

EDMONTON PUBLIC SCHOOLS

November 7, 2006

TO: Board of Trustees

FROM: Trustee K. Gibson, Conference Committee Chair

SUBJECT: Report #1 of the Conference Committee (From the Meeting Held October 31, 2006)

RECOMMENDATION

1. That report #1 of the Conference Committee from the meeting held October 31, 2006 be received and considered.

Aspen View Regional School Division Legal Challenge

2. That the board approve a \$5,000 contribution to Aspen View Regional School Division to support its legal challenge of the Minister of Education's right to determine an alternative method of separate school jurisdiction formation.

Trustee Electoral Ward Boundary Review

3. That an amendment to the trustee electoral ward design criteria such that the per cent of the average resident population of public school supporters and the potential for the average population growth or decline within all wards through three municipal general elections be increased from +/- 10 per cent to +/- 15 per cent, be confirmed.

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Background - Aspen View Regional School Division Legal Challenge

Attached is a letter from Don Fleming, President Public School Boards' Association of Alberta, seeking financial assistance from public school jurisdictions for the Aspen View Regional School Division's legal challenge of the Minister of Education's right to determine an alternative method of separate school jurisdiction formation as well as background information regarding the legal challenge (Appendix I).

## Background - Trustee Electoral Ward Boundary Review

The amended trustee electoral ward design criteria would read:

The wards must:

1. have a resident population of public school supporters that is within +/- 15 per cent of the average for all wards (one ninth of the total district-wide public-school supporting population);
2. reflect the potential for population growth or decline with the goal that school ward populations remain within +/-15 per cent of the average through three municipal general elections;
3. encompass entire school attendance areas where possible;
4. be regular in shape, and be delineated by easily identifiable boundaries such as major roadways, railways, ravines, rivers, etcetera; and
5. ensure where possible that communities of common interests or characteristics are kept within the same ward.

AS:mmf

APPENDIX I – Background Information re Aspen View Regional School  
Division Legal Challenge



## Public School Boards' Association of Alberta

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October 16<sup>th</sup>, 2006

Mrs. Bev Esslinger, Chair  
Board of Trustees  
Edmonton Public School District  
Centre for Education, One Kingsway  
Edmonton, AB T5H 4G9

Dear Bev:

As you may recall, in 2001, Learning Minister Lyle Oberg brought forward amendments to the School Act to create the so-called "alternative method" for separate school expansion. The amendments allowed the Minister to ignore existing constitutional requirements for establishing or expanding a separate school jurisdiction and gave him the power to establish or expand a separate school jurisdiction simply by signing a Ministerial Order. The Aspen View Regional School Division challenged the legality of the 2001 amendments and the matter is presently before the courts.

The challenge is expensive for Aspen View and they are looking to other public school jurisdictions for financial assistance with their legal costs. I am writing to request that your board consider providing that assistance to Aspen View.

This court case is likely to be of importance to every public school jurisdiction across the province. Its outcome will ultimately determine the power of a Minister to sidestep constitutional obligations and act unilaterally at his or her whim. The Government has not used the so-called alternate method since Aspen View initiated its challenge, and Minister Zwodzesky has said that he will not use the alternate method until the courts have made a decision about the issue.

When Dr. Oberg took the amendments through the Legislative Assembly, our Association and many of our members argued that the alternate method endangered the viability of rural public school jurisdictions. We argued that the amendments were wrong because they allowed expansion without the consultation and approval of the local members of the minority faith who may want to remain within the public school system. We argued that a Ministerial Order replacing one struggling public jurisdiction with two competing jurisdictions only serves to divide communities and diminish the quality of local educational offerings. We argued that sidestepping the constitutional requirement for significant input from local residents exceeds the power of the Minister.

I believe it is important for public school jurisdictions across the province to support the Aspen View initiative. Other rural jurisdictions could easily find themselves in the same situation as Aspen View. Urban jurisdictions should support Aspen View to limit the power of any Minister to step beyond the legal and constitutional requirements of his or her office.

At the August meeting of the Public School Boards Council, Representatives agreed that I should write to our member boards to request financial support for Aspen View. A suggested average contribution of \$5,000.00 from each public school jurisdiction in Alberta would be very helpful in Aspen View's efforts to conduct an effective challenge. Contributions can be sent to: Mr. Dave Dacyk, Chairman of the Board

Aspen View School Division  
3600 - 48<sup>th</sup> Avenue  
Athabasca, Alberta T9S 1M8

If you would like any additional information about the Aspen View case, please contact the Association office, or Aspen View.

Thank you for your consideration of this request.

Yours truly,

Public School Boards' Association of Alberta

A handwritten signature in cursive script that reads "Don Fleming".

Don Fleming, President

Thursday, November 2, 2006

**The Aspen View School Division Statement of Claim  
Against the Government of Alberta (Alberta Education)**

**What is happening?**

Shortly after the School Act was amended to create the so-called alternate method of expansion of Separate school education, the Lakeland Roman Catholic Separate School Division took advantage of the new method to expand into large areas of Aspen View Regional Division. The precipitating event was a decision by the Board of the Aspen View Regional Division that they would close a school, after requests for capital dollars to upgrade the school had been rejected by Alberta Infrastructure. (At the same time the Minister told school boards throughout the province to consider closing schools as a means of improving utilization.)

The Aspen View School Division has begun a legal challenge, claiming that the Government of Alberta, represented by the Minister of Education, was wrong to allow the expansion of the Lakeland Roman Catholic Separate School Division by the use of the so-called "Alternate Method of Expansion".

The Government is defending itself against the challenge. In the meantime, the Government has announced that it will not allow the use of the Alternate Method of Expansion until the Court has given a decision.

**Why is this case significant to urban public boards?**

The precipitating event was a legally proper and financially prudent decision by a public school board to close a school, following pressure from the provincial government to do so. The involvement of the provincial government in this matter amounted to an invitation to circumvent the decision of the public school board. Unrestrained and uneven competition can be brought to bear on urban public boards, although perhaps in different ways, if this precedent is allowed to stand.

It is important to challenge the government's proposition that it can unilaterally change the constitutional provisions as they relate to education in Alberta. If the government is not challenged on this matter now, a precedent will be established that may be used against public school boards in the future.

One consequence of the implementation of the alternate method is that local decision-making is reduced and the decision is centralized in the Office of the Minister. Public school boards throughout the province have an interest in getting a judicial decision on that trend, whenever possible.

Individual members of the minority faith lose an existing right to make the decision about Separate school education in the first place (with the establishment meeting and vote) and, having lost the right, there is no compensatory right to choose to continue as supporters of the public school system in their community. The government, as a matter of apparent public policy, is discriminating against public school education, including people who wish to be public school supporters, and the policy should be challenged.

There is a reduction of individual human rights, and this should be challenged.