

**MEMORANDUM OF AGREEMENT**

**Between:**

**British Columbia Public School Employers' Association ("BCPSEA")**

**and**

**The British Columbia Ministry of Education ("Ministry of Education")**

**and**

**British Columbia Teachers' Federation ("BCTF")**

**(collectively referred to as "the Provincial Parties")**

**RE: LOU NO. 17: EDUCATION FUND AND IMPACT OF THE COURT CASES – FINAL AGREEMENT**

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**WHEREAS** the Provincial Parties acknowledge that, as a result of the majority of the Supreme Court of Canada<sup>1</sup> adopting Justice Donald's conclusion<sup>2</sup> that the *Education Improvement Act*<sup>3</sup> was unconstitutional and of no force or effect, that the BCPSEA-BCTF collective agreement provisions that were deleted by the *Public Education Flexibility and Choice Act* in 2002 and again in 2012 by the *Education Improvement Act* are restored;

**AND WHEREAS** the Provincial Parties further acknowledge that the Supreme Court of Canada's decision triggered Letter of Understanding No. 17 to the 2013-2019 BCPSEA-BCTF Provincial Collective Agreement, which required the Parties to re-open collective agreement negotiations regarding the collective agreement provisions that were restored by the Supreme Court of Canada;

**AND WHEREAS** the Provincial Parties further acknowledge that Letter of Understanding No. 17 required an agreement "regarding implementation and/or changes to the restored language";

**AND WHEREAS** this Memorandum of Agreement has been negotiated pursuant to Letter of Understanding No. 17 fully and finally resolves all matters related to the implementation of the Supreme Court of Canada's decision. As such, the Provincial Parties acknowledge that the re-opener process set out in Letter of Understanding No. 17 has been completed.

**THEREFORE THE PROVINCIAL PARTIES AGREE THAT:**

**I. IMPLEMENTATION OF THIS MEMORANDUM OF AGREEMENT**

**Shared Commitment to Equitable Access to Learning**

1. All students are entitled to equitable access to learning, achievement and the pursuit of excellence in all aspects of their education. The Provincial Parties are committed to providing all students with special needs with an inclusive learning environment which provides an

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<sup>1</sup> *British Columbia Teachers' Federation v. British Columbia*, 2016 SCC 49

<sup>2</sup> *British Columbia Teachers' Federation v. British Columbia*, 2015 BCCA 184

<sup>3</sup> S.B.C. 2012, c. 3

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opportunity for meaningful participation and the promotion of interaction with others. The implementation of this Memorandum of Agreement shall not result in any student being denied access to a school, educational program, course, or inclusive learning environment unless this decision is based on an assessment of the student's individual needs and abilities.

### **Schedule "A" of All Restored Collective Agreement Provisions**

2. The Provincial Parties will develop a Schedule of the BCPSEA-BCTF collective agreement provisions that were deleted by the *Public Education Flexibility and Choice Act* in 2002 and again in 2012 by the *Education Improvement Act* ("the restored collective agreement provisions") that will be implemented pursuant to this Memorandum of Agreement. This Schedule will be attached to this Memorandum of Agreement as Schedule "A".

### **Agreement to be Implemented for September of the 2017-2018 School Year**

3. Commencing in September of the 2017-2018 school year and thereafter, school staffing will, subject to the terms of this Memorandum of Agreement, comply with the restored collective agreement provisions that are set out in Schedule "A".

### **Continuation of Existing Funding for the Remainder of the 2016/2017 School Year**

4. The Education Fund provisions referred to in Letter of Understanding No. 17 to the 2013-2019 BCPSEA-BCTF Provincial Collective Agreement will remain in place for the remainder of the 2016/2017 school year, following which the Education Fund provisions shall end.
5. The priority measures established pursuant to the January 5, 2017 Memorandum of Agreement Re: LOU No. 17: Education Fund and Impact of the Court Cases – Priority Measures will remain in place for the remainder of the 2016/2017 school year.

