

In the Matter of an Arbitration under
the *Labour Relations Code*

Between

British Columbia Public School Employers' Association / School District No. 61 (Greater Victoria)

Employer

And:

British Columbia Teachers' Federation / Greater Victoria Teachers Association

Union

Special Education Provincial Matters Grievance

Settlement Agreement

Whereas:

- A. Following an award of Marguerite Jackson in 2019, the Employer conducted a review of students with G and Q category designations in the District and determined that some of those students no longer qualified to be counted for the purposes of class size and class composition requirements in the Collective Agreement as it applies to the District (the "2019 Re-characterizations").
- B. Since the 2019 Re-characterizations there have been multiple smaller re-characterizations for contractual purposes (Together with the 2019 Re-characterization, the "Re-characterizations").
- C. The Union grieved the Re-characterizations and the matter was referred to arbitration as BCTF File No. 61-2020-0007 and BCTF File No. 61-2020-0008 (the "Grievances").

The Parties hereby agree to fully and finally resolve the Grievances by way of the following terms:

Re-characterization Review

1. By October 31, 2022, the District will conduct a review of all students who are designated as Category "G" for Ministry funding purposes (the "Review").

2. The Review will be conducted by an expanded District Designation Sub Committee which will consist of: three Psychologists employed by the District, two of whom will be appointed by the District and one appointed by the Union two District Principals, and two District Learning Support Teachers (appointed by the Union). A Speech and Language Pathologist may also be included.
3. Any changes in contract designations as a result of the Review will become effective for remedy purposes at the beginning of the month in which the decision is made.
4. On an ongoing basis, the re-characterization of designated students in the G and Q Ministry categories for collective agreement classification purposes will be conducted by the District Designation Sub-Committee in accordance with Article A.5.
5. Following completion of the Review, and an ongoing basis, the District will make available the following:
 - a. information sufficient to allow an affected teacher to understand why any student in their class was not included in Category G or J for collective agreement purposes (e.g. making available a completed checklist or other assessment rubric); and
 - b. sufficient information to allow the Union to represent its members and raise concerns regarding the interpretation and application of the collective agreement, including through appropriate dispute resolution mechanisms.
6. Any affected teacher who has concerns about a contract designation decision following the review process, may raise those concerns with their School Based Team, together with any available information regarding their concerns. If the matter is not resolved in discussion with the School Based Team, the principal will forward this information to the District Designation Sub-Committee, who will review the information provided, and communicate their decision, including reasons, in writing to the School Based Team and the Union (identifying information will be removed from the information provided to the Union).

Criteria for Review of Student Designations for CA Purposes

Category G

7. In order to determine whether a student qualifies as Category "G" (Autism Spectrum Disorder) for collective agreement purposes, an analysis will be conducted based on the student's most recent diagnosis using DSM V criteria. In addition to the presence of an Autism Spectrum Disorder diagnosis, all of the following DSM V criteria must be met:

- a. Marked deficits in verbal and non-verbal social communication skills (Level 2 Social Communication Severity);
 - b. An accompanying intellectual impairment; and
 - c. An accompanying language impairment.
8. In any case where a student's file does not contain sufficient information to determine whether the criteria in 7. a. b. or c. are met, the registered school psychologist will:
 - a. Where additional diagnostic information is available, but has not been provided, ask the appropriate School Based team to obtain this information from the student's parent or other third party; or
 - b. Where no additional diagnostic information is available, ask the appropriate School Based Team for information indicating the degree of any communication deficit, and/or whether the student has an intellectual and language impairment; and
 - c. If the School Based Team provides information indicating that the student may have an intellectual impairment and a language impairment, schedule the student for assessment or consultation as soon as is practical with:
 - i. for language impairment, a speech language pathologist; or,
 - ii. for intellectual impairment, a psychologist.
9. Students diagnosed with Autism Spectrum Disorder who do not meet the above criteria will be reviewed by the District Sub-Committee to determine whether they meet the criteria for inclusion in any other 1995 Ministry funding category. If there is insufficient information in the file to determine whether another category is appropriate, the District Sub-Committee will seek additional information from the appropriate School Based Team or member of the Team. If the School Based Team provides information to the District Sub-Committee, either on request or on their own initiative, indicating that the student may qualify for inclusion in another category, the District Sub-Committee will consider that information and take any appropriate steps.

