

# Article D.5: Middle Schools

## ❖ Overview

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This article sets out a process for school districts to address the modifications necessary to implement a new middle school program. The article does not apply in school districts that have already negotiated the changes necessary or have established practices for the operation of an existing middle school program.

This article was is supplemented by a letter of intent (LOI) that, as a transitional matter, set out the requirement for districts and locals to formalize any existing practices with respect to a middle school program by September 1, 2007. See LOI 1 Re: Formalization of Middle School Provisions, in the Letters of Intent section of this manual.

## ❖ Article D.5: Middle Schools

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1. *Where there are no negotiated provisions concerning the implementation or operation of a middle school program, this article shall govern the implementation or operation of a middle school program in a school district.*
2. *Should the employer seek to establish a middle school program in one or more schools in a district, the employer and the local shall meet, no later than ten (10) working days from a decision of the employer to implement a middle school program, in order to negotiate any alternate or additional provisions to the Collective Agreement which are necessary to accommodate the intended middle school program.*
3. *In the absence of any other agreement with respect to the instructional day and preparation time, the provisions of the Collective Agreement with regard to secondary schools shall apply to middle schools.*
4. *If the employer and the local are unable to agree on what, if any, alternate or additional provisions of the collective agreement are necessary to accommodate the intended middle school program(s), either party may refer the matter(s) in dispute to expedited arbitration for final and binding resolution pursuant to 5 below.*
5. a. *The jurisdiction of the arbitrator shall be limited to the determination of alternate or additional provisions necessary to accommodate the intended middle school program(s).*

- b. *In the event the arbitration is not concluded prior to the implementation of the middle school program, the arbitrator will have remedial authority to make appropriate retroactive modifications and adjustments to the agreement.*
- c. *The arbitration shall convene within thirty (30) working days of referral to arbitration in accordance with the following:*
  - i. *Within ten (10) working days of the matter being referred to arbitration, the parties shall identify all issues in dispute;*
  - ii. *Within a further five (5) working days, there shall be a complete disclosure of particulars and documents;*
  - iii. *Within a further five (5) working days, the parties shall exchange initial written submissions;*
  - iv. *The hearing shall commence within a further ten (10) working days; and*
  - v. *The arbitrator shall render a final and binding decision within fifteen (15) working days of the arbitration concluding.*
- 6. *Where a middle school program has been established on or prior to ratification of this Collective Agreement, the existing provisions shall be retained unless the parties mutually agree that they should be amended.*

## ❖ Explanation

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- D.5.1** 1. *Where there are no negotiated provisions concerning the implementation or operation of a middle school program, this article shall govern the implementation or operation of a middle school program in a school district.*

This article is intended to apply only where a school district intends to introduce a middle school program and does not have an existing program in place – either formally or in practice.

Clause D.5.1 clarifies that this article shall only apply in school districts where there are no negotiated provisions concerning the implementation or operation of a middle school program. When a district intends to introduce a middle school program, clause D.5.1 provides that the processes and provisions set out in Article D.5 shall govern the introduction.

If a district already has a contractual agreement setting out the terms under which an existing middle school program is operating, that agreement remains in place unless the parties agree to make changes as permitted under clause D.5.6.

Supplementing this article was a letter of intent which applied to those districts that had a middle school program in place prior to 2006 but had never formalized the terms in the collective agreement.

- D.5.2** 2. *Should the employer seek to establish a middle school program in one or more schools in a district, the employer and the local shall meet, no later than ten (10) working days from a decision of the employer to implement a middle school program, in order to negotiate any alternate or additional provisions to the Collective Agreement which are necessary to accommodate the intended middle school program.*

Clause D.5.2 sets out a timeline for the employer to commence discussions with the local when a district decides to introduce a middle school program. The clause requires that the local parties meet no later than 10 days after a school district has made the decision to implement a new middle school program. The purpose of such meetings is to identify any additional or alternate provisions that are believed to be necessary for the district to introduce an effective middle school program, and to negotiate those provisions with the local.

