ensure that review areas in subsequent EDC background studies are consistent with the previous study. If the 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 board in determining review areas and how the 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).

2.3.4 Capacity Determination

For the purpose of EDCs, the capacity to be used for all calculations (trigger, net new pupil places, etc.) is the current capacity (as recorded in the Ministry's School Facilities Inventory System) of all operational schools of the board on the day the by-law comes into force (also known as the "On-The-Ground" Capacity). Adjustments reflecting Ministry policy are to be made in such circumstances as outlined below (in consultation with staff from the Business Services 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 board must have passed a resolution transferring the school from one panel to the other.
- The capacity of all schools/additions either under construction on the day the by-

law comes into force or that will open within twelve months of by-law passage are to be included in the determination of capacity for EDC purposes. Boards are to ensure that capacity information for such schools has been entered in the Ministry's School Facilities Inventory System, and that the Business Services Branch of the Ministry has a complete set of electronic floor plans on file.

- All purpose-built special education, small adult education (e.g. storefront), or outdoor education facilities that cannot be used by the board to provide elementary or secondary accommodation may be excluded from capacity for EDC purposes in consultation with staff from the Business Services Branch of the Ministry of Education. These types of facilities may be excluded because they cannot be used for elementary or secondary accommodation without extensive renovations, they are too small to be used effectively, or they are located in remote areas without typical classroom configurations.
- The "On-The-Ground" capacity of a leased school is to be included if the school has "New Pupil Place" capacity attributed to it in the Ministry's School Facilities Inventory System; if the leased school has no "New Pupil Place" capacity attributed to it, the board may exclude the "On-The-Ground" capacity for EDC purposes.

Note: "New Pupil Place" capacity is defined as the capacity used in the determination of the Grant for New Pupil Places as outlined in the Ministry's Pupil Accommodation Grant Technical Paper.

- Schools that have been closed in accordance with the board's school closure policy may be excluded from the determination of capacity for EDC purposes if the closure has already taken place and is recorded in the Ministry's School Facilities Inventory System or information documenting the closure has been provided to the Business Services Branch of the Ministry. Capacity adjustments made under this provision may also apply to schools that are currently open, but will close during the tenure of an EDC by-law. However, this is only applicable if the school board has passed a resolution to close the school in accordance with the board's school closure policy before the passage of the by-law.

Boards are encouraged to contact the Ministry of Education, Business Services Branch, **prior** to commencement of an EDC background study to request an extract of the data contained in the School Facilities Inventory System in order to ensure consistency in the determination of capacity for EDC purposes.

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, boards are to ensure that the School Facilities Inventory System has been updated to reflect the current configuration of

schools in the board's real estate portfolio.

A board is to also include in its background study information regarding the number of temporary facilities (portables etc.) it has within the area in which it is proposing to impose EDCs. This too is to be consistent with the information contained in the Ministry's School Facilities Inventory System.

For additional information on the School Facilities Inventory System, see <http://sfis.edu.gov.on.ca>

2.3.5 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 board intends to levy a non-residential EDC, it must also provide estimates of either the **Non-Residential Board-Determined Gross Floor Area** or the **Non-Residential Declared Value** of development that will occur during the fifteen year planning horizon. The area municipalities should be consulted for input on this forecast (see section 2.1.2).

These determinations are to be consistent with the explanation of the use of demographic data sources (see section 2.3.2).

Ontario Regulation 20/98 Section 1

2.3.5.1 Number of New Dwelling Units

Using demographic models (see section 2.3.2) 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. Boards are to determine the number of **Projected New Dwelling Units** based on the type of development and criteria that is relevant to the 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 2.3.6) and to calculate the **Differentiated Residential EDC** based on dwelling type for boards pursuing **Differentiated Residential EDCs** (see section 2.3.9.3).

Ontario Regulation 20/98 Section 7

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

Education Act Section 257.54(3) and (5)

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),
- Dwellings built on Toronto Railway Lands subject to the terms of section 6 of the EDC Regulation and the relevant agreement specified therein.

