

LOU 17 Memorandum of Agreement Implementation Guide

*Implementation process for language restored by
Memorandum of Agreement re: LOU 17: Education
Fund and Impact of the Court Cases – Final Agreement*

Implementing the Supreme Court Decision

Overview

The November 2016 Supreme Court of Canada decision is the end of a 14-year legal battle that resulted in a declaration that the *Education Improvement Act* was unconstitutional and that the BCPSEA-BCTF collective agreement provisions that were deleted by the *Public Education Flexibility and Choice Act* in 2002 were to be restored as of November 10, 2016. This decision of the Supreme Court of Canada triggered Letter of Understanding No. 17, which reopened bargaining between the BCPSEA and BCTF in relation to the restored provisions. See [Appendix A](#) for a summary of the historical and legal background that led to the Supreme Court decision.

About this guide

This guide provides an overview of the Memorandum of Agreement (MoA) reached on March 3, 2017, between the provincial parties. The MoA provides language related to how districts are required to implement the restored language, with a focus on non-enrolling staff, process language, and class size and composition.

This guide includes an overview of each issue, summarizes the key discussions that took place at the table, and includes answers to districts' most frequently asked questions. We will update this guide as needed.

Please note that this Implementation Guide provides guidelines only and does not replace established collective agreement interpretation.

What is the Memorandum of Agreement?

The MoA is a three-party agreement between the Government of BC, BCPSEA, and BCTF that broadly outlines how to implement the restored language. Specifically, the MoA provides finality to the restoration of the deleted language to the collective agreement. It provides a process for how the restored language will be implemented and makes some changes to allow for the restoration within the current educational context.

The MoA also defines a dispute resolution process to avoid the potential for hundreds of grievances across the 60 districts on this matter. This dispute resolution process allows the provincial parties to support local parties and “trouble-shoot” if issues emerge.

The MoA takes effect at the start of the 2017/2018 school year.

What is the Letter of Understanding No. 17?

The provincial collective agreement for July 1, 2013 to June 30, 2019, included Letter of Understanding No. 17 (LOU #17) that extended the Education Fund in each of the five years of the agreement to address working and learning needs by hiring additional teachers. LOU #17 also included a reopener clause:

The above Education Fund is subject to the final appellate judgment on the appeal of the 2014 decision of Justice Griffin. If the final judgment affects the content of the collective agreement by fully or partially restoring the 2002 language, the parties will reopen the collective agreement on this issue and the parties will bargain from the restored language. The Education Fund provision will continue in effect until there is agreement regarding implementation and/or changes to the restored language.

The BCTF and BCPSEA reopened bargaining on November 30, 2016 and began discussions regarding the implementation of and changes to the restored language. The parties reached an agreement on March 3, 2017 and signed the MoA. .

Consequences of Supreme Court decision

As a result of the Supreme Court of Canada decision and LOU #17 discussions, districts must now restore the language within their local agreements negotiated prior to 2002. The main issues that districts need to immediately address are:

- [ratios for non-enrolling teachers](#) (including teacher librarians, counsellors, learning assistance teachers, special education resource teachers, and English as a second language teachers)
- [process and ancillary language](#) (for example, for school-based teams and staff committees)
- [class size and composition](#).

The restoration of the language has created significant complexities for districts as there are approximately 1,400 affected local and provincial clauses. As much of the language in each local agreement was negotiated and written well before 2002, there will be some challenges interpreting outdated terminology (for example, in the way the language refers to our students with special needs) and being misaligned with current educational practices (such as the use of “segregation” or “mainstreaming” models versus an inclusive education approach).

Districts are currently in the process of planning for and determining their staffing requirements for the upcoming school year. Navigating through this newly restored language will require districts’ thoughtful analyses and conversations with their local union.

Implementing the restored language: Roles and responsibilities

BCPSEA is able to provide districts with guidance and assistance on how to interpret the provincial language and can offer advice on the rules of interpretation as they apply to understanding locally negotiated language.

As a district, you are responsible for implementing the newly restored local language and you will need to be as accurate as possible when doing so. This means that you will need to build your understanding of your local restored language and how it operated in your district. To do so, you may need to identify and collect relevant local history that is pertinent to the application of the restored language by locating bargaining notes, grievance settlements, arbitration decisions, and letters outlining intent, as well as identifying individuals who understand the practices that were in place prior to 2002. You will also need to take a look at the processes available in the MoA.

Once you have analyzed your language and considered your district's past practice, you will need to apply your professional knowledge to decide how the restored language applies in your district, taking a sound position based on the available information. If the union disagrees with your informed position, the onus rests on them to provide sufficient tangible evidence to the contrary.

Bargaining in 2019

How does the Supreme Court decision affect bargaining in 2019?

BCPSEA is beginning its preparation work for the next round of bargaining. As part of this process, consultation with districts will be occurring so that BCPSEA can develop a set of bargaining goals based on school district priorities.

The provisions restored by the decision of the Supreme Court of Canada may enhance or decrease districts' abilities to meet their educational priorities. It will be important for BCPSEA to capture this information and potential evidence of where the restored language does or does not work for districts. This information will help inform the bargaining direction on these topics.

To summarize, it is important that districts document any challenges they face when implementing the restored language so that BCPSEA can obtain evidence to best illustrate the educational and operational concerns behind any decision to seek new or amended language.

Non-enrolling teachers

Overview

In 1998, the Agreement in Committee (AiC) was negotiated between government and the BCTF. This language provided a ratio that districts had to comply with for the following five categories of non-enrolling teachers:

- Teacher Librarians
- Counsellors
- Learning Assistance Teachers (LAT)
- Special Education Resource Teachers (SERT)
- English as a Second Language Teachers (ESL).

These ratios are now restored and districts must examine their staffing ratios and hire according to the ratios outlined in the MoA, unless the district local had superior provisions. If this is the case, districts must follow the superior provisions. Please refer to your district's Individual Implementation Summary Sheet (provided to you by BCPSEA) to ensure the correct ratio is adhered to. If you become aware of an error on your Implementation Summary Sheet, please contact BCPSEA immediately.

The student number that you will use to calculate your ratios – and that will determine compliance – is your total enrolment-based funding figure on your September 30 1701 count. This includes your regular students, as well as students in continuing education, alternate schools, and distributed learning as reported in your *Interim Operating Grants Following the September Enrolment Count* document found on the Ministry website under Operating Grants: <http://www2.gov.bc.ca/gov/content/education-training/administration/resource-management/k-12-funding-and-allocation/operating-grants/k12funding-16-17>. Do not include any international students.

Once you have your 1701 count, calculate your non-enrolling staffing level requirements as follows (**unless superior provisions apply – please see the Implementation Summary Sheet provided by BCPSEA to verify if you have superior provisions**):

- Teacher Librarians 1 to 702 students
- Counsellors 1 to 693 students
- LATs 1 to 504 students
- SERTs 1 to 342 students
- ESL teachers 1 to 74 ESL students.

Discussion at the table

Discussions at the table focused on four main areas:

- blending non-enrolling teacher categories
- SERT positions
- qualifications
- caseload limits.

Blending LAT, SERT and ESL categories

The parties at the table recognized that the categories LAT, SERT, and ESL no longer reflect the way that service is delivered to students. As a result, the MoA allows districts to calculate the total number of teachers required in these three categories, and then add the three totals together to determine the number of non-enrolling teachers in this category that the district is required to fill.

