

## **Class Size — Consultation Requirements**

### **Union Template Letter**

We are now aware of five districts that have received a letter from their local teachers' association (attached), which describes their understanding of Arbitrator Dorsey's awards concerning the consultation requirements under Bill 33. As these letters appear to be based upon a template letter, your district may also receive the same or very similar letter in the coming days.

While portions of these letters are accurate, other portions are not or may not be depending on the specific circumstances. Further, some of the statements are no longer applicable, as the rulings by Arbitrator Dorsey (with the exception of one award) were based on the legislation prior to its amendment in 2008 when the definition of "consult" was added.

### **Arbitrator Dorsey's Awards — "Consult"**

There have been two arbitration awards rendered by Arbitrator Dorsey on the consultation requirements of Bill 33. The first award, dated August 21, 2009, dealt with the 2006-08 school years, prior to the June 28, 2008 amendment to the Regulation (definition of "consult"). The second award, dated September 11, 2009, interpreted the amended Regulation and definition of "consult" but was limited to the very narrow interpretation of section 1(4)(a)(ii) with respect to the question of in what format the information must be provided to the teacher.

In the August 21, 2009 award, Arbitrator Dorsey specifically commented on the amendment (definition of consult) as follows, "The class size regulation was amended effective June 28, 2008 to define school principal and class teacher consultation with no express reference to actually meeting and engaging in a face-to-face dialogue."

Notwithstanding the amendment and definition of "consult," until further clarification is received, it is recommended that districts continue to conduct face to face meetings in order to receive the teacher's views under the "consult" requirements of Bill 33. Although the Dorsey award of August 21, 2009 did not interpret the amendment, his comments are useful and represent good educational practices. Further, should a grievance proceed to arbitration, a face to face consultation meeting will be good evidence that the teacher was provided an opportunity to provide the principal with their views. Other methods of consultation (e.g., an exchange of e-mails) may be less clear and may cause evidentiary challenges at arbitration in demonstrating that the employer has met its "consult" obligations under bill 33.

## BCPSEA Advice — “Consult”

The current advice with respect to the consultation requirements can be found on pages 10-24 in the BCPSEA *Guidelines for Implementing Class Size and Composition Provisions, August 2010*, distributed to all districts on August 11, 2010 (located on the BCPSEA teacher issues members only website under “2010-2011 Class Size”).

In order to ensure there is no confusion, below we have reproduced the 11 statements made by the union in their template letter, followed by a brief corresponding response. For a more detailed response, please refer to the BCPSEA August 2010 guideline document. Further, should your district receive such a letter from the local teachers’ association, BCPSEA has drafted a template letter that districts may consider using.

1. **Union Statement:** It is the obligation of the principal to schedule meetings and gather all of the relevant information for a thorough and organized consultation process (i.e., class lists, IEPs, report cards, etc.).

**BCPSEA response:** There is a legal obligation to provide the teacher with an opportunity to express their views under the “consult” requirements of Bill 33. As described above, although not necessarily required by the legislation, we recommend that this be done in a face-to face meeting scheduled by the principal. With respect to the relevant information to be provided to the teacher, Arbitrator Dorsey ruled that the teacher must be provided the class list (with the identification of students with an IEP and their corresponding designations), a copy of the most recent IEP if it has not already been distributed to the teacher earlier in the current school year, and any other document that the principal deems to be relevant. Arbitrator Dorsey did not rule on whether report cards are or are not relevant information. This would be for the principal to determine.

2. **Union Statement:** It is up to the principal to provide the information to each teacher, and after looking at the information, it is up to the teacher to request a consultation meeting. It is the union’s understanding that this is a new provision this year. The teacher then has two days to consider the information before requesting a meeting. Since the whole process has to be done within the first 15 days of school, the provision suggests that the information has to be given out almost immediately when school begins.

**BCPSEA Response:** The relevant information must be provided to the teacher two days prior to the consultation meeting that is scheduled by the principal. This provision took effect in September 2008. As changes often occur during the month of September, it is not suggested that the information be provided and the consultation occur immediately when school begins, but instead, later in the 15 days when the majority of the changes to the classes have been made.

3. **Union Statement:** Consultations should consider the learning needs of all students within the class and not be solely restricted to discussions regarding the students with IEPs.

**BCPSEA Response:** True. The teacher is to provide the principal with their views of the proposal for the size and organization of the class.

4. **Union Statement:** Any teacher working with the class, even if for only 45 minutes per week, is entitled to be consulted. This includes, but is not limited to, prep teachers, resource teachers, job share partners, teacher-librarians, etc.

**BCPSEA Response:** Teachers regularly scheduled and assigned to a class are to be consulted. This would include preparation relief teacher, part-time teachers and job share situations. This would not normally include learning assistant teachers, resource teachers, teacher-librarians and/or other teachers who support the classroom teacher or preparation relief teacher.

5. **Union Statement:** Group consultations, meetings that combine the consultations of several different classes, are not acceptable.

**BCPSEA Response:** Group consultations are permitted provided each class is discussed individually and each teacher has their own opportunity to express their views about their individual class. The use of group consultations would most likely occur in situations where you have a number of teachers teaching the same group of students, i.e., preparation relief, job share, rotating elective schedule. However, please note that some teachers may not feel comfortable providing their input in a group. Should a teacher raise such a concern, it is recommended that this teacher be provided an opportunity to provide their views individually/separately.

