

LABOUR RELATIONS CODE
(Section 84 Appointment)
ARBITRATION AWARD

BRITISH COLUMBIA TEACHERS' FEDERATION

UNION

BRITISH COLUMBIA PUBLIC SCHOOL EMPLOYERS' ASSOCIATION

EMPLOYER

(Grades 4 to 12 Class Size and Composition - 2006-07 and 2007-08 School Years)

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| Arbitration Board: | James E. Dorsey, Q.C. |
| Representing the Union: | Craig D. Bavis, John Rogers, Q.C., Carmela Allevato, Stephanie Drake and George Popp |
| Representing the Employer: | Judith C. Anderson, Brian Chutter and Stephanie Tassin |
| Date of Decision: | August 21, 2009 |

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| Hearing Locations: | Nanaimo, Victoria, Terrace, Sparwood, Kamloops, Merritt, Surrey and Vancouver |
| Hearing Dates: | |
| Qualicum Beach Middle School | November 24 - 28, 2008; February 27 - 28; March 2; April 14 - 15, 2009 |
| Claremont Secondary School | December 15 - 19, 2008; March 5 - 6; March 9 - 10, 2009 |
| Thornhill Elementary School | February 9 - 11; June 16 - 20, 2009 |
| Frank J. Mitchell Elementary School | May 4 - 6, 2009 |
| Merritt Central Elementary School | May 7 - 8; June 8 - 9, 2009 |
| Guildford Park Secondary School | May 11 - 15; May 25 - 27; May 30; June 13, 2009 |
| Hastings Community Elementary School | June 10 - 12; July 2 - 4, 2009 |
| Final Submissions | July 13 - 17, 2009 |

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1. Grievances, Decisions and Representative Nature of the Evidence

[1] In the public school Kindergarten to Grade 12 system, the size and composition of the group of students in a class is a significant factor in the working and learning conditions of teachers and students. The number of classes that must be organized is a significant cost driver for local boards of education funded by the provincial government.

[2] This arbitration is about class size and composition in Grades 4-12 in public schools in British Columbia for the first two school years there were legislated size and composition standards for these classes.

[3] One backdrop to this dispute is litigation challenging the decision to delete class size and composition standards from the collective agreement; to prohibit class size and composition standard making through collective bargaining; and to enact a uniform provincial standard that is less or more constraining on class size and composition organization than the various standards previously negotiated in school districts. Another is the potential demands interpretations of the legislation might place on public funds rationed in annual provincial budgets among public education and other public purposes.

[4] The union grieves that in the 2006-07 and 2007-08 school years some boards of education organized some classes contrary to the requirements of section 76.1 and other sections of the *School Act*¹, enacted in 2002 by the *Public Education Flexibility and Choice Act*² and amended in 2006 by the *Education (Learning Enhancement) Statutes Amendment Act 2006*.³ Section 76.1 states:

Class Size

- (1) A board must ensure that the average size of its classes, in the aggregate, does not exceed
 - (a) for kindergarten, 19 students,
 - (b) for grades 1 to 3, 21 students,
 - (c) for grades 4 to 7, 28 students, and
 - (d) for grades 8 to 12, 30 students.
- (2) Despite subsection (1), a board must ensure that the size of any primary grades class in any school in its school district does not exceed
 - (a) for kindergarten, 22 students, and
 - (b) for grades 1 to 3, 24 students.
- (2.1) Despite subsection (1) but subject to subsection (2.4), a board must ensure that the size of any class for any of grades 4 to 7 in any school in its school district does not exceed 30 students unless

