

Regulations and other Acts

Gouvernement du Québec

O.C. 862-2010, 20 October 2010

Charter of the French language
(R.S.Q., c. C-11)

Private educational institution not accredited — Criteria and weighting used to consider instruction in English received for the purposes of subsidies

Regulation respecting the criteria and weighting used to consider instruction in English received in a private educational institution not accredited for the purposes of subsidies

Whereas section 73.1 of the Charter of the French language (R.S.Q., c. C-11), enacted by section 2 of the Act following upon the court decisions on the language of instruction (2010, c. 23), provides that the Government may determine by regulation, on the joint recommendation of the Minister of Education, Recreation and Sports and the Minister responsible for the administration of the Charter of the French language, the analytical framework that a designated person must use in assessing the major part of the instruction received, invoked in support of an eligibility request under section 73 of the Charter;

Whereas section 21 of the Act following upon the court decisions on the language of instruction provides that the first regulation made under section 73.1 of the Charter of the French language is not subject to the publication requirement provided for in section 8 of the Regulations Act (R.S.Q., c. R-18.1) and comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date set therein;

Whereas a preliminary version of the proposed regulation was made public on 2 June 2010 and since then various stakeholders have made observations on that regulation, particularly during the public consultation held by the Committee on Culture and Education on the Act to amend the Charter of the French language and other legislative provisions (Bill 103);

Whereas it is expedient to make the Regulation with amendments;

IT IS ORDERED, therefore, on the joint recommendation of the Minister of Education, Recreation and Sports and the Minister responsible for the administration of the Charter of the French language:

THAT the Regulation respecting the criteria and weighting used to consider instruction in English received in a private educational institution not accredited for the purposes of subsidies, attached to this Order in Council, be made.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

Regulation respecting the criteria and weighting used to consider instruction in English received in a private educational institution not accredited for the purposes of subsidies

Charter of the French language
(R.S.Q., c. C-11, s. 73.1)

DIVISION I OBJECT AND SCOPE

1. The purpose of this Regulation is to determine the analysis framework to be used for eligibility requests referred to in section 2 in order to assess whether instruction received in English constitutes the major part of the instruction received by a child.

2. This Regulation applies to all requests for eligibility to receive instruction in English, submitted under paragraphs 1 and 2 of section 73 of the Charter of the French language (R.S.Q., chapter C-11), in which the instruction invoked in support of the request was received in Québec after 1 October 2002 in one or more private educational institutions not accredited for the purposes of subsidies that hold a permit under the Act respecting private education (R.S.Q. chapter E-9.1).

Despite the first paragraph, this Regulation does not apply to an eligibility request when the instruction received in English invoked in support of the request was received in an institution that ceased operating during

the period from 1 October 2002 to 22 October 2010. Nor does it apply when the elementary- or secondary-level instruction invoked in support of the request was received in an institution that offers only some of its classes in English at that level of instruction.

DIVISION II CRITERIA, INTERPRETIVE PRINCIPLES AND PASSING SCORE

3. The criteria and weighting to be used in assessing whether instruction received in English constitutes the major part of the instruction received by a child are described in Schedule I under the three following divisions:

Division 1 - “*Schooling*”

This division deals with the duration of the instruction received in English that is liable to reveal a genuine commitment to pursue studies in English, given the environment in which the schooling invoked in support of the request took place.

Among other elements, the following are considered: the different types of educational institutions attended and the characteristics of their enrolments that illustrate their relationship with the Québec anglophone minority, as well as any special educational projects or programs of study the institution offers to meet the needs of certain groups of students.

Division 2 - “*Consistent, true commitment*”

This division deals with the family context and other elements of the child’s environment that may shed light on the authenticity of the commitment to an English-language education, especially in terms of the continuity and consistency of this commitment.

Division 3 - “*Specific situation and overall education*”

This division deals with related or distinct contextual elements that allow a more in-depth assessment, with respect to the child’s personal and family situation, of the authenticity of the commitment made.

