

Article D.3: Alternate School Calendar

❖ Overview

This article sets out a process for school districts to address modifications to the collective agreement when implementing an alternate school calendar that involves a four-day week, a nine-day fortnight, or a year-round calendar.

The article does not apply in school districts that have already negotiated the changes necessary to introduce the alternate calendar, nor does it apply to changes other than those specifically identified above.

The article includes an expedited arbitration process in the event the parties are unable to agree on the terms for the alternate calendar.

Note: an alternative school calendar is a school calendar that differs from the standard school calendar as specified in Schedule 1 (Supplement) of the School Calendar Regulation 114/02. As of the 2013/14 school year there is no longer a published school calendar as specified in Regulation 114/02. There is now only a prescribed minimum number of hours of instruction that a board must offer to students as specified in the new School Calendar Regulation 314/12.

BCPSEA has indicated and the BCTF agrees that with the introduction of the new School Calendar Regulation 314/12 there no longer being a standard school calendar that this Article D.3 is now defunct and has no current application.

❖ Article D.3: Alternate School Calendar

- 1. In this Article, an alternative school calendar is a school calendar that differs from the standard school calendar as specified in Schedule 1 (Supplement) of the School Calendar Regulation 114/02.*
- 2. When the employer intends to implement an alternate school calendar, written notification shall be provided to the local no later than forty (40) working days prior to its implementation. The employer and the local shall meet within five (5) working days following receipt of such notice to negotiate modifications to the provisions of the agreement that are directly or indirectly affected by the proposed change(s). The aforesaid modifications shall preserve, to the full legal extent possible, the original intent of the agreement.*
- 3. The process outlined below in Article D.3.4 through Article D.3.7 applies only to modifications to the school calendar that include a four-day school*

week, a nine-day fortnight, or a year round calendar.

4. *If the parties cannot agree on the modifications required, including whether or not a provision(s) is/are directly or indirectly affected by the proposed alternate school calendar, the matter(s) in dispute may be referred, by either party, to expedited arbitration pursuant to Article D.3.6 below for final and binding resolution.*
5. *The jurisdiction of the arbitrator shall be limited to the modifications of the agreement necessary to accommodate the alternate school calendar.*
6. *In the event the arbitration is not concluded prior to the implementation of the alternate school calendar, the arbitrator will have remedial authority to make retroactive modifications and adjustments to the agreement.*
7. *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 a further fifteen (15) working days.*
8. *Where an alternate school calendar has been established prior to the ratification of the Collective Agreement, existing agreements that accommodate the alternate school calendar shall be retained unless the parties agree that they should be amended.*

Note: BCTF will provide a list of acceptable arbitrators from the current list of arbitrators available through the Collective Agreement Arbitration Bureau.

❖ Explanation

- D.3.1** 1. *In this Article, an alternative school calendar is a school calendar that differs from the standard school calendar as specified in Schedule 1 (Supplement) of the School Calendar Regulation 114/02.*

Article D.3 is intended to apply only where a school district intends to introduce an alternate school calendar that includes a four-day school week, a nine-day fortnight, or a year-round calendar, and the district does not have an

existing program in place to accommodate the alternate calendar. The article also may also apply when the parties agree to amend an existing program pursuant to clause D.3.8.

Clause D.3.1 aligns the article with the *School Act* and specifically references *School Calendar Regulation 114/02*. Although the article defines “an alternate school calendar” as differing from the standard school calendar specific in Schedule 1 of *School Calendar Regulation 114/02*, clause D.3.6 further narrows the application of this article to cases where schools are operating on a four-day week, nine-day fortnight, or year-round schedule.

- D.3.2** 2. *When the employer intends to implement an alternate school calendar, written notification shall be provided to the local no later than forty (40) working days prior to its implementation. The employer and the local shall meet within five (5) working days following receipt of such notice to negotiate modifications to the provisions of the agreement that are directly or indirectly affected by the proposed change(s). The aforesaid modifications shall preserve, to the full legal extent possible, the original intent of the agreement.*

Clause D.3.2 specifies that the processes and provisions set out in this article are to govern the introduction of the new calendar. If a district already has a contractual agreement setting out the terms under which an alternate school calendar is operating, that agreement remains in place unless the parties agree to make changes as permitted under clause D.3.8.