The agreement language that was drafted to address this situation is outlined below (section II.7.ii of the MoA):

For the purpose of posting and/or filling FTE, the Employer may combine the non-enrolling teacher categories set out in paragraph 1(i)(c)-(e) into a single category. The Employer will be deemed to have fulfilled its obligations under paragraph 1(i)(c)-(e) where the total non-enrolling teacher FTE of this single category is equivalent to the sum of the teachers required from categories 1(i)(c)-(e).

The following example illustrates how this is intended to work. To comply with the AiC language, a district of 7967.2 FTE students would need to hire 17.63 FTE LAT positions. However, the MoA allows us to combine the LAT, SERT, and ESL categories. When we do this, we see that the district currently employs 79.15 FTE across all three categories, exceeding the combined ratio requirement of 44.26 FTE by 34.89 FTE. Because it can combine the three categories, the district is not required to post positions to meet the individual ratio requirements for these three areas. The district will, however, need to add 0.9 FTE of a Teacher Librarian to meet its collective agreement requirements.

SAMPLE DISTRICT	T/L	T/C	LAT	SERT	ESL	Total
Student FTE	7967.2	7967.2	7967.2	7967.2	45	
Ratio	702.0	693.0	452.0	342.0	13.5	
AiC	11.35	11.50	17.63	23.30	3.33	67.10
Actual	10.44	14.63	0	73.59	5.56	104.25
Difference (Act - AiC)	-0.90	3.14	-17.63	50.30	2.23	37.15

SERT and LAT positions

Not all districts have positions with the title of Special Education Resource Teacher (SERT). You will need to determine which of your current positions can be counted in this category. To do so, refer to the original AiC definition of SERTs, which states:

Special education resource teachers shall be defined as those teachers assigned to programs 1.16, 1.17 and 1.18 by School Districts on Ministry form 1530.

The Ministry Reporting Categories from pre-2000 defines the program numbers as follows:

Program Number	Category Name
1.16	Severe Behaviour
1.17	High Incidence / Low Cost
1.18	Low Incidence / High Cost

Programs 1.16, 1.17 and 1.18 are broad categories. This means that you should be counting all teachers who provide service to students in the following areas as your SERTs:

- students with severe behaviours
- high incidence/low cost students
- low incidence/high cost students.

Some examples of these types of position include behaviour support teachers, vision support teachers, speech language pathologists, and psychologists.

The types of teachers that you would include in your LAT category would be those non-enrolling teachers who provide direct service to those students requiring learning support. Early intervention literacy or numeracy teachers, for example, would be included in this count.

Qualifications

There was discussion at the table relating to qualifications for these non-enrolling positions, and that it is not the intent to hire teachers who are not qualified for these positions. Recognizing that in some cases it may be difficult to find qualified teachers in these areas, the following paragraph was included in the agreement (section II.7.v of the MoA):

Where a non-enrolling teacher position remains unfilled following the completion of the applicable local post and fill processes, the local parties will meet to discuss alternatives for utilizing the FTE in another way. Following these discussions the Superintendent will make a final decision regarding how the FTE will be deployed. This provision is time limited and will remain in effect until the renewal of the BCPSEA-BCTF provincial collective agreement. Following the expiration of this provision, neither the language of this provision nor the practice that it establishes regarding alternatives for utilizing unfilled non-enrolling teacher positions will be referred to in any future arbitration or proceeding.

Caseload limits

Some district non-enrolling ratios have language related to caseload limits. The MoA included the following paragraph to address this (section II.7.iv):

*Where a local collective agreement provided for services, caseload limits, or ratios additional or superior to the ratios provided in paragraph 1(i) above – the services, caseload limits or ratios from the local collective agreement shall apply. **Provisions to be identified in Schedule “A” to this Memorandum of Agreement.***

Given that the language varies greatly in those districts that include caseload limit language, how it should be implemented will depend on your local language and past practice.

Process and ancillary language

Overview

The restored clauses include a number of provisions that describe local school- and district-based processes related to how students with special needs will be discussed, placed in classes, and case-managed and/or designated. While some districts have very little defined in this regard, others include extensive and detailed descriptions about how, at both a school and district level, these processes will unfold. This ancillary language may also include details related to staff committees and the committees' input regarding class organization and other matters. This locally derived process language is very specific to the culture of each district. All of these clauses are now legally restored.

The MoA requires that the majority of this language be implemented by the start of the 2017/2018 school year, but it allows for additional time to implement more complex language. Specifically, language relating to school-based teams, staffing committees, and the role and function of these committees is to be implemented at the start of the 2017/2018 school year. District-based language or school-based processes that reference district-level processes should be implemented as quickly as possible, and by no later than January 31, 2018.

Discussion at the table

Two main areas were discussed:

- timeline for full implementation
- incorporating current and preferred practices.

Timeline for full implementation

The restored process and ancillary language falls into two main categories:

- the language that is school based in nature and that can be restored quite easily
- language used in some districts that defines processes at a district level that will involve more complexities (such as hiring additional staff or assigning a budget) and potentially the creation or restoration of dormant committees or processes before it can be fully restored.

Recognizing that some districts' language was more complex, the MoA includes a paragraph explaining the two timelines as follows (section III.10):

The Provincial Parties recognize that it may take time to transition from existing practices to the processes that are defined in the restored language. The 2017/2018 school year will serve as a transition period for full implementation of the restored language by January 31, 2018 as follows:

[Continued on following page]

A. School-Based Process and Ancillary Language

*Restored school-based process and ancillary language including, but not limited to, language pertaining to school-based teams, staffing committees, and the role and function of staff committees, shall be implemented upon the commencement of the regular 2017/2018 school year. **[Provisions to be identified in Schedule “A” to this Memorandum of Agreement]***

B. District-Based Process and Ancillary Language

*The following restored collective agreement provisions shall be implemented as soon as practicable but by no later than January 31, 2018. During this transition period, current practices may be utilized while the necessary supports are put in place to implement the process and ancillary language. **[Provisions to be identified in Schedule “A” to this Memorandum of Agreement]***

- i. Restored school-based process and ancillary language that makes reference to a district-level process, and;*
- ii. Restored district-level processes and ancillary language including, but not limited to language pertaining to district committees and screening panels.*

Incorporating current and preferred practices

Discussion revealed that some locals may have processes in place that have evolved over time and that are seen by both parties as more favourable than the processes described in the restored language. To accommodate for this, the MoA includes language to allow the parties to renegotiate language to better reflect their current context and preferred processes.

If your district would like to pursue this, contact your BCPSEA liaison and we will work with you to draft language that will be approved by the provincial parties. This is outlined in section III.11 of the MoA:

*Where the local parties agree they prefer to follow a process that is different than what is set out in the applicable local collective agreement process and ancillary provisions, they may request that the Provincial Parties enter into discussions to amend these provisions. Upon agreement of the Provincial Parties, the amended provisions would replace the process and ancillary provisions for the respective School District and local union. **[Provisions to be identified in Schedule “A” to this Memorandum of Agreement]***

Class size and composition

Overview

Restoring the language related to class size and composition is a complex undertaking and will have the most significant impact to districts in terms of how classes and schools are organized. This section offers some context to the discussions that took place on this topic and describes the intent behind certain sections of the agreement.

