

Article A.6: Grievance Procedure

❖ Overview

The following is a summary of the grievance and arbitration procedure. All time limits are based on “working days,” which include both instructional and non-instructional days.

BCPSEA has also prepared a book, *Disputes and the Collective Agreement: Effectively Managing the Grievance Process*, which provides more thorough advice on managing the grievance process. A copy of this book is available by contacting your BCPSEA labour relations liaison.

❖ Procedure at a Glance

Incident

Thirty working days to file a grievance.

Step 1

Request for a meeting. No written grievance is required. Ten days to hold the meeting and render a decision.

Step 2

The union progresses the grievance in writing to the superintendent or designate, who has 10 days to hear the grievance and render a decision. The union has 10 more days to progress the grievance to step 3 if not satisfied. BCPSEA must be copied if it is a provincial matter.

Step 3

Ten days to hold the meeting.

Two employer representatives and two union representatives attend. If the district is eligible, the district may opt for each party to have three representatives.

Ten additional days to render a decision.

Note: Employer grievances should be initiated by writing to the president of the local and copying the BCTF and BCPSEA.

Arbitration

Fifteen additional days to progress to arbitration.

Ten days to agree on an arbitrator.

Note: The local can progress a local matters grievance to arbitration. Only

the BCTF and BCPSEA can progress a provincial matters grievance to arbitration.

Review Meeting

On a provincial matters grievance, the BCTF and BCPSEA may agree to meet and review the issues prior to arbitration.

Note: See the checklist on Information to Confirm During a Grievance Meeting with the Union at the end of this article.

See the Managing Provincial Matters Grievances subsection later in this article.

❖ Article A.6: Grievance Procedure

1. Preamble

The parties agree that this article constitutes the method and procedure for a final and conclusive settlement of any dispute (hereinafter referred to as “the grievance”) respecting the interpretation, application, operation or alleged violation of this Collective Agreement, including a question as to whether a matter is arbitrable.

Steps in Grievance Procedure

2. Step One

- a. The local or an employee alleging a grievance (“the grievor”) shall request a meeting with the employer official directly responsible, and at such meeting they shall attempt to resolve the grievance summarily. Where the grievor is not the local, the grievor shall be accompanied at this meeting by a representative appointed by the local.*
- b. The grievance must be raised within thirty (30) working days of the alleged violation, or within thirty (30) working days of the party becoming reasonably aware of the alleged violation.*

3. Step Two

- a. If the grievance is not resolved at Step One of the grievance procedure within ten (10) working days of the date of the request made for a meeting referred to in Article A.6.2.a the grievance may be referred to Step Two of the grievance procedure by letter, through the president or designate of the local to the superintendent or designate. The superintendent or designate shall forthwith meet with the president or designate of the local, and attempt to resolve the grievance.*
- b. The grievance shall be presented in writing giving the general nature of the grievance.*

4. Step Three

- a. *If the grievance is not resolved within ten (10) working days of the referral to Step Two in Article A.6.3.a the local may, within a further ten (10) working days, by letter to the superintendent or official designated by the district, refer the representatives of the local and two representatives of the employer shall meet within ten (10) working days and attempt to resolve the grievance.*

If both parties agree and the language of the Previous Local Agreement stipulates:

- i. *The number of representatives of each party at Step Three shall be three; and/or*
 - ii. *At least one of the employer representatives shall be a trustee.*
- b. *If the grievance involves a Provincial Matters issue, in every case a copy of the letter shall be sent to BCPSEA and the BCTF.*

5. Omitting Steps

- a. *Nothing in this Collective Agreement shall prevent the parties from mutually agreeing to refer a grievance to a higher step in the grievance procedure.*
- b. *Grievances of general application may be referred by the local, BCTF, the employer or BCPSEA directly to Step Three of the grievance procedure.*

6. Referral to Arbitration: Local Matters

- a. *If the grievance is not resolved at Step Three within ten (10) working days of the meeting referred to Article A.6.4, the local or the employer where applicable may refer a “local matters grievance,” as defined in Appendix 2 and Addenda, to arbitration within a further fifteen (15) working days.*
- b. *The referral to arbitration shall be in writing and should note that it is a “local matters grievance.” The parties shall agree upon an arbitrator within ten (10) working days of such notice.*

7. Referral to Arbitration: Provincial Matters

- a. *If the grievance is not resolved at Step Three within ten (10) working days of the meeting referred to in Article A.6.4, the BCTF or BCPSEA where applicable may refer a “provincial matters grievance,” as defined in Appendix 1 and Addenda, to arbitration within a further fifteen (15) working days.*
- b. *The referral to arbitration shall be in writing and should note that it is a “provincial matters grievance.” The parties shall agree upon an*

arbitrator within ten (10) working days of such notice.

c. Review Meeting:

- i. Either the BCTF or BCPSEA may request in writing a meeting to review the issues in a provincial matters grievance that has been referred to arbitration.*
- ii. Where the parties agree to hold such a meeting, it shall be held within ten (10) working days of the request, and prior to the commencement of the arbitration hearing. The scheduling of such a meeting shall not alter in any way the timelines set out in Article A.6.7.a and A.6.7.b of this article.*
- iii. Each party shall determine who shall attend the meeting on its behalf.*