The collective agreement modifications and/or additions that are required to implement a middle school program are normally found in Appendix 1, in Letter of Understanding No. 1 Re: Designation of Provincial and Local Matters. As Appendix 1 exclusively lists provincial matters, both the BCTF and BCPSEA must approve any agreements with respect to additions or modifications to the collective agreement. Please refer to the Responsibilities section of this manual which sets out the process for dealing with mid-contract modifications in a subsection under that heading. As is the case with all mid-contract modifications, BCPSEA strongly recommends that you contact your BCPSEA liaison prior to tabling your proposals with the local, and that you maintain this contact as negotiations progress. You can expect that the local will be receiving direction from the BCTF.

- D.5.3** 3. *In the absence of any other agreement with respect to the instructional day and preparation time, the provisions of the Collective Agreement with regard to secondary schools shall apply to middle schools.*

One issue that has arisen in almost every middle school program is the determination of appropriate provisions for preparation time and the instructional day in the new middle school. The standard for school districts in BC is to have separate collective agreement provisions for elementary and secondary school teachers, and nothing for the hybrid middle school model, which includes classes from both age groups. Diverse approaches have been taken in districts that have already introduced a middle school program; these agreements have varied according to the demographics of the middle school and to the particular priorities of the local parties, as well as to what has been found as a workable solution in the particular circumstances.

Clause D.5.3 provides a default in the event that the district and the local are unable to agree on an appropriate middle school provision on these two matters. In such cases, the default agreement will impose the secondary school provisions for the instructional day and preparation time on the new middle school program.

While preparation time and instructional time are not the only changes that a district may wish to negotiate for the new program, they are two issues that every negotiated middle school program has addressed. This default provision provides districts with a degree of certainty if agreement cannot be reached and it will avoid past problems where lack of agreement between the employer and the union resulted in the middle school operating on two different timetables.

Any other areas of disagreement may be referred to arbitration pursuant to clause D.5.4.

- D.5.4** 4. *If the employer and the local are unable to agree on what, if any, alternate or additional provisions of the collective agreement are necessary to accommodate the intended middle school program(s), either party may refer the matter(s) in dispute to expedited arbitration for final and binding resolution pursuant to 5 below.*

The new middle school program may raise other potential issues that the employer or the union may wish to address and which cannot be resolved by agreement with the local. Examples of such potential issues are new positions of special responsibility unique to the middle school, the allowance that will accompany such positions, and the length of the work year.

Where the local parties are unable to agree on these supplementary matters, the outstanding issues may be referred to expedited arbitration. Given that these issues are provincial matters, the party that refers the dispute to expedited arbitration must be a provincial party – either the BCTF or BCPSEA. This process ensures that the outstanding matters between the parties are resolved as quickly as possible.

- D.5.5** 5. a. *The jurisdiction of the arbitrator shall be limited to the determination of alternate or additional provisions necessary to accommodate the intended middle school program(s).*
- b. *In the event the arbitration is not concluded prior to the implementation of the middle school program, the arbitrator will have remedial authority to make appropriate retroactive modifications and adjustments to the agreement.*
- c. *The arbitration shall convene within thirty (30) working days of referral to arbitration in accordance with the following:*
- i. *Within ten (10) working days of the matter being referred to*

- arbitration, the parties shall identify all issues in dispute;*
- ii. Within a further five (5) working days, there shall be a complete disclosure of particulars and documents;*
  - iii. Within a further five (5) working days, the parties shall exchange initial written submissions;*
  - iv. The hearing shall commence within a further ten (10) working days; and*
  - v. The arbitrator shall render a final and binding decision within fifteen (15) working days of the arbitration concluding.*

Clause D.5.5 sets out in express detail the jurisdiction of the arbitrator and the specific timelines for initiating and completing the arbitration process when a dispute regarding middle school program implementation is referred to an arbitrator. The article recognizes that dealing with such disputes expeditiously is important for both parties:

- The employer does not want a delay in the implementation of a desirable new educational program.
- The union wants to ensure that any changes to the collective agreement terms for the new program are necessary and appropriate for its members.

