

**This is an amended version to correct and replace a typo contained in the original version sent out and dated October 28, 2009**

## **Changes after Date on Report (October 1)**

The Dorsey award has provided the parties with direction on the processes and requirements to be followed up to October 1. Although thus far there has been no arbitrable direction provided for the processes and requirements of Bill 33 after October 1, we wish to highlight the requirements of Sections 76.1 (2.1) to (2.3) and 74.4 (6) in relation to classes that change or commence after October 1.

### **Different Scenarios/Situations**

The following are 11 scenarios/situations where Sections 76.1 (2.1) to (2.3) and 74.4 (6) may be applicable. The first six scenarios/situations relate to existing classes that change after October 1. The last five scenarios/situations relate to new classes that commence after October 1. Recommendations on how best to proceed are provided following the situation overviews.

#### **▪ Changes to Existing Classes after October 1st**

- i.) Grade 4 – 7 class: increases in number of students such that the size of the class now exceeds 30 students; i.e., after October 1 a new student arrives and, if implemented, the class would go from 30 to 31 students.
- ii.) Grade 4 – 7 class: a class where the district had already obtained the consent of the teacher to exceed 30 students, now increases further; i.e., after October 1 a new student arrives and, if implemented, the class would go from 31 to 32 students.
- iii.) Grade 8 – 12 class: increases in number of students such that the size of the class now exceeds 30 students; i.e., after October 1 a new student arrives and, if implemented, the class would go from 30 to 31 students.
- iv.) Grade 8 – 12 class: increases in number such that the size of the class, which already exceeds 30 students, increases further; i.e., after October 1 a new student arrives and, if implemented, the class would go from 31 to 32 students.
- v.) K – 12 class: increases in the number of students with an entitlement to an IEP as defined in Bill 33 such that the number of students in the class entitled to an IEP now exceeds three; i.e., after October 1 a new student arrives with ministry designated IEP or an existing student in the class obtains a ministry designated IEP and, if implemented, the class would go from having three students with an entitlement to an IEP to four students with an entitlement to an IEP.

- vi.) K – 12 class: class which already exceeds three students with an entitlement to an IEP as defined in Bill 33 increases further; i.e., after October 1 a new student arrives with ministry designated IEP or an existing student in the class obtains a ministry designated IEP and, if implemented, the class would go from having four students with an entitlement to an IEP to five students with an entitlement to an IEP.

- **New Classes that Commence after October 1**

- vii.) Grade 8 – 12: new classes that are starting up in the second semester which are in excess of 30 students.
- viii.) K – 12: new classes that are starting up in the second semester that have in excess of three students with an entitlement to an IEP as defined in Bill 33.
- ix.) For grade 4 – 7: electives and other rotating sections that commence after October 1 that exceed 30 students. Some districts have already gone through the Bill 33 requirements in September for several of the electives and rotating sections that will commence after October 1. If your district has not gone through the Bill 33 processes in September or if there have been changes to these classes since the completion of the Bill 33 September processes, it is recommended that the post October 1 process apply. Please note this includes situations where a different teacher teaches the same students for a different class, but would not apply to the same teacher teaching the same students on a different subject.
- x.) For grade 8 – 12, electives and other rotating sections that commence after October 1 that exceed 30 students. Some districts have already gone through the Bill 33 requirements in September for several of the electives and rotating sections that will commence after October 1. If your district has not gone through the Bill 33 processes in September or if there have been changes to these classes since the completion of the Bill 33 September processes, it is recommended that the post October 1 process apply. Please note this includes situations where a different teacher teaches the same students for a different class, but would not apply to the same teacher teaching the same students on a different subject.
- xi.) K – 12, electives and other rotating sections that commence after October 1 which have in excess of three students with an entitlement to an IEP as defined in Bill 33. Some districts have already gone through the Bill 33 requirements in September for several of the electives and rotating sections that will commence after October 1. If your district has not gone through the Bill 33 processes in September or if there have been changes to these classes since the completion of the Bill 33 September processes, it is recommended that the post October 1 process apply. Please note this includes situations where a different teacher teaches the same students for a different class, but would not apply to the same teacher teaching the same students on a different subject.

## Application of Bill 33

While the requirements of Sections 76.1 (2.1) to (2.3) and 74.4 (6) may not apply to all of these scenarios/situations, until further clarification is received it is recommended that districts apply Sections 76.1 (2.1) to (2.3) and 74.4 (6) of Bill 33 for the 11 situations/scenarios described above, as follows:

### 1. For situations i), ii) and ix) described above:

- a. Under section 76.1 (2.1) (a), the principal and superintendent of schools must hold the opinion that the organization of the class is appropriate for student learning
- b. Under section 76.1 (2.1) (b), obtain the consent from the teacher
- c. Under section 76.4 (6) (a), the principal of school provide the school planning council with the rationale for the change in the organization of the class of over 30
- d. Under section 76.4 (6) (b), the superintendent of schools provides the board and district parents' advisory council, if established, with the rationale for the change in the organization of the class of over 30
- e. Under section 76.4 (6) (c), the board provide the minister with the rationale for the change in the organization of the class of over 30.