### **Agreement Implementation Committee**

6. Following the execution of this Memorandum of Agreement, the Provincial Parties will continue to meet as needed through June 30, 2017 to facilitate implementation of the Agreement for the Spring staffing process. After June 30, 2017, the Provincial Parties will meet to facilitate implementation of this Memorandum of Agreement on a quarterly basis until the opening of the next round of collective bargaining. Specific activities to be undertaken during these meetings include, but are not limited to:

#### **A. Restored Language: Housekeeping**

Housekeeping changes mutually recommended by the local parties will be approved through a four-party process with one representative from BCPSEA, one representative from the BCTF, one representative from the School District, and one representative from the BCTF local. Housekeeping changes will be limited to titles of committees, dates, names of positions, and terminology. This housekeeping process will not delay implementation of any of the restored language.

#### **B. Updating Terminology Pertaining to Students with Special Needs**

Terminology pertaining to students with special needs contained within the restored collective agreement provisions will be updated by the Provincial Parties. This process does not include changes to the definitions and classifications of special education

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designations and does not supersede or otherwise affect the work of the Class Composition Joint Committee set out in paragraph 20 below.

### **C. Dispute Resolution**

Where a dispute arises regarding the interpretation or application of this Memorandum of Agreement, the following process will apply:

- i) The local parties will meet and attempt to resolve the dispute;
- ii) Where, after meeting, the local parties are unable to resolve the dispute, the local parties, with the assistance and representation of the Provincial Parties, will meet again and attempt to resolve the dispute;
- iii) Where, after meeting, both the local and Provincial Parties are unable to resolve the dispute, either party may file a grievance and utilize the grievance procedure to resolve the dispute.

## **II. NON-ENROLLING TEACHER STAFFING RATIOS**

7. Effective upon the commencement of the regular 2017/2018 school year, all language pertaining to learning specialists shall be implemented as follows:

A. The minimum district ratios of learning specialists to students shall be as follows (except as provided for in paragraph 7(B) below):

- i) Teacher librarians shall be provided on a minimum pro-rated basis of at least one teacher librarian to seven hundred and two (702) students;
- ii) Counselors shall be provided on a minimum pro-rated basis of at least one counsellor to six hundred and ninety three (693) students;
- iii) Learning assistance teachers shall be provided on a minimum pro-rated basis of at least one learning assistance teacher to five hundred and four (504) students;
- iv) Special education resource teachers shall be provided on a minimum pro-rated basis of at least one special education resource teacher per three hundred and forty two (342) students;
- v) English as a second language teachers (ESL) shall be provided on a minimum pro-rated basis of at least one ESL teacher per seventy four (74) funded ESL students.

B. For the purpose of posting and/or filling FTE, the Employer may combine the non-enrolling teacher categories set out in paragraph 7(A)(iii)-(v) into a single category. The Employer will be deemed to have fulfilled its obligations under paragraph 7(A)(iii)-(v) where the total non-enrolling teacher FTE of this single category is equivalent to the sum of the teachers required from categories 7(A)(iii)-(v).

C. Where a local collective agreement provided for services, caseload limits, or ratios additional or superior to the ratios provided in paragraph 7(A) above – the services,

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caseload limits or ratios from the local collective agreement shall apply. **[Provisions to be identified in Schedule “A” to this Memorandum of Agreement].**

- D. The aforementioned employee staffing ratios shall be based on the funded FTE student enrolment numbers as reported by the Ministry of Education.
- E. Where a non-enrolling teacher position remains unfilled following the completion of the applicable local post and fill processes, the local parties will meet to discuss alternatives for utilizing the FTE in another way. Following these discussions the Superintendent will make a final decision regarding how the FTE will be deployed. This provision is time limited and will remain in effect until the renewal of the BCPSEA-BCTF provincial collective agreement. Following the expiration of this provision, neither the language of this provision nor the practice that it establishes regarding alternatives for utilizing unfilled non-enrolling teacher positions will be referred to in any future arbitration or proceeding.

### Dispute Resolution

- 8. Where a dispute arises regarding the interpretation or application of the non-enrolling language, the following process will apply:
  - A. The local parties will meet and attempt to resolve the dispute;
  - B. Where, after meeting, the local parties are unable to resolve the dispute, the local parties, with the assistance and representation of the Provincial Parties, will meet again and attempt to resolve the dispute;
  - C. Where, after meeting, both the local and Provincial Parties are unable to resolve the dispute, either party may file a grievance and utilize the grievance procedure to resolve the dispute.