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)

2.3.5.2 Non-Residential Development

Boards opting for a non-residential component to the EDC (see section 2.3.9.4) 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 2.3.2) boards are to forecast the amount of non-residential development using either the **Estimated Board-Determined Gross Floor Area** that will be constructed over the fifteen-year planning horizon or the **Estimated Declared Value** of that development.

Ontario Regulation 20/98 Section 7(10)

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

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

Ontario Regulation 20/98 Section 1(2)

These situations 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 6 of the EDC Regulation and the relevant agreement specified therein.

Boards are to ensure that in the determination of the **Estimated Board-Determined Gross Floor Area** or the **Estimated Declared Value** of new non-residential development that these exemptions are taken into consideration, as applicable.

In calculating the **Estimated Board-Determined Gross Floor Area** using municipal forecasts, 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, 10(vi)

2.3.6 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 2.3.5.1. 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 board in question. Elementary and secondary yield factors should be based on historical data and trends as outlined in section 2.3.2.

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 2.5 regarding Ministry forms.

Ontario Regulation 20/98 Section 7(3)

2.3.7 Net Growth-Related Pupil Places / Available Pupil Places

Boards are required to offset the total **Growth-Related Pupils** described in section 2.3.6 by any **Available Pupil Places** that are not required by existing pupils of the board in year fifteen of the planning horizon. If the board opts for a 'review area' approach in its EDC calculations, this determination is done independently for each review area of the board.

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 2.3.4), as well as the Average Daily Enrolment for the current year (as documented in Appendix C of the last Financial Statement, Revised Estimate, or Estimate the board filed with the Ministry) and 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.

Where a board has available space in its jurisdiction to accommodate some or all **Growth-Related Pupils**, but elects not to include the **Available Pupil Places** in its EDC calculation, the board is to provide a rationale for not acknowledging these spaces.

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

For further information, see section 2.5 regarding Ministry forms

Ontario Regulation 20/98 Section 7(3)(i) and 7(3)(ii)

2.3.8 Site Acquisition Needs / Growth-Related Net Education Land Costs

Once the board has determined its **Net Growth-Related Pupil Place Requirements** in accordance with section 2.3.7, the next step is an analysis of where new schools will need to be built, what size each facility will be, and when the land will be acquired for school construction. Growth-related land needs could also include enhancements to existing school sites to accommodate additions to existing schools.

The background study is to provide detailed information on each of these components, in conjunction with the Ministry form related to site needs (see section 2.5 regarding Ministry forms).

Since the study encompasses a 15-year planning horizon site-specific locations may not

be known. Nevertheless, a board should provide the general location of all sites whose cost the board intends to include in its EDC calculation.

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 Size (Elementary schools):

Number of Pupils	Maximum Area (acres)
1 to 400	4
401 to 500	5
501 to 600	6
601 to 700	7
701 or more	8

Maximum Site Size (Secondary schools):

Number of Pupils	Maximum Area (acres)
1 to 1000	12
1001 to 1100	13
1101 to 1200	14
1201 to 1300	15
1301 to 1400	16
1401 to 1500	17
1501 or more	18

Examples of situations where a site size may be greater than the maximum outlined above include:

- Additional land required to meet a legal requirement relating to the site (municipal requirements, Ministry of the Environment’s “Reasonable Use Policy” requirements, bus loops, parking requirements, etc.).

- Additional land required to meet a legal agreement entered into prior to February 1, 1998 or land acquired prior to February 1, 1998.

Ontario Regulation 20/98 Section 2(5)

To determine **Growth-Related Net Education Land Costs**:

1. Determine the number of **Elementary and/or Secondary School Sites** required to accommodate the estimated **Net Growth-Related Pupils** determined in section 2.3.7 over the fifteen-year planning horizon being considered in the background study.