It is important to note that while both parties agreed it was important that this language be restored, the needs of students are an important consideration as districts implement the restored language. For these reasons, you will notice that this statement has been included in paragraph 19 of the MoA.

Implementation of Class Composition Language

The BCPSEA-BCTF collective agreement provisions regarding class composition that were deleted by the Public Education and Flexibility and Choice Act in 2002 and again in 2012 by the Education Improvement Act will be implemented upon the commencement of the 2017/2018 school year. The Provincial Parties agree that the implementation of this language shall not result in a student being denied access to a school, educational program, course, or inclusive learning environment unless this decision is based on an assessment of the student's individual needs and abilities.

When you implement the restored language – and depending on your local language – you will need to consider the following:

- if your district has class composition language, you will need to determine how this language can be interpreted as it relates to the now outdated definitions of students with special needs that should be considered when organizing classes
- you will need to understand what the agreement requires you to consider in making your “best efforts” to achieve compliance with your local language
- you will need to understand how to provide a remedy for the affected teacher in situations where you have not been able to comply with the language.

Class size

Class size limits apply to all districts. In broad terms, class size language applies in four main ways:

- the K-3 provincial Memorandum of Agreement, which applies to all districts
- Grade 4-12 local class size language as bargained
- section 76.1 of the *School Act*, which applies to all districts
- specified classes, such as labs and certain secondary classes (not relevant to all districts).

K-3 class size: MoA or local language

For K-3, the class size limits outlined in the MoA at paragraph 14 will apply, unless your district's collective agreement had superior provisions. The MoA limits are the same as those established in the 1998 *Memorandum of Agreement K-3 Primary Class Size*.

For most districts the MoA applies and sets a maximum class size of:

- Kindergarten: 20
- Grade 1: 22
- Grade 2: 22
- Grade 3: 22
- Grade 3/4: The average of the class size maximum for Grade 3 and the class size maximum for Grade 4 (per paragraph 16). However, if the average results in a number higher than 24, then 24 is the class size limit in accordance with the *School Act*. See question 27 in the FAQs for an example of a split calculation per paragraph 16.

K-3 class size: School Act section 76.1

When applying your local or MoA class size language, note that Section 76.1 of the *School Act* is currently in effect and sets legislative class size limits.

The class size limits on primary grades under the *School Act* cannot be exceeded under any circumstance, even if your restored language contains a flex factor or other method of exceeding limits.

This means that under the *School Act* any class that includes:

- Kindergarten students cannot exceed 22
- Grades 1, 2, or 3 students cannot exceed 24

4-12 class size: MoA or local language

Almost every district has class size limits for Grades 4-12 contained in their restored language. In many cases, districts will have different class size limits established for intermediate and secondary classes, as well as for split and multi-grade classes. If your district does not have class size limits or if your restored local language provides for a number higher than 30, the *School Act* will apply.

4-12 class size: School Act section 76.1

If a district does not have class size limits or if the restored local language provides for a number higher than 30, the class size limit will be 30 in accordance with the *School Act* (unless the exceptions set out in subsection (2.1)(a) or (b) apply). The exceptions are:

- 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, or
- b) the class is in a prescribed category of classes:
 - an adult or continuing education class
 - a class conducted by means of distributed learning
 - a class that is part of an alternate program
 - a class that meets for the purpose of a work study or work experience program
 - a class that is limited to students enrolled in a specialty academy, as defined in section 82.1(1) of the Act
 - a music class, including band, choir, instrumental music and orchestra
 - a performing arts class, including drama and dance
 - a Planning 10 class
 - a board authorized leadership course.

Size of specified classes

In addition to the grade-specific limitations described above, language in approximately 40 districts in the province stipulates limits for specific classes such as Secondary English, Home Economics or lab courses. These limits are lower than the grade-specific limitations.

To find out your district's class size language, please refer to your district's Individual Implementation Summary Sheet provided to you by BCPSEA.

Class composition

Class composition refers to how the composition of any individual class will affect its size. The intent of the language, when it was bargained, was to address a teacher's workload when responsible for a particular class. Some, but not all, local agreements negotiated prior to 2002 included language around class composition, requiring districts to consider the unique needs of the students in a class when organizing classes and timetables.

Discussion at the table

Discussions at the table focused on four main areas:

- students with special needs
- student access to programs
- best efforts to achieve compliance
- remedies for non-compliance.

Students with special needs

The restored language that describes how students with special needs affect class composition varies widely from district to district – from referring to students as low incidence or high incidence, students with IEPs, and students with exceptional needs. Each district is unique.

It will be necessary for districts to have discussions with their special education staff, and, in particular, anyone who may have worked with this language in 2001 to determine what was intended and in practice at the time the language was removed. You will also need to use your reasonable judgment when determining which students need to be considered. Keep in mind that the restoration of these clauses does not provide for enhancements to the language, but instead provides the rights the local had before the language was removed.

Discussions at the table acknowledged that determining which students should be counted for purposes of composition is complex and highly technical. As such, the MoA includes a provision to establish a Class Composition Joint Committee that will meet over the 2017/2018 school year to come to agreement on a consistent approach to how composition impacts class size and teacher workload for those districts that have class composition language. Details about the defined process and goals for the Committee are outlined in paragraph 20 of the MoA.

While waiting for the outcome of the Committee, districts will have to interpret how the *intent* of the categories applies in their district. In general, however, the parties to the discussion did agree that for the 2017/2018 and 2018/2019 school years, when making decisions about class composition, districts would consider the current Ministry of Education definitions of special education designations and classifications and apply them on a without prejudice basis.

For your reference, we have provided a table from the Ministry of Education that may help in establishing your position related to the definitions in your local language.

Changes to Reporting Categories Pre-2002 to 2017				
1999	2000	2002	2006	Type of change
A = Dependent Handicapped	A=Physically Dependent			Name change to reflect current terminology.
B = Deafblind				No change
C = Moderate to Severe/Profound Intellectual Disability		C=Moderate to Profound Intellectual Disability		Name change to reflect current terminology and change in criteria for reporting.
D = Physical Disability/Chronic Health Impairment				No change
E = Visual Impairment				No change
F = Deaf or Hard of Hearing				No change
G = Autism			G=Autism Spectrum Disorder	Name change and change in criteria for reporting.
H = Severe Behaviour	H=Intensive Behaviour Interventions / Serious Mental Illness			Name change and broadening of the category to include Mental Illness, which changed the criteria for reporting.
J = Severe Learning Disability	Q=Learning Disabilities			Name change and change in criteria for reporting.
K = Mild Intellectual Disability				Name change and change in criteria for reporting.
M = Behaviour Disorder - Moderate	R=Moderate Behaviour Support/Mental Illness			Name change as two categories were combined and the category was broadened to include Mental Illness, which changed the criteria for reporting
N = Behaviour Disorder - Rehabilitation				
P = Gifted				No change

Student access to programs

Neither party wants the outcome of the implementation to result in students being denied access to a particular class or program. The following paragraph (II.19) was drafted to recognize this issue:

Implementation of Class Composition Language

The BCPSEA-BCTF collective agreement provisions regarding class composition that were deleted by the Public Education and Flexibility and Choice Act in 2002 and again in 2012 by the Education Improvement Act will be implemented upon the commencement of the 2017/2018 school year. The Provincial Parties agree that the implementation of this language shall not result in a student being denied access to a school, educational program, course, or inclusive learning environment unless this decision is based on an assessment of the student's individual needs and abilities.