8. Arbitration (Conduct of)

- a. All grievances shall be heard by a single arbitrator unless the parties mutually agree to submit a grievance to a three-person arbitration board.*
- b. The arbitrator shall determine the procedure in accordance with relevant legislation and shall give full opportunity to both parties to present evidence and make representations. The arbitrator shall hear and determine the difference or allegation and shall render a decision within sixty (60) days of the conclusion of the hearing.*
- c. All discussions and correspondence during the grievance procedure or arising from Article A.6.7.c shall be without prejudice and shall not be admissible at an arbitration hearing except for formal documents related to the grievance procedure; i.e., the grievance form, letters progressing the grievance, and grievance responses denying the grievance.*
- d. Authority of the Arbitrator:*
 - i. It is the intent of both parties to this Collective Agreement that no grievance shall be defeated merely because of a technical error in processing the grievance through the grievance procedure. To this end an arbitrator shall have the power to allow all necessary amendments to the grievance and the power to waive formal procedural irregularities in the processing of a grievance in order to determine the real matter in dispute and to render a decision according to equitable principles and the justice of the case.*
 - ii. The arbitrator shall not have jurisdiction to alter or change the provisions of the Collective Agreement or to substitute new ones.*

iii. *The provisions of this article do not override the provisions of the B.C. Labour Relations Code.*

e. *The decision of the arbitrator shall be final and binding.*

f. *Each party shall pay one half of the fees and expenses of the arbitrator.*

9. *General*

a. *After a grievance has been initiated, neither the employer's nor BCPSEA's representatives will enter into discussion or negotiations with respect to the grievance, with the grievor or any other member(s) of the bargaining unit without the consent of the local or the BCTF.*

b. *The time limits in this grievance procedure may be altered by mutual written consent of the parties.*

c. *If the local or the BCTF does not present a grievance to the next higher level, they shall not be deemed to have prejudiced their position on any future grievance.*

d. *No employee shall suffer any form of discipline, discrimination or intimidation by the employer as a result of having filed a grievance or having taken part in any proceedings under this article.*

e. i. *Any employee whose attendance is required at any grievance meeting pursuant to this article shall be released without loss of pay when such meeting is held during instructional hours. If a teacher teaching on call is required, such costs shall be borne by the employer.*

ii. *Any employee whose attendance is required at an arbitration hearing shall be released without loss of pay when attendance is required during instructional hours; and*

iii. *Unless the previous Local Agreement specifically provides otherwise, the party that requires an employee to attend an arbitration hearing shall bear the costs for any teacher teaching on call that may be required.*

❖ Explanation

A.6.1: Preamble

1. Preamble

The parties agree that this article constitutes the method and procedure for a final and conclusive settlement of any dispute (hereinafter referred to as “the grievance”) respecting the interpretation, application, operation or alleged violation of this Collective Agreement, including a question as to whether a matter is arbitrable.

Any issue regarding the interpretation, application, operation, or alleged violation of the collective agreement can be raised as a grievance. This is broad language, but the party raising a grievance must be able to demonstrate that the matter in dispute is in fact a violation of a specific clause or clauses. Note that this grievance procedure governs both provincial matters and local matters grievances.

Legislation or components of legislation that contain employment implications, whether in the collective agreement or not, may provide the grounds to raise a grievance that the employer (or the union) is in breach of this legislation. For example, there may be an alleged breach of the Pregnancy Leave component of the BC *Employment Standards Act*, even if the Act is not referenced in the collective agreement. Another example is where a local agreement sets out the provisions of the Canadian *Human Rights Act* as the criteria against which a charge of discrimination will be assessed, a grievance can be filed citing a breach of that Act, even though that legislation would not normally apply to a BC employer.

A simple reference to a piece of legislation or other document may not always be sufficient to allow the document to be considered part of the collective agreement. Arbitral jurisprudence suggests that this question will depend on the intentions of the parties when the document was referenced in the agreement. For example, although class size found in the *School Act* may be grievable as having employment implications (see *BCTF v. BCPSEA 2011 BCCA 148*), codes of conduct for students have been determined not to have employment implications and therefore are not subject to arbitration (see *BCTF v. BC .SEA 2011 BCCA 537*). Districts with questions on this matter should seek advice from their BCPSEA labour relations liaison.

A.6.2: Step One

A.6.2.a Steps in Grievance Procedure

2. Step One

- a. *The local or an employee alleging a grievance (“the grievor”) shall request a meeting with the employer official directly responsible, and at such meeting they shall attempt to resolve the grievance summarily. Where the grievor is not the local, the grievor shall be accompanied at*

this meeting by a representative appointed by the local.

A union grievance may be raised by an employee or by a union representative. Except for policy grievances, the first step is to meet with the management official to whom the employee reports or with the official specifically responsible for the issue. Usually, this will be the principal or vice-principal, but in some cases it may be another employee working in the district office.

