



Harris & Company ^{LLP}
14th Floor, 550 Burrard Street
Vancouver, BC
Canada V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
harrisco.com
info@harrisco.com

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*Eric J. Harris Q.C.
D/ 604 891 2222*

By EMail

*eharris@harrisco.com
Our file 000572.356*

Workplace Law

Labour Relations Board
Suite 600, Oceanic Plaza
1066 West Hastings Street
Vancouver, BC V6E 3X1

Attention: Bruce Wilkins, Associate Chair - Adjudication

Dear Mr. Wilkins:

Re: Application to Vary Essential Services Order No. 74/2014

Please accept this letter as a formal application to amend the essential services Order No. 74/2014 to include the designation of additional essential services connected with the provision of instructional services by BCTF members in July and August of this year. The areas which require designations are as follows:

- Summer Schools – Secondary remedial programs provided to students who have failed a secondary level course
- Year Round Schools – Five (5) elementary schools operate on a year round calendar. They are currently in the second month of their final three month period in session, which will end at the end of July, 2014. These schools have been closed since June 16, 2014.
- Students in Custodial or Health Care Facilities – educational programs to these vulnerable students are provided on a year round basis by teachers employed for this purpose.

Background

In 2005, BCPSEA and the BCTF concluded a hearing before the BC Labour Relations Board, addressing the issue of how long teachers could fully withdraw services from the classroom

before the essential services provisions of the *Code* were engaged. The dispute in 2005 ended before a decision was rendered.

In 2011, BCPSEA and BCTF were again engaged in a labour dispute. They requested that Mark Brown, the Associate Chair assigned to the 2005 hearing, issue a decision on the basis of the evidence and arguments advanced in 2005. The parties were provided with the opportunity to provide supplemental arguments, and a decision was rendered in BCLRB No.161/2011.

The recommendations contained in the Brown decision, while not formally binding, should be given significant weight. The recommendations are those of a former Vice-Chair with significant experience in this sector, and were made as the result of an agreed upon process involving extensive evidence and argument. These findings include:

1. The essential service provisions of the *Code* require the Board to determine the point at which serious and immediate disruption to educational programs will result from a full withdrawal of services.
2. The application of the serious and immediate disruption test may vary from grade to grade, and may not be the same for any time of year.
3. In the context of a dispute at the start of the school year, a full withdrawal of instructional services can be permitted for up to ten (10) days.
4. After ten (10) days have elapsed, any further withdrawal of services would need to be re-assessed, and should include a consideration of grade and time of year.
5. Pending the outcome of the process in (4) above, a maximum of one (1) day week or 20% of instructional services could be withdrawn without resulting in serious and immediate disruption.

The BCTF have been engaged in a full withdrawal of services since June 17, 2014. The ten (10) day period identified by Brown will expire on June 30, 2014. Our hope was that a resolution of this matter would render a further application moot. However, there is no indication that an agreement between the parties is imminent. For most students in British Columbia, the last day of the 2013-2014 school will arrive at the end of June, within the ten (10) day period specified by Mr. Brown.

For many other students, however, the school year does not end at the end of June. Their loss of educational programming is ongoing or imminent, and will continue during the summer months. For this reason, it is necessary to now address the issues considered in BCLRB B161/2011 in the context of the current dispute.

For the purposes of this application, we have accepted the recommendations of Mr. Brown. There are a range of programs offered by Districts which are taught by bargaining unit employees over the summer months. Some of these are ongoing educational programs which will have been suspended for a period of ten (10) days on June 30, 2014 (e.g. year round schools), while others (e.g. remedial programs) are tightly compressed and will quickly approach a loss of instructional time comparable to the upper limit recommended by Mr. Brown.

The ten (10) days recommended by Brown represents approximately 5% of the instructional days in a standard school calendar. This figure was recommended in the context of a dispute at the beginning of the school year. The ramifications of a withdrawal at the end of a school year are more significant, given the importance of end of year assessments, and the lack of any ability to make up lost school time through the compression or re-prioritization of learning outcomes for the remainder of the year. This impact is magnified in the higher grade levels, where learning outcomes are often sequential and cumulative, and assessment outcomes are relevant to student programming, scholarships, and post-secondary opportunities.

Designations Sought

In our submission designations are required in the following areas:

1. Summer School

Many Districts offer remedial summer school programs at the secondary level. In our submission, failure to offer these programs will result in serious and immediate disruption to academically vulnerable students. Remedial programs are open only to students who have failed a secondary level course. For students in Grades 10-12, these courses represent a critical opportunity to complete graduation requirements, or attain a prerequisite for a course in the next school year.

In our submission, designations are required to ensure that all instructional, assessment and reporting services provided by teachers for these classes are continued in the normal course, together with any support staff necessary to continue these programs.