Best efforts to achieve compliance

It was fully recognized that districts might not be able to comply with the language due to a number of circumstances. As such, there was considerable discussion about what a district must do before it is deemed that they have exhausted their efforts to comply with the language. For example, many districts may not have the space to expand to smaller classrooms, or some districts may not be able to hire a qualified teacher. Discussion at the table acknowledged these facts, which led to the drafting of paragraph 23 of the MoA:

Non-Compliance

Notwithstanding paragraph 10, the Provincial Parties recognize that non-compliance with class size and composition language may occur. Possible reasons for non-compliance include, but are not limited to:

- *compelling family issues;*
- *sibling attendance at the same school;*
- *the age of the affected student(s);*
- *distance to be travelled and/or available transportation;*
- *safety of the student(s);*
- *the needs and abilities of individual student(s);*
- *accessibility to special programs and services;*
- *anticipated student attrition;*
- *time of year;*
- *physical space limitations;*
- *teacher recruitment challenges.*

All that being said, it is the intent of the MoU that districts make their best efforts to comply with the language. There was an agreement at the table that districts would not, in any circumstance, seek remedy for teachers until all best efforts had been made to achieve compliance. Specifically, the language drafted to address this in paragraph 23 states the following:

Best Efforts to Be Made to Achieve Compliance

School Districts will make best efforts to achieve full compliance with the collective agreement provisions regarding class size and composition for the commencement of the 2017/2018 school year and thereafter. Best efforts shall include:

- A. Re-examining existing school boundaries;*
- B. Re-examining the utilization of existing space within a school or across schools that are proximate to one another;*
- C. Utilizing temporary classrooms;*
- D. Reorganizing the existing classes within the school to meet any class composition language, where doing so will not result in a reduction in a maximum class size by more than:
 - five students in grades K-3;*
 - four students for secondary shop or lab classes where the local class size limits are below 30, and;*
 - six students in all other grades.**

These class size reductions shall not preclude a Superintendent from approving a smaller class.

Note: For the following School Districts, class sizes for K-1 split classes will not be reduced below 14 students:

- 10 (Arrow Lakes)*
- 35 (Langley)*
- 49 (Central Coast)*
- 67 (Okanagan-Skaha)*
- 74 (Gold Trail)*
- 82 (Coast Mountain)*
- 85 (Vancouver Island North)*

E. Renegotiating the terms of existing lease or rental contracts that restrict the School District's ability to fully comply with the restored collective agreement provisions regarding class size and composition;

F. Completing the post-and-fill process for all vacant positions.

School Act and collective agreement class size limits

As Section 76.1 of the *School Act* remains in effect, a district must consider both the *School Act* class size limits as well as its local collective agreement class size limits when organizing classes. Specifically, if the *School Act*'s class size limits are lower than your local collective agreement language, you must meet the lower limits of the *School Act*. If your local collective agreement defines lower class size limits than the *School Act*, the lower limits of your local language will apply.

A quick guide to remedies

- If you exceed the MoA **kindergarten** limit of 20 or your lower local limit, you must make best efforts to comply, after which the remedy applies for up to 22 students. You cannot exceed 22 students under any circumstance as per the *School Act*.
- If you exceed the MoA **Grades 1-3** limit of 22 or your lower local limit, you must make best efforts to comply, after which the remedy for applies up to 24 students. You cannot exceed 24 students under any circumstance as per the *School Act*.
- If you exceed local language for **Grades 4-12**, you must make best efforts to comply, after which the remedy applies for up to 30 students. To exceed the *School Act* limit of 30 students, the superintendent and principal of the school must be of the opinion that the organization of the class is appropriate for student learning. If so, you may exceed 30 students. Remedy would also apply to students over 30.
- If your local language does not provide for a class size limit for **Grades 4-12** or your local limit is above 30, the *School Act* limit of 30 students applies unless either:
 - the superintendent and principal of the school are of the opinion that the organization of the class is appropriate for student learning or
 - the class is in a prescribed category of class (see [4-12 class size: School Act section 76.1](#) on page 12 of this guide or *The Class Size and Compensation Regulation*).

Compensation under Class Size and Compensation Regulation

Regardless of whether the class size violation originates from language in the *School Act* or your local language, you will provide the remedy as defined in the MoA. This is because, although the *School Act* remains in effect, the Ministry has recently amended *The Class Size and Compensation Regulation* (B.C. Reg 52/12). This regulation outlines the compensation formula that districts use to compensate teachers if their classes exceed 30. The amendment is as follows:

“Additional compensation

4. The additional compensation that, under section 76.1 (2.2) of the Act, a board must provide to an eligible teacher is the compensation set out for that purpose in the Memorandum of Agreement entered into by the British Columbia Teachers’ Federation, the British Columbia Public School Employers’ Association and the Ministry of Education on March 9, 2017”

Calculating remedies for non-compliance

If a district does not comply with the class size and composition language, the teacher will be entitled to a remedy. The formula that was drafted is as follows (paragraph 24.B):

Teachers of classes with the restored class size and composition provisions will become eligible to receive a monthly remedy for non-compliance effective October 1, 2017 (or 22 calendar days from the start of the class) as follows:

$$(V) = (180 \text{ minutes}) \times (P) \times (S1 + S2)$$

V = the value of the additional compensation;

P = the percentage of a full-time instructional month that the teacher teaches the class;

S1 = the highest number of students enrolled in the class during the month for which the calculation is made minus the maximum class size for that class;

S2 = the number of students by which the class exceeds the class composition limits of the collective agreement during the month for which the calculation is made;

Note: *If there is non-compliance for any portion of a calendar month the remedy will be provided for the entire month. It is recognized that adjustments to remedies may be triggered at any point during the school year if there is a change in S1 or S2.*

The intent of this formula is to provide a quantum of “time” that a district would use to translate into a particular remedy.

The list of remedies from the MoA include:

- additional preparation time for the affected teacher
- additional non-enrolling staffing added to the school specifically to work with the affected teacher’s class
- additional enrolling staffing to co-teach with the affected teacher
- other remedies that the local parties agree would be appropriate.

Other remedies could include a variety of options as determined by the parties. This could include teacher support in addition to the above, such as pooling time to create school resources versus specific teacher/class resources. It also includes the ability to convert remedy minutes into a cash equivalent in order to purchase additional education assistant or non-

teacher resources. If appropriate resources cannot be provided, the parties could agree to pay the teacher the cash equivalent of the calculated remedy.

To calculate P (the percentage of a full-time instructional month that the teacher teaches the class) in a school using an eight-block system, use 0.143 for the P value of one block ($1/8 + 12.5\% = 0.143$).

If the Value of the remedy needs to be converted from minutes to a dollar amount, then the following formula is to be used:

$\$ \text{ equivalent of remedy} = (\text{Value in hours} / \text{Kindergarten Student Instructional Hours}) \times \text{FTE cost}$

Where:

- **Value in hours** is the V (remedy value in minutes) divided by 60
- **Kindergarten Student Instructional Hours** is the student instructional hours for Kindergarten as defined in the School Calendar regulation. For 2017/18 this is 848 hours.
- **FTE cost** is the provincial average salary, plus 25% for benefits. The provincial average salary is published in the Operating Grant tables for the year (currently in Table 5) and is \$76,122 for the 2017/18 school year, meaning that the FTE cost for the 2017/18 school year is \$95,153.

