

September 22, 2021

Dear Electors

RE: Declaration of Determinations of Petition Invalidity Insufficiency

On September 9, 2021 the Division Administration received a purported petition addressed to “The Council of the Battle River School Board Regional Division 31 in the Province of Alberta” The heading of the petition included the following description:

We The undersigned persons... Choose freedom for our children as directed in the Canadian Charter of Rights and Freedoms. This petition advocates for Parents and Guardians of children 17 and under and Adults 18 and over attending the Battle River School District, the freedom to choose, vaccinated or unvaccinated, to wear or not wear a facemask while attending in person school or outside on the school grounds. No mandates on masking our children at school.

Section 247 of the *Education Act* requires that a “petition must be in accordance with the regulations”

247 When this Act provides for the doing of anything by petition or an elector wishes to present a petition to a board, the petition must be in accordance with the regulations

The relevant regulation is the *Petitions and Public Notices Regulation*, AR 91/2019 [the *Regulation*]. The *Regulation* requires that a petition must be filed with the secretary of the board. I received a copy of the petition and therefore proceeded with an examination of the petition.

Section 4 of the *Regulation* establishes a mandatory prerequisite for a petition to be valid. Section 4 requires that:

There must be attached to every petition a statement signed by an elector stating that

- (a) the elector represents the petitioners, and
- (b) the elector is the person to whom a board may direct any inquiries with respect to the petition.

In this case, the petition failed to identify an elector representing the petitioners or stating that such a representative was able to receive inquiries in respect of the petition. As a result, I have determined that the petition is invalid. There is no valid petition submitted to the Board which complies with section 247 of the *Education Act*.

Notwithstanding the fact that the petition was invalid, I also examined whether the petition would be “sufficient” if it were not already invalid. Section 6 of the *Regulation* reads:

- 6 When a petition is filed with the secretary of the board, the secretary must
- (a) determine the number of petitioners that have signed the petition,
 - (b) determine whether the petition meets the requirements of sections 2 and 3, and
 - (c) having made the determinations under clauses (a) and (b), declare the results of the secretary’s determination, and provide the elector referred to in section 4 with written notification of the declaration.

Determination #1: Number of Petitioners that have signed the Petition (section 6(a))

Declaration – 317 Petitioners have signed the Petition

In addressing section 6(a) of the *Regulation* (i.e. the number of petitioners that have signed the petition) I am bound by section 3(3) of the *Regulation* which reads:

- (3) The following must be excluded in determining the number of petitioners on a petition:
- (a) a person whose signature appears on a page of the petition that does not contain an accurate statement of the purpose of the petition identical to the statement contained on all the other pages of the petition;
 - (b) a person whose signature is not witnessed;
 - (c) a person whose address is not set out or is incorrectly set out;
 - (d) a person who is not an elector.

Applying section 3(3) I have determined that there are 317 petitioners who have signed the petition. I have made this determination as follows:

- 298 of all signatures on the (invalid) petition failed to set out a complete municipal address (see section 3(3)(c) of the *Regulation*). This leaves me unable to determine whether the signatory is an elector (section 3(3)(d) of the *Regulation*). An elector is defined under s. 1(g) of the *Education Act* which incorporates the definition under the *Local Authorities Election Act*, which in turn requires that the elector be a person who would be eligible to vote in the relevant election.
- In addition 47 of the signatures are unwitnessed meaning such persons cannot be considered “petitioner” (section 3(3)(b) of the *Regulations*)

Because of the failure to include complete addresses or failure of the signature being witnessed, I am forced to conclude and declare that there are 317 petitioners who have signed the petition.

Determination #2: Whether the Petition Meets the Requirements of Section 2

Declaration – The Petition Does Not Meet the Requirements of Section 2

Section 2 of the *Regulation* requires that when the *Education Act* provides for doing anything by petition, or when electors wish to present a petition, it must be in a form established by the Minister. The section reads:

When the Act provides for the doing of anything by petition, or one or more electors wish to present a petition to a board, the petition must be in the form established by the Minister.

Relatedly, section 247 of the *Education Act*, S.A. 2012, c. E-0.3 confirms that any petition which an elector wishes to present to a school board must be in accordance with the regulations. That section reads:

247 When this Act provides for the doing of anything by petition or an elector wishes to present a petition to a board, the petition must be in accordance with the regulations

As stated above, I have determined that the petition is invalid because it fails to meet the requirements set out in the *Regulation* under section 4.

Determination #3: Whether the Petition Meets the Requirements of Section 3

Declaration – The Petition Does Not Meet the Requirements of Section 3

Section 3(2) of the *Regulation* establishes the threshold requirements for the number of signatories as follows:

Number of Students in the Division, Francophone Education Region, or Charter School	Number of Required Signatures from Electors
5,000+ Students	Lessor of: 5000 electors OR number of electors equal to 10% of number of funded students
Between 1,000 and 4,999 Students	Lessor of: 500 electors OR number of electors equal to 25% of number of funded students
Less than 1,000 Students	Lessor of: 250 electors OR number of electors equal to 40% of number of funded students

In this case, there are 317 signatories based on my determination under Determination #1.

Therefore I declare that the Petition does not meet the requirements of Section 3(2).

Conclusion:

I declare that the requirements of sections 6(a) and 6(b) of the *Regulation* have not been met. The petition fails to identify and acknowledge the elector required under s. 4 and 317 signatures met the requirement under section 3(3)(b) and 3(3)(c) of the *Regulation*.

Pursuant to section 7 of the *Regulations* the board is required to proceed as if the petition had never been sufficient. That section provides:

7 If a petition is found under section 6 to be insufficient, the board must proceed as if the petition had not been presented to the board.

Section 6(c) of the *Regulation* requires me to provide the elector referred to in section 4 of the *Regulations* with this decision. However, the petition failed to identify such an elector. As a result, the Division will post my decision on the Division website.

An appeal of my determination and declaration may be possible by application to the Court of Queen's Bench. The application must be commenced within 14 days from the date of this declaration.

8(1) Where it is determined that a petition is insufficient, the petitioners may appeal the determination to the Court of Queen's Bench by application.

(2) An appeal under subsection (1) must be commenced within 14 days from the date that the secretary of the board makes the secretary's declaration under section 6(c).

However, because the petition failed to comply with ss. 2 and 4 of the *Regulation* and s. 247 of the *Education Act* an appeal may not be possible.

Respectfully,

ORIGINAL DOCUMENT HAS SIGNATURE

Imogene Walsh
Secretary-Treasurer
The Battle River School Division