



THE EDUCATION (ASSESSMENT, CLASSIFICATION, AND APPOINTMENT) REGULATIONS 1976, AMENDMENT NO. 12

DAVID BEATTIE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 20th day
of February 1984

Present:

THE RIGHT HON. D. S. THOMSON PRESIDING IN COUNCIL

PURSUANT to the Education Act 1964, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

1. Title and commencement
2. New Part inserted

PART VB

APPEALS TO PROTECTED
TEACHERS APPEAL BOARDS

- 59i. Panels of Appeal Board members

- 59j. Right of appeal
- 59k. Constitution of Appeal Board
- 59l. Procedure
- 59m. Lapsing of appeals
- 59n. Appeals in respect of category of protected teacher
- 59o. Consequences of successful appeal

3. Teachers selected before commencement

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Education (Assessment, Classification, and Appointment) Regulations 1976, Amendment No. 12, and shall be read together with and deemed part of the Education (Assessment, Classification, and Appointment) Regulations 1976* (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

2. New Part inserted—(1) The principal regulations are hereby amended by inserting, after Part VA (as inserted by regulation 6 (1) of the Education (Assessment, Classification, and Appointment) Regulations 1976, Amendment No. 8), the following Part:

“PART VB

“APPEALS TO PROTECTED TEACHERS APPEAL BOARDS

“59i. **Panels of Appeal Board members**—(1) As the need arises,—

“(a) The Minister shall from time to time, after consultation with the New Zealand Educational Institute and the New Zealand Education Boards Association, appoint persons to a panel of members of Appeal Boards:

“(b) The said Institute shall from time to time, by notice to the Minister, appoint persons to a panel of members of Appeal Boards:

“(c) The said Association shall from time to time, by notice to the Minister, appoint persons to a panel of members of Appeal Boards.

“(2) Every person appointed under subclause (1) of this regulation shall remain on the panel concerned for a term of 3 years, and may from time to time be reappointed.

“59j. **Right of appeal**—(1) Any teacher selected under Part VA of these regulations to become a protected teacher may, by written notice to his employing authority, appeal against his selection.

“(2) Where that employing authority is not the Director-General, it shall forward that notice to the Director-General forthwith upon receiving it.

“59k. **Constitution of Appeal Board**—(1) Upon receiving notice of an appeal under regulation 59j of these regulations, the Director-General shall, as soon as is practicable, either—

“(a) Notify an Appeal Board for the time being constituted under subclause (2) of this regulation (being an Appeal Board that could have been constituted under that subclause in respect of that appeal) that that appeal has been assigned to it for determination; or

“(b) Constitute an Appeal Board under subclause (2) of this regulation to hear that appeal.

“(2) Subject to subclauses (3) and (4) of this regulation, the Director-General shall from time to time, for the purpose of determining specific appeals under regulation 59j of these regulations, constitute Protected Teachers Appeal Boards (in this Part of these regulations referred to as Appeal Boards) comprising—

“(a) A Chairman appointed from the panel referred to in paragraph (a) of subclause (1) of regulation 59i of these regulations; and

*S.R. 1976/287

Amendment No. 1:	S.R. 1977/275
Amendment No. 2:	S.R. 1978/334
Amendment No. 3:	S.R. 1979/220
Amendment No. 4:	S.R. 1980/186
Amendment No. 5:	S.R. 1980/233
Amendment No. 6:	S.R. 1981/179
Amendment No. 7:	S.R. 1981/330
Amendment No. 8:	S.R. 1982/12
Amendment No. 9:	S.R. 1982/80
Amendment No. 10:	S.R. 1982/275
Amendment No. 11:	S.R. 1983/213

“(b) One member appointed from the panel referred to in paragraph (b) of that subclause; and

“(c) One member appointed from the panel referred to in paragraph (c) of that subclause.

“(3) The Director-General shall not appoint to be a member of an Appeal Board constituted to determine any appeal any person who is, in the opinion of the Director-General,—

“(a) A teacher employed at the school where the appellant concerned is employed; or

“(b) A person with whom the appellant has, or has had, a close association; or

“(c) A member or employee of any Education Board concerned.