### **III. PROCESS AND ANCILLARY LANGUAGE**

- 9. The BCPSEA-BCTF collective agreement process and ancillary provisions that were deleted by the *Public Education Flexibility and Choice Act* in 2002 and again in 2012 by the *Education Improvement Act* shall be implemented effective September 1, 2017 or as otherwise set out in paragraph 10 below. **[Provisions to be identified in Schedule “A” to this Memorandum of Agreement]**
- 10. The Provincial Parties recognize that it may take time to transition from existing practices to the processes that are defined in the restored language. The 2017/2018 school year will serve as a transition period for full implementation of the restored process and ancillary language by January 31, 2018 as follows:
  - A. School-Based Process and Ancillary Language

Restored school-based process and ancillary language including, but not limited to, language pertaining to school-based teams, staffing committees, and the role and function of staff committees, shall be implemented upon the commencement of the regular 2017/2018 school year. **[Provisions to be identified in Schedule “A” to this Memorandum of Agreement].**

**B. District-Based Process and Ancillary Language**

The following restored collective agreement provisions shall be implemented as soon as practicable but by no later than January 31, 2018. During this transition period, current practices may be utilized while the necessary supports are put in place to implement the process and ancillary language. **[Provisions to be identified in Schedule “A” to this Memorandum of Agreement].**

- i) Restored school-based process and ancillary language that makes reference to a district-level process, and;
- ii) Restored district-level processes and ancillary language including, but not limited to language pertaining to district committees and screening panels.

11. Where the local parties agree they prefer to follow a process that is different than what is set out in the applicable local collective agreement process and ancillary provisions, they may request that the Provincial Parties enter into discussions to amend these provisions. Upon agreement of the Provincial Parties, the amended provisions would replace the process and ancillary provisions for the respective School District and local union. **[Provisions to be identified in Schedule “A” to this Memorandum of Agreement].**

12. Where a dispute arises in anticipation of or during the 2017/2018 school year regarding paragraph 10 above, the following process will apply:

- A. The local parties will meet and attempt to resolve the dispute;
- B. Where, after meeting, the local parties are unable to resolve the dispute, the local parties, with the assistance and representation of the Provincial Parties, will meet again and attempt to resolve the dispute;
- C. Where, after meeting, both the local and Provincial Parties are unable to resolve the dispute, either party may file a grievance and utilize the grievance procedure.

**IV. CLASS SIZE AND COMPOSITION**

**PART I: CLASS SIZE PROVISIONS**

13. Effective for the commencement of the 2017/18 school year, the BCPSEA-BCTF collective agreement provisions regarding class size that were deleted by the *Public Education and Flexibility and Choice Act* in 2002 and again in 2012 by the *Education Improvement Act* will be implemented as set out below.

**Class Size Provisions: K-3**

14. Effective for the commencement of the 2017/2018 school year, the size of primary classes shall be limited as follows:

- A. Kindergarten classes shall not exceed 20 students;

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- B. Grade 1 classes shall not exceed 22 students;
  - C. Grade 2 classes shall not exceed 22 students;
  - D. Grade 3 classes shall not exceed 22 students;
15. Where there is more than one primary grade in any class with primary students, the class size maximum for the lower grade shall apply.
16. Where there is a combined primary/intermediate class, an average of the maximum class size of the lowest involved primary grade and the maximum class size of the lowest involved intermediate grade will apply.

### K-3 Superior Provisions to Apply

17. For primary and combined primary/intermediate classes where the restored collective agreement provisions provide for superior class size provisions beyond those listed in paragraphs 14 through 16 above, the superior provisions shall apply. **[Provisions to be identified in Schedule “A” to this Memorandum of Agreement].**

### Class Size Language: 4-12

18. The BCPSEA-BCTF collective agreement provisions regarding Grade 4–12 class size that were deleted by the *Public Education and Flexibility and Choice Act* in 2002 and again in 2012 by the *Education Improvement Act* will be implemented upon the commencement of the 2017/2018 school year.