This division makes it possible to complete, enrich or nuance the assessments made under the previous divisions, as needed, according to the circumstances and contexts specific to the case examined. Specifically, this division concerns elements other than those explored under the previous divisions, such as what prompted the choice of or change in educational institution, when this choice or change was made during the child’s schooling,

the instruction received in a language other than English by the parents of the child concerned, the importance of continuity in the context of special programs as well as the proportion of courses received in each language of instruction.

4. When interpreting and applying Schedule I, in particular Division 3, it is important, among other things, to make a distinction between cases that demonstrate a genuine commitment to an English-language education, and cases where attendance at a private educational institution described in the first paragraph of section 2 could simply denote a desire to create an artificial educational pathway in order to circumvent the Charter of the French language.

5. For an eligibility request submitted under section 2 to be granted, a passing score of 15 points, calculated according to the weighting set out in Schedule I, must be attributed to it.

An eligibility request that is attributed this 15-point passing score is nonetheless subject to all other applicable conditions, including the requirement to provide proof of citizenship or proof of filiation.

DIVISION III CLASSIFICATION OF INSTITUTIONS AND OTHER RULES FOR APPLYING SCHEDULE I AND THE WEIGHTING SYSTEM

§1. *Application of Schedule 1*

6. All divisions of Schedule I are applicable to eligibility requests referred to in section 2, whether submitted under paragraph 1 or paragraph 2 of section 73 of the Charter of the French language, except for subdivisions 2.2 and 2.3 of Schedule I, which do not apply to requests submitted under paragraph 1 of section 73 of the Charter.

§2. *Classification of institutions*

7. In this Regulation, “*private educational institution*” means a private educational institution described in the first paragraph of section 2 that offers elementary- or secondary-level instructional services, or both, and that offers one or more courses in English, in addition to the English course.

8. A private educational institution may be given more than one of the classifications defined below, depending on its characteristics and the rules set out in this Regulation.

A classification is assigned for each level of instruction, elementary or secondary, offered by the institution, subject to the situation referred to in paragraph 2 of the definition of a type A English-language institution given in section 9, where the classification assigned applies to both levels of instruction.

When a permit issued under the Act respecting private education authorizes the operation of more than one facility, a classification must also be assigned to each facility in which instructional services are provided.

9. In this Regulation,

“*type A English-language institution*” means a private educational institution to which one of the following situations applies:

(1) 60% or more of the students enrolled in the first three years of elementary or secondary school have a certificate of eligibility or a special authorization to receive instruction in English under the Charter of the French language; or

(2) the institution provides elementary- and secondary-level instruction and satisfies the following two criteria:

(a) 70% or more of the students at the elementary level go on to attend the institution throughout their secondary studies; and

(b) 70% or more of the hours of instruction are provided in English, at both the elementary and secondary levels, the proportion of English instruction having been determined by the institution concerned and certified by a member of a professional order of accountants authorized by law to audit books and accounts;

“*type B English-language institution*” means a private educational institution that is not a type A or type C institution;

“*type C institution*” means a private educational institution that is specially dedicated to providing bilingual or multilingual learning to students in the context of an immersion or other program and less than 60% of whose students have a certificate of eligibility or special authorization to receive instruction in English under the Charter of the French language;

“*French-language institution*” means a public French-language school or a private educational institution, subsidized or not, whose elementary- and secondary-level courses, with the exception of language courses, including English courses, are offered in French.

10. Private educational institutions that have been providing instructional services for three years or less and that were not created following the division or merger of existing private educational institutions are temporarily considered, during their first three years of operation, as type C educational institutions whose percentage of students who have a certificate of eligibility or an authorization to receive instruction in English is between 0% and 25%.

§3. *Other rules for applying Schedule I and the weighting system*

11. The following rules apply in the calculation of a percentage mentioned in this Regulation:

(1) percentages must be calculated annually for each institution by averaging the percentages for the previous three school years;

(2) in the case of educational institutions created following the division or merger of existing educational institutions, the calculation must take into account the percentages of the institution or institutions from which they originate;

(3) the percentage of students who are eligible to receive instruction in English is based on the number of students in the first three grades of elementary education or the first three grades of secondary education offered by the institution, depending on the case;

(4) fractions are rounded up to the next whole number; and

(5) data from the Ministère de l'Éducation, du Loisir et du Sport is used to calculate the percentage; the department makes the data available as well as the classification assigned to educational institutions on the basis of the data.