The employee or representative requests a meeting. The meeting is held as soon as reasonably possible, at a time convenient to both parties. The meeting will normally be held at a time that does not disrupt classes or incur Teacher Teaching on Call (TTOC) costs for the grievor or union representative.

A step 1 meeting is intended to be an informal meeting that encourages discussion of the issue and an early resolution in the case of a misunderstanding or error. The degree of formality varies depending on the seriousness of the issue and on the person presenting the complaint. The employer has a maximum of 10 working days to hear the grievance and render a decision.

The employee who has initiated the grievance must be accompanied to the meeting by a union representative. However, the union is not required to bring the employee if the union has raised the matter. It is recommended that a second management official also attend as a witness and to take notes, unless the union objects and has only one representative. If two or more union individuals are in attendance, at least two employer representatives should attend also.

Regardless of the outcome, a record should be kept of the discussions. Notes should include the following:

- The date of the meeting
- The names of union and employer representatives in attendance
- A description of the issues
- The clauses that are alleged to have been violated, how, and by whom
- The desired remedy
- Any commitments made by either party.

While the stated purpose of this meeting is to resolve the grievance quickly, the decision may not only impact other schools within the particular district, but in the case of provincial matters may also set precedents for other school districts in important policy and contractual areas.

To avoid problems, particularly in a provincial matter, principals/vice-principals should seek direction and advice from the designated district official responsible for such matters.

For provincial matters that involve interpretive issues, the district must contact its BCPSEA labour relations liaison. If the grievance only involves a question on the correct application of the agreement, the district does not need to contact the BCPSEA liaison, but is encouraged to do so for assistance or clarification. The district may not agree to change a previously accepted application without BCPSEA approval.

For more information on handling provincial matters, see the Managing Provincial Matters Grievances subsection later in this article.

A.6.2.b

b. The grievance must be raised within thirty (30) working days of the alleged violation, or within thirty (30) working days of the party becoming reasonably aware of the alleged violation.

There is a limited period of time in which a grievance can be filed. Generally, a grievance should be raised within 30 working days of the alleged violation. However, if the grievance is not raised within the 30-day period, the 30-day count should start from the date the grievor or union became aware of the alleged violation. If the reason for delay is not evident, determine the union's rationale when you first meet with the grievor or union. In these cases, the grievor or union may have to demonstrate that it was unaware of the violation until a specific date and explain why the delay.

Questions about whether or not the grievance is timely should be raised at the step 1 meeting. The purpose of the time limit is not to obstruct the resolution of legitimate work issues, and management officials should be careful when objecting on this point (see Section 89 of the *Labour Relations Code*¹).

The recommended action is to hear the grievance on its merits but reserve the right to raise an objection in arbitration. This approach allows the district to further employee relations, resolve problems as they arise, and still protect against a significant liability arising from the delay.

Working days include both instructional and non-instructional days, but not statutory holidays or Christmas, spring, or summer breaks. The exception would be a grievance arising out of a summer school program, in which case the timeline would include summer school working days.

Grievances raised at step 1 need not be in writing. The management official hearing the grievance must ensure that the details of the matter are provided by the grievor or union, and that timelines are adhered to unless there is a valid reason for not doing so. See clause A.6.9.b.

¹ *Labour Relations Code* [RSBC 1996], Chapter 244, Section 89, Authority of arbitration board.

A.6.4: Step Three**A.6.4.a***4. Step Three*

- a. If the grievance is not resolved within ten (10) working days of the referral to Step Two in Article A.6.3.a the local may, within a further ten (10) working days, by letter to the superintendent or official designated by the district, refer the representatives of the local and two representatives of the employer shall meet within ten (10) working days and attempt to resolve the grievance.*

If both parties agree and the language of the Previous Local Agreement stipulates:

- i. The number of representatives of each party at Step Three shall be three; and/or*
- ii. At least one of the employer representatives shall be a trustee.*

The union has 10 working days from receipt of the step 1 response in which to progress the grievance to step 3. After receiving the letter, the employer has an additional 10 working days to meet with the union. The meeting will normally be held at a time that does not disrupt classes or incur TTOC costs for the grievor or union representative.

Both the union and the employer have two representatives at this meeting. The school district must determine who its representatives will be (see Commonly Asked Questions later in this article).

In some districts, there is a potential for alternate employer representation at the step 3 meeting if the Previous Local Agreement provided for three representatives per party, one of whom is a trustee. Both parties must agree to continue this practice. In some instances, this practice has been found to hinder a quick settlement of grievances. As a result, many districts with this provision in their previous agreement have opted to discontinue this practice in accordance with the collective agreement.

Additional persons may attend the step 3 meeting at the request of either party if their presence is required for fact-finding purposes.

After the meeting, the employer has another 10 days to respond to the grievance.

A.6.4.b

- b. If the grievance involves a Provincial Matters issue, in every case a copy of the letter shall be sent to BCPSEA and the BCTF.*

When the local union progresses a provincial matter to step 3, it must send a copy of the letter to BCPSEA and the BCTF.

