



Teacher Collective Agreement

ADMINISTRATION BULLETIN



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Please copy to:

- School District Teacher Issues Contacts
- Trustees
- Management Staff
- Principals and Vice Principals
- BCPSEA Board of Directors
- Management Partner Associations
- Ministry of Education
- British Columbia Teachers' Federation

By E-mail: 2 Pages

In This Issue:

- **Bill 33 – Labour Relations Implications**
 - Arbitrability
 - Right to Representation

Bill 33 – Education (Learning Enhancement) Statutes Amendment Act, 2006

The following information is provided on the assumption that Bill 33 will be enacted as tabled.

Arbitrability

In 2005, the BC Court of Appeal ruled that arbitrators have jurisdiction to determine whether there has been a violation of s. 76.1 of the *School Act* and/or the *Class Size Regulation*. We have received legal advice that the amendments in Bill 33 will have no effect on that ruling and that arbitrators will have jurisdiction over alleged violations of the new School Act class size/class composition provisions affecting teachers' conditions of employment.

It is important that school boards and district staff follow the processes outlined in the Act as it is anticipated that the grievances will include a consideration of whether or not process was followed in establishing an intermediate or secondary class with more than 30 students and/or placing more than 3 students with individual education plans (IEP) in a class. The following information may assist in ensuring that a district's practices will meet an arbitral review.

It is important to note that the only students with IEPs included in the count are those with IEPs designed under the Individual Education Plan Order, Ministerial Order 638/95 excluding gifted students which must be read in conjunction with Special Needs Students Order, Ministerial Order 150/89.

Both consent and consultation require that the teacher involved be given a reasonable opportunity to have meaningful input into the final decision. All necessary information should be shared with the teacher if the Principal is proposing to establish a Grade 4-12 class of more than 30 students or to place more than 3 students with an IEP in a class.

However, a teacher's "**consent**" requires the teacher's voluntary agreement to a proposal made by the Principal. Recognizing that the organization of classes is often a collegial activity, 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 classroom organization.

While "**consultation**" requires that the teacher be involved in meaningful discussions in good faith, the Principal is not seeking permission and the teacher does not have to consent to the final decision. In other words, the teacher does not have the right of veto.

Right to Representation

It appears the BCTF will be very involved with teachers who enter into discussions under sections 76.1(2.1)(b), (2.2)(b) and (2.3)(b) of the *School Act*.

In one local, members were directed by the Executive to contact the President before entering into any consultations which might lead to "violating the class size maximums, and the maximum number of 3 IEP students in any class". It should be noted that a "violation" does not exist if the requirements in the *School Act* have been met.

Another district has been asked if teachers can request a union representative at those discussions and/or whether the union can invite itself to the discussions. Such a right 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 agreement.

It should be noted that there is no requirement to hold discussions regarding class size and/or composition during instructional hours. However, some agreements which provide for union representation require release of the union representative without loss of pay if the meeting takes place during instructional time. Again, you should review the language in your collective agreement.

Questions

If you have any questions with regard to Bill 33, please call Mike Hancock at 604.730.4510 or Bonda Bitzer at 604.730.4505.

Distribution of this Bulletin

Please ensure that this bulletin is circulated to all administrative staff, in both the district office and schools, who must rely on the collective agreement in the performance of their duties.