

BRITISH COLUMBIA
PUBLIC SCHOOL EMPLOYERS'
ASSOCIATION

**Guidelines for Implementing Class Size
and Composition Provisions**

August 2009

Guidelines for Implementing Class Size and Composition Provisions

To assist with the implementation of Bill 33, the *Education (Learning Enhancement) Statutes Amendment Act* ("Bill 33") and related class size legislation, as well as the recent decision from Arbitrator Dorsey; we have put together a series of guidelines and recommendations. For ease of reference, we have divided these recommendations into the following eight sections:

- Part One – General Applications
- Part Two – Consultation Process
- Part Three – "In the opinion of..."
- Part Four – Union Responsibilities/Representation
- Part Five – Post September 30th
- Part Six – District Averages and Grades K–3
- Part Seven – Class Size Provisions for Grades 4 - 7
- Part Eight – Next Steps

Excerpt from Class Size and Composition Legislation and Regulations

Section 76.1 of Bill 33 states:

- (2.2) *Despite subsection (1) but subject to subsection (2.4), a board must ensure that the size of any class for any of grades 8 to 12 in any school in its school district does not exceed 30 students unless*
 - (a) *in the opinions of the superintendent of schools for the school district and the principal of the school, the organization of the class is appropriate for student learning, and*
 - (b) *the principal of the school has consulted with the teacher of that class.*
- (2.3) *Despite subsections (1) to (2.2) but subject to subsection (2.4), a board must ensure that any class in any school in its school district does not have more than 3 students with an individual education plan unless*
 - (a) *in the opinions of the superintendent of schools for the school district and the principal of the school, the organization of the class is appropriate for student learning, and*
 - (b) *the principal of the school has consulted with the teacher of that class.*

Section 4 of the Class Size Regulations (the “Regulations”) states:

- (4) *For the purposes of section 76.1(2.2)(b), 76.1(2.3)(b), 76.2(a) and 76.3(8)(a)(i) of the Act, “consult” means*
- (a) *provision by the principal of a school to the teacher of a class with*
- (i) *information relevant to a proposal for the size and organization of the class, and*
- (ii) *2 school days before a decision is made respecting the size and organization of the class for the teacher to consider the proposal and provide the principal with the teacher’s views in that regard, and*
- (b) *consideration by the principal of the teacher’s views, if any have been provided, and “consulted” has a similar meaning*

Part One – General Applications

September 30th Date

- For grade 8-12 classes that are over 30 students and/or K-12 classes that have in excess of 3 students with an entitlement to an IEP as defined in Bill 33, the following two conditions must be met by September 30th:
 1. consultation between the teacher and principal
 2. opinions of the principal and superintendent that the organization of the classes are appropriate for student learning.
- The requirement to meet these two conditions by September 30th does not preclude the students from being in the class in the month of September before the two conditions are met.

Class Lists

- It is the obligation of the principal to retain copies of class lists used in the Bill 33 process on and before September 30 or any other document used in the Bill 33 consultation.

Definition of Class

- The Class Size Regulation defines a “class” as “a group of students regularly scheduled to be together in a classroom for the purpose of instruction in an education program.”

- The definition of “class” must meet all of the following 5 conditions:
 1. Group of students
 2. Regularly scheduled to be together
 3. In a classroom
 4. For the purpose of instruction
 5. In an education program.
- In addition, Arbitrator Dorsey found that the exclusions listed under section 5 of the Class Size Regulations pertaining to the calculation of district averages also apply to the determination of which classes are included for the requirement of the employer to “consult” with a teacher under Bill 33. In this regard, Arbitrator Dorsey stated “By employing this definition of class, each class that is included in the determination of the district average class size in the aggregate for primary, intermediate and secondary is a class that might be subject to the principal’s duty to consult.”
- Exclusions under section 5 of the Class Size Regulations are as follows:
 - (a) a student in an adult or continuing education program;
 - (b) a student in a distributed learning school;
 - (c) a class where the educational program is delivered through distributed learning;
 - (d) Repealed by B.C. Reg. 225/06;
 - (e) a student in a Provincial resource program;
 - (f) a student in an alternate program;
 - (g) a student in a work study or work experience program;
 - (h) a class operated exclusively for students who have learning disabilities or have disabilities of an intellectual, physical, sensory, emotional or behavioural nature or have exceptional gifts or talents.
- When determining which classes trigger the two Bill 33 requirements, consider the definition of class as well as the exclusions listed in section 5 of the Regulations.
- As a result, programs such as advisory, homeroom, grad transition, resource rooms, learning assistance rooms, alternate programs, classes exclusively for students with disabilities or exceptional gifts or talents, etc., do not trigger the two Bill 33 requirements.