12. If the instruction invoked in support of an eligibility request was received in private educational institutions that have different classifications, subdivision 1.1 of Schedule I is applied to the most significant portion of the instruction received. However, if no instruction clearly stands out, points are attributed to each educational institution attended as though it had provided the child's entire schooling and the average number of points for those institutions is retained.

DIVISION IV TRANSITIONAL AND FINAL PROVISIONS

13. Despite paragraph 1 of section 11, during the first three years of application of this Regulation, percentages for a given year are based on the average of the percentages for the previous two school years.

14. For the period from 22 October 2010 to 30 June 2011, and for the 2011–2012 school year, the percentage of students attending a private educational institution who have a certificate of eligibility or a special authorization to receive instruction in English under the Charter of the French language is the higher of

(1) the percentage determined in accordance with the provisions of Division III; and

(2) the percentage that corresponds to the average of the percentages of elementary school students who attended secondary school, in the previous two years, at a school under the jurisdiction of an English-language school board, a private English-language educational institution accredited for the purposes of subsidies under the Act respecting private education, or the same institution.

15. The percentage determined for the period from 22 October 2010 to 30 June 2011 is deemed to have remained the same since 1 October 2002 for the elementary or secondary school enrolments of the same institution, or, if the institution began operating after that date, since it began operating.

16. This Regulation comes into force on the date of its publication in the *Gazette officielle du Québec*.

SCHEDULE I*(Section 3)***DIVISION 1 “Schooling” (section 3)****1.1 Duration of English school attendance invoked in support of the eligibility request, according to the type of educational institution and the characteristics of its enrolments****Type A English-language institution**

Total school attendance	Type A English-language institution	Weighting
1 year	elementary or secondary	+2
2 years	elementary	+6
	elementary and secondary	+6
	secondary	+8
3 or 4 years	elementary	+15
	elementary and secondary	+15
3 years	secondary	+15
5 years	elementary	+17
	elementary and secondary	+18
6 years	elementary	+20
4 or 5 years	secondary	+25
6 to 9 years	elementary and secondary	+30
10 or 11 years	elementary and secondary	+35

Type B English-language institution

Total school attendance	Type B English-language institution	Weighting
	Institution where 0% to 25% of the enrolments hold a certificate of eligibility or a special authorization to receive instruction in English:	
2 to 3 years	elementary or secondary, or both	+3
4 to 6 years	elementary or secondary, or both	+8
7 to 11 years	elementary and secondary	+13
	Institution where 26% to 40% of the enrolments hold a certificate of eligibility or a special authorization to receive instruction in English:	
2 to 3 years	elementary or secondary, or both	+4
4 to 6 years	elementary or secondary, or both	+10
7 to 11 years	elementary and secondary	+16
	Institution where 41% to 59% of the enrolments hold a certificate of eligibility or a special authorization to receive instruction in English:	
2 to 3 years	elementary or secondary, or both	+5
4 to 6 years	elementary or secondary, or both	+13
7 to 11 years	elementary and secondary	+21

Type C institution

Total school attendance	Type C institution	Weighting
	Institution where 0% to 25% of the enrolments hold a certificate of eligibility or a special authorization to receive instruction in English:	
2 to 3 years	elementary or secondary, or both	+2
4 to 6 years	elementary or secondary, or both	+5
7 to 11 years	elementary and secondary	+8
	Institution where 26% to 40% of the enrolments hold a certificate of eligibility or a special authorization to receive instruction in English:	
2 to 3 years	elementary or secondary, or both	+3
4 to 6 years	elementary or secondary, or both	+7
7 to 11 years	elementary and secondary	+11
	Institution where 41% to 59% of the enrolments hold a certificate of eligibility or a special authorization to receive instruction in English:	
2 to 3 years	elementary or secondary, or both	+4
4 to 6 years	elementary or secondary, or both	+9
7 to 11 years	elementary and secondary	+14