We have included some examples of remedy calculations below:

Example 1:

Scenario:

Grade 5 collective agreement maximum class size of 30
Students with designations count as 2
Class contains 4 students with designations ($4 \times 2 = 8$)
Class composition = $30 - 8 = 22$

Paragraph 22.D *Reorganizing the existing classes within the school to meet any class composition language, where doing so will not result in a reduction in a maximum class size by more than [six students].*

Results in a choice of:

- Class of 22 (no remedy payable) as it complies with local language; or
- Apply paragraph 22.D and have a class of 24 (class size 30 – maximum reduction of 6), and pay a remedy on 2 students (for exceeding composition)

$$\text{Formula: } (V) = (180 \text{ minutes}) \times (P) \times (S1 + S2)$$

$$P = \% \text{ of FTE} = 1.0$$

$$S1 = 24 - 30 = -6 \text{ (negative numbers} = 0)$$

$$S2 = 4 - 2 = 2$$

$$V = 180 \text{ mins.} \times (1) \times (0 + 2)$$

$$V = \text{Value} = 360 \text{ mins}$$

To convert the value of a remedy from minutes to a dollar value:

$$\text{\$ equivalent of remedy} = (\text{Value in hours} / \text{Student Instructional Hours}) \times \text{FTE cost}$$

$$\text{\$ equivalent of remedy} = ((360/60)/848) \times \$95,153$$

$$\text{\$ equivalent of remedy} = (6/848) \times \$95,153$$

$$\text{\$ equivalent of remedy} = \$673.25 \text{ per month}$$

Example 2: Paragraph 24 – Elementary

Scenario:

Grade 4 collective agreement maximum class size of 28

Limit of 3 students with designations

Class contains 4 students with designations

Class contains 26 students

$$\text{Formula: } (V) = (180 \text{ minutes}) \times (P) \times (S1 + S2)$$

$$P = \% \text{ of FTE} = 1.0$$

$$S1 = 26 - 28 = -2 \text{ (negative numbers} = 0)$$

$$S2 = 4 - 3 = 1$$

$$V = 180 \text{ mins.} \times (1) \times (0 + 1)$$

$$V = \text{Value} = 180 \text{ mins}$$

To convert the value of the remedy from minutes to a dollar value:

$$\text{\$ equivalent of remedy} = (\text{Value in hours} / \text{Student Instructional Hours}) \times \text{FTE cost}$$

$$\text{\$ equivalent of remedy} = ((180/60)/848) \times \$95,153$$

$$\text{\$ equivalent of remedy} = (3/848) \times \$95,153$$

$$\text{\$ equivalent of remedy} = \$336.63 \text{ per month}$$

Example 3: Paragraph 24 – Secondary

Scenario:

Grade 12 collective agreement maximum math class size of 26
Limit of 2 students with designations
Class contains 4 students with designations
Class contains 28 students

Formula: $(V) = (180 \text{ minutes}) \times (P) \times (S1 + S2)$

$$P = \% \text{ of FTE} = 0.143$$

$$S1 = 28 - 26 = 2$$

$$S2 = 4 - 2 = 2$$

$$V = 180 \text{ mins.} \times (0.143) \times (2 + 2)$$

$$V = \text{Value} = 103 \text{ mins}$$

To convert the value of the remedy from minutes to a dollar value:

$$\text{\$ equivalent of remedy} = (\text{Value in hours} / \text{Student Instructional Hours}) \times \text{FTE cost}$$

$$\text{\$ equivalent of remedy} = ((103/60)/848) \times \$95,153$$

$$\text{\$ equivalent of remedy} = (1.7167/848) \times \$95,153$$

$$\text{\$ equivalent of remedy} = \$192.62 \text{ per month}$$

Example 4: Paragraph 24 – Secondary with Flex Factor

Scenario:

Grade 12 collective agreement maximum math class size of 26
Limit of 2 students with designations
Class contains 4 students with designations
Class contains 28 students

Flex factor language after September 30 = 2

Class has 3 students added after September 30

Formula: $(V) = (180 \text{ minutes}) \times (P) \times (S1 + S2)$

$$P = \% \text{ of FTE} = 0.143$$

$$\left\{ \begin{array}{l} S1 = (28 - 26) + (3 \text{ students} - 2 \text{ flex}) \\ S1 = (2) + (1) \\ S1 = 3 \end{array} \right.$$

$$S2 = 4 - 2 = 2$$

$$V = 180 \text{ mins.} \times (0.143) \times (3 + 2)$$

$$V = \text{Value} = 129 \text{ mins}$$

To convert the value of the remedy from minutes to a dollar value:

$$\text{\$ equivalent of remedy} = (\text{Value in hours} / \text{Student Instructional Hours}) \times \text{FTE cost}$$

$$\text{\$ equivalent of remedy} = ((129/60)/848) \times \$95,153$$

$$\text{\$ equivalent of remedy} = (2.15/848) \times \$95,153$$

$$\text{\$ equivalent of remedy} = \$241.25 \text{ per month}$$

Frequently Asked Questions

Districts have many questions about the implementation of the restored language. This section provides answers to the most commonly asked questions. Questions are organized under headings that relate to sections of the MoA and other related topics:

- [implementation](#)
- [non-enrolling ratios](#)
- [process and ancillary language](#)
- [class size and composition](#)
- [implementation summary sheet](#)
- [other](#).

I: Implementation

Paragraph 1

Q1: How much weight does this paragraph regarding equitable access to learning have, when balanced with local language regarding maximums of designated students per class?

A1: Each situation must be handled on a case-by-case basis, much as you would handle an employee accommodation under human rights law. This paragraph provides a lens through which to view the rest of the MoA language. Not every student will get into every class, but the decision in that regard must be thoughtful and reasonable. In general, our advice when making decisions under this MoA is to err on the side of what's in the best interest of the students.

Q2: What did the parties include in this agreement to address human rights issues that may arise?

A2: Refer to paragraphs 1 (Shared Commitment to Equitable Access to Learning) and 19 (Implementation of Class Composition Language).

Paragraph 3

Q3: Does this MoA affect our current spring staffing processes?

A3: Yes, because the MoA applies to staffing starting in September of the upcoming 2017/2018 school year.

Q4: How can we staff when we do not know our final funding allocation?

A4: The Ministry has said that the implementation of the MoA is 100% funded. In implementing the MoA, direct any funding questions to the Ministry.

Paragraph 6.b: Updating special needs terminology

- Q5:** Until special needs terminology has been updated under this provision, how do we define special needs classifications?
- A5:** Clearly understanding your past practise in relation to what students with special needs were considered in your local language pre-2002 is critical. You should research this at a local level. As guidance, it is important to also note that, as outlined in paragraph 20(D), during the 2017-2019 school years the current Ministry definitions of special education designations and classifications will apply (unless the provincial parties agree otherwise). Please note that paragraph 6(B) refers to updating and modernizing terminology, not changing definitions of special needs classification.