- (a) in the opinions of the superintendent of schools for the school district and the principal of the school, the organization of the class is appropriate for student learning, and
 - (b) the principal of the school has obtained the consent of the teacher of that class.
- (2.2) Despite subsection (1) but subject to subsection (2.4), a board must ensure that the size of any class for any of grades 8 to 12 in any school in its school district does not exceed 30 students unless
 - (a) in the opinions of the superintendent of schools for the school district and the principal of the school, the organization of the class is appropriate for student learning, and
 - (b) the principal of the school has consulted with the teacher of that class.
- (2.3) Despite subsections (1) to (2.2) but subject to subsection (2.4), a board must ensure that any class in any school in its school district does not have more than 3 students with an individual education plan unless
 - (a) in the opinions of the superintendent of schools for the school district and the principal of the school, the organization of the class is appropriate for student learning, and
 - (b) the principal of the school has consulted with the teacher of that class.
- (2.4) Subsections (2.1) to (2.3) apply to a board, in relation to a school year, after the date under section 76.3 (5) on the report that the board submits to the minister under section 76.3 (10) for that school year.
- (3) The Lieutenant Governor in Council may, by regulation,
 - (a) establish the methods to be used by a board for determining average class size in the aggregate, including, without limitation, methods of providing for students with special needs,
 - (b) exclude any type of class, course, program, school or student from the determination of average class size in the aggregate,
 - (c) set dates by which determinations must be made under this section,
 - (d) define terms used in this section for the purposes of a regulation under this section,
 - (e) require boards to prepare, submit to the minister and make publicly available, in the form and manner specified by the Lieutenant Governor in Council, for each school district and each school within the school district,
 - (i) reports respecting class size, and
 - (ii) plans respecting allocation of resources, services and staff in order to comply with subsection (1),
 - (f) specify matters that must be considered by a board in preparing a plan under paragraph (e) (ii) and the information required to be included in reports or plans under paragraph (e), and
 - (g) require a board to establish, in respect of plans and reports under paragraph (e), a process of consultation with parents of students attending school in the school district.

- (4) The limits and requirements of subsections (1) and (2) do not apply for the purposes of the 2001-2002 school year.
- (5) In this section, "student with an individual education plan" means a student for whom an individual education plan must be designed under the Individual Education Plan Order, Ministerial Order 638/95, but does not include a student who has exceptional gifts or talents.

1.1 Grievances Consolidated after Preliminary Objections Dismissed

[5] In September 2008, the employer's preliminary objections to the grievances for each of the two school years were heard and dismissed.⁴ By agreement after that decision, the two grievances were consolidated for hearing and final decision. The grievances include an allegation one board of education exceeded an aggregate class size average. By agreement that difference is not part of this phase of the arbitration.

1.2 Disclosure and Privacy Protection of Students' Personal Information

[6] To facilitate an expeditious process and protect the privacy of students' personal information, I made the following order on November 17, 2008:

The British Columbia Public School Employers' Association ("employer") is required to disclose to the British Columbia Teachers' Federation ("union") now and throughout the hearing several documents from schools and district offices of boards of education.

Some of the documents, such as individual education plans and progress reports, contain personal student information.

By agreement of the employer and union, individual students are not to be named or identified in any preliminary, interim or final decision and personal student information will not be referred to in any decision in a manner that will enable a student to be identified.

I hereby order the employer and the boards of education for which it is the accredited bargaining agent to disclose to the union all documents potentially relevant to the arbitration of these grievances on the following conditions applicable to any documents containing personal student information:

1. The union will keep confidential personal student information disclosed by the employer and only copy documents containing personal student information or disclose personal student information to the extent necessary for the preparation and presentation of these grievances at arbitration and any review, appeal or other proceeding before the Labour Relations Board or the courts arising from this arbitration;
2. The union will not use personal student information disclosed by the employer pursuant to this order for any reason other than the preparation and presentation of these grievances at arbitration and any review, appeal or other proceeding before the Labour Relations Board or the courts arising from this arbitration;
3. At the conclusion of this arbitration or any review, appeal or other proceeding before the Labour Relations Board or the courts arising from this arbitration, the union will return to the employer all documents received from the

employer that contain personal student information and destroy all copies of any documents that contain personal student information.

4. The employer will confirm for the union that it has received from the union all original copies of documents disclosed by the employer that contain personal student information.
5. The union will inform the employer the manner and time by which it will have destroyed all copies of any documents it retains in paper, electronic or other format that contain personal student information.