D.3.2 sets out a timeline for the employer to notify the union and to commence discussions with the local when a school district decides to introduce an alternate school calendar.

When the decision to implement an alternate school calendar is made, D.3.2 requires the employer to notify the local union of the decision no later than 40 days prior to the implementation of the alternate calendar. The clause further requires that the local parties meet no later than five working days after the local has received the notice of change to the school program, for the purpose of negotiating any modifications to provisions in the collective agreement that are directly or indirectly affected by the proposed changes.

Examples of provisions that might be directly affected are those articles addressing the length of the school day, and where a year-round schedule is introduced, the articles addressing the length of the school year. The negotiated amendment for a four-day week would reflect the necessary adjustment to the minutes of instruction required on a daily basis, rather than the standard weekly number found in most agreements. With respect to year-round schedules, the negotiated amendments would reflect the timing of the school breaks and the distribution of the instructional and non-instructional days during the 12-month calendar. A checklist of provisions that may require change is provided at the end of this article.

Examples of provisions that might be indirectly affected are the accrual and use of sick time, and the daily rate of pay for a Teacher on Call when a four-day week is introduced. Both cases will require a formula adjustment to align the pay/sick leave with the new length of the school day. Depending on the district, other articles may require amending to accommodate the alternate calendar.

This clause also stipulates that the modifications are to maintain, to the “full legal extent possible,” the original intent of the agreement. Simply put, that means that neither the employer nor the union should make gains when negotiating the necessary changes. The collective agreement amendments should parallel the original intent of both parties as closely as possible.

Recording the Amendments in a Mid-Contract Modification

It is important to note that the collective agreement modifications made when implementing an alternate calendar 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, any agreements with respect to additions or modifications to the collective agreement must be approved by both the BCTF and BCPSEA. Please refer to the Responsibilities section of this manual, which sets out the process for dealing with mid-contract modifications.

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. BCPSEA has sample letters of understanding that you can use as a template, which will give you a clear idea of what is required and what should not be included in the negotiated amendments. You can expect that the local will be receiving direction from the BCTF.

- D.3.3** 3. *The process outlined below in Article D.3.4 through Article D.3.7 applies only to modifications to the school calendar that include a four-day school week, a nine-day fortnight, or a year round calendar.*

It is intended that Article D.3 is limited to specific alternate school calendar arrangements, and does not apply for every deviation from the standard calendar. If the school district intends to move to a four-day week, a nine-day fortnight, or a year-round school schedule, then the provisions of this article shall apply.

Article D.5 shall not apply if a district is planning such alternate calendar arrangements as commencing the school year one week early in order to add a week to the spring break. Nor will this article apply if the district extends the school day by minutes for the same purpose.

- D.3.4.c** 4. *If the parties cannot agree on the modifications required, including whether or not a provision(s) is/are directly or indirectly affected by the proposed alternate school calendar, the matter(s) in dispute may be*

referred, by either party, to expedited arbitration pursuant to Article D.3.6 below for final and binding resolution.

Where the employer and the local are unable to agree on what are necessary and/or appropriate modifications to the collective agreement, the outstanding issues may be referred to expedited arbitration. There are two possible reasons for referring a matter to arbitration:

1. The parties agree that a given clause (or clauses) needs to be amended to accommodate the new calendar, because both parties agree that the clause is directly involved. However, they cannot agree on the manner in which the clause is to be amended in order to “preserve, to the full legal extent possible, the original intent of the agreement.”
2. Alternatively, the parties may be unable to agree whether a clause falls within the criteria of being “directly or indirectly” affected by the proposed change to the calendar. One party may be seeking amendments to the clause, and the other party is resisting any amendment.

In either case, the matter may be referred to expedited arbitration for resolution. 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.