### 2. For situations iii), iv), vii), and x) described above:

- a. Under section 76.1 (2.2) (a) or 76.1 (2.3) (a), the principal and superintendent of schools must hold the opinion that the organization of the class is appropriate for student learning
- b. Under section 76.1 (2.2) (b) or 76.1 (2.3) (b), the principal will consult with the teacher of the class.
- c. Under section 76.4 (6) (a), the principal of school provide the school planning council with the rationale for the change in the organization of the class of over 30
- d. Under section 76.4 (6) (b), the superintendent of schools provides the board and district parents' advisory council, if established, with the rationale for the change in the organization of the class of over 30
- e. Under section 76.4 (6) (c), the board provide the minister with the rationale for the change in the organization of the class of over 30.

### 3. For situations v), vi), viii) and xi) described above:

- a. Under section 76.1 (2.2) (a) or 76.1 (2.3) (a), the principal and superintendent of schools must hold the opinion that the organization of the class is appropriate for student learning
- b. Under section 76.1 (2.2) (b) or 76.1 (2.3) (b), the principal will consult with the teacher of the class.

Please note:

- Districts should ensure that they maintain documentation/evidence that would demonstrate compliance with Sections 76.1 (2.1) to (2.3) and 74.4 (6).
- There is no requirement to provide rationale for classes which are in excess of three students with an entitlement to an IEP as defined in Bill 33.

- The rationale described in Section 76.4 (6) is the rationale of why there were changes in the organization resulting in classes of over 30; it is not the rationale of why the principal and superintendent have the opinion that the classes are appropriate for student learning.
- For changes or new classes after October 1, there are no specific timelines stipulated in Bill 33. As such, districts should comply with these Bill 33 requirements within a reasonable period of time.
- For existing classes that change after October 1, it is unnecessary to provide the teacher with a second copy of the same information that was provided to the teacher for the September consultation. In most situations, it would be sufficient to provide the teacher with only new or updated information relevant to the class and its subsequent changes. This should be provided to the teacher two days prior to the consultation meeting.

### **District Averages and K–3**

Compliance with the Bill 33 district averages and K–3 class size limits must be maintained throughout the school year. District averages stipulated in Section 76.1(1) cannot be exceeded, even fractionally; i.e., normal mathematical rounding is not to be applied. With respect to the calculation of split classes, the maximum permissible size for a K–1 split is 22; for a grade 3/4 split it is 24. The general rule should be that the requirement for the youngest grade of children enrolled should apply to the entire class.

### **Ministry Class Size and Composition Data Exchange Report**

It is our understanding that the class size and composition data exchange report is to be submitted to the ministry by October 30. The ministry then reviews these reports for any duplications and/or errors and posts the final report on the Ministry website in December or early January. The BCTF has advised that in order to assist in the union process of determining which classes they believe are in violation, they have requested that districts provide their local union with a copy of the October 30 preliminary report submitted by the superintendent to the ministry. In addition, a number of districts have now received FOIPPA requests for this information. Provided the district includes a disclaimer statement that the information provided is not the final version (preliminary report provided to the Ministry) and is subject to revision by the ministry for duplications and errors, it is suggested that you provide this report to your local union at this time, if requested.

### **Union Identification of Issues in Dispute**

Arbitrator Dorsey clearly stated in his award that it is the responsibility of the union to inform the employer of any disagreements with the organization of the classes and, if not resolved, file timely grievances. Although the BCTF has filed a policy grievance on July 10, 2009 covering every class and district in the province for the entire 2009-10 school year, the BCTF has not provided any particulars describing which classes and/or issues with which they are in disagreement. This week, BCPSEA will be asking to schedule a grievance meeting with the BCTF to discuss the grievance and request particulars on which specific classes and/or issues they are in disagreement with and on what basis.

In order that your district is aware of and has an opportunity to resolve any disputed classes, it is recommended that districts meet with their local teachers' association within the next few weeks and request the local union identify and inform you of any classes and/or issues that they are in disagreement with as an alleged violation of Bill 33. This information is critical for the district to understand not only which classes the local union is disputing but also the reasons why and rationale. In addition to there being a provincial policy grievance covering all of the classes in the province for the 2009-10 school year, the parties are scheduled to arbitrate the issue of redress in November. As a result, any settlement discussions involving the interpretation of Bill 33 or a redress issue **must include the participation and agreement of BCPSEA**. BCPSEA will be advising the BCTF that any settlements in this regard will require the involvement and agreement of BCPSEA.

Below are two template letters for your consideration. The first template letter is an invitation to meet. If the local union refuses to meet or provide your district with the specific classes and/or issues in dispute, this should be recorded and the union should be advised in writing that should this matter proceed to arbitration, the employer will raise the issue of timeliness and prejudice (second template letter).

#### **Template Letter — Inviting Local Union**

President of the Local Union

We have recently completed the class size and regulations processes for classes as of September 30. Arbitrator Dorsey clearly stated in his award that it is the responsibility of the union to inform the employer of any disagreements with the organization of the classes and, if not resolved, file timely grievances.

I am requesting that the local parties meet within the next two weeks. At this meeting, we ask that the local union identify all classes or issues with which you are in disagreement, as an alleged violation of Bill 33. This will allow the employer the opportunity to be aware of, and attempt to resolve, any disagreements pertaining to Bill 33.

We are available to meet on the following dates (list):

I look forward to your response.

#### **Template Letter — If Local Union Refuses to Provide Particulars**

President of the Local Union

Further to my letter of (date), this is to confirm that your local union has declined the employer's request for the union to identify and attempt to resolve all classes or issues with which you are in disagreement and allege to be a violation of Bill 33.

This is to notify you that should this matter proceed to arbitration, the employer will raise the issues of timeliness and prejudice.

#### **Questions**

For further information or discussion, please contact your BCPSEA labour relations liaison.