

Class Size

Today we are in receipt of Arbitrator Dorsey's award (copy attached) on the following class size issues:

1. The counting of the 15-day timeline with respect to the September process requirements; i.e., does the 15-day timeline include the first day of school?
2. What are the class size requirements/procedures/timelines that apply after October 1?

1. 15 Day Timeline in September

Under section 76.2 of the *Education (Learning Enhancement) Statutes Amendment Act* (Bill 33), the principal's obligations are as follows:

*"In each school year, the principal of a school must, **within 15 school days after the school opening day** set out in the school calendar applicable to the school for the school year,*

(a) if applicable, obtain the consent of or consult with the teacher of a class as required by section 76.1 (2.1) (b), (2.2) (b) or (2.3) (b),

(b) consult with the school planning council with respect to the proposed organization of classes within the school for that school year, and

(c) provide the superintendent of schools with a proposed organization of classes for the school for that school year that is, in the opinion of the principal, appropriate for student learning."

Issue: Is the first day of school counted as one of the 15 school days?

Decision: No. Arbitrator Dorsey agreed with the employer's position that the first day of school is not counted. On page two of the award, he concluded as follows:

September 7, 2010 is the school opening day set out in the standard school calendar for the 2010-11 school year. Under section 76.2 of the *School Act*, this day is not included in the fifteen school days within which mandatory consultations must be conducted. It is the fifteen school days "after" the school opening day set out in the school calendar.

Consequently, the fifteenth school day for consultation in the current school year was September 28, 2010.

2. Section 76.4 — Legislative Requirements — Class Changes and New Classes After October 1 (date of the report)

On pages 39-44 of the BCPSEA August 2010 "[Guidelines for Implementing Class Size and Composition Provisions](#)," BCPSEA described its understanding of the requirements and application of the class size legislation after October 1.

At the time of the above noted publication there had been no arbitrable direction for the processes and requirements of Bill 33 after October 1.

As a result, Arbitrator Dorsey was asked to make a determination on the following four issues on a prospective basis. On page one of his award, it was confirmed that,

The union and employer agree the interpretation, declarations and directions on the issues relating to new and changed classes after September 30th will have prospective effect for the administration and application of their collective agreement and the *School Act* from the date of this decision."

It is important to note that the decision by Arbitrator Dorsey takes effect today, October 18, 2010 and has application to any changes to existing classes or new classes that commence from this date forward.

- **Issue 1:** After September 30, which circumstances trigger the principal's obligations to consult with the teacher and provide the opinion that the class is "appropriate for student learning"?

Decision: On page four of his award, Arbitrator Dorsey concludes the following:

Consultation after September 30th is required in the following situations:

- (a) A class for which a consultation was required under s.76.1 of the School Act increases in size or number of students entitled to an individual education plan or both;
 - (b) A class for which a consultation was not required under s. 76.1 of the School Act increases in size or number of students entitled to an individual education plan or both so that it becomes a class for which consultation would have been required under s.76.1 of the School Act;
 - (c) All second semester classes organized in a manner that would require consultation under section 76.1 of the School Act.
- **Issue 2:** For classes that change after September 30 or for new classes that commence after September 30 (i.e., second semester), what timelines apply to fulfil the principal's obligations to consult with the teacher and provide the opinion that the class is "appropriate for student learning"?

Decision: On page five of his award, Arbitrator Dorsey concludes the following:

The required consultation in the above situations must occur **within fifteen school days after**;

- (a) The principal is notified that a student in a class has been designated a student entitled to an individual education plan;
- (b) The placement in the class of a student increasing the size of a class;
- (c) The school opening day of the second semester.

- **Issue 3:** Does the definition of “consult” in section 1(4) of the Class Size Regulation apply to all situations when consultation is required after September 30?

Decision: Yes

- **Issue 4:** Is the principal required (within the 15 days) to communicate to the teacher his/her decision about the appropriateness of the class for student learning?

Decision: Yes. As there are not the same reporting requirements after September 30, Arbitrator Dorsey confirmed that a principal is required to notify the teacher of his/her **decision** on whether the class is appropriate for student learning **within the same 15 day timeline** as described above.

However, this does not require an explanation or rationale but simply what decision the principal has made, with confirmation that the consultation process has been completed. Please note, such notice to the teacher would not normally take place at the end of the consultation meeting, but instead would occur after the principal has had an opportunity to consider all the information and reach a decision.

With respect to communicating the decision, the principal can do so either verbally or in writing; i.e., e-mail. **Please note** that in the event this issue proceeds to arbitration, it is important that the employer maintain documentation that would demonstrate a decision was communicated to the teacher within the 15-day timeline.

Concluding Remarks

Districts should continue to apply the advice provided on pages 39-44 of the “Guidelines for Implementing Class Size and Composition Provisions” referenced earlier. The only changes/additions to these instructions are as follows:

- A. Timelines for consultations after September 30 must occur **within fifteen school days after:**
 - i. The principal is notified that a student in a class has been designated a student entitled to an individual education plan;
 - ii. The placement in the class of a student increasing the size of a class;
 - iii. The school opening day of the second semester.
- B. A principal is **required** to notify the teacher of his/her **decision** on whether the class is appropriate for student learning **within the same 15-day timeline** as described above.

This arbitration award takes effect today (including the 15-day timeline) and would apply to any new or changed classes. Further, the reporting requirements in the legislation are not commented upon by Arbitrator Dorsey (but still required) because those issues are not arbitrable.

Questions

Should you have questions on this matter, please contact:

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Attachment