At this stage, the district must also forward a copy of its file to BCPSEA for review if this has not been done already. To protect all districts, the response on provincial matters must be consistent when the issue is not solely determined by specific local language. For more information, see Commonly Asked Questions later in this article.

A.6.5: Omitting Steps

A.6.5.a

5. Omitting Steps

- a. Nothing in this Collective Agreement shall prevent the parties from mutually agreeing to refer a grievance to a higher step in the grievance procedure.*

This clause permits the parties to a grievance to omit steps when both agree that doing so is appropriate. For example, if a dispute arises over a discipline matter resulting from a school board meeting mandated by the Previous Local Agreement's discipline provisions, it usually does not make sense to file a grievance at step 1 with an individual who cannot provide the remedy being sought. Clearly, in these cases, the parties should agree to raise the grievance to the level in the organization that can meaningfully hear the grievance and perhaps resolve it.

However, except as specifically provided, omitting steps cannot be a unilateral action by either party. Both the union and the employer must agree to waive the earlier steps. If either party does not agree, the grievance must be processed through each step.

Steps are rarely omitted. The purpose of the multi-step grievance process is to provide the parties with a mechanism for gathering information about a specific matter and making a decision based on the information. The omission of steps does not permit an orderly and complete examination of the issues of the dispute.

Currently, the parties may have an established process to initiate the omission of steps. In the absence of such a process, this clause should generally be applied as follows:

1. The party should raise the grievance at step 1 and ask that the grievance be processed at step 2 or 3.

2. The management official receiving the grievance should consult with the designated district official to determine whether the request to omit steps is appropriate given the circumstances of the grievance. The union should be advised of the decision and the reason the employer is adopting that stance under the particular circumstances.
3. A copy of all correspondence should be provided to all individuals participating in the decision and the grievance meeting.

A.6.5.b

- b. Grievances of general application may be referred by the local, BCTF, the employer or BCPSEA directly to Step Three of the grievance procedure.*

Employer grievances are not commonplace, and BCPSEA should be involved before a district initiates an employer grievance on a provincial matter. This is especially so with employer policy grievances, which by definition are likely to have provincial implications.

A party (without the agreement of the other party) may raise certain grievances at step 3 without following the previous steps. "Policy" grievances are raised at step 3. A policy grievance is one in which the subject matter is of general interest and where individual employees may or may not be affected at the time the grievance is filed.

It should be noted that some local agreements provide an automatic waiver of one or more steps of the grievance procedure for specific types of grievance. These waivers are found in the articles covering the specific matter.

If in doubt, call your BCPSEA liaison for specific direction on the case. Doing so is particularly important since most of these grievances are provincial matters and the way they are handled may impact other districts.

A.6.6: Referral to Arbitration: Local Matters

A.6.6.a

6. *Referral to Arbitration: Local Matters*
 - a. *If the grievance is not resolved at Step Three within ten (10) working days of the meeting referred to in Article A.6.4, the local or the employer where applicable may refer a "local matters grievance," as defined in Appendix 2 and Addenda, to arbitration within a further fifteen (15) working days.*

A.6.7: Referral to Arbitration: Provincial Matters

A.6.7.a

7. *Referral to Arbitration: Provincial Matters*
 - a. *If the grievance is not resolved at Step Three within ten (10) working*

days of the meeting referred to in Article A.6.4, the BCTF or BCPSEA where applicable may refer a “provincial matters grievance,” as defined in Appendix 1 and Addenda, to arbitration within a further fifteen (15) working days.

In A.6.6.a and A.6.7.a, the employer has a maximum of 10 working days in which to respond to the union after the step 3 meeting. If the union is not satisfied with the response, the union then has 15 working days to progress the matter to arbitration.

The referral to arbitration must be in writing. The parties then have 10 working days to agree on an arbitrator.

Note: Exceptions to this clause may be provided by Article A.7 *Expedited Arbitration* or a referral under section 104 of the *Labour Relations Code*.² For details on the Expedited Arbitration process, refer to the Article A.7 section of this manual. If a grievance is referred to arbitration under section 104 of the *Labour Relations Code*, contact your BCPSEA labour relations liaison for assistance.

Procedure for grievances referred to arbitration prior to Employment Practices Liability Program (EPLP) — July 2015

Local matters grievances that are referred to arbitration are processed by the local parties. The district should designate the individual who will manage the employer’s case, choose counsel, and participate in the selection of the arbitrator. BCPSEA will assist in the selection of counsel and arbitrator if requested by the district. If the district has any doubt about whether an issue is a local or a provincial matter, the BCPSEA liaison must be contacted for clarification.

Provincial matters grievances that are referred to arbitration are processed by the provincial parties. The BCTF refers union grievances to BCPSEA, and BCPSEA refers employer grievances to the BCTF. BCPSEA will provide copies of BCTF referrals to the designated district official. BCPSEA and the official will then determine how the matter should proceed and who should be responsible for directing the arbitration activities. This involvement by BCPSEA includes provincial matters referred under alternate dispute resolution provisions in Previous Local Agreements.

