

Class Size and Composition: Letters from Union

Arising from Arbitrator Dorsey's recent arbitration awards (August 21, 2009 and September 11, 2009) regarding Bill 33 — Class Size and Composition, some districts have advised that their local teachers' union is intending to have classroom teachers send letters home to parents regarding the composition of individual classes.

Two versions of these letters have been received to date: one on class size and composition, and another entitled "Individual Education Plan (IEP) Disclaimer Form."

Copies of these letters are attached. We have prepared suggested template responses (included in this bulletin) to each of these letters. Should you receive such a letter in your district, you may wish to respond with the applicable template letter.

Please advise your BCPSEA labour relations liaison if either of the letters appear in your district, regardless of how you decide to respond.

Questions

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

Attachments:

- Local Union Letter to Parents Re: "IEP Disclaimer Form"
- Local Union Letter to Parents on Class Size and Composition

Template Response Letter from District Re: Local Union Letter to Parents on Class Size and Composition

Thank you for providing the district with a copy of the letter that the union intends to advise teachers to send to parents regarding the class size and composition of their classrooms (attached).

It is the district's position that this letter, as written, is not appropriate to send to parents. The letter contains comments that:

- constitute a breach of the teacher's legal duty of loyalty towards the district as his/her employer
- undermine public confidence in the public education system
- may lead to discussions with parents which disclose personal information of other students in violation of the *Freedom of Information and Protection of Privacy Act (FIPPA)*.

In the 2004 arbitration award regarding freedom of expression issues relating to class size and composition, Arbitrator Munroe held that teachers were entitled to communicate with parents about the effects of the Liberal government actions on students. The types of information that were held to be permissible to communicate to parents included:

- "Last year, the teacher's contract limited this class to ____ students. This year, there are ____ students in your child's class."
- "Common sense and research tell us that smaller classes are better for students. A 20-year study of 11,500 children from kindergarten through post-secondary found that small classes of 13–18 are better than classes of 22 to 26."
- "In January 2002, the BC Liberal government removed from the teachers' collective agreement a number of important protections for students. The government eliminated limits on the size of classes; guarantees of service levels for counselors, teacher-librarians, and other specialist teachers; and support for students with special needs. The government raised the class size limits for primary grades and put the raised limits into legislation."
- Union bulletins that were critical of the BCPSEA collective bargaining positions as they related to such matters as class sizes, specialist teachers and the provision of services for special needs students.
- Union bulletins that were critical of government action, including a funding freeze on education and health care until 2004, the "removal of learning conditions" by the legislatively-imposed collective agreement reductions in teaching positions, school closures and program cuts, and reduced funding "forc[ing]" school boards to make decisions detrimentally "affect[ing] the quality of our children's education."

The difference between the facts that led to the Munroe decision and the current union proposed letter in this case is that, in the Munroe case, the teachers' criticism and challenge was directed at the government, whereas in this case, the criticism and challenge is directed at the teachers' employer in the decision made by the principal and/or superintendent with respect to the size and organization of the class in accordance with the Bill 33 process.

It is a generally accepted legal principle that employees owe a legal duty of loyalty to their employer. Therefore, although a teacher may publicly express opposition to the class size legislation or publicly criticize the class size system put in place by the government, he/she may

not publicly criticize, challenge or undermine the decisions of the principals and superintendents that are made in accordance with the statutory scheme. The statements made in the letter that express opinions contrary to those of the principal and/or superintendent or that contradict the educational judgment of the principals and/or superintendents breach the teachers' legal duty of loyalty to the district.

Further, those teachers who do not agree with the decisions of their principal and/or superintendent have recourse under the grievance procedure. The teachers' means for challenging the opinions and decisions of principals and superintendents is through the grievance procedure and not through public criticism.

It is recognized that respectful debate about educational issues is important. In that regard, judicial and arbitral jurisprudence has clarified that teachers have the right to engage in political discussion and the freedom to express their views to parents on such educational issues under Section 2(b) of the *Charter of Rights and Freedoms* (the Charter). However, these rights are not without limits. Any restrictions on expression have to be justified under Section 1 of the Charter. The basis for those restrictions under Section 1 are described above.

Accordingly, teachers' right to further the debate with parents must be valued, but it must also be balanced with society's interest in an effective and efficient school system which maintains the confidence of students, parents and the public, and recognizes the teacher's legal duty of loyalty towards the district as his/her employer.

I trust that you will rescind or amend your intended correspondence to ensure it is consistent with the legal principles outlined above in order to ensure that you do not unnecessarily put your members at risk with respect to their employment and legal obligations.

Should you consider amending the correspondence to address the issues raised above, please provide me with a copy for discussion prior to any distribution. If you wish to discuss any other issues or proposed correspondence, please do not hesitate to contact me.

Template Response Letter from District to Local Union Re: "IEP Disclaimer Form"

We are in receipt of a copy of the "Individual Education Plan (IEP) Disclaimer Form" with <the local union> letterhead (copy attached). It is our understanding that the union has advised teachers to file this disclaimer form with the student's IEP and also send a copy to parents.

It is the district's position that this disclaimer form, as written, is not appropriate to be filed with the IEP or sent to parents. The letter contains comments that:

- are inaccurate and misleading; i.e., "... the number of students working on IEPs currently exceeds the maximum appropriate for student learning")
- constitute a breach of the teacher's legal duty of loyalty towards the district as his/her employer
- undermine public confidence in the public education system
- may lead to discussions with parents which disclose personal information of other students in violation of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

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- "Last year, the teacher's contract limited this class to ____ students. This year, there are ____ students in your child's class."
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- The union distributed bulletins that were critical of the BCPSEA collective bargaining positions as they related to such matters as class size, specialist teachers, and the provision of services for special needs students.
- The union also distributed bulletins that were critical of government action, including a funding freeze on education and health care until 2004, the "removal of learning conditions" by the legislatively-imposed collective agreement reductions in teaching positions, school closures and program cuts, and reduced funding "forc[ing]" school boards to make decisions detrimentally "affect[ing]" the quality of our children's education."

The difference between the facts that led to the Munroe decision and the current union proposed "disclaimer form" in this case is that, in the Munroe case, the teachers' criticism and challenge was directed at the government, whereas in this case, the criticism and challenge is directed at the teachers' employer in the decision made by the principal and/or superintendent with respect to the size and organization of the class in accordance with the Bill 33 process.

It is a generally accepted legal principle that employees owe a legal duty of loyalty to their employer. Therefore, although a teacher may publicly express opposition to the class size legislation or publicly criticize the class size system put in place by the government, he/she may not publicly criticize, challenge or undermine the decisions of the principals and superintendents that are made in accordance with the statutory scheme. The statements made in the union disclaimer form that express opinions contrary to those of the principal and/or superintendent or that contradict the educational judgment of the principals and/or superintendents breach the teachers' legal duty of loyalty to the district.

Further, those teachers who do not agree with the decisions of their principal and/or superintendent have recourse under the grievance procedure. The teachers' means for challenging the opinions and decisions of principals and superintendents is through the grievance procedure and not through public criticism.

It is recognized that respectful debate about educational issues is important. In that regard, judicial and arbitral jurisprudence has clarified that teachers have the right to engage in political discussion and the freedom to express their views to parents on such educational issues under Section 2(b) of the *Charter of Rights and Freedoms* (the Charter). However, these rights are not without limits. Any restrictions on expression have to be justified under Section 1 of the Charter. The basis for those restrictions under Section 1 are described above.

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