## **PART II – CLASS COMPOSITION PROVISIONS**

### Implementation of Class Composition Language

19. The BCPSEA-BCTF collective agreement provisions regarding class composition that were deleted by the *Public Education and Flexibility and Choice Act* in 2002 and again in 2012 by the *Education Improvement Act* will be implemented upon the commencement of the 2017/2018 school year. The Provincial Parties agree that the implementation of this language shall not result in a student being denied access to a school, educational program, course, or inclusive learning environment unless this decision is based on an assessment of the student’s individual needs and abilities.

### Class Composition Joint Committee

20. Given the complexity of class composition issues and the changes that have occurred within the definitions of special education designations and classifications, a Class Composition Joint Committee (“the Committee”) will be established upon ratification of this Memorandum of Agreement to examine and resolve outstanding issues related to class composition as follows:
- A. After establishing terms of reference, the Committee will meet and attempt to agree upon a consistent approach to how composition impacts class size/teacher workload for those School Districts that have class composition language;

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- B. If, after meeting, the Committee is unable to agree upon a consistent approach to class composition, the Committee will meet and attempt to agree upon the definitions of special education designations and classifications in the current context of educational service delivery;
- C. If the Committee is unable to agree on the definitions of special education designations by June 30, 2018, the matter will be referred to Arbitrator John Hall for a final and binding determination of the definitions and classifications of special education designations in the current context of educational service delivery. Arbitration dates will be pre-booked during the fall of 2018 and best efforts will be made to conclude the arbitration hearing by November 30, 2018. The Provincial Parties will request that Arbitrator Hall's decision be issued as soon as possible and, in any event, no later than January 31, 2019. This decision will be used to determine class organization for the 2019/2020 school year and thereafter until the Provincial Parties negotiate an alternative approach to class composition.
- D. Unless the Provincial Parties agree otherwise, during the 2017/2018 and 2018/2019 school year, the current Ministry of Education definitions of special education designations and classifications will apply on an interim and without prejudice basis while the work of the Committee set out in paragraphs 20(A-C) is completed.
- E. The Provincial Parties recognize that the interim Committee approach to class composition issues set out in paragraph 20(A, B and D) is agreed to on a without prejudice basis. Neither of the Provincial Parties will refer to this approach or the practices that it establishes regarding class composition in any future collective bargaining, arbitration or proceeding, including the final and binding arbitration referenced in paragraph 20(C).

## **PART III: CLASS SIZE AND COMPOSITION COMPLIANCE AND REMEDIES**

### ***Efforts to Achieve Compliance: Provincial Approach***

21. The Provincial Parties agree that paragraphs 22-25 of this agreement establish a provincial approach regarding the efforts that must be made to comply with the class size and composition provisions set out in Schedule "A" to this agreement and the remedies that are available where non-compliance occurs. This provincial approach applies to all School Districts and replaces all restored collective agreement provisions related to compliance and remedies for class size and composition. For clarity, the restored collective agreement compliance and remedy provisions that are replaced by this provincial approach are identified in Schedule "B" to this Memorandum of Agreement. The Provincial Parties commit to reviewing this provincial approach in the 2019 round of negotiations.

### ***Best Efforts to Be Made to Achieve Compliance***

22. School Districts will make best efforts to achieve full compliance with the collective agreement provisions regarding class size and composition for the commencement of the 2017/2018 school year and thereafter. Best efforts shall include:

- A. Re-examining existing school boundaries;

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- B. Re-examining the utilization of existing space within a school or across schools that are proximate to one another;
- C. Utilizing temporary classrooms;
- D. Reorganizing the existing classes within the school to meet any class composition language, where doing so will not result in a reduction in a maximum class size by more than:
  - five students in grades K-3;
  - four students for secondary shop or lab classes where the local class size limits are below 30, and;
  - six students in all other grades.

These class size reductions shall not preclude a Superintendent from approving a smaller class.