If these processes were carried forward into the previous collective agreement, they are now part of the new collective agreement and must be read in the context of the provincial collective agreement. For example, while an expedited process may provide for referral to arbitration, the referral must be made in the context of Article A.6, with local matters being referred by the local party and provincial matters being referred by the provincial party. Questions about any of these processes should be directed to your BCPSEA labour relations liaison.

² *Labour Relations Code* [RSBC 1996], Chapter 244, Section 104, Expedited arbitration.

If the grievance concerns a matter that has provincial impact or significance, and that will not be determined solely on the basis of the local language, practice, or negotiating history, BCPSEA may manage the arbitration in consultation with the district. In these cases, BCPSEA may assume the cost of the arbitration in accordance with BCPSEA policy.³

Procedure for grievances referred to arbitration after Employment Practices Liability Program (EPLP) commenced — from July 2015

Both local and provincial matters grievances that have a Step 3 meeting after the commencement of the EPLP should be reported through the online incident reporting site: <http://www.incident-request.org/> (Note: Internet Explorer is the required browser for access this site). Once reported, a grievance eligible for coverage under the EPLP which is referred to arbitration will have legal counsel engaged by BCPSEA and the defense costs of the arbitration paid by the EPLP. BCPSEA Liaisons will discuss the appointment of legal counsel with a district prior to assigning counsel. Questions relating to the coverage offered by EPLP or EPLP processes should be directed to your BCPSEA liaison or BCPSEA General Counsel.

A.6.7.c

c. Review Meeting:

- i. Either the BCTF or BCPSEA may request in writing a meeting to review the issues in a provincial matters grievance that has been referred to arbitration.*
- ii. Where the parties agree to hold such a meeting, it shall be held within ten (10) working days of the request, and prior to the commencement of the arbitration hearing. The scheduling of such a meeting shall not alter in any way the timelines set out in Article A.6.7.a and A.6.7.b of this article.*
- iii. Each party shall determine who shall attend the meeting on its behalf.*

This clause is intended to provide an opportunity for the provincial parties to discuss an outstanding provincial matters issue prior to arbitration, and either the BCTF or BCPSEA may request such a meeting. Although the parties are not required to meet, both the BCTF and BCPSEA have agreed to use this process in an attempt to resolve issues of provincial significance. Should the BCTF and BCPSEA agree to meet on a particular issue, representatives of the local and the district may be invited to attend.

While this clause was intended to provide the provincial parties with an opportunity to discuss an issue directly, taking advantage of this opportunity does not extend the time limit for progressing a grievance to arbitration or for selecting an arbitrator. Of course, the parties may mutually agree to waive

³ BCPSEA Policy 94-02, *Collective Agreement Administration, Grievance Management and Arbitration Assistance*

these time limits where they consider it advantageous to do so.

A.6.8: Arbitration (Conduct of)

A.6.8.c

c. All discussions and correspondence during the grievance procedure or arising from Article A.6.7.c shall be without prejudice and shall not be admissible at an arbitration hearing except for formal documents related to the grievance procedure; i.e., the grievance form, letters progressing the grievance, and grievance responses denying the grievance.

Discussions and offers of settlement during the grievance procedure and review meeting are not admissible at an arbitration hearing. However, this clause ensures that the formal grievance correspondence flowing from such meetings is admissible. If you wish to make an offer of settlement, ensure the following:

- The document carries a “without prejudice” caption.
- The offer is made in a separate letter and is not included as part of a formal response.
- The offer (and any acceptance correspondence) bears the statement that the settlement is based on the specific circumstances of that case and is not being referred to as precedent in any other matter.

The employer and/or union are free to introduce settlement of earlier grievances on a similar or related matter, provided the grievances were not made on a “without prejudice” basis.

A.6.8.d

d. Authority of the Arbitrator:

- i. It is the intent of both parties to this Collective Agreement that no grievance shall be defeated merely because of a technical error in processing the grievance through the grievance procedure. To this end an arbitrator shall have the power to allow all necessary amendments to the grievance and the power to waive formal procedural irregularities in the processing of a grievance in order to determine the real matter in dispute and to render a decision according to equitable principles and the justice of the case.*
- ii. The arbitrator shall not have jurisdiction to alter or change the provisions of the Collective Agreement or to substitute new ones.*
- iii. The provisions of this article do not override the provisions of the B.C. Labour Relations Code.*

Under the *Labour Relations Code*, arbitrators have significant latitude in determining the true nature of the grievance. This latitude is reflected in this article and provides opportunities for the party raising the grievance to go beyond the specifics given on the grievance form and discussed at the grievance meetings. Accordingly, the employer representatives attending the

grievance meetings should solicit the most complete information possible on the grievance as it is presented.

This article does not permit a wholesale change of the grievance. A full exploration of the issue at the earlier meeting should avoid arguments at arbitration.