All Students Entitled to an IEP Must be Counted

- Bill 33 specifically defines which students must be counted: “A student for whom an individual education plan must be designed under the Individual education Plan Order, Ministerial Order 638/95, but does not include a student who has exceptional gifts or talents.”
 - Notwithstanding the fact that a student’s IEP may have little or no bearing on the subject matter of the class, (i.e., student in a PE class with an academic related IEP), the principal must count all students who are entitled to an IEP under the above noted
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definition. Arbitrator Dorsey confirmed that although counted under Bill 33 for the purposes of triggering the two requirements under Bill 33, the type of IEP and type of class can be taken into consideration when the principal and superintendent are formulating their opinion on whether the class is appropriate for student learning.

- Conversely, students who are not entitled to an IEP under the Ministerial Order 638/95 but have one, should not be counted for the purposes of Bill 33.

Authority of Vice Principal

- Section 76.8 of the *School Act* states the following, “If authorized by the principal of a school, the vice principal of the school may perform any duties of the principal under section 76.1 to 76.6.
- If authorized by the principal, the vice principal may carry out the consultation or any other portion of 76.1 to 76.6 for which the “principal” is referenced.

Part Two – Consultation Process

Definition of Teacher

- Under the *School Act*, teacher is defined as, “a person holding a certificate of qualification who is employed by a board to provide an educational program to students in a school but does not include a person appointed by a board as superintendent of schools, assistant superintendent of schools or principal, vice principal or director of instruction.”
- Should one of the above listed groups teach a class or a portion of a class, the consultation requirements of Bill 33 do not apply to the superintendent of schools, assistant superintendent of schools, principals, vice principals or directors of instruction.

Which Teachers Must be Consulted?

- All teachers who are assigned to teach the class must be given the opportunity to participate in a consultation. This would include preparation relief teacher, part-time teachers and job share situations, i.e., not just the enrolling teacher.
- Even if the union and its representatives agree, group consultation meetings that discuss and focus on the resources of the entire school may not be used in place of individual teacher class consultations that discuss and focus on the individual class. Group

meetings of a general nature can supplement individual consultations but they do not replace them.

- While group consultations that focus on the resources of the school versus that of the individual class do not meet the spirit of Bill 33, there may be situations where a group consultation can occur provided the consultation revolves around the individual classes. For example, for teachers of a **single class** (i.e., preparation relief, job share, etc.), a consultation can be scheduled at one time. The important point is that the consultation has to be about each individual class being taught.
- The consultation requirement is with the current teacher(s) assigned to the class. If the teacher of the class is subsequently replaced later in the year after the consultation process has already been completed, there is no requirement to consult with the replacement teacher.

Information and Requirement to Consult

- The Dorsey award dealt with the 2006-2007 and 2007-2008 school years which were prior to the new Regulations taking effect on June 28, 2008 that defined the term “consult”. Please note that this section of the Regulations is referenced earlier in this document.
- With respect to this new Regulation, Arbitrator Dorsey commented, “The class size regulation was amended effective June 28, 2008 to define school principal and class teacher consultation with no express reference to actually meeting and engaging in a face-to-face dialogue.”
- For guidance on the effect of the new Regulation, please refer to @issue 2008-11 dated August 26, 2008 and @issue 2008-12 dated August 29, 2008 for advice on this definition (attached).
- Although Arbitrator Dorsey’s award did not take into consideration the definition of “consult” in the new Regulations and notwithstanding Arbitrator Dorsey’s comments and the content of the new Regulations themselves, until further clarification is received, it may be preferable for districts to continue to have a face to face meetings in order to receive the teacher’s views under the “consult” requirements of Bill 33.
- Although not required, it is our recommendation that districts send a letter to each teacher for which consultation is required under Bill 33 that includes the following:
 1. Copy of the class list and identified students for the purposes of Bill 33
 2. Any other information that may be relevant to the class.
 3. Instructions on how the teacher can access student records, IEPs, and any other documents that may be relevant.
 4. Set a date, time and location for a consultation meeting and ask the teacher to confirm whether they would like to participate in the consultation to provide their

views on the class organization, i.e., under the new Regulations the teacher is not required to do so and have the right to opt out of providing their views of the class in a consultation.