II: Non-enrolling ratios

- Q6:** Are the ratios calculated school by school, or are they district-wide?
- A6:** The ratio calculation is done on a district-wide basis, unless your local agreement has superior language.
- Q7:** Can we count the time that administrators act in non-enrolling teacher roles when we calculate our ratios?
- A7:** No. As per the restored AiC language legislated in 1998, only bargaining unit employee time counts towards the ratios for the purpose of compliance. This does not mean that administrators are not able to take on these roles, but that their time in those roles does not count toward the ratios for the purpose of compliance.
- Q8:** What students do we count to calculate our non-enrolling ratios?
- A8:** The student number that you will use to calculate your ratios – and which will determine compliance – is your total enrolment-based funding figure on your September 30 1701 count. This includes your regular students, as well as students in continuing education, alternate schools, and distributed learning as reported in your Interim Operating Grants. Do not include any international students. (For the ESL ratio, student count is the number of funded ESL students.)

The September Enrolment Count documents can be found on the Ministry website at: <http://www2.gov.bc.ca/gov/content/education-training/administration/resource-management/k-12-funding-and-allocation/operating-grants/k12funding-16-17>.

- Q9:** What happens if we can't fill vacancies to meet the non-enrolling ratios?
- A9:** As described in paragraph 7(E), you must exhaust your local post-and-fill process. If you are not able to find a qualified teacher to fill one of your non-enrolling vacancies, the local parties will meet to discuss alternatives for using

the FTE in another way. Following these discussions, the Superintendent will make a final decision regarding how the FTE will be deployed.

Q10: Can we renegotiate this language with our local if we want to change the ratios?

A10: No, this language is provincial in nature and cannot be renegotiated locally.

Q11: Paragraph 7 says that all MoA language pertaining to learning specialists “shall” be implemented, but shouldn’t our superior local ratios in Appendix A apply instead of the MOA ratios?

A11: Yes. As outlined in paragraph 7(C), if a local collective agreement provided for services, caseload limits, or ratios additional or superior to the ratios provided provincially, those superior provisions shall continue to apply.

Paragraph 7.A.iv: Special Education Resource Teachers

Q12: What is the definition of a Special Education Resource Teacher (SERT) for the purpose of this ratio?

A12: The Agreement in Council defined SERTs as those teachers assigned to the historical Ministry programs 1.16, 1.17, and 1.18. This is defined as

- students with severe behaviours
- high incidence/low cost students
- low incidence/high cost students.

You will need to look at the job duties of the role and include those who provide service to these students.

Paragraph 7.A.v: English as a Second Language Teachers

Q13: Are ELL and ESD students included in this ratio?

A13: Only Ministry-funded ELL students will count for purposes of this calculation.

Q14: Are all ELL teachers included in this ratio?

A14: Yes. If the teacher is in the bargaining unit and teaches English language learners (funded or non-funded), then the teacher would be included.

Q15: Are international students included in this ratio?

A15: No, the student count you would use is the September 30 1701 count, which does not include international students.

Paragraph 7.E

Q16: If I have an unfilled non-enrolling teacher position, does the FTE have to be used within the teacher bargaining unit?

A16: Yes, unless you agree otherwise with your union local.

Paragraph 7.D: Basis of ratios

Q17: What student enrolment numbers do we use for ratio calculations?

A17: Use your total enrolment-based funding figure on your September 30 1701 count. The ratios are based only on funded students.

The September Enrolment Count documents can be found on the Ministry website at <http://www2.gov.bc.ca/gov/content/education-training/administration/resource-management/k-12-funding-and-allocation/operating-grants/k12funding-16-17>.

III: Process and ancillary language

Q18: Can we re-draft our language to better reflect the local school-based team language that currently exists?

A18: Yes. In cases where the local parties prefer a different local school-based team process, they can work with the provincial parties to re-write and obtain a four-party sign-off. Please contact your BCPSEA liaison before agreeing to modify your language to ensure the parameters are acceptable.

IV: Class size and composition

Q19: Are classes at academies considered classes for the purpose of this section?

A19: Unless your collective agreement has language to the contrary, academies would likely not be considered a class.

Q20: Do the class size and composition limits apply to summer school programs, given that special education students are not funded for those programs?

A20: This will depend on your local language, if any, and your past practice relating to summer school programs.

Q21: Do the class size and composition limits apply to alternate schools or to aboriginal education?

A21: This will depend on your local language, if any, and your past practice relating to these programs.

Q22: Do the class size and composition limits apply to programs on graduation transitions and work experience?

A22: Unless your collective agreement has language to the contrary, graduation transitions and work experience programs are not considered a class.

Part I: Class size

Q23: When does my flex factor apply for the purposes of class size and composition?

A23: It depends on your flex factor language. There are two possible ways your language could be written: Either your flex factor comes into effect after a certain date (often September 30) or your flex factor is open (not limited by dates).

Scenario A: Dated flex factor of +2

- The class size limit is 28
- You built a class for September 1 with 30 students
- Remedy comes into effect on September 30 per paragraph 24(B).

In this scenario, on September 30, students 29 and 30 are not in compliance with your language and will attract a remedy. After September 30, your flex factor takes effect, meaning that students 31 and 32 would not attract a remedy (but student 33 and higher would). You will continue to pay remedy on students 29 and 30.

Scenario B: Open flex factor of +2

- The class size limit is 28
- You built a class for September 1 with 30 students
- Remedy comes into effect on September 30 per paragraph 24(B).

In this scenario, your flex factor is in effect on September 1, and there is no remedy for students 29 and 30. Students 31 and higher would each attract a remedy from September 30.

Q24: If I have a dated flex factor of September 30, why can't I use it before that date?

A24: The flex factor can't be used as part of meeting compliance as that would be contrary to your language. See the scenarios above for examples of flex factor and remedy.

Q25: How does flex factor impact remedy?

A25: This will depend on your flex factor language, as demonstrated in the above scenarios. The flex factor may come into effect after you pay a remedy, depending on whether you have dated or open flex factor language. Remedies are not applied to the flex factor.

Q26: I have a XX.5 class size limit according to my calculation, but I can't have half a student. Do I round up or down?

A26: Unless you have language regarding rounding in your local agreement, do not round up or down. While you can't have half a student, you can use the number 0.5 to calculate a remedy.

Q27: What is the maximum class size for a split 3/4 class?

A27: The maximum for a split 3/4 class is 24 (per section 76.1(2)(b) of the *School Act*), unless the MoA paragraph 16 calculation or your local language require a lower limit.

Here's an example of calculating a split class limit under paragraph 16. The Grade 3 maximum is 21 students and the Grade 4 maximum is 26 students. Averaging the maximums of each grade, the calculation is: $(21+26)/2 = 23.5$.

Q28: I need to use paragraph 16 to create a 3/4 split, and I have language that states I need to reduce my maximum class size by 1 for every 2 students with special needs. I know I will have 2 designated Grade 4 students in the class. Do I reduce the class size and then calculate the average, or vice versa?

A28: In calculating a split class size maximum using paragraph 16, use the class size maximums of Grades 3 and 4. The split class maximum is then reduced in accordance with your composition language.

Q29: We have language that says shop and science lab classes have a limit of 24. Does this apply to every shop class and every science class from Grades 8-12?

A29: Generally, "shop" applies to all shop classes. However, not all science classes are science lab classes. Some science classes are not laboratory based, and BCPSEA's perspective is that only lab-based science classes would be subject to the specified limit of 24.

Q30: In what circumstances can class size and composition be exceeded?

