

Foundation Skills Assessment: Labour Relations Implications

Following the province-wide vote in December 2008 taken by the BC Teachers' Federation (BCTF) regarding the Foundation Skills Assessment (FSA), some school districts have received communications from their BCTF local. Those locals have clearly communicated, on behalf of their members, their intention to refuse to prepare for, administer and mark FSA as part of the ongoing BCTF political campaign with respect to testing. The message from BCTF locals to school district staff and boards of education varies, but is related to the vote held by the BCTF to have teachers refuse to administer the FSA.

Although each communication has been somewhat different, the following themes have emerged in multiple letters:

- Requesting that the district honour any parent request to exempt their child from the FSA, without strictly applying the criteria set out in the Ministry guidelines
- Requesting that the district join with the union in asking the Ministry to move toward random sampling
- Advising that the refusal to prepare for, administer, and/or mark the FSA is a collective action, and not an individual decision of teachers
- Requesting that the matter of refusal to prepare for, administer, and/or mark the FSA not be raised with individual teachers, but rather with the local president and/or staff reps
- Advising that if the matter is raised with individual teachers, teachers will not meet unless a union representative is also present
- Requesting that teachers not be directed to prepare for, administer, and/or mark the FSA
- Requesting that administrators also not prepare for, administer, and/or mark the FSA
- Advising that the refusal to prepare for, administer, and/or mark the FSA is an exercise of teachers' professional autonomy.

Legislative Requirements and FSA (Reproduced from *@issue No. 2008-15*)

The administration and supervision of tests is the nature of work normally performed by teachers. The assessment and evaluation of students is a core duty of teachers, as this represents an integral part of the learning process.

In April 2002, the Labour Relations Board (LRB) issued a decision¹ concluding that supervising FSA tests is work which teachers are obligated to perform and ordered the BCTF to suspend its direction to members not to supervise the test.

On pages 5 and 6 of the award, the LRB stated:

¹ [2002] B.C.L.R.B.D. No. 123

...it is clearly within the authority of the Ministry of Education to set this test as a provincial student learning assessment under the Ministry order. The Ministerial Order also allows school boards to designate teachers as the individuals responsible for supervising the FSA test.”

At the time of this decision, section 17(1) of the *School Act* defined teachers' responsibilities and section 17(2) required teachers to perform the duties set out in the Regulations:

Teachers' responsibilities

17 (1) A teacher's responsibilities include designing, supervising and assessing educational programs and providing instruction to individual students and groups of students.

(2) Teachers must perform the duties set out in the regulations.

Duties of teachers

4. (1) The duties of a teacher include the following:

- (a) providing teaching and other educational services, including advice and instructional assistance, to the students assigned to the teacher, as required or assigned by the board or the minister;...
- (g) evaluating the student's intellectual development, human and social development and career development and evaluating educational programs as required by the board or the minister.

The Student Learning Assessment Order, Ministerial Order No. M60/94 (Ministerial Order), specifically deals with the evaluation of students and a teacher's responsibility to conduct assessments in a manner consistent with the instructions and protocols issued by the Ministry and outlined in this order. The following key sections outline the responsibilities of a teacher:

- Section 1 of the Ministerial Order defines "assessments" to include provincial assessments sent to a school board by the Minister for the purpose of assessing the effectiveness of educational programs by, among other things, measuring individual student performance.
- Section 2(b) of the Ministerial Order requires a school board to ensure that the students taking part in such assessments are supervised by "a teacher, principal, vice principal or director of instruction or other person designated by the minister or board or francophone education authority..."
- Section 3 of the Ministerial Order provides that the individuals designated to supervise the assessment do so according to the Ministry of Education assessment protocols, instructions and invigilation procedures.

A teacher's participation is not limited to the supervision of the FSA tests, but includes full administration of the tests in accordance with the instructions received by the teacher.

Subsequent to the 2002 LRB decision, the Student Learning Assessment Order was amended as follows:

- 3. ...”a teacher, principal, vice principal or director of instruction, or other person designated by the minister or board or francophone education authority, must
 - (b) ensure that the assessments are administered and completed, and that the data collected from the assessments are transmitted to the minister, in accordance with the assessment protocols, instructions and invigilation

procedures sent to the board or francophone education authority by the minister with each assessment...”

Recommendations

As the letters and communications from teacher locals to districts vary, there is no set response that is applicable in all situations and all districts. We recommend that you contact your BCPSEA labour relations liaison for assistance with developing a written response that addresses the specific concerns and issues raised in your district.

However, in any meetings or discussions you may have with the local or teachers, you may wish to consider communicating the following points, as applicable:

- The reality is that whatever personal opinions school trustees, district staff, the BCTF, and teachers may hold with respect to the FSA (or any other educational initiative for that matter), the FSA is an initiative of the Ministry of Education and is required by the *School Act* and Regulations. Boards are obliged to ensure that the FSA proceeds as intended without disruption to the workplace.
- There is a collective agreement in place. Job action during the term of a collective agreement is not permitted. Teachers are expected to perform their normal duties and those duties include the preparation for, administration, and marking of the FSA.
- Should a refusal to prepare for, administer, or mark the FSA occur, typical responses could include one or more of: filing an application with the LRB and/or the courts; a grievance; or other actions including potential discipline for teachers who engage in a refusal to perform this work. The fact that the refusal may be part of collective action does not preclude discipline from being imposed on individual teachers who refuse to perform the work.
- Teachers should clearly understand that they are expected to prepare for, administer, and mark the FSA, and that these duties fall within the normal duties of a teacher as they have performed these duties in the past, without grievance.
- Any arguments with respect to professional autonomy should be dealt with following the usual dispute resolution process available under the collective agreement. Collective agreements are constructed within a legal framework which provides a grievance procedure to address disputes without a stoppage of work or other disruption to the workplace. That is, teachers should be performing the work that is required and filing a grievance if they believe that the collective agreement (including any professional autonomy clause, for example) has been violated (work now, grieve later principle).
- While preparing for, administering, and marking the FSA are part of the normal duties of teachers, boards of education will attempt to put contingency plans in place in order to try to meet their legal obligations with respect to the FSA. Boards may pursue recovery of any additional costs or consequences that are the result of the refusal by teachers to carry out their duties related to the FSA.

BCPSEA will continue to communicate with the BCTF to advise the union of our view of the actions being taken by the union and its locals, and the possible implications if the actions are carried out.

Questions

Please contact your BCPSEA labour relations liaison if you have any other questions.

Attachment: January 12, 2009 letter to BCTF