Please note: In order that there is no confusion, this notification package to the teacher should include a tear off sheet or other method for the teacher to confirm **in writing** whether he/she wishes to participate in the consultation or not. If he/she chooses not to, this written record should be kept in case the matter should proceed to arbitration. Furthermore, when providing information or access to information to the teacher, please ensure that privacy legislation requirements are complied with.

- Although Dorsey's ruling did not take into consideration the new Regulations that took effect on June 28, 2008, many of his comments still apply and are good personnel practices, should the teacher opt to participate in a consultation meeting.

Preparation for the Consultation

- There is a joint requirement/responsibility for teachers and principals to be prepared for the consultation.
- Once the consultation with the teacher is confirmed, the principal is expected to gather relevant information for the consultation dialogue, which is not a one-way conversation.
- Arbitrator Dorsey noted that it is not a prerequisite to a meaningful dialogue in consultation that the principal attend and observe the class prior to the consultation.
- Teachers are expected to access the relevant information they deem necessary to prepare themselves for the consultation.

Release Time

- There is no requirement under Bill 33 to provide paid release time for attending or preparing for the consultation. However, in some districts, this may be addressed in the collective agreement.
- A teacher's work day is not limited to instructional time. Consultations do not have to take place during instructional time. Consultations can take place before and after school hours, during recess and at lunch.

Issues to be Covered During the Consultation – General

- Consultation is a joint responsibility of the principal and the teacher.

- A teacher's participation in class building in June is not consultation under Bill 33 or recognition by the teacher that the class is appropriate for student learning. Instead, these processes set a context for the consultation.
- The shared knowledge about curricula, instruction, assessment and evaluation strategies and requirements, and similar professional knowledge, together with knowledge about the policies and practices of the district and the school, form a foundation and background for the consultation.
- During the consultation, new teachers may need to be informed about relevant matters specific to the school and how it operates.
- Although there is no requirement for a principal to have at hand and discuss at the consultation the integrated resource packages (IRPs) for the class or the prescribed learning outcomes (PLOs), a teacher may want to discuss them during the consultation. Arbitrator Dorsey commented, "It might be that a teacher has concerns that the composition of the class does not lend itself to teaching the prescribed curricula and its size and composition will be a barrier to achieving the prescribed learning outcomes at an acceptable level."
- Dorsey further commented that, "The reality everyone is focussed on is fine-tuning, not dramatic change. As was clear from the evidence, the focus of the consultation discussion is how to support the class or make the existing organization work. It is not about changing the size or composition of the class. Teachers are loath to suggest the principal remove one or more students from their class and place them in a colleagues' class or to deny a student that elective in that semester. Teachers correctly assume the principal has stretched the resources allocated to the school as far as possible and any suggestion that an additional class be organized and staffed is futile."
- While the change to size and composition of the classes may be considered, discussions will normally be more focussed on discussing what resources are in place to support the classes.
- The consultation is an essential feedback loop for the principal to receive reinforcement from the teacher that the class formation assigned to the teacher is considered by the teacher to be appropriate for student learning.

Issues to be Covered During the Consultation – Principal

- Confirmation of the class lists and IEPs
- The principal must gather and discuss the relevant information for the consultation dialogue, which is not a one-way conversation.
- Principals may have to ensure new teachers are informed about relevant matters specific to the school and how it operates.

- The consultation must be thoughtfully, carefully organized and conducted in good faith.

Issues to be Covered During the Consultation – Teacher

- There is a reciprocal obligation on teachers to participate fully in good faith in the consultation process. There must be reciprocal disclosure of the information about any matter that may affect the appropriateness of the class for student learning and some dialogue about this critical issue.
- Arbitrator Dorsey commented as follows, “If it is the teacher’s opinion that the organization of the class is not appropriate for student learning, then the teacher is expected to articulate some basis for the opinion **why** the organization of the class will likely adversely affect the normal learning expectations for a class that meets the class size and composition standard, which is presumed in the *School Act* to be appropriate for student learning.”
- The teacher’s basis for his/her agreement or disagreement should be based on the definition in Bill 33, not on a goal or the ideal.

Part Three – “In the opinion of...”

Principal’s Opinion – “Appropriate for student learning...”

