

## **Notice under Section 11.1 of the *Alberta Human Rights Act***

On September 1, 2010, section 11.1 of the *Alberta Human Rights Act* came into force. This section requires boards (including charter schools) to provide parents with notice where “courses of study, educational programs or instructional materials, or instruction or exercises...include subject matter that deals primarily and explicitly with religion, human sexuality or sexual orientation.” Where a parent makes a written request, teachers shall exempt the student, without academic penalty, from such instruction, course of study, educational program, or use of instructional material. These requirements do not apply to incidental or indirect references to religion, religious themes, human sexuality or sexual orientation.

The requirements in this legislation are not intended to disrupt instruction or the discussion of controversial issues in the classroom. (See *Controversial Issues* on pages 72-75 of the *Guide to Education*.)

[http://www.education.alberta.ca/media/6542444/guidetoed\\_2011-2012.pdf](http://www.education.alberta.ca/media/6542444/guidetoed_2011-2012.pdf)

Teachers and schools should continue to respectfully handle the decisions and perspectives of parents when providing instruction and choosing instructional materials. Section 11.1 of the *Alberta Human Rights Act* continues to call on teachers and school administrators to exercise their professional judgment to determine when notice should be provided to parents and to handle complaints or concerns raised by parents.

### **Determining When to Provide Notice to Parents**

The Alberta Programs of Study contain the expected outcomes for students, achieved through the instructional choices made by certificated teachers. In light of the requirements in section 11.1, Alberta Education has done a review of the Programs of Study to identify those courses that contain outcomes that deal primarily and explicitly with religion, human sexuality or sexual orientation. The following courses have been identified as containing outcomes that require notification under section 11.1:

- Aboriginal Studies 10 – Theme II: Aboriginal Worldviews → religion)
- Career and Life Management (CALM) → human sexuality
- Career and Technology Studies (CTS) Reproduction & Readiness for Parenting (HCS3050) → human sexuality
- Career and Technology Studies (CTS) → Developing Maturity & Independence (HSS1040) → human sexuality
- Health (Grades 4, 5 and 6) → human sexuality
- Health and Life Skills (Grades 7, 8 and 9) → human sexuality
- Religious Ethics 20 → religion

- Religious Meanings 20 → religion
- •World Religions 30 → religion

Notification under section 11.1 may also be required for locally-developed courses that contain subject matter that deals primarily and explicitly with religion, human sexuality or sexual orientation.

Depending upon the choices teachers make in how outcomes are taught and the instructional materials that will be used, other courses or programs of study may also require notification to parents under section 11.1. When determining whether notification is required, teachers or boards may wish to consider the following:

1. Notification is required where the instructional material, exercise, outcome or course contain subject matter that deals **primarily and explicitly** with religion, human sexuality or sexual orientation.
  - For the instructional material, exercise, outcome or course to be considered to deal explicitly with religion, human sexuality or sexual orientation, there must be no question that the subject matter is intended to be about religion, human sexuality or sexual orientation. A religious interpretation of an otherwise non-religious subject matter would not be considered explicit. For example, the intent of including evolution in the Science programs of study is to explore its foundation in scientific theory. Although there may be religious interpretations of the origin of life, the inclusion of evolution is not intended to be explicitly about religion. Similarly, in order to be considered explicitly about “human sexuality”, an outcome, course, exercise or instructional material must also address human sexual behaviours. Therefore, outcomes within the Science programs of study that deal only with the anatomy and physiology of human reproduction are not explicitly about human sexuality; however, outcomes in CALM that examine aspects of healthy sexuality and responsible sexual behaviour are explicitly about human sexuality.
  - Even if the subject matter deals **explicitly** with religion, human sexuality or sexual orientation, the outcome, course, exercise, or instructional material must also **primarily** deal with religion, human sexuality or sexual orientation. For example, even though various outcomes in the Social Studies programs of study include explicit references to “religion”, the outcomes are primarily about the core concepts of citizenship and identity. Similarly, notification is not required where an instructional material contains subject matter that explicitly deals with religion, human

sexuality or sexual orientation, unless that instructional material is also primarily about one of these subjects.