A.6.9: General

A.6.9.a

9. General

- a. After a grievance has been initiated, neither the employer's nor BCPSEA's representatives will enter into discussion or negotiations with respect to the grievance, with the grievor or any other member(s) of the bargaining unit without the consent of the local or the BCTF.*

The purpose of this clause is to ensure that the employer or BCPSEA will not interfere with the grievor or any other bargaining unit member once a grievance has been filed. The clause prohibits conversation on matters related to the union's position on the grievance unless a union representative has agreed to such a discussion.

This clause does not preclude discussions on other matters with the grievor or other bargaining unit members. It also does not preclude the employer or BCPSEA from asking bargaining unit members who witnessed an event to describe what they saw and heard.

A.6.9.b

- b. The time limits in this grievance procedure may be altered by mutual written consent of the parties.*

This clause is self-explanatory and should be followed if the grievance is not processed by either party in accordance with the timelines. Occasionally, circumstances may dictate a verbal agreement to waive or extend timelines. In these cases, however, the verbal agreement must be confirmed in writing as soon as possible.

When agreeing to a timeline extension, employers may wish to agree "with the understanding that the district cannot be held liable for remedies or damages that predate a delayed filing of a grievance, or are exacerbated by a delay in referring a matter to the next stage pursuant to the collective agreement."

A.6.9.c

- c. If the local or the BCTF does not present a grievance to the next higher level, they shall not be deemed to have prejudiced their position on any future grievance.*

This clause allows the union to raise a grievance and then either withdraw or abandon the grievance prior to referral to arbitration without impacting the

union's legal rights to raise the same issue again at another time with a different set of facts. Abandonment or withdrawal after that point may carry prejudice.

If you encounter a pattern in which grievances are raised and then abandoned on the same issue, bring it to the attention of your BCPSEA liaison. BCPSEA will raise the matter with the BCTF.

Note that this clause does not preclude the employer and/or the union from introducing settlements of earlier grievances on a similar or related matter at arbitration, provided the settlement was not made on a "without prejudice" basis.

A.6.9.e

- e. i. Any employee whose attendance is required at any grievance meeting pursuant to this article shall be released without loss of pay when such meeting is held during instructional hours. If a Teacher on Call is required, such costs shall be borne by the employer.*
- ii. Any employee whose attendance is required at an arbitration hearing shall be released without loss of pay when attendance is required during instructional hours; and*
- iii. Unless the Previous Local Agreement specifically provides otherwise, the party that requires an employee to attend an arbitration hearing shall bear the costs for any Teacher on Call that may be required.*

When a teacher must attend a grievance meeting during instructional hours and a Teacher Teaching on Call is required to replace the teacher, the employer will bear the cost of the Teacher Teaching on Call and the teacher will not be deducted pay. This clause does not require grievance meetings to be held during instructional hours. It is intended as instruction to districts when such meetings are unavoidable.

This clause further clarifies that teachers will be released without loss of pay to attend arbitration hearings that take place during instructional hours. When a teacher's attendance is required at an arbitration hearing during instructional hours, the party requiring that attendance – the employer or the union – will bear the cost of the Teacher Teaching on Call unless clear provisions in the previous collective agreement specify otherwise.

❖ Managing Provincial Matters Grievances

Districts, subject to BCPSEA verification, can determine whether grievances are provincial or local matters by referring to Letter of Understanding No. 1 Appendix 1 (Provincial Matters and Appendix 2 (Local Matters) (which can be found in this manual in the Letter of Understanding section).

BCPSEA has two roles: one is to coordinate all provincial matters issues, and the other is to provide service to members on general labour and personnel issues. Districts are encouraged to contact their BCPSEA liaison if they need advice on any collective agreement or other labour or personnel issue.

Districts must contact their BCPSEA liaison if the grievance involves the following:

- Any issues arising out of the provincially negotiated/legislated articles of the collective agreement
- A matter of provincial significance arising out of the previous local language on a provincial issue.

Examples of matters of provincial significance are:

- An alleged class size violation, especially if the size is challenged on subjective grounds, such as safety (e.g., the union wants reduced limits on science labs for safety reasons and also wants those limits to apply to science classes and labs with no safety implications). While there are no longer any other collective agreement provisions that cover class size, the BC Court of Appeal has determined that arbitrators have the authority to hear alleged violations of the *School Act* with regard to class size.
- The creation of a new position with duties that a member of the bargaining unit has not previously performed.
- Harassment, misconduct, routine supervision, etc. (e.g., the union claims that routine supervision is harassment or that an administrator must have permission to enter a teacher's classroom).

Matters that are covered by EPLP will require that a district fill out a Basic Grievance Information form (Form 1). For a copy please see the Resources section below.

❖ Grievance Settlements: Provincial Matters

BCPSEA's responsibility on behalf of its members is to ensure that the collective agreement is applied consistently throughout BC. Only the BCTF and BCPSEA have the authority to offer and reach agreements that waive or alter provisions of a provincial matter in the collective agreement.