Note: This may include school sites 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 needed, 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 cost, the **Total Outstanding Education Development Charge Financial Obligations** (principal and interest) incurred by the 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 Cost**, all contributions to site costs, which the board has received or to which it is entitled, that defray, or will defray, the **Net Education Land Cost**.
Note: 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 board’s EDC by-law. By adding the **Growth-Related Net Education Land Costs** and the **EDC Background Study Costs** the 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 board

has “double-counted” education land costs and is in effect recovering monies in excess of that permitted by the Education Act.

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**.

2.3.8.1 Examples Of Eligible Costs / Net Education Land Costs

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

Education Act Section 257.53

Such as:

- 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.)

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

Please see the section of this document dealing with Ministry forms for further information.

2.3.8.2 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 board on the balance of the EDC reserve fund and interest payable on financing used to pay for land purchases.

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, 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 board to review the future cost of sites to be purchased beyond the first five years in a subsequent background study.

Education Act Section 257.53(2)(4)

2.3.8.3 Revenue Sources

In some cases, boards will need to purchase sites prior to collecting sufficient revenue from the EDC to pay for them. Boards are required to arrange their own financing in order to pay for sites, if required. Boards may arrange for short or long-term financing with financial institutions, or may finance site acquisition by issuing debentures.

These decisions are entirely up to the board. Additionally, boards may borrow from other reserves subject to the provisions of the Education Act.

Education Act, Section 241

2.3.8.4 Reserve Funds

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

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 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 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 board's jurisdiction cannot be used to purchase sites in another area.

Ontario Regulation 20/98 Section 16(2)(a)

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 2.3.8.1)
- For the production, distribution, and revision of the pamphlet required (see section 3.4)
- 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, boards may borrow or invest monies from their EDC reserve fund to help cash flow other 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

2.3.9 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 board (see section 2.3.9.1). The Ministry has standard forms that 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 boards to determine the type of EDC the board will impose on new residential development. 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)

2.3.9.1 Apportionment of Education Land Costs across Development

At the discretion of the 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, 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)

2.3.9.2 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 Cost** (section 2.3.9.1) by the **Number of Net New Dwelling Units** (section 2.3.5.1) estimated to be built over the fifteen-year period to arrive at the **Uniform Residential Education Development Charge per Dwelling Unit**.

Ontario Regulation 20/98 Section 7(9)

2.3.9.3 Differentiated Residential EDC

This section outlines the calculation steps in determining the **Differentiated Residential EDC**. This type of residential EDC results in different charges based on dwelling unit types defined by the board and 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.). 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 2.3.6) 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 board. This is known as the **Distribution Factor**.
2. Multiply each **Distribution Factor** by the **Residential Growth-Related Net Education Land Cost** (section 2.3.9.1) to determine the **Apportionment Of Residential Net Education Land Cost 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 2.3.5.1) 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)

2.3.9.4 Non-Residential EDC

If charges are to be imposed on non-residential development, a board shall calculate the amount of an education development charge on non-residential development projected over the fifteen-year period, expressed as an amount per square foot of gross floor area or as a percentage of the declared value (see section 2.3.9.2).

If the 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 2.3.9.1) by the **Estimated Total Board-Determined Gross Floor Area** (section 2.3.5.2) of all non-residential development for which building permits will be issued during the 15-year period, other than non-residential development that are exempt from education development charges under the Act or Regulation.

If the board chooses to express the charge as a Percentage Of The Declared Value, the following is the method used to calculate this amount:

1. Divide the **Non-Residential Growth-Related Education Land Cost** (section 2.3.9.1) by the **Estimated Declared Value** (section 2.3.5.2) of all building permits to be issued during the 15-year period, other than building permits in respect of non-residential development that is exempt from education development charges under the Act or Regulation.
2. Multiply the quotient obtained by 100.

Ontario Regulation 20/98 Section 7(10) and Section 8

2.4 Policy Statements Required By the Board

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

For all subsequent by-laws, boards are required to review EDC policies in a public meeting of the board (see section 3.2). However, a policy review is not required for an initial by-law. For initial by-laws, boards are required only to include copies of the policy statements in the background study.