1.3 Scope of 2007-08 Grievance – Delta and Coquitlam Ruled Excluded

[7] Through case management discussions and disclosure of particulars, the union identified the classes in dispute for each of the 2006-07 and 2007-08 school years. A difference arose over the inclusion of 2007-08 school year classes in School District No. 37 (Delta) and School District No. 43 (Coquitlam). The ruling on January 30, 2009 excluding these classes was as follows:

This is my decision on the employer's objection to the inclusion of School Districts 37 (Delta) and 43 (Coquitlam) in the scope of the 2007-08 school year grievance.

Before the September 24, 2008 decision dismissing the employer's preliminary objection ([2008] B.C.C.A.A. No. 131 (QL)), the union had identified the school districts included in its grievances for the 2006-07 and 2007-08 school years.

The union listed 23 affected school districts in a June 13, 2008 schedule of particulars for the 2007-08 school year grievance. School District No. 37 (Delta) was listed as one of the 23 school districts, but, unlike the other school districts, no schools or category of class size or composition violations were listed.

At the case management meeting on October 14, 2008, the union informed that School District No. 37 (Delta) was not included and there were 22, not 23, school districts affected by the 2007-08 school year grievance. A representative manner of proceeding with the arbitration and a schedule for disclosure of further particulars and documents was established.

The union provided further particulars of each grievance on October 22nd. The particulars for the 2007-08 school year grievance included particulars for School District No. 37 (Delta). For the first time, the union identified School District No. 43 (Coquitlam) as included in the 2007-08 school year grievance, which had been initiated by letter dated November 5, 2007.

The employer responded on October 23rd, objecting to the inclusion of these two school districts.

On October 27th, the employer applied for an order excluding School Districts No. 43 (Coquitlam) and No. 37 (Delta) from the scope of the grievance. "School District No. 43 (Coquitlam) has never been included on any list prior to this last week. At the case management meeting School District No. 37 (Delta) was deleted from the list by the Union."

The union's response on October 27th was as follows:

2007 - 2008 particulars

At the, case management meeting, Mr. Popp was unaware of a few schools in School District 37 that were in violation and mistakenly

advised me that there were no violations. We apologize for the error. If you believe that you have been prejudiced by this error, please advise us of the nature of the prejudice.

Upon further investigation and compilation of the particulars, it came to Mr. Popp's attention that School District 43 had been omitted from the list. Our understanding is that discussion occurred between the Local Association and S.D 43 such that S.D. 43 cannot claim that it was unaware that the Local Association objected to some of the class assignments as contrary to s. 76.1. If you believe that you have been prejudiced by this error, please advise us of the nature of the prejudice.

Submissions on the employer's application were made at the case management meeting on October 27th.

The union advised School District No. 37 (Delta) was inadvertently omitted from previous particulars of the grievances. It is intended to be included in the 2007-08 school year grievance with respect to four classes in three separate schools, but no district school was selected by the union as a representative school in this stage of the arbitration. School District No. 43 (Coquitlam) was inadvertently omitted from the grievances for both school years, but the union does not intend to include this district in the 2006-07 school year grievance.

By October 27th, the union had limited the scope of the 2006-07 school year grievance to seven school districts – SDs 8 (Kootney Lake), 36 (Surrey), 39 (Vancouver), 53 (Okanagan Similkameen), 62 (Sooke), 67 (Okanagan-Skaha) and 70 (Alberni).

The union had limited the scope of the 2007-08 school year grievance to eighteen school districts – SDs 5 (Southeast Kootney), 8 (Kootney Lake), 20 (Kootney-Columbia), 28 (Quesnel), 36 (Surrey), 37 (Delta), 39 (Vancouver), 43 (Coquitlam), 44 (North Vancouver), 58 (Nicola-Similkameen), 61 (Greater Victoria), 62 (Sooke), 63 (Saanich), 68 (Nanaimo-Ladysmith), 69 (Qualicum), 70 (Alberni), 73 (Kamloops/Thompson) and 82 (Coast Mountains).

The union's first notice on October 22nd to the employer that School District No. 43 (Coquitlam) was included in the 2007-08 school year grievance was a year after the commencement of the grievance and after the decision on the employer's preliminary objections. Despite the absence of any evidence of actual prejudice to the employer and School District No. 43 (Coquitlam), this is a period of delay for which it can be presumed the employer and School District No. 43 (Coquitlam) have been prejudiced and would be unfairly disadvantaged if the union were permitted to broaden the scope of the grievance to include School District No. 43 (Coquitlam).