The resolution process set out in this article is “interest” arbitration in contrast to grievance or “rights” arbitration. Accordingly, the arbitrator will have the authority to establish new provisions in the collective agreement. Naturally, both the union and the employer want to ensure that this authority is limited to those areas that are essential for the successful implementation of the new program, and the authority is not extended to permit changes that either the employer or the local merely desire. Clause D.5.5.a limits the arbitrator’s jurisdiction accordingly.

What this means in practical terms is that each party has to convince the arbitrator with objective evidence that a particular change is required or is not required. The arbitrator is unable to award amendments to the collective agreement that are unrelated to the middle school program and that are unnecessary for the operation of that program.

In the event that the employer implements the middle school program prior to agreement being reached and prior to the arbitrator’s decision being awarded, clause D.5.5.b also provides the arbitrator with the jurisdiction to make his/her award retroactive to the date the middle school program was introduced. The arbitrator is thus able to award any corrective “remedies” s/he deems appropriate if the operation of the school has not been consistent with the arbitrator’s ultimate decision with respect to necessary changes to the collective agreement.

Should your district become involved in this process, BCPSEA will work with you to ensure that your rights and interests are protected, and to ensure that other members’ rights and interests are not jeopardized.

Clause D.5.5.c sets out the timelines and process for initiating expedited arbitration, for exchanging information, and for presenting the case and completing the arbitration. The process is prescribed and the parties have little time to prepare once the dispute is referred to arbitration. Within 10 days of the referral, the employer (and, of course, the union) must be able to articulate the precise issues in dispute. Within a further five days, the parties must exchange their specific positions and supporting documents and, within a further five days, the parties must exchange their initial written submissions.

Such a tight timeline requires that the district and BCPSEA are working together prior to the arbitration process being invoked, or the union will have a significant advantage in the arbitration.

No finite number of days is set for hearing; however, once the hearing has concluded, the arbitrator is required to render a decision within 15 days. This decision will be final and binding and cannot be appealed by either party.

- D.5.6** 6. *Where a middle school program has been established on or prior to ratification of this Collective Agreement, the existing provisions shall be retained unless the parties mutually agree that they should be amended.*

Clause D.5.6 specifically states that negotiated provisions for existing middle school programs shall continue to apply when the program was established prior to the ratification of this agreement. The clause does permit a district and a local to amend their established provisions for operating the middle school program if they both agree. If they do not agree, then the existing terms shall continue to apply; there is no mechanism in this clause or elsewhere in this article to refer a disagreement under this clause to arbitration.

## ❖ Transition/Implementation

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A number of districts had middle school programs in place but had not formally agreed on the collective agreement modifications that were in practice for those programs. A companion to Article D.5 is Letter of Intent No. 1 Re: Formalization of Middle School Provisions, which set out the process for codifying and including all such informal practices in the collective agreement.

If your district was one of the districts with a middle school program in place but no formalized agreement with respect to contractual issues, please refer to LOI No. 1 in the Letters of Intent section of this manual for further information.

## ❖ Resources

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While there are a variety of middle school program models, some standard areas normally do require amendments to the collective agreement. To assist districts in this task, BCPSEA developed both a checklist of considerations and a template letter of understanding. The suggested checklist and the template LOU can be found at the end of this article.

## ❖ Relationship to Other Articles

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### **Existing Middle School Terms and Conditions**

If your district has negotiated provisions for an established middle school program, only clause D.5.6 has application for you. Under clause D.5.6, you and your local may agree to negotiate changes to your existing provisions; if you do not agree, then clause D.5.6 continues your existing provisions and the balance of Article D.5 has no application.

### **Letter of Intent No. 1 Re: Formalization of Middle School Provisions**

As noted above, if your district had an established middle school program that had been operating on an informal basis, without specifically negotiated amendments to the collective agreement, please refer to Letter of Intent No. 1 Re: Formalization of Middle School Provisions. The LOI set out the requirement to codify your existing middle school practices where they deviated from the collective agreement.

## ❖ Checklist: Introducing a New Middle School Program

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### For Application of Article D.5: Middle Schools

**1. Prior to making the decision**

- a. Consider the student age group.
- b. Consider your plans for leadership, POSR allowances, etc.
- c. Consider your preferred instructional day, preparation time, and common planning time.
- d. Identify what provisions you wish to change, and your objectives and rationale for any such objectives in negotiations with the union.
- e. Consider the implications of the default language found in clause D.1.3 if you are unable to reach agreement with the union.