A30: You may exceed once you have made best efforts to achieve compliance. Refer to paragraph 22 for a list of considerations included in best efforts.

Part II: Class composition

Q31: How do I interpret my class composition language?

A31: Districts have unique composition language. If you are in doubt as to how to interpret your language, please contact your BCPSEA District Liaison.

Q32: When considering our designated student limits, how are the needs of children and human rights concerns factored in?

A32: The provincial best efforts approach, as well as paragraphs 1 and 19, were negotiated for this reason. Despite best efforts, if you are unable to meet your designated student limits, the provincial remedy would apply per paragraph 24(B). If you have disputes on this issue, the resolution language of paragraph 25 would apply.

Part III: Compliance and remedies

Paragraph 22: Best efforts

Q33: What is meant by “best efforts”?

A33: The components of “best efforts” are set out in paragraph 22 of the MoA. All districts must take reasonable steps to exhaust the items on the list (in no particular order). At the end of the process, if you are unable to reach compliance, then the remedies set out in paragraph 24 will apply.

Q34: Are we expected to first deploy whichever best effort solution will cost the least?

A34: Not necessarily. Our perspective is that districts will work to comply with the language, which may mean that the lowest cost effort is not appropriate. First and foremost, the language of the MoA should be followed.

Q35: If my composition languages requires me to reduce class size by 2 for every designated student, and I have 4 designated students in a Grade 7 class, how does paragraph 22.D apply?

A35: Paragraph 22.D exempts you from reorganizing classes in certain situations, including where doing so would result in the maximum class size being reduced by more than 6 students. However, note that remedies still apply to number above your maximum.

In this example, if your class size limit was 30, you are permitted a class of 24. Because of the exemption, you would not have to build a class of 22 students, although you would be required to pay a remedy on the number of students over 22.

Q36: Will we be expected to re-examine boundary/catchment areas?

A36: As outlined in paragraph 22.A, you will be expected to re-examine existing school boundaries as part of best efforts.

Q37: Will we be expected to consider re-opening closed schools?

A37: Yes. You are expected to do so if it is reasonable in the circumstances. This analysis will need to be done on a case-by-case basis. Depending on the circumstances, it may or may not be reasonable to open a closed school.

Q38: Will we be required to repurpose sensory/library/computer rooms in order to make “best efforts”?

A38: As outlined in paragraph 22.B, the expectation is that you re-examine the utilization of all the existing space within a school or across schools that are proximate to one another. You will need to judge what is reasonable on a space-by-space basis.

- Q39:** Paragraph 22.E refers to renegotiating terms of existing leases or rental contracts. When undertaking this best effort, can we factor in the cost of renegotiating contracts, the desire to attract parents and children to our sites before they are school aged, and similar considerations?
- A39:** The BCTF had the expectation at the bargaining table that if a district was able to renegotiate terms of existing leases or rental contracts, then they would do so. In general, you will not need to displace programs that are related to your Board of Education's mandate. If the program is not within mandate, you must make best efforts to do so.
- Q40:** Do best efforts include eliminating Strong Start or similar programs?
- A40:** The parties discussed Strong Start at the table, and agreed that the program would not be forced to move to comply with this language. In general, you will not need to displace programs that are related to your Board of Education's mandate.
- Q41:** What if the union doesn't want us to eliminate a program, but doing so would put us in compliance. Is the union still entitled to a remedy for non-compliance?
- A41:** Yes. If you are not in compliance then a remedy must be provided.

Paragraph 24: Remedies

- Q42:** What is a sample remedy calculation?
- A42:** After best efforts, a teacher who works full time has a Grade 2 class with 24 students, of which 4 are special needs students. The language allows for a maximum of 22 students, including 2 special needs students.

Per paragraph 24.B, the formula for remedy calculation is:

$$V = (180 \text{ minutes}) \times P \times (S1 + S2)$$

Value = 180 X (% of full-time instructional month teacher teaches class) X ([highest # students that month – class size max] + [# of students over composition limit that month])

So in this example:

180 minutes X 100% X (2+2) = 720 minutes. For each month they instruct this class, the teacher receives a remedy valued at 720 minutes.

- Q43:** Can S1 ever be a negative value? For example, if the highest number of students we have enrolled for a month is 24, and the class size max is 30, does S1 equal negative 6 (-6)?
- A43:** No. Neither S1 nor S2 can be negative. Treat all negative values as 0.

- Q44:** Does remedy apply when you have specific language for certain subjects (e.g. band/drama/PE) that says you can exceed class size if the teacher so requests?
- A44:** No. Remedy would not apply if under your language a teacher can (and does) request a larger class.
- Q45:** Are teachers eligible for monthly remedy before or after the flex factor is applied?
- A45:** It depends on whether you have a dated or open flex factor. See the scenarios in question 23.
- Q46:** How is a remedy awarded?
- A46:** The individual teacher determines which of the remedies set out in paragraph 24.C they will receive. If it is not practical to provide the teacher with those remedies, the local parties will meet to determine what alternative the teacher will receive.
- Q47:** How do we convert minutes to FTE in order to apply the remedies set out in paragraph 24.C?
- A47:** There is a standard formula to convert remedy value to FTE. Please see the formula and examples starting in the section [Calculating remedies for non-compliance](#) on page 19 of this guide.
- Q48:** Do teachers earn seniority on the value of the remedy awarded? For example, would a teacher with a remedy value of 720 minutes per month also receive 720 minutes of extra seniority that month?
- A48:** If the teacher selects additional preparation time or other form of compensation as agreed to locally, there is no additional seniority for the remedied teacher. However, if the teacher selects additional enrolling or non-enrolling staffing then the additional teacher would accrue seniority in accordance with the collective agreement.
- Q49:** Do we need to document the teacher's selection of remedy?
- A49:** Our advice is to confirm in writing the remedy selected by an individual teacher.
- Q50:** Do we need to document our process of coming to an agreement with the local regarding remedy?
- A50:** Where other remedies have been discussed and agreed to with the local under paragraph 24.C.iv, our advice is to confirm the local agreement in writing with the union.
- Q51:** Is there any other information we should be documenting?
- A51:** BCPSEA strongly recommends tracking remedy information district-wide, in as much detail as possible, as this will assist with 2019 bargaining.

- Q52:** Do prep teachers receive remedies?
- A52:** Any teacher regularly scheduled in front of a class that is non-compliant, including teachers providing prep time, is entitled to remedy. Short-term TTOCs are excluded from this requirement.
- Q53:** If the provided remedy is prep time, can principals and vice-principals provide that prep time to the teacher?
- A53:** Yes. Principals and vice-principals continue to be able to provide instruction to classes and can be used to provide prep time in these situations.
- Q54:** Where remedy is payable for a class, is that remedy available to a TTOC?
- A54:** TTOCs receive a remedy if they are teaching the class on an ongoing basis. TTOCs do not receive a remedy for short-term or single-day callouts.
- Q55:** In a situation where a long-term TTOC is receiving a remedy, would the regular teacher also receive it?
- A55:** No. There should be no overlap between the remedy for an assigned teacher and a long-term TTOC.
- Q56:** If a teacher is in a job/class share, how does the remedy apply?
- A56:** In calculating a remedy, the P value is the percentage of a full-time instructional month that the teacher teaches the class. For example, if two teachers have a 50/50 job share, then P will equal 50%. Note that because the remedy to each teacher is separate, the teachers may elect different forms of remedy.
- Q57:** Are Educational Assistants part of the remedies contemplated by this MoA?
- A57:** Educational Assistants are not a remedy explicitly contemplated by the MoA. However, one of the options available under paragraph 24.C.iv is “other remedies that the local parties agree would be appropriate.”
- Q58:** Under paragraph 24.C.iv, if the teacher selects a remedy of cash (and the local parties agree that would be appropriate), how do I calculate what to pay them?
- A58:** Use the formula provided in the section [Calculating remedies for non-compliance](#) on page 19 to convert the remedy minutes to a dollar value. We’ve included some examples following the formula description that help illustrate how this works.
- Q59:** The remedy calculation is done monthly. Do teachers get to select a new remedy every month?
- A59:** Our position is that they do not, as this is not the intent of the language and is not practicable.