- Although for grades 8-12 of over 30 students and/or K – 12 classes that have in excess of 3 students with an entitlement to an IEP as defined in Bill 33, the agreement of the teacher is **not** required under Bill 33, before the principal reaches his/her own opinion (with or without changes to size, composition or supports) as to whether the class is appropriate for student learning. The principal must *consider* the teacher’s information, opinion and most importantly the reason/rationale for their opinion provided during the consultation.
- Arbitrator Dorsey commented, “It must take its meaning from the context in which it is used. That context is that the first mandate for a board of education is to “ensure” the class size and composition standard is met for each class. Ensuring is not a goal or ideal. It is a clear direction. Exceeding the class size standard is not to be a norm, but a permissible anticipated exception to occur with some frequency in Grades 8-12. There is no easily discernible measure of how frequent it was anticipated the class composition standard of three students with an IEP would be exceeded at any grade level.”
- As indicated earlier, when formulating his/her opinion, the principal can take into consideration the subject matter of the class and the relevance of the various IEPs.

- Arbitrator Dorsey commented, “It has been and continues to be common experience that certain courses in grades 8 – 12 frequently have more than thirty students in a class. The most often cited examples are Band, Choir, Drama and Physical Education classes.”
- Arbitrator Dorsey confirmed that Bill 33 makes no distinction between the types of classes, (i.e., shop, art, science labs, band, etc.), but this can be taken into consideration when formulating his/her opinion.
- Teacher workload is not addressed under Bill 33

Following the Consultation and Opinion of the Principal

- It is the obligation of the principal to retain copies of class lists or other documents used in the Bill 33 process on and before September 30.
- There is no requirement for forms or joint forms to be used; however, it is important that the principal has an accurate summary of the information covered during the consultation. The important point is the need to record the information of the consult, whether or not the teacher is in agreement, and if not, why.
- Arbitrator Dorsey has expressed that the teacher’s agreement/disagreement and rationale is an important component for the principal and superintendent to consider when forming their opinions. As a result it is our advice that the teacher’s agreement/disagreement and rationale be recorded in writing and signed off during the consultation.
- Although forms are not required, BCPSEA previously provided districts with various suggested template forms for recording the information of the consultation. In the coming days, given the comments made by Arbitrator Dorsey, BCPSEA will be revising these forms to be consistent with the Dorsey award. Please disregard any previous forms that BCPSEA may have provided.
- Although there is no requirement for any follow-up written communication from the principal to the teacher, Arbitrator Dorsey indicated that the teacher must be informed that the process is over and told what the outcome is.
- The next step is for the principal to inform the superintendant of his/her opinion with respect to the classes being appropriate for student learning. Although it is not required by Bill 33, it is recommended that this notice be in writing.
- Furthermore, the principal is to provide the superintendent with information on whether the teacher agreed, disagreed or provided no opinion on whether the teacher believed the class was appropriate for student learning.

Superintendent's Opinion – "Appropriate for student learning..."

- Superintendents are not expected to have the same level and knowledge with respect to the individual classes as that of the principal.
- The superintendent's opinion is predicated on their "organizational leadership accountability within a government structure."
- The superintendent's opinion will rely largely on "structured processes", "delegated responsibility" and the "existence and reasonableness of the principal's opinion."
- When forming his/her opinion, the superintendent must be informed:
 1. Which grade 8-12 classes exceed 30 students
 2. Which K-12 classes have in excess of three students entitlement to an IEP as defined in Bill 33
 3. Whether the teacher agreed, disagreed or provided no opinion on whether the teacher believed that the class was appropriate for student learning.

Part Four – Union Responsibilities/Representation

Union Responsibilities

- Arbitrator Dorsey has clearly stated that it is the responsibility of the union to inform the employer of any disagreements with the organization of the classes and, if not resolved, file timely grievances.
- It is recommended that shortly after September 30th the employer request a meeting to confirm and discuss which classes under the BCTF policy grievance the union is in disagreement with, and consider any issues brought forward by the union. If the union declines to provide the information in a timely fashion, it is recommended that this be recorded and confirmed in writing to the union.

Please Note: Although the school year has yet to commence, the BCTF has already filed a policy grievance for the 2009/10 school year which covers every class and district in the province. BCPSEA will be discussing with the BCTF how they envision implementing this portion of the Dorsey award. As a result, there may be further advice on this issue at a later date.