BCPSEA recommends that you consult with your BCPSEA liaison for research on middle school programs and related collective agreement provisions in other school districts, and also discuss your proposed collective agreement changes with the liaison. These are provincial matters, and the approval of BCPSEA and the BCTF will be required.

**2. Within 10 working days of making the decision**

- Invite the local to meet to negotiate amendments to the collective agreement, where your current provisions do not permit you to operate your intended middle school program.
- Be prepared with draft proposals; preliminary calculations of instructional minutes, preparation time, and common planning time; and plans for new leadership positions and accompanying allowances.

**3. Discuss with your BCPSEA labour relations liaison after meeting with the union**

**4. If no agreement, consider what you need as a minimum to introduce your program**

- Will the default language of clause D.5.3 be sufficient, coupled with existing collective agreement provisions for leadership and allowances?
- If not, plan for an expedited arbitration pursuant to clauses D.5.4 and D.5.5.

**5. Contact your BCPSEA labour relations liaison for assistance in the event of an arbitration**

**Note:** This checklist is for the purpose of implementing a new middle school program; it is not for amending established provisions or for codifying an existing program that has never been formalized. For the former, please apply the standard mid-contract modification process, which can be found under Mid-Contract Modifications in the Responsibilities section of this manual. For the latter, refer to Letter of Intent No. 1 Re: Formalization of Middle School Programs in the Letters of Intent section of this manual.

## ❖ Template

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### Letter of Understanding

BETWEEN: British Columbia Public School Employers' Association  
AND  
School District No. \_\_ ( \_\_\_\_\_ )

AND: British Columbia Teachers' Federation  
AND  
\_\_\_\_\_ Teachers' Association

#### **Re: Article D.5: Middle Schools — Introducing a New Middle School Program**

It is agreed that this letter of understanding sets out the terms and conditions for the operation of a middle school program(s) in SD No. \_\_, and the collective agreement is amended as indicated.

This letter of understanding applies specifically to SD No. \_\_\_\_ and is without prejudice to the operation of middle school programs in other school districts. The middle school(s) in SD No. \_\_\_\_ is/are organized to include grades \_\_, \_\_, and \_\_. *If you have different configurations in different schools, those should be listed and any differing terms identified.*

The parties hereby agree to the following amendments to the collective agreement:

1. Article D.\_\_\_: Instructional Day/Week shall be amended to include the following new clause:

D.\_\_\_.3: Middle Schools *This clause should be written in the style of your existing provisions for elementary and secondary schools, but reflect the hours of the middle school program if it is a general one, or the specific hours at individual schools if they vary.*

2. Article D.\_\_\_: Preparation Time shall be amended to include the following new clause:

D.\_\_\_.3: Middle Schools *This clause should also be written in the style of your existing provisions for elementary and secondary schools, but reflect the preparation or common planning times of the middle school program or programs.*

3. Article D.\_\_\_: School Year

*It is less common to have any specific provisions for middle school programs under this article. However, if you do, then this article should be amended in the same manner set out above.*

4. Positions of Special Responsibility

Article B.\_\_: POSR Allowances

Article E.\_\_: Post and Fill

*If you intend to have special leadership positions, these should be added to the appropriate articles in your existing agreement. It is common to have special leadership positions that attract an allowance. You may also require amendments if your selection process for these positions is different from your normal post and fill terms.*

You may have additional provisions that require amending. Please see the checklist developed for this purpose which is included in this article. If you wish to have terms that do not seem to fit this template, please contact your BCPSEA liaison for assistance.

The terms of this letter of understanding have been determined pursuant to Article D.5: Middle Schools. They shall be incorporated into the collective agreement at the next printing of the working document.

Date of Signing: \_\_\_\_\_

\_\_\_\_\_  
For British Columbia Public School  
Employers' Association

\_\_\_\_\_  
For SD No. \_\_

\_\_\_\_\_  
For British Columbia Teachers' Federation

\_\_\_\_\_  
For \_\_ Teachers' Association