

## Bill 33: Consultation Process

Since Arbitrator Dorsey's first award on August 21, 2009 and subsequent award on September 11, 2009, BCPSEA has provided information and a number of documents to districts. In preparation for the regional conference calls scheduled for Wednesday, September 16, 2009, this @issue is intended to provide clarification on the Bill 33 consultation process currently underway in districts.

Attached with this @issue please find:

- The most recent BCTF advice to local presidents
- Revised sample letter and consultation/consent forms.

## Frequently Asked Questions — Consultation Process

For ease of reference, below are some of the questions and answers that have arisen from the BCTF documents, the two Dorsey awards, and the previous advice from BCPSEA with respect to consultation. This question and answer section is intended to be a user-friendly supplement to the previous documents provided and is not intended to cover all of the issues or depth of issues as previously provided. Please refer to our previous documents for a fuller discussion of issues.

- 1. Are principals required to provide teachers (two days in advance of the consultation) with hard copies of the relevant information or is it sufficient to provide teachers with access to the information in the school?**

Principals are required to provide teachers with hard copies or, alternatively, provide teachers with electronic access to the information. If this information has already been provided to the teacher earlier in the school year, there is no requirement to reproduce it a second time.

- 2. Given Arbitrator Dorsey's recent award, is the sample letter suggested by BCPSEA still current?**

No. If districts are considering sending a letter, the portion related to providing teachers with access should be deleted and replaced with a record of what information was provided to the teacher either in hard copy, electronically or previously in the school year. **Please find attached the revised sample letter.** Please note there is no requirement to provide a letter; this is only suggested process for district consideration.

**3. Who determines what information and documents are relevant and need to be provided to the teacher at least two days before the consultation meeting?**

Principals must provide the teacher with the class list (including indication of which students have a Ministry designation and the corresponding descriptor) and a copy of the most recent IEP for each applicable student in the class, if not previously provided this school year. It is the principal, however, who determines what additional information and documents they deem relevant in the proposed size and organization of the class. This determination by the principal should include, but is not limited to, strong consideration of applicable student safety and/or behavior plans and transition information from the previous year or school if not previously provided.

**4. What information must principals provide to teachers in regard to the general organization of the school and how it relates to specific classes?**

Provision of such general background information as the school organization chart or master timetable, staffing complement and budget factors should be considered. While BCPSEA has stated that the relevant information should focus on the individual class and Arbitrator Dorsey has confirmed that the consultation process is focused on fine-tuning, not dramatic change, school background information of a general nature should be considered for sharing with all teachers to provide a context for the principal's proposal.

**5. Does providing electronic access to IEPs rather than hard copy change the rules of the process?**

No, all of the rules and general principles established for the consultation process, privacy concerns and provision of relevant information still apply whether the information has been provided in hard copy or through electronic access. Where schools and districts are providing electronic access to information and documents (rather than hard copies), they must ensure teachers can reasonably access and review the materials as they might the printed copies.

**6. Must principals supply additional information and/or documents requested by a teacher either in advance of the consultation meeting or at the meeting itself?**

In general, principals are not obligated 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.

**7. Do principals have to provide copies of IEPs for students in classes over 30, but with three or fewer Ministry designated students?**

Yes, principals must provide copies of IEPs for each Ministry designated student entitled to an IEP in every class over 30 as well as any class in which there are more than three students with a Ministry designation and IEP. For example, in a class of 32 with two IEPs, the two IEPs must be provided.

**8. What happens if a student's IEP is not available through the school or district (e.g., the IEP for a student new to the school district has yet to be forwarded by the previous jurisdiction)?**

Principals need only supply that information which currently exists and is available to them. The consultation meeting should proceed within the legislated timelines even if all of the IEPs are not available.

**9. If two (or more) teachers have agreed to a joint consultation meeting for a single class that they both teach, does the principal have to provide copies of the relevant information to each teacher?**

Yes, each teacher participating in a joint meeting should receive the same relevant information and documents at least two days before the meeting.

**10. When does the two day “consideration period” for the teacher begin?**

Before providing their views of the proposed size and organization of the class at the consultation meeting, teachers should be provided with a minimum of two days to consider all of the relevant information provided by the principal.

**11. Once the relevant information and documents, including class lists and IEPs, are provided to a teacher, who is responsible for ensuring the confidentiality of the information?**

The teacher is responsible for ensuring that confidentiality of the information is maintained at all times. This includes proper storage of all materials as well as disposal once use of the materials has been completed. All district policies and professional obligations regarding student privacy and the handling of confidential information apply in this situation. Districts may wish to remind teachers of this obligation and include copies of any applicable policies when the materials are distributed. Please note that a comprehensive document from BCPSEA on privacy issues with respect to the access to and use of this information by the teacher and, if applicable, the union, will be provided to districts later this week.

**12. When during the day may principals schedule consultation meetings?**

Principals may schedule consultation meetings at any time during the general work day, including at times outside of hours of instruction (i.e., before, in-between and after the hours of scheduled instruction). Principals must, however, ensure that reasonable time is available for a meaningful two-way discussion during each meeting.

**13. Are teachers required to attend a scheduled consultation meeting?**

No. After the teacher has received from the principal the information that the principal deems relevant to their proposed size and organization of the class, the teacher has two days before a decision is made to consider the proposal and provide the principal with his/her views in this regard. The scheduled consultation meeting is the opportunity under Bill 33 for the teacher to provide their views.

