

Implementation of Memorandum of Agreement: BCPSEA Responses to BCTF Frequently Asked Questions

As districts may be aware, the BC Teachers' Federation (BCTF) issued a Frequently Asked Questions (FAQ) document on April 13, 2017. As referenced in BCPSEA @issue [No. 2017-09](#), BCPSEA does not agree with many of the answers provided in the BCTF FAQ. Following are BCPSEA responses to the BCTF questions and answers where we did not agree and, in addition, where we believe further clarification is required.

BCTF Questions and Answers <i>(as numbered in the BCTF FAQ document)</i>	BCPSEA Response
<p>1. What does “best efforts” mean in terms of the district following the restored collective agreement provisions?</p> <p><i>“Best efforts” is a much higher legal test than “reasonable efforts,” which means that districts cannot rely on finances and will have to look at many factors including, but not limited to, items included in the MOA such as:</i></p> <ul style="list-style-type: none">▪ <i>school boundaries/catchments</i>▪ <i>re-examining the use of existing space in schools or across schools that are proximate to one another</i>▪ <i>temporary classrooms (i.e., portables)</i>▪ <i>re-organizing existing classes to meet class-composition limits.</i>	<p>The provincial parties reached agreement concerning what “best efforts” will include when attempting to achieve full compliance with the collective agreement provisions regarding class size and composition provisions for the 2017-2018 school year and thereafter.</p> <p>This is set out at paragraph 22 of the <i>Memorandum of Agreement Re: LOU No. 17: Education Fund and Impact of the Court Cases – Final Agreement (“LOU 17 MoA”)</i>.</p>
<p>2. How do we, as a local, ensure that our school district is implementing the restored language to the best efforts standard?</p> <p>[...]</p> <ul style="list-style-type: none">▪ Challenge qualification requirement of postings — <i>given the thousands of new teaching positions, locals need to insist districts:</i><ul style="list-style-type: none">○ <i>not have onerous qualification requirements leading to unfilled positions</i>○ <i>provide in-service and training opportunities to allow teachers to assume more specialized positions</i>○ <i>not create artificial barriers in postings within primary or intermediate grades or between primary/intermediate or intermediate/secondary.</i>	<p>BCPSEA does not agree with the BCTF answer to this question. To clarify, the provincial parties agreed that local post and fill language/processes would continue to apply to the posting and filling of any position arising from the LOU 17 MoA.</p> <p>There was no provincial agreement to alter the process or to require the provision of in-service training.</p>

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<p>3. Our school district is refusing to consider catchment/boundary changes to fully implement the local restored collective agreement language, citing parent complaints. Can they refuse to consider catchment changes?</p> <p>No. The MOA clearly identifies catchment areas as an important consideration in implementing the restored language. The local should insist they be considered and if there is an impasse, it should be referred to the provincial parties per the MOA dispute resolution process.</p>	<p>Districts are required to consider catchment/boundary changes as part of best efforts under paragraph 22.A of the MoA. However, it is recognized that the process of amending boundaries is complicated and often requires consultation processes. Consequently, it may not be feasible to implement such changes for the 2017-2018 school year.</p>
<p>4. Our school district has closed schools that are used for other purposes and they do not wish to re-open them. Can they refuse to re-open the schools?</p> <p>No, assuming there are space issues that may lead to non-compliance.</p>	<p>Districts are required to re-examine the use of existing space within a school or across schools that are proximate to one another as part of best efforts required under paragraph 22.B of the MoA. However, the reopening of a school is a complicated process that includes consideration of a number of factors such as the building's condition, current use, required consultation processes, etc. Consequently, it may not be feasible to reopen a school for the 2017-2018 school year.</p>
<p>5. Our school district has schools that are used by outside groups under lease. The school district does not wish to break the lease of the leaseholders. Can the district refuse to break such leases?</p> <p>Assuming there are space issues that may lead to non-compliance, the local should insist the district approach the renter to establish a date to terminate the lease.</p>	<p>While a district is not automatically required to terminate a lease, paragraph 22.E refers to renegotiating terms of existing leases or rental contracts as part of the best efforts process. When reviewing this best effort at the bargaining table, the parties acknowledged that if a district was able to renegotiate terms of existing leases or rental contracts, then the district would do so.</p> <p>In general, you will not need to displace programs that are related to your board of education's mandate. If the program is not within mandate, you must consider it. StrongStart programs are an exception and do not need to be considered for closure.</p> <p><i>See also the BCPSEA LOU 17 Memorandum of Agreement Implementation Guide (April 2017) FAQ numbers 40 and 41.</i></p>