“(4) Where—

“(a) There are for the time being no persons on a panel referred to in paragraph (b) or paragraph (c) of regulation 59I (1) of these regulations; or

“(b) In the opinion of the Director-General, every person for the time being on any such panel resides too far away from the place in which a particular appeal is likely to be heard for it to be appropriate for that person to be a member of an Appeal Board constituted to determine that appeal,—

the Director-General shall request the organisation having the power to appoint persons to that panel to appoint to that panel a person (not being a person who, in relation to the appeal concerned, is a person to whom any of paragraphs (a) to (c) of subclause (3) of this regulation applies) who resides within a reasonable distance of the place where the appeal concerned is likely to be heard; and if, within 14 days of receiving that notice, that organisation fails or refuses to appoint any person to that panel, or appoints only persons who, in the opinion of the Director-General, do not so reside, he may, instead of a person who is on that panel, appoint to be a member of the Appeal Board concerned any person he considers suitable.

“59L. **Procedure**—Where an appeal is referred to an Appeal Board, or an Appeal Board is constituted in respect of an appeal, the following provisions shall apply:

“(a) The Appeal Board shall fix a date, time, and venue for the hearing of that appeal, and shall notify the appellant and his employing authority of them:

“(b) As soon as is practicable after receiving notice under paragraph (a) of this regulation, that employing authority shall notify every other teacher who might lawfully have been selected to be a protected teacher instead of the appellant—

“(i) That the appellant has appealed against his selection as a protected teacher; and

“(ii) Of the date, time, and venue fixed for the hearing of the appeal; and

“(iii) That that other teacher has a right to be a party to that appeal, and to appear and be heard to the same extent as the appellant, in relation to the original selection of the appellant and the proposition that any other teacher be selected in place of the appellant; and

“(iv) That the Appeal Board has the authority to select as a protected teacher in place of the appellant any other teacher who might lawfully have been selected in place of the appellant; and

- “(v) That the decision of the Appeal Board is final; and
“(vi) Of the membership of the Appeal Board:
- “(c) Every such other teacher who so wishes shall notify the Director-General that he wishes to be a party to the appeal:
- “(d) The Appeal Board may, on the application of any party, vary the date, time, or venue of the appeal:
- “(e) Subject to paragraph (f) of this regulation, every party to the appeal may appear and be heard either in person or by an advocate who shall be—
- “(i) A teacher employed by an Education Board or the Director-General; or
 “(ii) An officer or member of the New Zealand Educational Institute; or
 “(iii) A member or employee of the appellant’s employing authority;—
but no other person shall be entitled to appear or be heard in relation to the appeal:
- “(f) No person who holds a current practising certificate as a barrister, a barrister and solicitor, or a solicitor, shall be entitled to appear and be heard as an advocate in relation to the appeal:
- “(g) The Appeal Board shall first hear the appellant (or his advocate) and the appellant’s employer (or any person appearing on that employer’s behalf); and if the Appeal Board is then satisfied that the appellant was the most suitable person of those who might lawfully have been selected to become a protected teacher, it shall confirm his selection:
- “(h) If the Appeal Board is not then so satisfied, it shall hear all the other parties (or their advocates) in such order as it thinks fit; and—
- “(i) Subject to paragraph (i) of this regulation, if it is satisfied that of the persons who might lawfully have been selected to become a protected teacher the most suitable so to be selected is some person other than the appellant, it shall select that person in place of the appellant; but
 “(ii) In every other case it shall confirm the selection of the appellant:
- “(i) Where the Appeal Board—
- “(i) Is satisfied that the appeal concerned was not lodged with the appellant’s employing authority within 14 days of his receiving notice of his selection as a protected teacher; and
 “(ii) Is not satisfied that there are extraordinary reasons justifying the acceptance of an appeal lodged later,—
it shall confirm his selection:
- “(j) For the purposes of paragraph (h) of this regulation, a person is more suitable to be selected as a protected teacher in place of some other person if that other person’s continued employment at the school concerned is likely, in the light of—
- “(i) The social and educational needs of the children enrolled at that school; and
 “(ii) The organisational needs of that school,—
to be more beneficial to that school and the children enrolled at it than that first-mentioned teacher’s continued employment at that school:
- “(k) The Appeal Board shall refuse to consider any evidence that was not before the Appointments Committee in respect of the

selection of the appellant, unless the Appeal Board is satisfied that it would cause serious injustice to the party wishing to advance that evidence not to consider it:

“(l) Every decision of an Appeal Board shall be a decision of a majority of its members:

“(m) Subject to the provisions of this Part of these regulations, every Appeal Board shall regulate its own procedure.