Education Act, Section 257.60(3)

2.4.1 Alternative Accommodation

The 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.

Ontario Regulation 20/98 Section 9(1)(6)

If a previous background study was prepared, the board is to indicate how Alternative Accommodation policies were implemented (or not implemented) in the subsequent background study. Boards are also required to provide an overview of the end result of the previous policy. Documentation of the board's efforts to provide such arrangements is to be kept on file by the board and is to be made available, if requested, by interested parties.

Ontario Regulation 20/98 Section 9(1)(7)

2.4.2 Operating Savings

A statement from the 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 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)

2.5 Completion of Ministry Forms

The Ministry has prepared standardized forms that are to be included with all background studies. These forms allow Ministry staff to analyze the EDC submission in a consistent manner for all boards. These forms represent the minimum amount of detail necessary. Boards are permitted to elaborate upon or enhance the forms, so long as the basic information (in the required format) is provided.

These forms are available from the Ministry's FTP site at <ftp://ftp.edu.gov.on.ca/sfis/edc>. These forms are considered an integral component of this guidelines package. 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	Purpose
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 guidelines document.

3 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 board passed the by-law. A board may choose to specify an effective date beyond the fifth day after 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 board (and has been released to the public). If for some reason the 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 3.1 and 3.2).

Education Act Section 257.62

3.1 Minister's Approval Required

Before proceeding with the passage of an EDC by-law, the 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 and number of sites required under Section 10 of the EDC Regulation.

Ontario Regulation 20/98 Section 10

3.2 Public Meeting

Before passing an EDC by-law, the *Education Act* requires boards to hold at least one public meeting so that the concerns of the community, and other interested parties with respect to the proposed charge, can be voiced. The public meeting is also an opportunity for the board to address issues raised by the community.

Education Act Section 257.63

The board is required to provide at least twenty days' notice of the meeting and to ensure that the EDC background study and proposed by-law are made available to the public at least two weeks prior to the first meeting. Many stakeholders have expressed concern that two weeks is not usually enough time to interpret and analyze background studies. The Ministry therefore recommends that boards release background studies to the public at least four weeks prior to the public meeting.

For clarification, the policy statement review required by the board (section 2.4) may be addressed by the board during this public meeting.

Ontario Regulation 20/98 Section 11

3.3 Notices

The EDC Regulation requires boards to prepare detailed notices regarding:

- Public meetings
- Notice of the passage of the EDC by-law
- Notice of proposed amendment to an EDC by-law
- Notice of passage of an amending by-law

These notices are similar in content. 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 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
- 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 personal service, fax, or mail or by publishing notice in a newspaper having general circulation in the area to which the by-law will apply.

Regulation 20/98 Sections 11,12, 14

Notices provided to other parties are to be done by either personal delivery 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.

Ontario Regulation 20/98 Sections 11,12, 14

3.4 Pamphlet

Once an EDC by-law has come into force, the board is to prepare and distribute a pamphlet within sixty days outlining:

- The general purpose for which EDC by-laws are imposed
- 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 Municipal Board, the pamphlet is to be prepared and distributed within sixty days after the appeal decision or after the by-law is amended (see the section of this document dealing with appeals).

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

Pamphlets are to be provided without charge.

Ontario Regulation 20/98 Section 21

3.5 Statement of Treasurer

The Treasurer of the board is to provide an annual financial statement to the board on a date specified by the 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 Transfer Payment and Financial Reporting Branch of the Ministry with the annual school board Financial Statement package.

Education Act Section 257.98

3.6 By-Law Expiration

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

3.7 Non-Statutory Exemptions

A school board may designate types of development that will be exempt from the EDC. For instance, a 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 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 revenue shortfalls.

4 Charge Collection / 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 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

4.1 Credits for Land Use Conversion

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 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).

