

2007-06

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By E-mail: 4 Pages

Foundation Skills Assessment

As announced by the Ministry of Education earlier this year, the Foundation Skills Assessment (FSA) administration date has been moved to February to make possible a more timely release of individual FSA results, which in turn will facilitate discussion of student progress and pave the way for planning for student needs. A field test is planned in October in a selected number of schools. As in previous years, it is our understanding that the BCTF will continue to oppose such testing. In preparation for the field test, this *@ Issue* will recap the law and advice previously provided.

Background

The FSA is an annual province-wide assessment of British Columbia students' academic skills, and provides a snapshot of how well BC students are learning foundation skills in reading comprehension, writing, and numeracy. The FSA is administered each year to Grade 4 and 7 students in public and provincially funded independent schools. The main purpose of the FSA is to help the province, school districts, schools and school planning councils evaluate how well students are achieving basic skills, and make plans to improve student achievement. The tests, which are linked to the provincial curriculum and provincial performance standards, are designed and developed by British Columbia educators.

In past years, the BCTF has engaged in a public relations campaign against the FSA, asserting that the FSA testing is harmful to students.

Student participation is not optional

As the Ministry of Education has clearly stated, with the exception of specific exemptions, students' participation in the FSA is not an optional activity.

The Student Learning Assessment Order (Ministerial Order 60/94 as amended) (the "Order") requires school boards to ensure that the FSA tests are administered to and completed by students in accordance with the assessment protocols, instructions, and invigilation procedures established by the Ministry of Education. The Ministry's 2007 Instructions for Principals and Teachers/Invigilators contain the following participation guidelines at page 15:

Participation Guidelines

All Grade 4 and Grade 7 students are expected to participate in the Foundation Skills Assessment. The only exceptions are: a) students who have Individual Education Plans (IEPs) documenting a learning disability directly related to reading, writing or numeracy; b) students with IEPs who would need adaptations with which they are not familiar (e.g., readers, scribes) or who would need such extended periods of time as to create a hardship for the individual student; or c) those students who are reported and funded as receiving English-as-a-Second-

Language (ESL) support who have not yet reached a level of proficiency sufficient for them to provide meaningful responses to the reading or writing or numeracy sections of the FSA.

Principals determine which students, if any, are excused from one, two or all three components of the FSA.

Parents may request the principal to excuse a student in the event of a family emergency, a lengthy illness or other extenuating circumstances.

Principals of public schools are to send a list of those students the principal has excused to their superintendents.

As principal, you must notify a parent or guardian if you intend to excuse a student from participating in one or more components of the FSA.

Such notification should be made prior to the administration date. Provide a copy of the brochure, "Information for Students, Parents and Guardians." This brochure explains the purpose of the FSA; you would not then need to repeat all of the background information in your notification letter or telephone call.

Last April, the BCTF provided locals and members with a brochure regarding the FSA with intended distribution to parents by teachers. This brochure contained a recommendation for parents to withdraw their children from the FSA tests. The BCTF assertion that parents can withdraw their children from the FSA tests by writing a letter to the school principal is inaccurate and contrary to the FSA requirements.

Should this occur again this year, school boards can direct teachers not to advise parents that principals can exclude students from taking FSA tests in the manner suggested by the BCTF, as this advice is not consistent with the Ministry procedures on the participation of students in the FSA tests.

Accurate information on participation in the FSA tests should be communicated to parents by each school administrator, including the participation guidelines set by the Ministry. Any inaccurate information on the FSA provided to parents by a teacher or the BCTF, in a public venue such as a parent advisory council meeting, should also be corrected.

Teacher participation not optional

On April 3, 2002, the Labour Relations Board (LRB) issued a decision (BCLR No. 123/2002) concluding that supervising FSA tests is work which teachers are obligated to perform and ordered the BCTF to suspend its direction to members not to supervise the test.

On pages 5 and 6 of this award, the LRB stated, "... it is clearly within the authority of the Ministry of Education to set this test as a provincial student learning assessment under the Ministry order. The Ministerial Order also allows school boards to designate teachers as the individuals responsible for supervising the FSA test."

Article 3 of the Student Learning Assessment Order states:

Administration and completion of assessments

3. ...a teacher, administrative officer or other person designated by the minister or board...must

- (b) ensure that assessments are administered and completed, and that the data collected from assessments are transmitted to the minister, in accordance with the assessment protocols, instructions and invigilation procedures sent to the board...by the minister with each assessment.