“59M. **Lapsing of appeals**—An appeal under regulation 59J of these regulations shall lapse—

“(a) If the appellant is appointed to a permanent full-time position in the Education Service; or

“(b) If the appellant is reinstated under regulation 59H of these regulations.

“59N. **Appeals in respect of category of protected teacher**—Where—

“(a) Of a group of persons who might so have been selected, one person has been selected to be a protected teacher (within entitlement), and one or more persons have been selected to be a protected teacher (over entitlement); and

“(b) Any person selected as a protected teacher (over entitlement) appeals under regulation 59J of these regulations against his selection; and

“(c) The Appeal Board selects, in place of the appellant, the person (hereafter in this section referred to as the replacement) who was selected to be a protected teacher (within entitlement)—

the Appeal Board shall also select from among those persons (including the appellant) who might lawfully have been selected to be a protected teacher (within entitlement) a protected teacher (within entitlement) in place of the replacement, in the same manner as if the replacement had successfully appealed against his selection as a protected teacher (within entitlement).

“59O. **Consequences of successful appeal**—(1) Where a person selected by an Appeal Board to become a protected teacher in place of some other person is so selected before the day on which that other person would otherwise become a protected teacher,—

“(a) That other person shall not, except by further selection under these regulations, become a protected teacher; and

“(b) That first-mentioned person shall become a protected teacher on the day on which that other person would have become a protected teacher.

“(2) Where a person selected by an Appeal Board to become a protected teacher in place of some other person is so selected on or after the day on which that other person became a protected teacher,—

“(a) Unless that other person has, since his initial selection, again been selected to be a protected teacher, he shall thereupon cease to be a protected teacher; and

“(b) That first-mentioned person shall thereupon become a protected teacher; but subclauses (9) to (11) of regulation 59D of these regulations, and regulation 59C of these regulations, shall apply to that first-mentioned person as if he had become a protected teacher on the day on which that other person became a protected teacher.

“(3) A person selected to be a protected teacher in place of some other person shall become a protected teacher (within entitlement) or a protected

teacher (over entitlement) in accordance with whether that other person was selected to be a protected teacher (within entitlement) or a protected teacher (over entitlement).”

(2) Regulation 59E (5) of the principal regulations is hereby consequentially amended by inserting, after the words “subclause (6) of this regulation”, the words “and regulation 59L (g) of these regulations”.

3. Teachers selected before commencement—(1) Notwithstanding regulation 59J of the principal regulations (as inserted by regulation 2 (1) of these regulations), a teacher selected to be a protected teacher before the commencement of these regulations may appeal against that selection at any time before the expiration of 14 days from that commencement.

(2) Where—

- (a) Before the 1st day of December 1982 any teacher was selected to be a protected teacher; and
 - (b) Before the 1st day of December 1983 that teacher appealed (or purported to appeal) to the Teachers’ Court of Appeal against his selection; and
 - (c) That teacher had not since selection and before the 1st day of December 1983 been appointed to any full-time permanent position in the Education Service; and
 - (d) That teacher successfully appeals against his selection under Part VB of the principal regulations (as inserted as aforesaid),—
- regulation 59O of these regulations shall apply as if that teacher had become a protected teacher on the 31st day of January 1984.

P. G. MILLEN,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

This amendment creates a procedure for primary teachers to appeal against their selection as protected teachers under Part VA of the Education (Assessment, Classification, and Appointment) Regulations 1976. A protected teacher is a teacher who has acquired certain priorities in relation to appointment to new positions by virtue of having been given notice that, because of falling rolls, he or she will be dismissed if a new position has not been found within a specified time.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 23 February 1984.

These regulations are administered in the Department of Education.