Category J/Q

10. In determining whether students currently identified as Category Q students (Learning Disabled) count as Category J students (Severe Learning Disabled) for collective agreement purposes, the District will conduct a review of the student's file and assessments to determine whether there is a discrepancy between ability and

achievement caused by a weakness in one or more cognitive processes, rather than by some other disabling condition or external factors.

11. The following criteria will be used to make the determination:

1995 Category J

(Severe Learning Disabilities) Designation Criteria

1. Characterized by a discrepancy of 2 standard deviations (30 scale score points between estimated learning potential (generally an intelligence test) and academic achievement as measured by norm referenced instruments in grades 3 to 12.

and

2. A significant weakness in one or more cognitive process (e.g. perception, memory, attention, receptive or expressive language, visual-spatial abilities, phonological processing) relative to overall intellectual functioning as shown by above.

and

3. Neither of the above are due to the result of other disabling conditions (e.g. visual impairment, hearing impairment or other medical condition, or an external influence)
Determination of Ability – Achievement Discrepancy (no. 1. Above)

Estimated Learning Potential is generally determined by performance on an IQ test. The below identifies tests commonly used by districts but may be amended to reflect current practice or the introduction of new or updating of existing tests.

Wechsler Intelligence Scale for Children series (WISC-III, WISC-IV, WISC-V).

On the **WISC III** the best measure of global ability is the Full Scale score.

On the **WISC-IV** the Full Scale score or one of the Composite scores; whichever one yields the highest number can be used as the reference point for ability (estimated learning potential).

On the **WISC-V** the Full Scale score or one of the Primary Index scales; whichever one yields the highest number, can be used as the reference point for ability.

On the Woodcock-Johnson test of Cognitive Ability the Gf-Gc Composite score should be used.

On the Stanford-Binet 4 the Composite Score should be used.

The TONI series of tests will only have one score, which is the one to use.

Academic Achievement is determined by a student's performance on a norm referenced test of academic achievement. such as the Wechsler Individual Achievement Test (WIAT, WIAT-II and WIAT-3), or Woodcock-Johnson Tests of Achievement, series 1 through 4.

On all of the above achievement tests the scores needed to establish a discrepancy are those from:

- Reading Comprehension
- Word Reading, Oral Reading Fluency, Word Decoding, or Letter-Word Identification
- Math Calculations,
- Math Concepts and applications, Math Problem solving
- Spelling
- Writing subtests from any of the achievement measures
- the Spontaneous Writing score from the Test of Written Language (TOWL-1-3) can also be used. (These tests are used in some senior secondary schools.)

If any of the scores from any one or more of the above areas are 30 or more points behind the highest Composite or Index score from the Ability (IQ) the student qualifies as a category J student. Where, after taking into account confidence intervals, a student's achievement/ability discrepancy could be 30 points or more, the student may be included as a "J" student at the discretion of the District Sub-Committee based on a functional review of the student's overall assessment and performance.

Future Student Assessments

12. In addition to the Review conducted above, all re-characterizations conducted or reviewed following the date of this Agreement will follow the above criteria and process set out in sections 4-11 of this Agreement. The designations will be used to determine remedy and/or prep time pursuant to Article D.2.9., LOU 12.
13. The Union hereby withdraws the Grievances.
14. This agreement has been reached on a without prejudice basis, and will not be referenced in any other District or in any other proceeding, other than to enforce its terms.
15. Arbitrator Jackson shall remain seized to resolve any disputes arising from the implementation and enforcement of this Agreement.

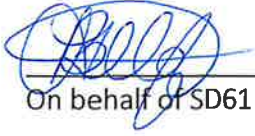
Signed this _____ day of _____, 2022.



On behalf of BCPSEA



On behalf of GVTA



On behalf of SD61



On behalf of BCTF

Dated for Reference September 12, 2022