



BCPSEA Policy 94-02

Collective Agreement Administration, Grievance Management and Arbitration Assistance

Background

The *Public Education Labour Relations Act* establishes that the British Columbia Public School Employers' Association (BCPSEA) is the accredited bargaining agent for all bargaining units of all boards of education. This legal status applies to collective agreement administration and grievance management as well as to collective bargaining.

Scope

This policy applies to teacher and support staff collective agreement administration.

Roles and Responsibilities

As part of the allocation of roles and responsibilities, BCPSEA delegates certain elements of grievance management to the individual school districts. However, BCPSEA will exercise its grievance management authority with respect to grievances which have province-wide strategic implications and/or province-wide legal implications. These decisions are ultimately made by the BCPSEA Board of Directors and are facilitated through mandatory grievance reporting and a grievance tracking and advisory system.

School District Responsibilities

1. School districts are required to implement a procedure whereby the substance and details of each unresolved grievance are reported to BCPSEA prior to the commencement of that step in the grievance procedure which precedes referral of the grievance to arbitration (i.e., prior to commencement of the last in-house step of the grievance procedure; for teachers, this is prior to the Step 3 meeting).
2. Notwithstanding the above minimum requirements, school districts should contact BCPSEA at the earliest opportunity with regard to any grievances which might have province-wide implications.

BCPSEA Responsibilities

1. For a grievance that has or may have province-wide implications, BCPSEA, in consultation with the school district, will develop a coordinated strategic and substantive response for the grievance step prior to arbitration and for arbitration, if necessary.

2. For a grievance deemed to have province-wide implications, BCPSEA will pay some or all of the school district's share of the external costs of the arbitration, including costs of counsel. The extent of BCPSEA funding will be determined by the extent to which the outcome of the case will be seen to have provincial implications (see criteria below).

BCPSEA will regularly provide reports on grievance activity, legal analysis, strategic considerations, and procedural refinements to assist school districts in coordinating their local grievance management with the BCPSEA tracking and advisory system.

Criteria to Determine Provincial Implications

BCPSEA involvement under this policy is based on an assessment that an issue has a high degree of province-wide strategic implications and/or province-wide legal precedential implications. This assessment will result from consideration of the following criteria:

1. The outcome of a grievance will, or could in the future have, provincial implications.

Note: The more the outcome of a grievance depends on the local facts or the bargaining history or practices of a collective agreement article specific to the district, the less likely the outcome of the grievance will be seen to have provincial implications.

2. The grievance concerns a provision that is included in a significant number of agreements and may affect the rights of a significant number of boards of education.
3. The grievance concerns the interpretation of an agreement rather than its application.

Note: In this respect, grievances regarding discipline or evaluation matters rarely have provincial implications as they turn on the fact pattern of the individual case.

4. The grievance involves provincially negotiated language or a consideration of legal principles involving the *School Act* or other legislation having provincial implications.
5. For grievances that are determined to have a high degree of provincial implications but do not directly stem from provincially negotiated language or legal principles involving the *School Act* or other legislation, funding will be limited to a percentage of shared costs based on the monies available in the current operating budget designated for arbitrations.
6. Given the nature of the matter at issue, cases may be assessed for funding at the completion of the case and on receipt of the award.

Procedures

1. School district staff should contact their district's BCPSEA liaison with particulars of the grievance, including the name of the grievor, the section of the collective agreement that is being grieved, and the remedy sought by the grievor.
2. This contact must take place prior to the commencement of that step in the grievance procedure which precedes referral of the grievance to arbitration (i.e., prior to commencement of the last in-house step of the grievance procedure). However, school districts should contact BCPSEA at the earliest opportunity with regard to any grievances that might have province-wide implications.

When the grievance involves any issue arising out of language negotiated by the provincial parties or regarding an interpretation of a statute, the district must contact BCPSEA at the first indication of a dispute.

3. The BCPSEA liaison will determine the following and communicate to the district:
 - a. whether the grievance has a high degree of provincial implications
 - b. who will carry (take charge of) the grievance — the district or BCPSEA
 - c. the degree of financial support (if any) from BCPSEA.
4. BCPSEA staff will report the decisions on provincial grievance management to the BCPSEA Board of Directors on a regular basis.
5. Any BCPSEA staff decision not to carry a grievance through to arbitration or any BCPSEA staff decision regarding the handling of a grievance may be appealed by a board of education to the BCPSEA Board of Directors for a final decision.

Chronology:

- Approved: November 1994
- Amended: June 1996; October 1996; April 1998; May 1999; January 2009; November 2012