

## Class Size Update

### Training Session and Updated Resource Package for Districts

Later this month, BCPSEA will be providing districts with an updated version of the “Guidelines for Implementing Class Size and Composition” package that was distributed in August 2009. The updated guidelines will consolidate/incorporate the advice, principles, and arbitration rulings that have developed over the past four years. The guidelines are intended to be a hands-on document that should assist and guide districts in the implementation and administration of the employment-related components of the class size and composition legislation.

We are also offering district staff the opportunity to attend a one-day workshop on either August 18 or August 24. An e-mail notice was distributed to all districts on June 28; following is a link to our website containing the workshop information and access to online registration:

<http://www.bcpsea.bc.ca/access/events/prod/class-size-composition.html>

### Status of 2006–2008

The following 18 school districts were involved in the 2006-07 and 2007-08 grievances involving approximately 1,600 classes: 5, 8, 20, 28, 36, 39, 44, 53, 58, 61, 62, 63, 67, 68, 69, 70, 73 & 82.

After 54 days of hearings, on August 24, 2009, Arbitrator Dorsey issued an arbitration award on 81 representative classes from seven representative school and districts. Following the issuing of this 354 page award, the provincial parties agreed to a process to attempt to resolve the remainder of the outstanding classes based on the principles established in the award. It is expected that this resolution process should be completed by August 31, 2010. Eleven days of arbitration have been tentatively scheduled in October to December 2010 to arbitrate any outstanding issues that have not been resolved in this process.

### Status of 2008–2009

The BCTF has now confirmed that it has reduced the scope of the grievance from 14,000 classes to approximately 4,200-4,500 classes. The BCTF agreed the list would be finalized and confirmed before any local or provincial processes occur with respect to the 2008-09 classes.

The parties are presently in discussions with Arbitrator Dorsey with respect to the resolution and arbitration processes that will apply to these classes.

## Status of 2009–2010

At this point the BCTF has not reduced the scope of the grievance. They presently take the position that all classes in all districts that have more than 30 students and/or 3 students with an IEP are still at issue. Dates of arbitration and the appointment of an arbitrator have not been agreed upon.

### District Reminders

1. Until the above noted grievances are resolved, it is very important that all districts ensure they retain copies of documents related to the Bill 33 process, including any correspondence, consultation sheets, class lists before, on and after September 30, and any other documents used in the Bill 33 consultations.
2. A few districts have reported that their local union has approached them recently in an attempted to file local grievances with respect to the 2006-07, 2007-08, 2008-09 and 2009-10 school years. As these four school years are presently under provincial grievances filed by the BCTF, there cannot be grievances filed at the local level with respect to these four years. Should your local approach you in this regard, please contact your BCPSEA labour relations liaison.

## Current Arbitrations and Court Proceedings

### Redress Issues

On June 24, 2010, the following two redress issues were arbitrated by arbitrator Dorsey:

1. Under s. 76.2 of the *School Act*, consultation must occur “within 15 days after the school opening day set out in the school calendar applicable to the school for the school year.” Question at issue: With respect to redress, what occurs if the consultation takes place after the 15 days but before October 1? The employer takes the position that the 15 day timeline under the legislation is not a substantive requirement of the legislation. Although it may be a technical violation of the legislation, redress is not appropriate because there is no prejudice to the teacher or the process in arriving at the October 1 report/opinion.
2. For a class size violation that occurs before October 1, arbitrator Dorsey had previously awarded redress for the entire year unless there were mitigating circumstances and/or the classes decreased in number or number of students with an IEP during the year. Question at issue: What occurs if the number of students or students with an IEP increases during the year for classes that were already found to be in violation in September? The employer takes the position that redress stops at this point as section 74.6 has now been triggered and the new obligations under section 76.4 would now apply. Section 76.4 requires a new consultation and new opinions of the sup’t and principal.

Arbitrator Dorsey indicated that he expects to issue his award on these two issues on August 1.

## **SD No. 70 (Alberni) — Mandatory Replacement of Absent Education Assistant**

As reported in [@issue](#) No. 2010-06 dated February 4, 2010, the employer was successful in defending the BCTF grievance concerning the issue of whether, in the context of the class size provisions of the *School Act*, the employer has the right to change resources assigned to a class after September 30.

The BCTF has filed an appeal of this decision by arbitrator Dorsey with the British Columbia Court of Appeal. Facts have now been filed with the courts by both parties and it is expected that this issue will be heard by the Court of Appeal in the Fall.

## **Bills 27 and 28 — BCTF Court Challenge**

The BCTF allege the legislation (Bill 27) that removed the class size and composition language from collective agreements and replaced it with class size and composition legislation was unconstitutional. It is expected that this case will be heard by the courts this fall.

## **Other Outstanding Issues to be Arbitrated or Resolved**

The following are three outstanding issues that have been identified by the provincial parties:

1. For onus issues at arbitration, arbitrator Dorsey created the rule of 33 (total number of students + number of students with an IEP) for grades 4-12. For redress purposes, arbitrator Dorsey created tiers of differing redress amounts (33 and below, 34 – 36, 37 – 39 and 40 and above) for grades 4-12. The issue to be determined is what numbers apply for K-3 classes that have more than 3 students with an IEP?
2. Section 76.4 of the *School Act*: All of the decisions so far have dealt with violations and issues in September. The question now is, what occurs for new classes that are formed after October 1 or classes that change after October 1? What are the legislative obligations, processes and procedures, and time limits in this regard?
3. What information does the employer have to provide to the union with respect to calculation of district averages?

The provincial parties will attempt to resolve these issues. Failing resolution, they may require arbitration.

## **Questions**

If you have any questions or would like more information, please contact your district BCPSEA labour relations liaison.