Union Representation

- Arbitrator Dorsey wrote, “Similarly, the class size provisions of the *School Act* do not address attendance and participation by union staff representatives at consultation meetings. In some districts, this may be addressed in the collective agreement.”
- The right to union representation does not arise out of the *School Act* but may arise out of the collective agreement. Districts should review the right to representation language in their particular collective agreements.
- It was noted in the award that in 6 of the 7 districts staff representation were present during the consultations.
- While staff representatives may or may not be present during the consultation, the requirement under Bill 33 is to consult with the “teacher”. Principals should not meet with staff representatives as a substitute for receiving the teacher’s views under the “consult” requirements of Bill 33.
- Further, Arbitrator Dorsey indicates that “There is no provision in the *School Act* for the union or its representatives to waive the consultation to which teachers are entitled under section 76.1.”

Part Five – Post September 30th

New Classes, Exploratory, Electives and Semester Systems

Please note: this issue was not addressed or commented upon by Arbitrator Dorsey in his award.

- For new grade 8-12 classes that are over 30 students and/or K – 12 classes that have in excess of 3 students with an entitlement to an IEP as defined in Bill 33 that start after September 30th, the requirements of subsections 76.1 (2.1) to 76.1(2.3) of the *School Act* apply. These include the requirement to:
 1. consultation between the teacher and principal
 2. opinions of the principal and superintendent that the organization of the classes are appropriate for student learning.
- Although there are no timelines stipulated in Bill 33 for meeting the two requirements triggered for new classes after September 30th, it is our recommendation that these 2 requirements be met prior to these new classes commencing or within a reasonable period of time after they have commenced.

- The information with respect to consultation and opinion of the principal and superintendent described earlier in this document would apply.

Existing Classes that Increase after September 30th

BCPSEA is still reviewing this issue at this time and will provide advice at a later date.

Part Six – District Averages and Grades K–3

The “Munroe Award” – January 2006

Following is a summary of the interpretive issues stemming from the “Munroe” award concerning the application of s.76.1 of the *School Act* and Regulation with respect to district averages and K-3. While the award dealt specifically with the Class Size Regulation, as it existed in the 2002/03 school year, the reasoning with respect to district averages and K–3 continues to apply. There are three interpretative issues that arose from this award:

1. When must school districts be in compliance with statutory class size numbers?

Boards are required to ensure compliance by September 30 and to maintain compliance thereafter. In other words, there is a grace period during September but on September 30 and throughout the remainder of the year classes must comply with the *School Act*.

2. What is the proper method for reporting district-wide class size averages? Should the number reported reflect normal mathematical rounding?

Averages fixed by section 76.1(1) cannot be exceeded, even fractionally. In other words, normal mathematical rounding is not to be applied.

3. What are the individual class size limits for split classes?

The maximum permissible class size for a K-1 split is 22; for a grade 3/4 split it is 24. The general rule should be that the requirements for the youngest children enrolled should apply to the entire class.

Part Seven – Class Size Provisions for Grades 4–7

Section 76.1 of Bill 33 states:

- (2.1) *Despite subsection (1) but subject to subsection (2.4), a board must ensure that the size of any class for any of grades 4 to 7 in any school in its school district does not exceed 30 students unless*
- (a) *in the opinions of the superintendent of schools for the school district and the principal of the school, the organization of the class is appropriate for student learning, and*
 - (b) *the principal of the school has obtained the **consent** of the teacher of that class.*

Consent of the Teacher is Required by September 30th

- For grade 4-7 classes that are over 30 students the following two conditions must be met by September 30th:
 1. Consent of the teacher
 2. opinions of the principal and superintendent that the organization of the classes are appropriate for student learning.
- If a grade 4–7 class is to exceed 30 students, the principal must ensure that the teacher of the class has freely consented to the proposed class room organization.
- Although this consent is not required to be in writing under Bill 33, it is our recommendation that this consent be verified in writing by the teacher.

Part Eight – Next Steps

With respect to any redress issues and the remainder of the classes covered by the BCTF's grievances for the 2006/07, 2007/08 and 2008/09 school years, BCPSEA will meet with the BCTF to discuss resolution and/or a process to resolve. Should the parties be unable to resolve the outstanding issues, Arbitrator Dorsey has retained jurisdiction for the 2006/07 and 2007/08 school years and has been appointed by the parties as the arbitrator for the 2008/09 school year.

Until such discussions occur between the provincial parties, we ask that districts not discuss these matters with their local unions.

Questions

If you have any questions concerning the implementation of the award or its application for the 2009/10 school year, please contact your BCPSEA liaison.