Therefore, I order that the scope of the 2007-08 school year grievance does not include alleged violations by School District No. 43 (Coquitlam).

School District No. 37 (Delta) was not included in the 2006-07 school year class grievance and is not sought to be included by the union. The union's initial particulars of the 2007-08 school year grievance on June 13, 2008 listed school districts, the schools in each district where the union alleged there was a violation and identified the category of violation alleged at each school. No schools and no categories were listed for School District No. 37 (Delta). These particulars formed part of the evidence in the preliminary objection hearing in September 2008.

The union inadvertently omitted the particulars for School District No. 37 (Delta) in June 2008 and erroneously informed the employer that School District No. 37 (Delta) was not included in the 2007-08 school year grievance in October. Then the union informed the employer it intended to include four classes in three separate schools within the scope of the grievance. Although there was no intention to mislead and the errors were innocent, I find the potential prejudice to the employer and School District No. 37 (Delta) of including it within the scope of the 2007-08 school year grievance outweighs the potential loss to the union and its members in the four affected classes.

Therefore, I order that the scope of the 2007-08 school year grievance does not include alleged violations by School District No. 37 (Delta).

[8] For each of the two school years, the union relied on a complaint driven system to identify classes for inclusion in its provincial grievances. Classes were identified by teachers, school staff representatives and local union presidents. The union did not determine, and does not admit, that similar classes that have not been grieved were in compliance with the *School Act*. Particulars of the two grievances are summarized in Appendices 1 and 2.

- 2006-07 school year - 546 classes in 28 schools in 6 school districts
- 2007-08 school year – 1,122 classes in 129 schools in 16 school districts

For the 2007-08 school year, the following is a comparison of the number of classes grieved, excluding School District No. 37 (Delta) and No. 43 (Coquitlam), to the number of provincial classes.

| 2007-08 | Schools | Total Classes | ≥31 Students | ≥4 IEP Students |
|-----------------|----------------|----------------------|---------------------|------------------------|
| Province | 1,458 | 68,693 | 3,179 | 10,313 |
| Grieved | 129 | 1,122 | 345 | 883 |

The total classes included in the grievance (1,122) is less than the sum of the classes with thirty-one or more students or four or more students with an individual education plan (1,228) because there are 107 classes in which the union states there are both thirty-one or more students and four or more students with an individual education plan.

1.4 Evidence on Representative Classes and Second Semester Ruling

[9] The union gave particulars of eleven second semester classes at two secondary schools in School District No. 82 (Coast Mountains) in the 2007-08 school year. During the hearing, the union sought to include second semester classes at Claremont Secondary School in School District No. 63 (Saanich). The ruling on December 15, 2008 upholding the employer's objection was as follows:

The method adopted to address the many schools and classes covered by the grievances was to have the union select schools that would represent the various issues raised by the grievances and provide particulars to the employer. We had worked deliberately and diligently to identify the scope of these proceedings and to balance the need for a fair hearing with an efficient and time limited proceeding. The issue of the nature and extent of consultation for second semester classes was not identified. It is clearly an important issue. There are likely other important issues that will be identified. However, the importance of the issue to one or both parties has not been the criteria defining the scope of this round of hearings. The criterion is the particulars meticulously identified before we commenced hearings in November. I rule that this issue is not to be addressed in this hearing and no evidence with respect to it is to be adduced.

