

Distribution of Foundation Skills Assessment (FSA) Results

On February 29, 2008, the BC Teachers' Federation (BCTF) issued the following *School Staff Alert*:

"Teachers across the province have done an amazing job of exposing the FSA tests as harmful to education, and a waste of education dollars. But the fight to get rid of these tests is not over. The next stage that teachers will be faced with is when the marking is completed and administrators arrange to send the booklets home to parents.

As with the marking of the tests, teachers need to refuse to participate in distributing the results which we have said are meaningless for individual schools and students.

The BCTF will provide teachers with a special pamphlet to give to parents with information outlining their concerns about the FSA and the proliferation of mandated testing. If administrators do distribute the booklets to parents, teachers can send these pamphlets explaining their position."

Further to our @issue No. 2008-06 that was distributed on March 3, 2008, we have now obtained and attached a copy of the new BCTF pamphlet on FSA that is referenced in the above-noted *School Staff Alert*.

➤ BCTF Approach

The BCTF has advised its locals and members to refuse to distribute the FSA results and booklets to parents.

Response

As with other authorized materials from the district, the distribution of the FSA results and booklets to parents through students is within the duties of a teacher. As a result, should a district choose this method of distribution, teachers are expected and, if necessary should be directed, to distribute these authorized materials accordingly. Should a teacher or a group of teachers in your district continue to refuse, please contact your BCPSEA labour relations liaison.

➤ BCTF Approach

The BCTF has advised its locals and members to distribute "a special pamphlet to give to parents with information outlining their concerns about the FSA and the proliferation of mandated testing."

Response: Distribution of Union Materials to Parents through Students

Students are not to be used as the conduits or couriers for communication of union materials or any materials not approved by the school for distribution through it. A school board is within its lawful right to direct teachers not to use students as the means for conveying union views (whether in a

sealed envelope or not) concerning the FSA tests to parents. Neither the collective agreement nor any applicable legislation gives teachers the right to use students in this manner. Yesterday, an arbitration was completed on this very issue in SD No. 5 (Southeast Kootenay). A decision is expected in the next two to three months.

Response: Distribution of Union Materials Directly by Teachers to Parents

We have now reviewed the attached BCTF pamphlet. We are not in agreement that this pamphlet should be distributed directly to parents by teachers. Teachers have a duty of fidelity to their employer, which is required by law to administer the FSA. The arbitration arising in SD No. 5 (Southeast Kootenay) also addresses the extent to which schools are appropriately used as forums for political debate. Our position, as argued in the SD No. 5 (Southeast Kootenay) arbitration, is that as a result of the approach taken in the City of Montreal Supreme Court of Canada decision [*Montreal (City of) v. 2962-1366 Quebec Inc.*, 2005 S.C.C 62], schools are not a place where there is a right to free speech, as schools have not historically been a forum for free expression.

However, until the parties receive a decision in SD No. 5 (Southeast Kootenay) on this topic, our advice at this time is for districts to continue to apply the Munroe and Court of Appeal line of jurisprudence [*BCPSEA v. BCTF 2005 BCCA 393*]. Those cases establish that a Board is entitled to place reasonable limits on teacher expression in the workplace (including expression from teachers to parents). Reasonable limits that a board may impose include requirements that:

- The information is accurate
- The information is distributed in a professional manner and its content does not undermine public confidence in the public education system
- The information does not frustrate the district's ability to effectively carry out its legally mandated obligations in respect of the FSA.

As a result, should a teacher choose to distribute the attached pamphlet **directly to a parent**, our advice to districts is that you advise the teacher that the district is not approving or in agreement with this conduct, however, the district would not be directing that teacher not to distribute this pamphlet directly to a parent. Should the pamphlet be of a different nature or content than the one attached, please contact your BCPSEA liaison for discussion.

Questions

BCPSEA will be conducting regional conference calls on Thursday March 13, 2008. FSAs will be one of the topics discussed on these calls. If you have any questions or encounter any of the situations described in this bulletin or any other issue pertaining to the FSA, please contact your BCPSEA labour relations liaison.

Attachment