D.3.5 *5. The jurisdiction of the arbitrator shall be limited to the modifications of the agreement necessary to accommodate the alternate school calendar.*

Clause D.3.5 sets out the jurisdiction of the arbitrator and limits the arbitrator’s authority to determining appropriate modifications to the collective agreement in only those areas that are specifically necessary for the implementation of the alternate calendar. The arbitrator will not have authority to award any other changes to the collective agreement.

As this is “interest” arbitration, rather than a question of existing rights, 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 alternate calendar, and is not extended to award changes that either the employer or the local merely desire. Clause D.3.5 limits the arbitrator’s jurisdiction accordingly.

When combined with clause D.3.2, clause D.3.5 means, in practical terms, that each side has to convince the arbitrator with objective evidence of the following:

- That a particular change is required for the operation of the alternate calendar.
- That the provision requiring change is either directly or indirectly related specifically to the alternate calendar.
- That the proposed modifications “preserve, to the full legal extent possible, the original intent of the agreement.”

The arbitrator is unable to award amendments to the collective agreement that do not meet the above criteria.

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.

- D.3.6** 6. *In the event the arbitration is not concluded prior to the implementation of the alternate school calendar, the arbitrator will have remedial authority to make retroactive modifications and adjustments to the agreement.*

In the event that the employer implements the alternate calendar prior to agreement being reached and prior to the arbitrator's decision being awarded, clause D.3.6 also provides the arbitrator with the jurisdiction to make his/her award retroactive to the date the calendar was introduced. The arbitrator is thus able to award any corrective "remedies" s/he deems appropriate if the school district's operation has not been consistent with the arbitrator's ultimate decision with respect to necessary changes to the collective agreement.

An example of such remedial awards might be a retroactive payment to Teachers on Call for work done under the alternate calendar; another could be retroactive corrections to sick bank accruals or usage.

- D.3.7** 7. *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 a further fifteen (15) working days.*

This clause sets out the specific timelines for initiating and completing the arbitration process when a dispute regarding the introduction of an alternate calendar is referred to an arbitrator. The article recognizes that both parties need to have disputes dealt with expeditiously, since 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.

The tight timelines set out in this article mean 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 and cannot be appealed by either party.

- D.3.8** 8. *Where an alternate school calendar has been established prior to the ratification of the Collective Agreement, existing agreements that accommodate the alternate school calendar shall be retained unless the parties agree that they should be amended.*

Note: BCTF will provide a list of acceptable arbitrators from the current list of arbitrators available through the Collective Agreement Arbitration Bureau.

This clause specifically states that negotiated provisions for an existing alternate calendar 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 alternate calendar – but only if they both agree. If they do not agree, there is no mechanism in this clause or elsewhere in this article to refer a disagreement under this clause to arbitration.

On the other hand, if the school district decides to change to a different alternate calendar, the notice, negotiation, and arbitration provisions of this article will apply to the revised calendar if the previous negotiated amendments are no longer appropriate for the new calendar arrangement.

- Note** *Note: BCTF will provide a list of acceptable arbitrators from the current list of arbitrators available through the Collective Agreement Arbitration Bureau.*

The BCTF has committed to providing BCPSEA with a list of arbitrators who would be acceptable for this purpose. The arbitrators are to be selected from the current list of those who are available through the Collective Agreement Arbitration Bureau associated with the Labour Relations Board.

❖ Relationship to Legislation

This article must be read in conjunction with sections 77 and 78 of the *School Act* and *School Calendar Regulation 114/02*. The article supplements the legislation with respect to communications with the teachers' union; it does not replace the other consultation processes required under the *School Act*.

❖ Local School Calendar Checklist

Provisions dealing with the following may need to be reviewed when discussing potential revisions:

For Four-Day Weeks, Nine-Day Fortnights:

- Teacher on Call Pay and Benefits
- Sick Leave Usage
- Posts of Special Responsibility
- Part Month Payments and Deductions
- Posting Vacant Position
- Leaves of Absence

For Year-Round Schools:

- Pay Periods
- Teacher on Call Working Conditions (Call-out)

Contact your BCPSEA labour relations liaison for examples of mid-contract modifications arising from the implementation of an alternate school calendar.