**Note:** For the following School Districts, class sizes for K-1 split classes will not be reduced below 14 students:

- School District 10 (Arrow Lakes)
  - School District 35 (Langley)
  - School District 49 (Central Coast)
  - School District 67 (Okanagan-Skaha)
  - School District 74 (Gold Trail)
  - School District 82 (Coast Mountain)
  - School District 85 (Vancouver Island North)
- E. Renegotiating the terms of existing lease or rental contracts that restrict the School District's ability to fully comply with the restored collective agreement provisions regarding class size and composition;
  - F. Completing the post-and-fill process for all vacant positions.

### **Non-Compliance**

23. Notwithstanding paragraph 22, the Provincial Parties recognize that non-compliance with class size and composition language may occur. Possible reasons for non-compliance include, but are not limited to:

- compelling family issues;
- sibling attendance at the same school;
- the age of the affected student(s);
- distance to be travelled and/or available transportation;
- safety of the student(s);
- the needs and abilities of individual student(s);

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- accessibility to special programs and services;
- anticipated student attrition;
- time of year;
- physical space limitations;
- teacher recruitment challenges.

### **Remedies for Non-Compliance**

24. Where a School District has, as per paragraph 22 above, made best efforts to achieve full compliance with the restored collective agreement provisions regarding class size and composition, but has not been able to do so:

- A. For classes that start in September, the District will not be required to make further changes to the composition of classes or the organization of the school after September 30 of the applicable school year. It is recognized that existing “flex factor” language that is set out in the restored collective agreement provisions will continue to apply for the duration of the class.

For classes that start after September, the District will not be required to make further changes to the composition of classes or the organization of schools after 21 calendar days from the start of the class. It is recognized that existing “flex factor” language that is set out in the restored collective agreement provisions will continue to apply for the duration of the class.

- B. Teachers of classes that do not comply with the restored class size and composition provisions will become eligible to receive a monthly remedy for non-compliance effective October 1, 2017 (or 22 calendar days from the start of the class) as follows:

$$(V) = (180 \text{ minutes}) \times (P) \times (S1 + S2)$$

**V** = the value of the additional compensation;

**P** = the percentage of a full-time instructional month that the teacher teaches the class;

**S1** = the highest number of students enrolled in the class during the month for which the calculation is made minus the maximum class size for that class;

**S2** = the number of students by which the class exceeds the class composition limits of the collective agreement during the month for which the calculation is made;

**Note:** If there is non-compliance for any portion of a calendar month the remedy will be provided for the entire month. It is recognized that adjustments to remedies may be triggered at any point during the school year if there is a change in S1 or S2.

- C. Once the value of the remedy has been calculated, the teacher will determine which of the following remedies will be awarded:
- i) Additional preparation time for the affected teacher;

**ERRORS AND OMISSIONS EXCEPTED**

- ii) Additional non-enrolling staffing added to the school specifically to work with the affected teacher's class;
- iii) Additional enrolling staffing to co-teach with the affected teacher;
- iv) Other remedies that the local parties agree would be appropriate.

In the event that it is not practicable to provide the affected teacher with any of these remedies during the school year, the local parties will meet to determine what alternative remedy the teacher will receive.

Dispute Resolution

25. In the event that a dispute arises regarding whether a School District has made best efforts to achieve full compliance with the collective agreement provisions regarding class size and composition, the following process will apply:
- A. The local parties will meet and attempt to resolve the dispute;
  - B. Where, after meeting, the local parties are unable to resolve the dispute, the local parties, with the assistance and representation of the Provincial Parties, will meet again and attempt to resolve the dispute;
  - C. Where, after meeting, both the local and Provincial Parties are unable to resolve the dispute, either party may file a grievance and utilize the grievance procedure to resolve the dispute.

**IV. EFFECTIVE DATE**

26. Subject to ratification by the Provincial Parties, the provisions in this Memorandum of Agreement will become effective on September 1, 2017, unless specified otherwise (including, but not limited to, paragraphs 4 and 5 above).

Dated at Vancouver, British Columbia this 9<sup>th</sup> day of March, 2017

British Columbia Teachers' Federation

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Glen Hansman, President

British Columbia Public School Employers' Association

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Renzo Del Negro, CEO

British Columbia Ministry of Education

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Dave Byng, Deputy Minister

Public Sector Employers' Council

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Christina Zacharuk, President and CEO