§1.2 Type and availability of special programs of study

Special mission or purpose	Weighting
Attendance at an institution most of whose enrolments are students requiring special services because of a physical or mental handicap, behavioural problems, social maladjustments, learning difficulties or other similar problems	0 to +5

DIVISION 2 “Consistent, true commitment” (section 3)**§2.1 Changes or inconsistencies in terms of the language of instruction during the schooling invoked in support of the eligibility request**

Length of interruption or change in language of instruction or school	French-language institution*	Weighting
1 year	elementary	(-3)
2 years	elementary	(-3 per year)
3 or more years	elementary	(-5 per year for each additional year after the first 2 years)

Length of interruption or change in language of instruction or school	French-language institution*	Weighting
1 year	secondary	(-5)
2 years	secondary	(-5 per year)
3 or more years	secondary	(-8 per year for each additional year after the first 2 years)

* Enrolment in a French-language institution is not considered if motivated by the availability of special services needed because of a physical or mental handicap, behavioural problems, social maladjustments, learning difficulties or other similar problems. Similarly, the period of enrolment in a French-language institution is to be disregarded if ascribable to the student's participation in a special program of studies with limited access or availability, such as sports-study or music-study programs.

§2.2 Continued commitment, changes or inconsistencies in siblings' school attendance

In this division, "siblings" means

(1) brothers and sisters who attended elementary or secondary school during the period when the child concerned was also enrolled in elementary or secondary school, or

(2) brothers and sisters who attended such an institution during the five years before or after the child concerned received elementary or secondary school instruction.

Siblings	Language of instruction and type of educational institution	Weighting
No siblings		—
1 or more siblings	Siblings attended a type A English-language institution at the elementary or secondary level for a total of 1 year of instruction	+2
1 or more siblings	Siblings attended a type A English-language institution at the elementary or secondary level for a total of 2 years of instruction	+5
1 or more siblings	Siblings attended a type A English-language institution at the elementary or secondary level for a total of 3 or 4 years of instruction	+8
1 or more siblings	Siblings attended a type A English-language institution at the elementary or secondary level for a total of 5 to 8 years of instruction	+15
1 or more siblings	Siblings attended a type A English-language institution at the elementary or secondary level for a total of 9 or more years of instruction	+20
1 or more siblings	Siblings attended a French-language institution** at the elementary or secondary level for a total of 1 year of instruction	(-2)
1 or more siblings	Siblings attended a French-language institution** at the elementary or secondary level for a total of 2 years of instruction	(-5)

Siblings	Language of instruction and type of educational institution	Weighting
1 or more siblings	Siblings attended a French-language institution** at the elementary or secondary level for a total of 3 or 4 years of instruction	(-15)
1 or more siblings	Siblings attended a French-language institution** at the elementary or secondary level for a total of 5 to 8 years of instruction	(-20)
1 or more siblings	Siblings attended a French-language institution** at the elementary or secondary level for a total of 9 or more years of instruction	(-30)

** Enrolment in a French-language institution is not considered if motivated by the availability of special services needed because of a physical or mental handicap, behavioural problems, social maladjustments, learning difficulties or other similar problems. Similarly, the period of enrolment in a French-language institution is to be disregarded if ascribable to the student's participation in a special program of studies with limited access or availability, such as sports-study or music-study programs.

§2.3 Continued and consistent commitment in relation to the parents' mobility

In this division, "parents" means the parents of the child concerned for the purposes of an eligibility request submitted under paragraph 2 of section 73 of the Charter of the French language.

Length of residency elsewhere in Canada (without receiving elementary- or secondary-level instruction in French)	Parents	Weighting
More than 10 years out of the 20 years preceding the beginning of the schooling invoked in support of the eligibility request	1 parent	+5
	2 parents	+8

DIVISION 3 "Specific situation and overall education" (section 3)

Related or distinct contextual elements that allow a more in-depth assessment, with respect to the child's personal and family situation, of the authenticity of the commitment made	-8 to +8
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