Q60: Is there a remedy to violations of caseload limits?

A60: This item is being raised by BCPSEA for discussion with the BCTF. BCPSEA will provide an update once the discussions are concluded.

Implementation summary sheet

Q61: There is an asterisk on my implementation sheet that refers to “the number of students in the classroom shouldn’t exceed what the facility was designed for.” What does this mean in terms of class size?

A61: The footer explaining the asterisks is standard on all implementation sheets. BCPSEA made efforts to remove the asterisks in the body of the text if the district did not have corresponding or similar language. Please confirm that the asterisks (as well as the other information) on your district’s implementation sheet are correct, and if not, inform your district liaison.

If you have language that is corresponding or similar to the footer in your implementation summary sheet, the footer is intended as a note to remind districts to refer to their language per Schedule A.

Q62: Descriptors of my class composition language are on the same row as flex factor. Does this mean that flex does not apply to classes with designated students?

A62: No. In the table, the description for class composition relates to the columns on composition, it does not relate to the flex factor (which is to be read as a row under the class size limits column only). Do not read across the flex factor row to the composition columns.

Q63: I have a XX.5 class size limit according to my implementation sheet, but I can’t have half a student. What does this mean?

A63: While you can’t have half a student, you can use the number 0.5 when calculating a remedy.

Other

Q64: What happens to the MoA during and after bargaining in 2019? Is it still applicable?

A64: The MoA language is now part of the provincial collective agreement as well as your local agreement. It will remain intact unless changes are negotiated. For the 2013-2019 collective agreements, the MoA and Schedule A are to be added to your agreement as appendices (agreements will not be re-melded).

Please keep track of any language that is presenting challenges in your districts, as this will help shape bargaining in 2019.

Q65: Is this MoA fully funded?

A65: The commitment from government is to provide funding for MoA implementation. Please direct all specific funding questions to the Ministry.

- Q66:** How will funding protection be structured, including for funding currently under review?
- A66:** Please direct all specific funding questions to the Ministry. BCPSEA is not involved in decisions regarding funding protection.
- Q67:** Can I assign prep time to a librarian as part of their assignment?
- A67:** There is no provision preventing a district from following this practice. However, you may want to carefully consider your district's past practice and the type of prep assignment, including whether the duties are reasonably associated with the duties of a teacher librarian.
- Q68:** Now that the Education Fund has been discontinued, what is the impact to the support staff LIF?
- A68:** Under the provincial support staff framework of agreement, it was bargained that the support staff LIF would receive the greater of either 20% of the total LIF (i.e., the education fund and SSLIF) or \$10 million. Districts may wish to note that CUPE is seeking to maintain this year's level of funding to the SSLIF, but a decision has not been made at this time.

APPENDIX A

Background and legal framework

How did we get here?

There are a number of significant events leading to the situation we now find ourselves. The dates and events described below provide useful background information that can help you understand how we got here and the significance of the Memorandum of Agreement signed on March 3, 2017 (MoA).

Before 1997

Prior to 1997, the provincial agreement consisted of a small number of provincially negotiated clauses, plus 60 local agreements that included a variety of class size maximums and provisions for the inclusion of students with special needs. Local agreements also contained language around ratios for non-enrolling teachers and various school- or district-based processes.

The 1998 Agreement in Committee

In 1998, the government negotiated directly with the BCTF and entered two agreements:

- The *Memorandum of Agreement K-3 Primary Class Size* placed limits on class size for Kindergarten through Grade 3 classes. While this agreement originally had an end date of June 30, 2001, BCPSEA and BCTF resigned the agreement in 2001 before it expired. This document was therefore in effect when legislation removed class size language.
- The *Agreement in Committee (AiC)* added ratios for non-enrolling teachers into the collective agreement. Although districts rejected the AiC, the government, through legislation, established the AiC as the collective agreement for the July 1, 1998 through June 30, 2001 term.

2002 Public Education Flexibility and Choice Act (Bill 28)

When the next round of bargaining in 2001 failed to reach a new collective agreement, the government introduced the *Public Education Flexibility and Choice Act (Bill 28)* on January 28, 2002, which, among other changes, removed provisions on class size and composition effective July 1, 2002 and prohibited future collective bargaining about these issues. The 1,400 removed provisions had, for the most part, been negotiated during the 1987-1994 period of local bargaining, and some of the provisions pre-date bargaining. New class size provisions were included in the *School Act* – moving them into the realm of legislation (rather than bargaining) and establishing a province-wide standard (rather than district by district).

This then led to a series of BCTF court challenges.

2011: Supreme Court of BC decision re Bill 28 (Justice Griffin No. 1)

Madam Justice Griffin held that Bill 28 infringed teachers' freedom of association. She declared Bill 28 to be unconstitutional and invalid, but suspended her declaration of invalidity for one year to allow the Province time to address the repercussions of the decision. The government was given 12 months to respond to the Court's decision, after which Bill 28 would become inoperative and the contested language regarding class size and composition would be restored.

March 2012 Education Improvement Act (Bill 22),

The BCTF and government were unable to reach a negotiated resolution. In March 2012, the government passed the *Education Improvement Act* (Bill 22), which extended the current collective agreement while the BCTF and BCPSEA negotiated a new agreement. Bill 22 permitted negotiation regarding class size and composition in future rounds of collective bargaining. Bill 22 also implemented a new Learning Improvement Fund (LIF) to help school districts and teachers address complex classroom composition issues. The BCTF promptly challenged Bill 22.

January 28, 2014: Supreme Court of BC decision re Bill 22 (Justice Griffin No. 2)

Madam Justice Griffin held that Bill 22 infringed teachers' freedom of association. She declared Bill 22 to be unconstitutional. The Province appealed this decision.

April 30, 2015: BC Court of Appeal decision

A majority of the Court held that the *Education Improvement Act* did not violate the *Charter*. However, Justice Donald in dissent found that the *Education Improvement Act* did violate the *Charter* and was of no force or effect.

November 10, 2016: Supreme Court of Canada decision

The Supreme Court of Canada (SCC) appeal concluded in November 2016 that the BCPSEA-BCTF collective agreement provisions deleted by the *Public Education Flexibility and Choice Act* in 2002 were to be restored effective November 10, 2016. A majority of the Court endorsed Justice Donald's dissent and held that the *Education Improvement Act* violated the *Charter* and was of no force or effect.

The SCC decision held that the process – not the content – was unconstitutional. The government has the right to legislate, provided it follows an appropriate process. This decision resulted in the triggering of Letter of Understanding No. 17.