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<p>6. Our school district has already created a contingency fund for remedies and has stated that it will be unable to meet the restored collective agreement provisions. Can the school district create such a fund, and also declare they already have made best efforts and know they will be in non-compliance?</p> <p>Yes and no.</p> <ul style="list-style-type: none"> ▪ A district is free to create any fund it wishes in its budget. ▪ However, the school district cannot declare best efforts have been made prior to the start of the 2017-18 school year when the collective agreement language needs to be fully implemented. 	<p>It is possible to meet best efforts prior to the start of the 2017-2018 school year based on the information available to you at the time of planning. However, subsequent changes in student enrolment (e.g., through the summer) resulting in non-compliance will require you to re-examine best efforts in September to achieve compliance.</p>
<p>8. The local is wanting to ensure compliance with class composition language. What should locals do to ensure they have appropriate data to ensure the best efforts standard has been met?</p> <p>BCPSEA has cited privacy concerns and advised districts to err on the side of caution when handling data related to class composition. We are in discussions with BCPSEA to try and find a process that would enable the local parties to review the data for compliance purposes while respecting privacy. We hope to reach an understanding on this issue soon.</p> <p>However, in the meantime, in order to determine the appropriate staffing level at schools to meet class size and class composition limits, individual teachers, union staff committees, school-based teams and district committees (where they exist) need to:</p> <ul style="list-style-type: none"> ▪ collect aggregate data on student designations for high and low incidence and behaviour (if used in class composition) ▪ not collect students' names or their medical information ▪ give that information to the local so that they have the information required to ensure compliance. 	<p>The parties are in discussions to attempt to reach a process that will ensure disclosure occurs in accordance with the <i>Freedom of Information and Protection of Privacy Act</i> (FOIPPA).</p> <p>Until such a time as the parties reach an agreed-upon process, districts are advised to be careful about sharing information that may not be aligned with their obligations to protect the personal information of students under FOIPPA.</p>

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<p>12. Are itinerant positions, including but not limited to School Psychologists, Occupational Therapists, Speech Language Therapists, and Teachers of the Hearing Impaired and Visually Impaired, included in the ratios for non-enrolling teachers under the special education categories of SERT, LAT, and ELL?</p> <p>No, those non-enrolling positions existed in addition to the SERT, LAT, and ELL, and should continue to exist separate from the ratios in Schedule A. Their roles are completely different. The negotiated ratios were never intended to include others outside of these roles. Although we had discussions about different delivery models, it was never assumed that this would give districts the authority to include any non-enrolling teachers under the ratios in the MOA.</p>	<p>BCPSEA disagrees with the BCTF response to this question. The Agreement in Committee defined SERTs as those teachers assigned to the historical Ministry programs 1.16, 1.17, and 1.18, defined as:</p> <ul style="list-style-type: none"> ▪ students with severe behaviours ▪ high incidence/low cost students ▪ low incidence/high cost students. <p>Accordingly, the positions described above are not automatically excluded for non-enrolling ratios. You will need to take a look at the job duties of the role and include those who provide service to the students listed above.</p> <p>Some examples of these types of position may include behaviour support teachers, speech language pathologists, and psychologists. Note: districts should not include teachers who provide support to other teachers (e.g., district helping teachers).</p> <p><i>See also the BCPSEA LOU 17 Memorandum of Agreement Implementation Guide (April 2017) Page 7 and FAQ number 13.</i></p>
<p>14. Does the Teacher-Librarian non-enrolling ratio include preparation time coverage?</p> <p>Unless it is explicitly stated in your collective agreement that Teacher-Librarians provide preparation relief, the BCTF position is if a Teacher-Librarian were to take a class for a colleague and provide preparation relief, they would be the enrolling teacher during these times. Providing preparation relief to colleagues cannot reasonably fall under the definition of a non-enrolling Teacher-Librarian position.</p>	<p>BCPSEA disagrees with the BCTF response to this question. In the absence of specific language in your collective agreement restricting Teacher-Librarians from performing preparation time coverage, a Teacher-Librarian can provide the coverage where this work is normally assigned to Teacher-Librarians in your district.</p> <p><i>See also the BCPSEA LOU 17 Memorandum of Agreement Implementation Guide (April 2017) FAQ number 66.</i></p>