A teacher's participation is not limited to the supervision of the FSA tests, but includes full administration of the tests in accordance with the instructions received by the teacher. As this has not been an issue since the 2002 LRB award and order, it is not expected that your district will experience teacher refusals in this area. However, should this not be the case, school boards can direct teachers to comply.

Distribution of BCTF/Union material to parents

Your local union may reference a BCPSEA/BCTF Court of Appeal case concerning teachers' right to freedom of expression under the *Charter of Rights and Freedoms*.

The court case referenced by your local, *British Columbia Public School Employers' Association v. British Columbia Teachers' Federation*, 2005 BCCA 393, was an appeal by BCPSEA of an arbitration award by Don Munroe. This case arose out of a dispute regarding information distributed by teachers to parents at school and during parent-teacher interviews. The information referred to the provincial government's legislative actions concerning class size and learning conditions. In this case, the BCTF commentary on the class size legislation and its effect were, for the most part, factually correct. The BCTF was critical of the provincial government's decision to remove class size and staff formulas for specialist teachers from the collective agreement. School boards responded to the BCTF action by issuing directives to teachers not to discuss class size and learning conditions issues in parent-teacher interviews or to make available BCTF materials to parents.

The Court of Appeal upheld the arbitrator's decision that school boards had violated teachers' freedom of expression and that the impugned directives were not justified under section 1 of the *Charter*. Although the Court of Appeal found that the objectives of the employer issuing of the directives (maintaining confidence in the public school system and ensuring parent-teacher interviews met their purpose) were sufficiently important to justify some limits on teachers' freedom of expression and that the school boards' actions were rationally connected to the objective of maintaining public confidence in the school system, the Court of Appeal found that an "absolute ban" of discussion on school property during school hours, and the ban on posting materials on school bulletin boards, did not minimally impair teachers' rights and, therefore, the employer's directives were not justified under section 1 of the *Charter*.

The decision, however, did not provide for an unfettered right to communication but, rather, that any limitation or restriction on the right to freedom of expression be "reasonable limits prescribed by law [that can be] demonstrably justified in a free and democratic society." Therefore, freedom of expression rights are not absolute. However, any restrictions on that freedom must be reasonably justified.

Although certainly not an exhaustive list, the following are examples of clearly established restrictions to a teacher's freedom of expression rights. Should a teacher disregard a direction concerning one of these restrictions, a school board has the authority to discipline a teacher.

- 1. Accuracy of information:** The information being distributed must be accurate. The teacher is prohibited from knowingly or recklessly providing inaccurate information to parents. An example contained in the BCTF brochure of last year included the statement that a parent can "withdraw [their] child from the FSA tests by writing a letter to the school principal."

School boards should advise teachers communicating on the FSA in any venue to remove any reference to exclusions from participation in FSA, except for the exclusion of students which is permitted under the FSA Ministry procedure.

2. **Use of students:** Students are not to be used as the conduits or couriers for communication of union materials or any materials not approved by the school for distribution through it. A school board is within its lawful right to direct teachers not to use students as the means for conveying union views concerning the FSA tests to parents. Neither the collective agreement nor any applicable legislation gives teachers the right to use students in this manner and to do so can be harmful to public confidence in the public education system.
3. **School mailing lists:** Teachers may not use a school/classroom mailing list or a parent directory to obtain mailing addresses for parents of students in their class for the purpose of communicating or mailing out BCTF material. The home addresses of students and parents provided to a school or district are the personal information of the students and parents and can only be used for the purpose for which they were collected; i.e., for school-related purposes, not for the purposes of communicating BCTF views.

Local union pressure

Your school boards and school district administration may be approached by your local union and asked to accede to the union's wishes and accept their position or they will use the media, meetings with parents, and other public forums to promote their opposition to FSA. A variation of this is the "*if you respected your teachers you would...*" or the "*whose side are you on*" approach, where the school board is challenged to choose between the position of their teachers or the Ministry of Education.

This is a power tactic; like other approaches, it attempts to obscure the matters at issue, leverage your goodwill and, through that, leverage acceptance of the BCTF position on FSA. The issue of standardized testing has been a matter of debate for many years. From a public policy perspective, the Ministry has adopted a testing regime comprised of many components, one of which is the FSA. A reasoned policy discussion on FSA is best left to another forum. The best way to respond to this approach is with clarity as to the purpose of the FSA, what teachers and the BCTF can and cannot do to advance their opposition to it, and the statutory obligations of school boards.

Next steps

We will continue to monitor and report emerging strategies on the part of the BCTF regarding the FSA. If you are aware of any new developments, please advise BCPSEA as soon as possible.

Questions

If you have any questions, please contact your BCPSEA liaison.