

Memorandum of Agreement

Between

British Columbia Public School Employers' Association (BCPSEA)

And

British Columbia Teachers' Federation (BCTF)

Re: Employer Policy Grievance – Protocol Processes and Procedures Agreement – Distribution of Materials that Relate to a Union and/or Political Issue by Teachers to Parents via Students or Directly to Parents on School Property

Courts and Arbitrators (and more specifically in our sector, Arbitrators Munroe, Kinzie, Hall and the BC Court of Appeal) have recognized that teachers have the right to engage in political discussion with parents on educational issues under Section 2(b) of the Charter of Rights and Freedoms (the Charter), and that any restrictions on expression by the employer have to be justified under Section 1 of the *Charter*.

BCPSEA has filed an employer policy grievance on behalf of its members (attachment #1). Following the grievance procedure, the parties referred this matter to Arbitrator McPhillips for hearing.

On a without precedent and prejudice basis to the positions that the parties may have on this issue, the parties have agreed to the following:

Processes and Procedures

1. Each district and local teacher union shall designate a representative and alternate for this process.
2. When a teacher intends to distribute union materials that relate to a union and/or political issue to parents via students or directly to parents on school property, the following review process shall be followed. Distribution of such materials will not occur unless these processes and procedures are completed. This includes union and/or political materials authored/prepared by the BCTF and/or its locals, including template letters for individual teachers to use and/or amend.
 - a) Prior to distribution, the designated union representative will provide copies of the envelope and materials to the designated district representative for review with respect to:
 - I. whether there are any section 1 *Charter* concerns
 - II. whether the envelope and materials clearly identify the author responsible for the materials
 - III. Whether the envelope and materials are clearly marked and addressed to the parent/guardian.

Please Note: Only political and/or union materials that are distributed by teachers to parents through students are required to be in an envelope. The above references to envelopes in ii and iii would not apply to political and/or union materials that are distributed by teachers directly to parents on school property.

- b) Normally within one working day, but no more than two working days following receipt of the materials, or at such other time as agreed to by the parties, the district representative will advise the union representative whether the district has any concerns regarding the three issues identified in paragraph 2(a) above.
- c) If the designated union representative is advised by the designated district representative that there are no paragraph 2.a concerns, then the parties will proceed to paragraph 3 of this Memorandum of Agreement.
- d) If the designated union representative is advised by the designated district representative that there is a paragraph 2.a concern(s), the employer representative will identify the specific concern(s) and the district and local teacher union representative shall have two working days, or such time as agreed to by the parties, to reach resolution. Should agreement be reached, the parties will then proceed to paragraph 3 of this Memorandum of Agreement.
- e) If the employer fails to meet the timelines in b) above or reach agreement within the timelines prescribed in d) above, the matter will be referred directly to the expedited dispute resolution process described in f) to k) below.
- f) The matter shall be heard by Arbitrator John Hall within three working days of the referral. Should Arbitrator Hall be unavailable, the matter shall be heard by Colin Taylor and 2 other arbitrators (to be named in the future by agreement of the parties) in rotating order. If required, the parties agree that they will make themselves available on evenings in order to facilitate the scheduling of the hearing.
- g) Arbitrator Hall (or his alternate) will have jurisdiction to rule on the three issues identified in paragraph (2)(a) above. The ruling will be binding on the parties, but will be on a without precedent and prejudice basis.
- h) The hearing will not exceed one-half day in length. The hearing may be conducted by conference call at the request of the parties or by decision of the arbitrator. No lawyers will be used by either party unless agreed.
- i) The arbitrator will issue a bottom-line decision at the end of the hearing or no later than 24 hours from the conclusion of the hearing. Either party may request the arbitrator to provide written reasons.
- j) Materials will not be sent out until the revisions consistent with the Arbitrator's ruling have been made to the materials (if applicable) and have been verified by the designated district representatives. Any disagreements in this regard will be referred back to the assigned arbitrator immediately for determination.
- k) Once the materials are consistent with arbitrators ruling, the parties will then proceed to paragraph 3 of this consent award.

Implementation

3. Following completion of paragraph 2.c, 2.d, 2.k or 9, the following shall occur:
 - a) The local teacher union designated representative shall notify the district designated representative of the schools and dates on which the distribution of the materials shall occur. This notice shall occur no less than four hours prior to distribution.
 - b) Materials that are distributed to parents by teachers via students shall be in sealed envelopes, clearly identifying that they are union produced and distributed. The envelope and materials will also be clearly marked and addressed to the parent/guardian.

General

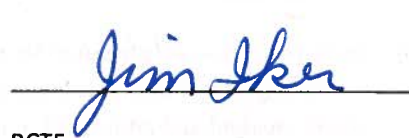
4. This Memorandum of Agreement is binding on BCPSEA, the BCTF, and the 60 public school districts and local teacher unions in British Columbia.
5. It is agreed that this Memorandum of Agreement and Arbitrator Hall's letter of clarification dated March 5, 2013 shall be in full force and effect from the date of its signing.
6. Notwithstanding paragraph 5 above, anytime after June 30, 2015, either party may provide written notice to terminate this protocol agreement. Should such notice be provided, the employer policy grievance will be re-activated and scheduled to be heard by Arbitrator McPhillips. The protocol agreement shall then continue to be in full force and effect until the arbitration award of Arbitrator McPhillips is rendered on the employer's policy grievance.
7. The parties agree that any decision or agreement made under this Memorandum of Agreement:
 - by the employer to verify distribution under paragraph 2.c
 - by the local parties reaching agreement under paragraph 2.d
 - by the arbitrator under 2.k
 - by the provincial parties under paragraph 6 or 9

are all on a without precedent and prejudice basis to their respective positions and will not be referred to in any legal proceedings of any nature.
8. As an alternative, the steps in paragraph 2 of this Memorandum of Agreement could be fulfilled at the provincial level between BCPSEA and the BCTF. Should this occur, the steps laid out in paragraph 3 shall then proceed at the local level following the completion of the steps of paragraph 2 at the provincial level.
9. Arbitrator Hall will remain seized of implementation and compliance with this Memorandum of Agreement for the period that it is in effect.
10. Implementation of this Memorandum of Agreement is in no way an acknowledgement, endorsement or agreement by the employer of the views, statements or content of the union initiated or produced materials.

11. This agreement will not be referred to in any future legal proceedings of any nature, including that of the policy grievance described above.



BCPSEA



BCTF

Oct 2/13

Signed

Oct. 2, 2013

Signed