2. Year Round Schools

The following BC schools operate on a year round schedule:

- Spul'u'kwuks Elementary and Garden City Elementary in Richmond,
- Douglas Park Spul'u'kwuks Elementary Community (Elementary) in Langley,
- Kanaka Creek Elementary in Maple Ridge;

- Cataline Elementary in Cariboo-Chilcotin.

As of June 30, 2014, students in these schools will reach the ten (10) day threshold identified in BCLRB No. 161/2011. In addition there are students enrolled in year round educational programs through distance learning. There is obviously some complexity to the issues raised by this aspect of the application. Depending on the position of the BCTF, any hearing in this matter may be lengthy.

In our submission, consistent with BCLRB No. 161/2011, and pending a final order from the Board, the Board should issue designations requiring that these year round educational programs be continued at a minimum of 80% of normal levels (equivalent to four days in five), effective July 1, 2014.

3. Students in Custodial or Health Care Facilities

Custodial Service Centres

Youth Custody Service Centres are legally designated facilities that house young offenders who have been ordered by the court to serve a period of time in custody, or for youth who have been detained in custody pending further court appearances. Youth may be held in custody centres for all types of offences, ranging from persistent property offences to serious violent offences.

Nineteen (19) teachers employed by local School Districts are presently assigned to Youth Custody Centres:

- Operated by SD 41 (Burnaby)
 - Maples Adolescent Treatment Centre, Burnaby (9 Teachers)
 - Burnaby Youth Custody Services (13 Teachers)
- Operated by SD 57 (Prince George)
 - Prince George Youth Custody Services (3 Teachers)

Youth accessing custody services are some of the most challenged youth in our province and ongoing immediate disruption in educational services delivery within the centres is serious and impacts the rehabilitation and re-integration needs of the youth accessing our services. There is a significant disproportion of aboriginal youth within the youth custody system. As it relates to education, the gap between Aboriginal peoples and non –Aboriginal peoples continues to widen and consists of the differences in levels of educational attainment, dropout rates, in school problems and social economic concerns.

All students are subject to an educational assessment upon admission. The absence of this information, provided by teachers, creates gaps in the development of Individual Crisis management plans, behavioural management plans and further reduces the effectiveness of release planning.

The ongoing delivery of educational programs in a custody environment breaks the cycle of upheaval and dislocation for youth and creates a significant opportunity to provide culturally appropriate curriculum and reintroduced them to a system of learning that can continue upon release.

Maples Adolescent Treatment Center

The Maples provides tertiary provincial mental services to youth 12-17 years old. As a part of the array of services provided to youth in care, provincial education services are delivered by the Burnaby school district. Those teachers provide valuable assessments critical to the development of comprehensive care plans and classroom school curriculum throughout the year including the summer program. There are currently nine (9) teachers assigned to Maples.

The Maples youth experience some of the most serious mental health challenges including schizophrenia, anxiety disorders, conduct disorders, bipolar, and depression. They are frequently absent from school in their communities due to these challenges and when they come to the Maples they are afforded individualized educational plans that support them to keep up with their peers and successfully reintegrate into school systems in their community.

The testing that is completed by these teachers provides the assessment required for educational designations and funding in the next school year. Fall 2014 educational designations and funding will be impacted by the lack of assessments by teachers.

Maples also provide a comprehensive care plan in its Response Program and as a part of that service school assessment teachers provide valuable assessments that support the formulation of the care plan. In 2013, Maples completed 156 Care plans for youth. Admissions to the Response Program for the purpose of developing a care plan requires the contributions of the teacher's assessments. Failure to provide to provide these assessments means that admissions will be stopped.

Hospital Programs

- **Operated by SD 39 (Vancouver):**
 - BCCH Child Psychiatric Unit School Program
 - BCCH Adolescent Psychiatric Unit School Program

- GF Strong Rehabilitation Centre School Program
- Sunnyhill Hospital School Program

[more locations to be inserted]

Teachers provide ongoing educational programs to ill children in the above noted facilities. These programs have not been in operation since June 16, 2014. Students in these facilities require continued support to ensure that their health issues impact their educational progress to the minimal extent possible and that consequences of their illness and/or injury are taken into account when developing or assessing their ongoing educational program and capabilities. Continued educational opportunities are also an important mechanism for helping children cope with hospitalization and the management of their illness. The continued absence of teachers from these programs will have a serious and immediate impact on the education programs of students.

If teachers remain on strike and are not providing these services, this will have a serious impact on very fragile youth and set them back even further in their education and integration back into their schools.

In our submission, the services provided by teachers must be designated essential at all of the above facilities so that critical instructional and educational assessment services are resumed effective July 1, 2014.

Conclusion

Given the procedural and substantive issues raised by this application, we request that a case management meeting be arranged at the earliest opportunity.

Yours very truly,
Harris & Company LLP

Per:

Eric J. Harris Q.C.

EJH/MH/mh

cc BCTF, Attn: Craig Bavis
cc CUPE, Attn: Matt Yun
cc Affected Support Staff Unions (see attached list)

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