4.2 Monthly Report

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
- The number of building permits issued for each type of residential development
- The location of lands to which the residential building permits were issued
- The number of building permits issued for residential development for which no EDC was collected

And, if the 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 development used to generate the non-residential EDCs collected *OR* the total declared value of the non-residential development used to generate the non-residential EDCs

collected (depending on the method the board used to determine the non-residential EDC in the by-law)

- 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
 - If the EDC is based on declared value, the declared value of the development in question
- 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; and
 - If the EDC is determined using the declared value, the declared value of the development in question
- 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

4.3 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

4.3.1 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
- 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
- Reasons for the complaint

4.3.2 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

5 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.

5.1 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 3.3) not more than twenty days after by-law passage. The notice must also state how to file an appeal.

Education Act Section 257.64

5.2 Notice of Appeal

Any person or organization may appeal an EDC by-law to the Ontario Municipal Board (OMB). 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 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

5.3 Appeal Process

In the event of an appeal, the secretary of the board must forward a copy of the Notice of Appeal and the following documents to the OMB 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*
- 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 OMB. The OMB will also decide the manner that notices regarding the hearing will be provided to interested parties.

Education Act Section 257.67(2)

The OMB 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 OMB 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)

5.4 Powers of the Ontario Municipal Board

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

- Dismiss the appeal in whole or in part
- Order the board to repeal or amend the by-law in accordance with the order of the OMB
- Repeal or amend the by-law itself

However, the OMB is not permitted to:

- Increase the quantum of an EDC
- Remove or reduce the scope of a discretionary exemption (see section 2.3.5.1)
- Change the expiration date of an EDC by-law

Education Act Section 257.67(3) and (4)

5.5 Refunds & Interest Rates

If an EDC by-law is repealed (whether by the board under an order from the OMB or by the OMB 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 OMB repeals or amends a by-law itself. If the OMB directs the board to repeal or amend a by-law, the refund is due within 30 days of the repeal or amendment by the 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 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

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.

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 board desires in accordance with Section 18(3)(b)).

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

5.6 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)

5.7 Appeal of Municipal Decision

The decision of a municipal council regarding a complaint (see section 4.3) may be appealed by any of the parties to the OMB within 40 days after the decision of council is made. An appeal to the OMB 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
- 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 OMB 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
- 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 OMB is filed with the clerk of a municipality, the clerk is to forward all documents to the secretary of the OMB within 30 days after the Notice of Appeal is received. Furthermore, the municipal clerk is to provide all information and materials requested by the OMB.

Education Act Section 257.88

The OMB 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 5.5 for information regarding the determination of refunds and interest owing.

Education Act Section 257. 89

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

Education Act Section 257. 91

6 Amendments to Existing By-Law

Boards may need to amend an EDC by-law for various reasons. In certain situations, a board may decide it is necessary to adjust the quantum of the EDC to reflect changes in the estimated acquisition price of land, to reduce or increase the scope of discretionary exemptions (see section 2.3.5.1), or to effect other changes deemed appropriate by the board.

Boards are not required to seek approval of the Ministry of Education in order to amend an EDC by-law. Boards are required, as part of the notice process (see section 3.3) 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 board wishing to amend an existing by-law.

6.1 Limitation on Amendments

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

- Increase the quantum of the EDC that is payable
- Extend the term of a by-law

Education Act Section 257.70

6.2 Process to Amend a By-Law

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.

Boards wishing to pass an **Amending By-Law** are required to provide notice to the public (see section 3.3). In addition, 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.

Boards are encouraged to hold at least one public meeting prior to passing an amendment. The board is further encouraged to give at least twenty days' notice of the meeting. For further information on public meetings, see section 3.2.

Education Act Section 257.70 and 257.71 & Education Act Section 257.72

6.3 Calculation of Amended EDC

The EDC Regulation specifies that adjustments to the original calculation are to be made by a board amending the quantum of the EDC. This provision requires 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

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