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<p>16. Some districts are setting a high qualification bar when trying to fill the Teacher-Librarian positions (and others) with the intent that it is unlikely they can fill most of these with the level of qualification requested.</p> <p>While we agree with setting reasonable qualifications we believe it is disingenuous to set very high qualification bars when you consider that many Teacher-Librarian positions have been filled by school administrators over the years since 2002 without many of them having any Teacher-Librarian qualifications and the role of the Teacher-Librarian has changed over the intervening 15 years to include more student research and online access to resources. Provision 7 (v) from the MOA should be applied judiciously and not with the intent to establish barriers.</p>	<p>Districts should continue to identify the required qualifications for teacher positions (including teacher-librarians) in a manner that is consistent with the required duties and responsibilities.</p>
<p>17. Can teacher assistant or educational assistant staffing be used as a remedy?</p> <p>No. Once the remedy amount is calculated, the affected teachers will determine whether the remedy is additional preparation time, additional non-enrolling support for their classes, or additional enrolling staff to allow for co-teaching. In the event the above remedies are not practicable, the local parties will meet to determine the appropriate remedy the teachers will receive.</p>	<p>We disagree with the BCTF response to this question. Paragraph 24.C.iv of the MoA permits “other remedies that the local parties agree would be appropriate.” This may include additional teacher assistants or education assistants if the local parties agree.</p>
<p>18. How will preparation time, non-enrolling, or enrolling staffing support generated by remedy be scheduled?</p> <p>Teachers will determine the remedy, and the schedule should be determined by the teacher after consultation with the school administration.</p>	<p>Teachers can determine the type of remedy per paragraph 22 of the MoA. However, the scheduling of the remedy is a responsibility of the Principal of the school. This responsibility is set out in <i>School Act Regulation</i> section 7.</p>
<p>20. What is the remedy for a secondary block, per violation, at a linear and a semestered secondary school?</p> <p>The remedy on a linear schedule per block is 1/7 of full-time per violation and 2/7 on a semestered schedule per violation for each block.</p>	<p>The calculation of a remedy is set out commencing on Page 17 of the BCPSEA <i>LOU 17 Memorandum of Agreement Implementation Guide</i> (April 2017).</p> <p>Per provincial agreement, when calculating P (the percentage of a full-time instructional month that the teacher teaches the class), one block in an eight block system is to be valued at 0.143.</p> <p>Remedy is only paid for the months in which a class is in non-compliance.</p>

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<p>22. The School Act regulation on providing remedy to Grade 4-12 classes has been repealed. What happens now?</p> <p>The <i>School Act</i> regulation now references the 2017 MOA remedy process and for classes that exceed the <i>School Act</i> maximum, remedy shall apply per the terms and conditions of the MOA.</p>	<p>Any <i>School Act</i> remedies being paid in the current 2016-2017 school year should continue to follow the repealed <i>School Act Regulation</i> (effective July 1, 2012).</p> <p>The amended remedy provided under the <i>School Act Regulation</i> applies to remedies in the 2017-2018 school year.</p>
<p>24. Our district has been reluctant to meet with us to discuss implementation and school organization.</p> <p>It is the expectation of the provincial parties that there will be respectful and collaborative meetings to help understand and implement both the restored language and the application of the MOA. The MOA clearly states the language is restored and that school districts need to make best efforts to implement the terms and conditions of the restored language. The local should insist that regular meetings be scheduled and that a joint committee be struck to facilitate the implementation. If the district continues to delay or decline to meet, the matter should be referred to the provincial parties per the MOA dispute resolution process.</p>	<p>In view of each district’s obligation to apply best efforts, BCPSEA recommends you meet with your local union to identify whether or not the local has concerns that best efforts have not been met. There is no requirement that you establish a joint committee that meets regularly.</p> <p>If you do feel the need to meet regularly, consider incorporating issues related to the MoA through your already established labour–management meeting structure.</p>
<p>27. How do term courses (i.e. 2-credit courses) count towards total teaching load under the collective agreement?</p> <p>For local collective agreements with total teaching load language, term course student count is generally pro-rated for the length in time the course runs. However, additional preparation and more reporting requirements for teachers will occur as a result.</p>	<p>Total teaching load was not discussed at the bargaining table. Districts should rely on past practice in calculating total teaching load counts.</p>

Questions

If you have any questions, please contact your BCPSEA liaison.