[10] The union selected five representative schools in five school districts – two elementary schools, one middle school and two secondary schools. The employer could have chosen an equal number, but limited its selection to two elementary schools in two school districts because of some unique events related to the organization of classes at the two elementary schools selected by the union. The five schools selected by the union are:

- Frank J. Mitchell Elementary School (K-7) – S.D. No. 5 (Southeast Kootenay)
- Thornhill Elementary School (Grades 4-7) – S.D. No. 82 (Coast Mountains)
- Qualicum Beach Middle School (Grades 6-8) – S.D. No. 69 (Qualicum)
- Claremont Secondary School (Grades 9-12) – S.D. No. 63 (Saanich)
- Guildford Park Secondary School (Grades 8-12) – S.D. No. 36 (Surrey)

The two selected by the employer are:

- Hastings Community Elementary School (K-7) - S.D. No. 39 (Vancouver)
- Merritt Central Elementary School (K-6) - S.D. No. 58 (Nicola-Similkameen)

Through document disclosure and further investigation, the union and employer reduced the number of disputed classes in the seven representative schools to be examined in this phase of the arbitration.

[11] The union and employer agree the representative schools and classes, which have a variety of missions and purposes, English as Second Language programs, immigrant settlement patterns, Aboriginal children populations, curricula, support and remediation programs and special education needs, have been truly a representative cross-section of the Grades 4 to 12 schools and classes across the province. The

evidence with respect to each of the seven representative schools is summarized in Appendix 4.

[12] The agreement on this process was predicated on an intention it would produce some clear criteria for addressing recurring differences on the same issues, establish some predictable guidelines for resolution of many differences and avoid divergent outcomes before different arbitrators. One goal is to fashion some structured approach that provides predictability and efficiency in resolving many, if not most, differences over classes that exceed the legislated class size and composition standard.

[13] By agreement, no evidence was adduced or submissions made on remedy, which will be addressed after the union and employer have discussed the application of this decision to the other classes grieved in the 2005-06 and 2007-08 school years. Proceedings on the 2008-09 school year are scheduled to commence in September.

[14] Teachers and administrators gave time from their demanding schedules to testify about their students, schools and school districts. Their competence, dedication, commitment to their students and their sacrifices for the professions to which they have committed their working lives were overwhelmingly evident. Numerous other teachers, administrators and union representatives attended and supported this arbitration process. There were five days of most helpful final submissions by counsel whose dedication, long hours of work, professionalism, civility and commitment to the timeline made it possible to identify and address the relevant issues in an efficient and thorough manner. I am indebted to each of them.

1.5 Three Employer Claims of Prejudice

[15] School records and class lists are under constant revision. The students in a class may change throughout September. The group of students in a class can be dynamic throughout the school year as families arrive and leave the neighbourhood. One recurring challenge throughout this proceeding was locating or generating class lists and other documents that record the exact composition of classes at the date of principal-teacher consultation in September and at September 30, 2007.

[16] As a practice and to protect student personal information, class lists and related documents are often destroyed by teachers as new ones replace them. The various

electronic data systems used by the school districts (BCeSIS, SASI, TURBO, SOA, etc.) do not easily allow or were unable to generate point in time reports about class composition. There was a wide variation in the nature and standard of consultation record keeping and reporting by school districts, principals, union staff representatives and local unions.

[17] In this phase of the arbitration, the employer claims its was prejudiced in its ability to respond to the grievances for one reason generally applicable to all representative schools and for two separate reasons in School District No. 26 (Surrey). The first generally applicable basis of the employer's claim of prejudice is as follows:

The ... issue concerns the destroying of class records by the majority of the teachers who testified in these proceedings. Most of the teachers testified that they did not know that they should keep their records in that they were not told by the Union that their classes would be advanced to arbitration.

For those teachers who did not destroy their notes, it has been shown that the evidence with respect to their classes is far superior to the evidence with respect to teachers who no longer have any of their class records.

Had the teachers retained their records there would have been a better opportunity to review the specifics with respect to each of those classes and to make appropriate determinations with respect to the class. ...

In all of the proceedings, teachers were asked whether their school administration had directed them to retain their records. The evidence generally was that there was no specific direction with respect to retention.

This is a Union grievance that was processed and directed at the provincial level. The obligation was on the Union to notify its members to retain records that would be relevant to the proceedings. School Districts were not advised by the Union which classes were in dispute. Indeed, the evidence from teachers from each of the schools confirmed their lack of knowledge of the dispute concerning their particular class.

