

teacher COLLECTIVE AGREEMENT *administration bulletin*

BRITISH COLUMBIA
PUBLIC SCHOOL EMPLOYERS'
ASSOCIATION

13 September 11, 2007

By E-mail: 3 Pages

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Munroe Award, January 2006

Following is a summary of the interpretive issues stemming from the Munroe award concerning the application of s.76.1 of the *School Act* and Regulation. While the award dealt specifically with the Class Size Regulation as it existed in the 2002/2003 school year, the reasoning will also apply to subsequent years. There are three interpretative issues that arose from this award:

1. **When must school districts be in compliance with statutory class size numbers?**
Boards are required to ensure compliance by September 30 and to maintain compliance thereafter. In other words, there is a grace period during September but on September 30 and throughout the remainder of the year classes must comply with the *School Act*.
2. **What is the proper method for reporting district-wide class size averages? Should the number reported reflect normal mathematical rounding?**
Averages fixed by section 76.1(1) cannot be exceeded, even fractionally. In other words, normal mathematical rounding is not to be applied.
3. **What are the individual class size limits for split classes?**
The maximum permissible class size for a K-1 split is 22; for a grade 3/4 split it is 24. The general rule should be that the requirements for the youngest children enrolled should apply to the entire class.

Consent and Consultation

The following provide guidelines for Principals to use when having discussions with teachers regarding a proposed class organization that:

- exceeds 30 students in Grade 4-7 (consent);
- exceeds 30 students in Grade 8-12 (consultation); and/or
- places more than three students with IEP's in a class (consultation).

It is important to note that the only students with IEPs included in the count are those entitled to IEPs designed under the Individual Education Plan Order, Ministerial Order 638/95 excluding gifted students, which must be read in conjunction with the Special Needs Student Order, Ministerial Order 150/89.

A teacher's "**consent**" requires the teacher's voluntary agreement to a proposal made by the Principal, while "**consultation**" requires that the teacher be involved in meaningful discussions in good faith. In the latter situation, agreement is not required nor does the teacher have the right of veto. During these discussions we suggest the Principal:

- share the proposed organization and relevant information with the teacher(s)
- ask the teacher(s) to identify any concerns and/or suggested alternatives
- discuss/consider all points and alternatives raised by the teacher(s).

The above may take place in a single meeting or in a series of meetings. In some schools, classes are developed in group sessions involving all the teachers in a particular grade or subject area. Regardless, it is the Principal's responsibility to ensure that voluntary consent has been given and/or consultation has been carried out where it is required.

We advise that Principals keep brief notes of all discussions. The notes can be used to prepare the required report to the Board/DPAC/Minister as well as act as a memory refresher should a grievance be filed.

Many districts and local unions have drafted forms to be used to record consent and consultation discussions. It has been reported that some local unions are advocating the position that there must be a joint signature and agreement concerning the rationale utilized in organizing a class. Although forms may be useful to record the consent and/or consultation discussions, there is no requirement under the Act or regulations to use a form or obtain agreement on the rationale. As such, any form used should simply record the discussions that took place and whether consent was obtained where applicable. As you will note under Provincial Grievance – 2006-2007 School Year below, the BCTF is seeking a clear definition of "consult" under this legislation.

Requirement for Additional Resources

The legislation does not require that additional resources be provided when consent is received by a teacher with respect to a Grade 4-7 class. Nor is it required in consultation situations for Grade 8-12 classes or in classes with more than three IEP designated students. In the end, the Principal and the Superintendent must be of the opinion that the organization of the class is appropriate for student learning. The size and composition of each class must be considered individually. In some cases, the Principal and Superintendent may believe that additional supports are needed in order for them to be of that opinion. In other cases, additional supports may not be required. The rationale for these decisions is then provided by the Superintendent in his/her report to the Board.

Provincial Grievance — 2006-07 School Year

In addition to any local grievance you may have received from your local teachers' association, on April 13, 2007 the BCTF filed a provincial grievance for all alleged violations related to the 2006-07 school year. Although this grievance specifically listed 15 districts (SD Nos. 5, 8, 28, 33, 53, 61, 62, 63, 67, 68, 70, 79, 82, 87, 91), the BCTF claimed that they were not limited to those identified and reserved the right to add more alleged violations at a later date.

BCPSEA has raised some preliminary issues with respect to this grievance, including timeliness, proper nature of the grievance (general versus individual) and the ability of the union to expand the grievance at a later date. The employer also requested particulars on the BCTF statement that this provincial grievance was intended to "collect and replace" all of the grievances that were filed at the local level for the 2006-07 school year. These have yet to be provided.

The provincial parties are currently in the process of agreeing to an arbitrator and setting dates for a hearing. The following issues are raised in the provincial grievance:

1. Limits

Issue: Have there been any violations of the limits/averages that are not subject to change through consent and/or consultation (K: 22 students per class/district average 19; grades 1-3: 24 students per class/district average 21; grades 4-7: district average 28; grades 8-12: district average 30)? If so, what is the appropriate redress?

2. Consent — Grades 4- 7

Issue: Have there been any violations of grade 4-7 classes being over 30 students where consent from the teacher has not been obtained? If so, what is the appropriate redress?

3. Consultation

Issue: Did consultation occur (grades 8-12 over 30 students; K-12 more than three IEP students)? If so, was it meaningful? What is the definition of consult under this legislation?

4. Class Appropriate for Student Learning

Issue: Can the union challenge the opinion of the Principal and Superintendent in situations where they have determined that a grade 8-12 class of over 30 students and/or a K-12 class containing more than three IEP students is appropriate for student learning?

5. Union Representation

Issue: Is it mandatory to have a union representative present at each consent and/or consultation meeting with a teacher under the Bill 33 process?

6. Individual Education Plans (IEPs)

Issue: What categories of special needs students have applicability to Bill 33?

7. Segregated/Dedicated Special Needs Classes

Issue: Is Bill 33 applicable to segregated/dedicated special needs classes, modified classes (i.e., lower levels of math) and/or elective classes where there is historically a higher percentage of special needs students; i.e., physical education, home economics, etc.?

8. Reporting/Consultation Requirement — Parents/Ministry

Issue: Are the portions of Bill 33 related to the reporting requirements and consultation with parents and the Ministry grievable?

Questions

If you are approached by your local union concerning a Bill 33 grievance from the 2006-07 school year or have any questions with regard to Bill 33 in general, please contact your BCPSEA district liaison or Brian Chutter at tel: 604.730.4520; e-mail brianc@bcpsea.bc.ca.

Distribution of this Bulletin

Please ensure that this bulletin is circulated to all administrative staff in both the district office and schools who must rely on the collective agreement in the performance of their duties.