2. Section 11.1 is clear that notification to parents is not required for indirect or incidental references to religion, religious themes, human sexuality or sexual orientation in an outcome, course, exercise or instructional material.
  - Where a reference to religion, religious themes, human sexuality or sexual orientation occurs indirectly or in connection to another subject matter in classroom discussions, notification is not required. Therefore, teachers should not avoid topics where these subject matters may arise nor should they feel the need to stop classroom discussion.
  - Similarly, where a course of study or education program does not already deal primarily and explicitly with religion, human sexuality or sexual orientation, references to these subject matters in student projects or presentations would be considered incidental and notification would not be required.
3. Section 11.1 does not apply to student behaviour or interactions that are not related to courses of study, education programs, instruction, exercises or instructional materials. Therefore, it does not affect the ability of boards and teachers to address bullying or disciplinary issues, including those related to religion, human sexuality or sexual orientation.

#### How to Provide Notice to Parents

Notification to parents under section 11.1 should be in writing and allow the parent enough time to request that their child be exempted from the instruction or exercise at issue. Section 11.1 does not require teachers or boards to obtain parental consent before providing the instruction or exercise. Notification procedures must include the following:

1. A notice provided to the parent indicating that a particular outcome or component of a course contains subject matter that deals primarily and explicitly with religion, human sexuality or sexual orientation.  
A sample notice form can be found in Appendix 4 of *the Guide to Education*.  
[http://www.education.alberta.ca/media/6542444/guidetoed\\_2011-2012.pdf](http://www.education.alberta.ca/media/6542444/guidetoed_2011-2012.pdf)
2. In the circumstance where a student is registered for a specific course which deals primarily and explicitly with religion, sexual orientation or human sexuality, notice may be given by providing a clear notice to the parent on the registration form for said course identifying that the course or a portion thereof is primarily and explicitly about religion, sexual orientation or human sexuality. A parent so

notified is encouraged to give notice of their request for exemption at the time of registration.

3. A separate board, a board which offers an alternative program that emphasizes a particular religion, or a board which has the teaching of religion or faith-based education programs on its premises, may satisfy the requirement to give notice of religious instruction by providing a clear statement on registration forms indicating to parents that they are enrolling their child in a school where religious instruction, exercises or instructional materials are used and that religion permeates the school program.

#### Exclusion from Instruction, Exercise or Use of Instructional Material

1. Where a parent makes a written request, section 11.1 requires a teacher to exclude a student, without academic penalty, from the instruction, exercise or use of instructional material that includes subject matter that deals primarily and explicitly with religion, human sexuality or sexual orientation. The parent should indicate in their written request whether they want the student to leave the classroom or place where the instruction or exercise is taking place or whether they want the student to remain in the classroom without taking part. A sample exemption form can be found in Appendix 4 of the *Guide to Education* [http://www.education.alberta.ca/media/6542444/guidetoed\\_2011-2012.pdf](http://www.education.alberta.ca/media/6542444/guidetoed_2011-2012.pdf)

#### How to Handle Concerns or Complaints from Parents

Boards must ensure that concerns or complaints from parents are handled in an open, fair, objective and timely manner, and in accordance with their appeal procedures as required by Section 123 of the *School Act*. Schools and teachers are encouraged to resolve concerns or complaints from parents regarding the requirements in Section 11.1 at the local level.

#### Procedure:

1. If a parent has a complaint related to the provision or non-provision of notice or the exclusion of his or her child from instruction, the parent must first address the issue with the teacher. In the event that the matter cannot be resolved in this normal course of discussion with the teacher involved, the parent shall provide the teacher with a written statement outlining the purported breach, the action explained in sufficient detail to allow for a full analysis to take place.
2. Upon receipt of a formal complaint in writing, the teacher may continue to attempt resolution in an informal and Without Prejudice basis.
3. In the event that the matter cannot be resolved between the teacher and the parent, either the parent or the teacher may refer the matter to the principal.

4. The principal may engage in discussion with the parent and the teacher, separately or together, on a Without Prejudice basis, in a further attempt to resolve the matter.
5. In the event that the matter cannot be appropriately resolved at the school level, either the principal, teacher or parent may refer the matter to the board for resolution via the procedures established by the board in accordance with Section 123 of the *School Act*, and as directed by the Minister of Education. In the event of such a referral, the teacher shall provide a statement in writing responding and providing analysis of the complaint.

“Without Prejudice” is a legal concept that encourages parties to resolve matters between them without being constrained in discussions by a fear that what they say may be used against them in a formal process. This encourages full and fair discussion without concern that statements may be misquoted or taken out of context. Parties may wish to identify those communications that are made on a Without Prejudice basis. This may include marking written communications “Without Prejudice.”