6. **Union Statement:** Consultation meetings should address only individual classes and include all teachers involved in teaching that class. In other words, where more than one teacher teaches a class, each teacher is entitled to a consultation meeting. The teachers can choose to have a group consultation for the class, or may each have an individual meeting.

**BCPSEA Response:** Please refer to BCPSEA response in #5 above.

7. **Union Statement:** If during the consultation process a principal says they will “look into” getting additional resources to support the class, the principal is required to report their findings back to the teacher before the consultation process is considered complete.

**BCPSEA Response:** Although there is no requirement for a follow-up meeting or written communication (unless mutually agreed), Arbitrator Dorsey indicated that once a decision has been made by the principal, the principal is to inform the teacher of the outcome and advise the teacher that the consultation process has been completed.

8. **Union Statement:** If a teacher has sincere concerns about their ability to meet the PLOs, there must be discussion and serious consideration by the principal.

**BCPSEA Response:** Yes, this should be considered by the principal when forming their opinion; however, this does not prevent the principal from reaching an independent conclusion as to the appropriateness of the class. Nor does it relieve the teacher of their responsibility to ensure the success of the students.

9. **Union Statement:** If a teacher believes a class is not appropriate for student learning, he/she “is expected to articulate some basis for forming the opinion why the organization of the class will likely adversely affect the normal learning expectations for a class that meets the class size and composition standard” as described in the *School Act*.

**BCPSEA Response:** Yes, if the teacher is in disagreement with the class, the teacher must give a clear answer and reason why.

9. **Union Statement:** Teachers must advise the principal if they disagree with the organization of the class and why they disagree by the end of the process (though not necessarily at the consultation meeting).

**BCPSEA Response:** Yes, if the teacher is in disagreement with the class, the teacher must give a clear answer and reason why. The consultation meeting is an opportunity for the teacher to provide their views about the organization of the class to the principal. If a teacher does not provide their views at the consultation meeting, the teacher will run the risk that the principal will reach their opinion without the benefit of the teacher’s views.

10. **Union Statement:** The arbitrator says that the opinion of the teacher is relevant and important and believes that principals, superintendents, boards of education and parents should be informed of the objections of teachers in order to properly inform their own decisions around the appropriateness of the learning situations in classrooms.

**BCPSEA Response:** Although there is no legislative requirement, Arbitrator Dorsey indicated that the teacher’s opinion should be considered when the principal and superintendent are forming their opinion. However, it is BCPSEA’s recommendation that this information should not be provided to parents or in other public forums due to privacy issues, as well as the fact that these groups are not forming opinions under the legislation.

Please find below a link to BCPSEA *@issue* No. 2009-33 (and attachments) dated September 25, 2009, which addressed the issue of teachers providing parents with this information as being inappropriate due to privacy and loyalty issues.

[@issue 2009-33](#); [IEP disclaimer](#); [parent letter](#)

11. **Union Statement:** In order to have a professional discussion, the following information is expected to be made available to our teachers (the union then provides a long list of items which includes criminal records, medical concerns including drug or alcohol issues, involvement of the Ministry of children and Families, Youth Workers, or probation officers, etc.).

**BCPSEA Response:** In his decision dated September 11, 2009, Arbitrator Dorsey ruled that although it is the principal’s responsibility to determine what information is relevant, relevant documents would include:

- i. The class list with the identification of students with a Ministry designated IEP and their corresponding designations
- ii. Copy of the most recent IEP if it has not already been distributed to the teacher earlier in the current school year
- iii. Any other documents that the principal deems to be relevant to his/her proposal for the size and organization of the class.

He further ruled that it is the principal (not the teacher or union) who determines what is relevant and to be provided to the teacher before the consultation. In general, principals are not obliged to provide additional information requested by the teacher either in advance of the consultation meeting or at the meeting itself. If, however, the principal feels the request for additional information and/or documents is reasonable and might realistically help to inform the consultation discussion, they may wish to fulfill the request.

On page 27 of his September 11, 2009 award, Arbitrator Dorsey states the following:

“However, at the beginning of the consultation process the question of relevant information relates to principals’ proposals. What principals consider to be relevant information is within their knowledge. They must provide that information to teachers who are to be consulted. For the purpose of this dispute, decision and declaration it is not appropriate to comment on any source of potentially relevant information other than individual education plans, which have been determined and agreed to be relevant sources of information. If individual education plans for students in the class have not been distributed to teachers before the consultation notification package and they are not electronically available to the teachers, copies must be included with the materials in the notification package.”

## Template Response Letter

Should your district receive such a letter from the union local, your district may consider the following as a response:

“Thank you for your letter of (date). The Board intends on meeting the legislative requirements of the *School Act* through constructive dialogue between teachers and administrators, including the opportunity for the teacher to provide their views on the proposed organization of their class.

While portions of your letter are accurate, other portions are not or may not be depending on the specific circumstances. Further, some of your statements are no longer applicable, as the rulings by Arbitrator Dorsey (with the exception of one award) were based on the legislation prior to its amendment in 2008 when the definition of “consult” was added.

Please find attached a copy of the employers’ “*Guidelines for Implementing Class Size and Composition Provisions*” dated August 2010. I believe this document covers the issues you have raised in your letter. A copy of these guidelines has also been provided to the BCTF.

Should you have any questions in this regard, please do not hesitate to contact me.”

## Questions

Should you have questions on this matter, please contact your BCPSEA labour relations liaison.