**14. Must there be a staff rep. present in order for a consultation meeting to take place?**

No. Unless stipulated in your collective agreement, there is no requirement for a staff rep. to be present at the Bill 33 consultation meetings. While it is not a requirement under Bill 33, it is suggested that normal district practices with respect to union representation at meetings with teachers apply. However, should this occur, all costs incurred in having a staff rep. attend a meeting are the responsibility of the union. Staff reps. are not entitled to provide their opinions or input into the appropriateness of the size and organization of the class for student learning; that remains the prerogative of the classroom teacher(s) alone. For this reason, provision of relevant information and documents to the staff rep., either prior to or at the meeting, is inappropriate.

**15. Is there a requirement for any forms or joint forms to be completed at the consultation meeting?**

No, however, it is important that the principal has an accurate summary of the information covered during the consultation meeting. The form is simply one method for a principal to record the information. These forms are not unlike a principal recording notes of a meeting in his/her diary; they were developed to provide guidance to ensure all of the topics and requirements of the consultation are covered. These forms are not meant to be a negotiation document, but simply an accurate recording of the meeting.

**16. As a result of the recent Dorsey award, are there any suggested changes to the BCPSEA sample consultation forms which were provided to districts on September 3, 2009?**

No, not as a result of the recent Dorsey award. However, BCPSEA is now suggesting that the consent form be amended to remove the teacher's signature for situations where the teacher is in disagreement with providing consent to grade 4-7 students in classes of over 30. There has been no change to the consultation form for grades 8-12 with more than 30 students or K-12 with more than three students entitled to a Ministry designated IEP. For both forms, it is now suggested that for recording purposes only, the signature of the teacher be requested when the teacher is in agreement, not disagreement. The remainder of the form, including any disagreement by the teacher and reasons provided by the teacher, should be recorded and completed by the principal only. The two forms are attached.

**17. Are teachers or the staff rep. entitled to a copy of the principal's completed consultation form?**

There is no requirement under Bill 33 to provide the teacher or staff rep. with a copy. However, the exception to this is if a teacher signs the consent form for grade 4-7 classes or signs that they are in agreement with a grade 8-12 class over 30 or a K-12 class with more than three students entitled to a ministry designated IEP. In this case it is suggested that the teacher receive a copy. Please note that should the class be subject to a grievance by the BCTF, it is likely that these forms will be requested by the union and provided by the employer in the production of documents arbitration process. It remains the principal's obligation to ensure that the employer form, class lists, and other pertinent documents from the consultation meetings are kept for future reference in case the issue should be referred to arbitration.

**18. Are teachers required to sign the record of consultation form completed by the principal?**

No, teachers are not required to sign the form. Principals may request teachers do so when they are in agreement with the class, but it is their right to refuse. If this should occur, the principal should confirm the teacher's decision and record it accordingly.

**19. Is the teacher required to indicate during the consultation meeting whether the teacher is in agreement (or not) with the size and organization of the class, and if not, why?**

Yes, arbitrator Dorsey indicated that this is the teacher's responsibility. This meeting is the teacher's opportunity to provide this information. There is no requirement to provide the teacher with an extension. If the teacher indicates that they are not prepared to provide this information at the consultation meeting, the teacher should be advised that the principal will record and rely upon the teacher's response as, "teacher declined to provide their view on the size and organization of the class."

**20. Following the consultation meeting, is there a requirement to have a subsequent meeting or written communication with the teacher?**

No. Although there is no requirement for any follow-up meeting or written communication (unless mutually agreed), arbitrator Dorsey indicated that the teacher must be informed by the principal, at a later date, when the process is over and what the outcome is.

**21. Under Bill 33, after the consultation meeting has been completed, can a teacher provide additional views of the size and organization of the class to the principal?**

As stated above, arbitrator Dorsey has indicated that the teacher is to be informed by the principal when the process is over and what the outcome is. Following the consultation, teachers are free to provide additional views with respect to the size and organization of the class as they see fit. Principals must consider the views provided by the teacher up to the point the process is completed and the teacher has been informed of the principal's decision. If the teacher provides additional views after the teacher has been informed by the principal that the process is over and what the outcome is, then there is no requirement under Bill 33 for the principal to change their decision or consider the additional views provided by the teacher.

**22. Did arbitrator Dorsey's decisions change counsellors' obligation to schedule students and classes?**

No, counsellors must still complete all aspects of scheduling students and classes even where there may be a need to put over 30 students in total or more than three students with IEPs into a class.

**23. Did arbitrator Dorsey impose a new combined maximum "cap" of 33 students in any class?**

No, there is no "cap" of 33 students (by head count or combined total of head count and IEPs). The final decision in this regard remains the decision of the principal and the superintendent. The same requirements of Bill 33 apply to any grade 8-12 class of over 30 students and/or K-12 classes that have in excess of three students with an entitlement to a Ministry designated IEP. Arbitrator Dorsey's decision on classes with a combined total of more than 33 students only relates to procedural requirements at arbitration, in the event the case should proceed. In cases of 33 and less, the union will be required to proceed first with their evidence of why they believe that the class is "inappropriate for student learning." In cases of 34 and above, the employer would be required to proceed first with their explanation of why the principal and superintendent came to their opinion that the class was "appropriate for student learning." For a fuller description and understanding of this reference, please refer to paragraphs 486 – 488 on page 144 of the Dorsey award dated August 21, 2009.

## Questions

Please review this document prior to the conference calls scheduled for tomorrow. In the meantime, should you have any questions, please contact your BCPSEA labour relations liaison for discussion.