

# Formalization of Middle School Provisions

## ❖ Overview

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This letter of intent supplements new Article D.5: Middle Schools. It is a transitional matter that sets out the requirement for districts and locals to formalize any existing practices with respect to a middle school program. Where the parties are unable to agree on what constitutes the existing practice, the Letter of Intent provides an expedited arbitration process for resolution. (See Article D.5: Middle Schools in this manual.)

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

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*Where a middle school program has been operating in a district without a formal agreement, the local and the employer shall modify the Collective Agreement, in a Letter of Understanding signed by the provincial and local parties, to incorporate the terms under which the middle school program has been operating.*

*Should the employer and the local be unable to agree, by March 01, 2007, on the terms under which the middle school program has been operating, either party may refer the outstanding issues to expedited arbitration as set out in article D.5.5.c.*

*In such a case, the jurisdiction of the arbitrator shall be confined to a determination of the terms that most accurately reflect the practice in the district with respect to the operation of the middle school program in a school or schools.*

## ❖ Explanation

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This letter of intent applies to school districts that have had a middle school program prior to the negotiation of the 2006-2011 Provincial Collective Agreement, but have never formalized the terms or amended the collective agreement to reflect the practices in place in those middle school programs.

The purpose of the letter of intent is to codify the practices in all established middle school programs that have been operating on an informal basis and to incorporate those practices into the collective agreement.

## Dispute Resolution

The letter of intent does not mandate a timeline for commencing this exercise; however, it recognizes there may be disagreement on what the actual practice has been. Paragraph 2 provides a cut-off date of March 1, 2007 for the parties to reach agreement on new language; if they are unable to do so, the letter of intent provides that either party may refer the outstanding issues to a modified version of the expedited arbitration process set out in Article D.5.5. Only clause D.5.5.c. will apply, and this is set out below for ease of reference.

- D.5.5.c** 5. 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.*

The explanation of these provisions is set out in the section covering clause D.5.5.c, and for ease of reference is repeated below:

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.

What these provisions mean in practical terms is that the district and BCPSEA need to be 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 a 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.

### **Arbitrator's Jurisdiction**

Although the dispute resolution is similar to the process set out in Article D.5, the arbitrator's jurisdiction pursuant to this letter of intent is more circumscribed. The authority of the arbitrator, pursuant to the letter of intent, is limited to determining what the practice has been, and to awarding terms that most accurately reflect that practice. The arbitrator does not have the jurisdiction to award amendments to the collective agreement that do not reflect the practices already in place in the operation of the middle school program.

What this means in practical terms is that each side has to convince the arbitrator with objective evidence as to what the particular practice has been. This process is not one that will allow either party to make gains; it is a process to formalize the status quo.

If your district is one of those districts with a middle school program in place but no formalized agreement with respect to contractual issues, please contact your BCPSEA labour relations liaison for assistance. BCPSEA will work with you to develop collective agreement language that accurately reflects your practice and does not expose your district to legal challenges in the future.

BCPSEA knows of at least eight school districts that this letter of intent will impact. It will be helpful for all of those districts if BCPSEA is aware of any issues that arise in the early days of meeting with their local for the purpose of this letter of intent. If you are aware of issues that are still unresolved, notwithstanding the fact that you have been operating a middle school program without a grievance, please advise your BCPSEA liaison of the details related to the unresolved issues as soon as possible.

If you are unable to reach agreement with your local on the language, BCPSEA will also work with you to ensure that your rights and interests are protected in the arbitration process.

### **❖ Implementation**

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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 has developed both a checklist of considerations and a template letter of understanding (LOU) for districts' use. The suggested checklist and the template LOU follow.

## ❖ Checklist: Formalization of Existing Middle School Programs

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### For Implementation of Letter of Intent No. 1

*Deadline: March 1, 2007 or it goes to arbitration*

- 1. Do not change existing practices without contacting BCPSEA!**
- 2. Meet with your middle school principal(s):**
  - Identify any practices that are not consistent with your collective agreement (examples may be the instructional day, preparation time, common planning time, leadership positions, allowances).
  - Draft amended provisions to reflect these practices.
  - Identify any matters that may be in dispute with the local:
    - What is the practice?
    - Has it been consistent?
    - What does the local want if it disagrees with the practice?
    - When did the practice change?
- 3. Contact your district liaison at BCPSEA:**
  - Review the draft language.
  - Discuss any outstanding issues; i.e., What does the employer want? What does the local want? What are the precise differences? How long has the matter been in dispute? Is there middle ground?
- 4. Meet with the local to agree on the necessary amended provisions that reflect the practice:**
  - Discuss with your BCPSEA labour relations liaison if problems arise and before committing to alternate language.
- 5. When agreement is reached:**
  - Formalize the agreed language in a letter of understanding.
  - Include four signature lines: the local, the school board, the BCTF, and BCPSEA.
  - After securing the local signatures, forward the LOU to BCPSEA.
- 6. If agreement is not reached:**
  - Advise your BCPSEA liaison.
  - Refer to expedited arbitration by March 7, 2007.

**Note:** This process is for established middle school programs that have not been previously formalized in collective agreement language. It is not the process to use when a district wishes to implement a new middle school program. That process is set out in Article D.5: Middle Schools, and you will find advice with respect to that article in the manual section devoted to this purpose. Moreover, this process is not the one to use if you wish to negotiate changes to your current middle school provisions. Those changes should be dealt with under the normal mid-contract modification process, which you can find under Mid-Contract Modifications in the Responsibilities 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: Middle School Program

It is agreed that this letter of understanding codifies the existing practices with respect to the operation of a middle school program(s) in SD No. \_\_. To this end, the parties agree that the following provisions govern the operation of the middle school program, 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 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 that was developed for this purpose in this section of the manual. If you 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 and satisfy the requirements of Letter of Intent No.1 Re: Formalization of Middle School Provisions. 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