1. A grievance settlement can be made by local parties if it:
 - a. Corrects an error.
 - b. Does not directly affect matters in any school district other than the one in which the grievance arose.
 - c. Deals with the application rather than the interpretation of the collective agreement.
2. A grievance settlement must be approved and signed by BCPSEA if it:
 - a. Directly affects matters in districts other than the one in which the grievance arose (by definition, this will include any grievance settlement on a provincially negotiated provision).
 - b. Deals with the interpretation of the collective agreement.
3. A grievance settlement that would constitute a mid-contract modification to the collective agreement may not be resolved without the approval of BCPSEA, and must be framed in a letter of understanding or memorandum of agreement, signed by all the local and provincial parties. (See the Responsibilities section near the beginning of this manual).

❖ Grievance Documentation

When districts contact BCPSEA, they should provide as complete a picture as possible. They should provide the following documentation:

- The grievance
- The specific agreement articles and specific portion of the articles allegedly violated
- The sequence of events, if appropriate
- Past practices in the district – especially if they differ from the remedy being sought
- Any mitigating factors
- The preferred course of action.
- See Basic Grievance Information (Form 1) in the Resource section below. For Provincial Matters Grievances, you may be asked to fill out this form for BCPSEA

Not all grievances can be settled. From time to time, cases will have to be concluded through the arbitration process.

If you are considering a grievance settlement at step three we recommend you contact your BCPSEA labour relations liaison.

❖ Commonly Asked Questions

Q1: *What should the district do when step 2 action is required?*

A1: The district should determine whether the superintendent should be involved at this stage, or whether a designate should be appointed for some or all grievances. The district should then determine who the designate will be and advise the local president.

The district may choose to have the superintendent receive the written grievance and then designate an appropriate management official to conduct the meeting and make the decision. Alternatively, if the district has a human resources staff position, you may prefer to name that individual as the designate for all purposes at this stage.

Q2: *What should the district do if step 3 action is required?*

A2: The district should determine who should receive the correspondence from the union progressing the grievance to step 3, and advise the union. Employer representatives should be selected at the discretion of district officials. BCPSEA recommends that senior management personnel with the authority to resolve the dispute be designated. Depending on the size of the district, the superintendent and a director may be selected for performance and educational issues, and the secretary-treasurer and superintendent for matters relating to cost. Where available, a labour relations or human resources staff person may be appointed as the second management representative.

Many BCPSEA members believe that mandating trustee representation in the grievance procedure causes serious problems, and that approaching three representatives is too onerous. This step is flexible since members have said that a blanket representational model should not be followed.

Districts should also note, that they are eligible for EPLP coverage at this step and must report the grievance into the EPLP system before coverage can be provided.

Q3: *When should the district settle the matter “without prejudice”?*

A3: When used in settling a grievance, the term “without prejudice” indicates that the parties making the agreement do so on the basis that the action does not imply wrongdoing or otherwise affect their legal rights. From time to time, you may settle an issue “without prejudice” when the resolution is not consistent with a strict reading of the collective agreement and/or the past practice of the district.

While a “without prejudice” settlement may not create a precedent for the future, repeated settlements on the same or similar issues create an expectation on the part of the union that the employer will deal with matters in a certain way. These settlements must be reached with care, and you should contact your BCPSEA liaison if you are considering a “without prejudice”

resolution of a provincial matters grievance. Refer to Managing Provincial Matters Grievances in this article for guidelines on resolving provincial matters grievances either with or without prejudice.

Q4: *When, if ever, is the grievor required to attend a grievance meeting?*

A4: Article A.6 does not require the grievor's presence at a grievance meeting, even though it may be beneficial in some instances.

A decision can only be made on the information available, and if the grievor is not present to answer questions, the decision may reflect this absence. The grievor's absence should be noted in the employer's response.

Q5: *What if the union refuses to allow the grievor to respond?*

A5: No one can force an individual to answer a question, but failure to answer may have the same consequences as failure to appear at a grievance meeting.

Q6: *What are the rules for holding a grievance meeting?*

A6: The meeting must be held within the time limits, unless an extension is granted. These meetings vary in formality but should provide both sides with an opportunity to fully present their case. As a matter of law, the party raising an interpretation or application grievance – usually the union – is obligated to prove its point. Usually this means that the party presents its argument first and management responds as necessary.

The meeting should be held at a time that is convenient to both parties and that does not disrupt classes or incur Teacher Teaching on Call costs for the grievor or union representative.

The meeting should be confined to facts and issues as much as possible, and neither party should be permitted to personalize the complaint. If additional witnesses or information is required, the employer may adjourn the meeting and set a date to reconvene. This date, of course, must be within the prescribed 10-day period, or the employer should seek an extension. The employer does not have to render the decision at the meeting and in fact should not make the decision right away. Instead, the employer's representative should take time to reflect, consider all the necessary information and advice, and make an objective decision.

Q7: *What are the rules regarding time limits?*

A7: Time limits can be altered by mutual written consent. Even if consent is lacking, the arbitrator has the discretion to waive the time limits. However, take note when the union has breached a time limit, and maintain your right to object to arbitration of the grievances. This documentation and notations of such breaches ensure that the district is protected from financial and other liabilities resulting from the delay.

