

BRITISH COLUMBIA
PUBLIC SCHOOL EMPLOYERS'
ASSOCIATION

January 12, 2009

By E-mail: 2 Pages

Irene Lanzinger
President
BC Teachers' Federation
100-550 West 6th Avenue
Vancouver, BC V7Z 4P2

Dear Irene:

Re: Foundation Skills Assessment

We write with respect to the ongoing issues surrounding the Foundation Skills Assessment (FSA).

On December 9 and 10, 2008, the BCTF asked its members to vote on the question:

“Do you agree with the 2008 AGM decision that unless the Ministry of Education changes to a random sampling with neither schools nor students identified, teachers exercise their professional autonomy and not prepare for, administer, or mark the provincial FSAs?”

The BCTF reported that 85% of voting members voted “yes” to this question.

In its December 11, 2008 news release, the BCTF stated that as a result of the vote:

“BCTF members will not prepare for, administer, or mark the FSA exams next February unless the government moves towards random sampling.”

It is therefore our understanding that the BCTF intends for its members not to prepare for, administer, or mark the FSA, absent a government move towards random sampling, and that BCTF has or will advise its members accordingly.

In our view, this work is properly the work of teachers. We are supported in this view by the 2002 decision of the Labour Relations Board (BCLRB No. B123/2002), wherein Vice-Chair Kearney held that:

“supervising the FSA test is *prima facie* work which teachers are obligated to perform” (at para. 18).

Consequently, a refusal to perform this work may be an illegal work stoppage and therefore contrary to the *Labour Relations Code*.

Further, in our view, refusing to perform duly assigned work is not an appropriate exercise of the professional autonomy provisions in the collective agreement. If teachers are directed to

perform work in regard to the FSA, it is expected that they will do so, and will follow the "work now grieve later" principle and file a grievance in regard to any alleged breach of the professional autonomy provisions if the union believes that such a breach has occurred.

In this respect, we note that the Labour Relations Board stated in the above-noted decision that it was:

"satisfied on a *prima facie* basis, that teachers are required to supervise students completing the FSA test when this work is assigned to them" (at para. 16).

We therefore disagree with the BCTF position in *School Staff Alert #11*, in which BCTF advised its members that:

"[t]his is not a vote to withdraw services or walk off the job. Members will be in school and performing their regular teaching duties. In our view, a refusal to prepare for, administer, and mark the FSAs is a right of teachers in exercising their professional autonomy."

In BCPSEA's view, the BCTF advice to its members in this regard may be contrary to the *Labour Relations Code*, arbitral and Labour Relations Board decisions, and/or the collective agreement.

The BCTF direction to its members to refuse to prepare for, administer, or mark the FSA may leave school districts with no option other than to use individuals other than BCTF members to perform this work, since school districts are obliged to ensure that, to the extent possible, the FSA proceeds without interruption. However, if any school district does use individuals other than BCTF members to prepare for, administer, or mark the FSA, such action is specifically without prejudice to the ability of that school district, any other school district, or BCPSEA to advance the position that that work is properly the work of teachers and ought to have been performed by BCTF members.

If BCTF members engage in the contemplated refusal to perform this work, they may be in jeopardy of disciplinary action, and BCPSEA and/or its member employers may seek to recover damages or the costs associated with any work refusals or using others to perform the work that ought to have been performed by BCTF members. A refusal to perform assigned work may also form the basis for a grievance, application to the Labour Relations Board, or Court action.

BCPSEA and affected school districts will consider the full range of procedures and remedies available to them, depending on the circumstances. We trust that BCTF members have been made aware of all of the possible consequences of a refusal to prepare for, administer, or mark the FSA.

Yours truly,



Jacquie Griffiths
Associate Executive Director