Q8: *Does the employer have the right to grieve?*

A8: Yes. Although the steps in the grievance procedure only address a union grievance, the employer has an equal right to file a policy grievance or to grieve a violation of the collective agreement by a union member, or more likely by the union.

Normally, such a grievance would be filed at step 3 with the president of the local or with the BCTF. However, in some cases the district may wish to initiate a grievance at a lower level, to encourage relationship building and attempt to solve problems at the source. Employer grievances are not commonplace, however, and BCPSEA should be involved before a district initiates an employer grievance on a provincial matter. This is especially so with employer policy grievances, which by definition are likely to have provincial implications (for more information, see clause A.6.5). Employer grievances might arise over, for example, illegal work stoppages, or may arise when the employer believes the union unreasonably withholds its agreement when the collective agreement provides otherwise.

❖ Relationship to Other Articles and Legislation

Previous Local Agreements

For grievances raised on or after June 17, 1996, Article A.6 of the collective agreement generally replaced the existing grievance/arbitration language in Previous Local Agreements. However, many local agreements had alternate dispute resolution processes that have remained in effect. These processes were found in the local's grievance procedures, in the expedited arbitration procedures, or in other articles for specific appeals (e.g., for discipline or discharge), and post and fill disputes.

If these processes were carried forward into the previous collective agreement, they are now part of the new collective agreement and must be read in the context of the provincial collective agreement. For example, while an expedited process may provide for referral to arbitration, the referral must be made in the context of Article A.6, with local matters being referred by the local party and provincial matters being referred by the provincial party. Questions about any of these processes should be directed to your BCPSEA liaison.

Article A.7: Expedited Arbitration

Grievances may be referred by mutual agreement to the expedited arbitration process set out in Article A.7. For details on the Expedited Arbitration process, refer to section A.7 section of this manual.

Article E.2: Harassment/Sexual Harassment

Generally, complaints under Article E.2 will be handled according to the resolution mechanisms in that article. A complaint may be processed under Article A.6: Grievance Procedure under the following circumstances:

- The complainant is not satisfied with the corrective measures or remedy resulting from an investigation under Article E.2
- The complainant does not agree with the investigator's findings
- The complainant alleges harassment by someone who is not an employee (e.g., parent, student).

The BC Labour Relations Code

Section 104 of the *Labour Relations Code* provides for an expedited arbitration process that is available in lieu of the arbitration processes detailed in Article A.6. Under Section 104, either party can advance the grievance to expedited arbitration within the prescribed timelines and conditions, whereas under Article A.6, only the party raising the grievance can progress a case to arbitration.

Section 105 of the *Labour Relations Code* provides for a consensual mediation/arbitration process, but only if the parties can agree on the issue and only if they agree to this process instead of the one outlined in Article A.6 of the provincial collective agreement.

If you require assistance with either of these *Labour Relations Code* processes, whether the grievance concerns a local or a provincial matter, contact your BCPSEA liaison.

The BC Human Rights Code

Complaints of discrimination under the *Human Rights Code* may be challenged before the BC Human Rights Tribunal, as well as under the collective agreement. Complaints may be made about sexual harassment or discrimination based on religious beliefs, sexual orientation, race, etc. Complaints may arise, for example, over a job posting and award, a loss of pay for time off on a religious holiday, or a poisoned environment due to racial discrimination.

The *Human Rights Code* takes precedence over the collective agreement provisions, but the process under the code is very slow. If a complaint has also been raised and is being processed under the grievance/arbitration procedure, the parties may agree to hold the grievance in abeyance pending the outcome of the complaint before the Tribunal. Alternatively, both processes may proceed, leaving the school board vulnerable to different conclusions and compounding remedies. The school board cannot be ordered to pay back pay more than once, but might be liable for humiliation damages under the *Human Rights Code*, and an arbitrator might order other compensation.

It is strongly recommended that you contact the BCPSEA before you respond to a complaint raised under the *Human Rights Code*. Such complaints made by an employee are generally eligible for EPLP coverage.

❖ Resources

✓ Checklist 2: Information to Confirm During a Grievance Meeting with the Union	
Discussion	Date:
Committee Stage	Date:
Ensure that the following information has been received and clarified in any meeting with the union regarding a dispute about the collective agreement.	
Chronology of events leading to the dispute (date/time)	
List of who is involved other than the grievor ("chain of involved parties"):	
<ul style="list-style-type: none"> • Other employees • Managers/supervisors • Witnesses (not employees) 	
Identify extenuating, unique, aggravating, enhancing, or unusual circumstances.	
Documents giving rise to the dispute:	
<ul style="list-style-type: none"> • Letters/memos • Evaluation • Posting number 	
Collective agreement provisions in alleged violation	
Remedy sought by the employee and union	

Excerpt from *Disputes and the Collective Agreement: Effectively Managing the Grievance Process*, page 97.