The Employer bears no responsibility for the failure of the Union to promptly notify its members to retain documents or for the failure of the Union to provide information to the Employer to use in requesting School Districts to retain records.⁵

[18] This objection relates to accurate class size lists before and after September 30th. There might be circumstances when events after September 30th are relevant. If an impending change after September 30th in the size or composition of a class for which there was a required consultation was known before September 30th, that subsequent event might be relevant to the formation of the principal and superintendent opinions. In that case, the principal would have advance notice and, perhaps, discussed the anticipated event at a principal-teacher consultation. The employer

would have records to follow-up that the anticipated event occurred.

[19] Otherwise, if there was a change after September 30th in the size or composition of a class for which there was a required consultation, that subsequent event would not be relevant to the issues in dispute in this phase of the arbitration. That event might be relevant to fashioning or mitigating a remedy if there was no meaningful consultation on the class or a principal or superintendent opinion the class was appropriate for student learning was flawed. As was said in the decision on the preliminary objections: “If the conduct of the union or employer has aggravated a violation or impacted the ability to mitigate a violation that is a matter that can be considered when fashioning a remedy.”⁶ By express agreement, remedy and mitigation are not matters for this phase of the arbitration.

[20] Returning to class lists on and before September 30th, the employer knew class sizes and compositions in each instance when the principal was required to consult the teacher within fifteen school days after school opening day. The principals maintained records of those consultations. They formulated and confirmed their opinions on those classes and reported to school planning councils. Principals reported to superintendents who formulated opinions on classes and reported to boards of education and district parents’ advisory councils. The size and composition of each class as of September 30th was reported to the minister who made them publically accessible through the internet.⁷

[21] These were record keeping obligations on the employer, not the teachers or the union. Teachers must maintain records required by the principal and district,⁸ but there was no requirement for them to keep these records. And, as was unknown and incorrectly anticipated by participants as these proceedings progressed, the school districts did not maintain and were unable to produce point in time records of class size and composition. This generated considerable unanticipated inquiry and frustration for which the teachers or the union cannot be held responsible.

[22] There was extensive litigation and delay before these grievances arrived at a hearing on their merits. During that time, school districts knew they did not possess and were unable to generate accurate lists for any class, whether grieved or not, despite having publically reported on the class as of September 30th in each of the two school

years. No steps were taken to inform the union or the teachers, who were equally prejudiced by not having access to accurate point in time class lists. Where there is a difference about the class size and composition numbers, not the students' names, the public report must be presumed to be accurate, despite the instances in which there was evidence that they contained inaccuracies. This first claim of prejudice by the employer is not meritorious and is dismissed.

[23] The employer claims its ability to defend against these grievances was prejudice in School District No. 36 (Surrey) because the employer was unable to produce accurate class records at Guildford Park Secondary School for September 30, 2007, but would have been able to do so had the grievance proceeded in a timelier manner.

Had the grievance been pursued within the timelines of the grievance procedure and/or if there had been discussion at the local level and identification of the classes in dispute in a timely way, the School District would have been able to retain and produce the necessary class lists for the purposes of these proceedings.⁹

[24] This is substantially the same as the first claim and a reiteration of aspects of the several employer claims of prejudice in the preliminary stages of this arbitration that were addressed and dismissed.¹⁰ This second claim of prejudice by the employer is not meritorious and is dismissed.

[25] The employer claims its ability to defend against these grievances in School District No. 36 (Surrey) was prejudice by a letter from the Surrey Teachers' Association to the school district about discussions in February 2007 between a teacher and a principal about the 2006-07 school year grievance at a school that is not listed in the union's particulars of its grievance for that school year. The employer submits:

... Brian Bastien testified concerning the muzzle letter from the Surrey Teachers' Association and his response (Exhibits 29 and 31).

His evidence shows that the Union took the position that there could be no discussion with any teachers concerning the provincial class size grievance.

This in essence deprived the Employer from any opportunity to know about any class size or composition issues.¹¹

[26] As reported in the decision on the employer's preliminary objections to these grievances, the Surrey Teachers' Association filed a grievance in January 2007. The steps Mr. Bastien took and what followed are also summarized.¹² These events might or might not be relevant to future disposition of the grievance for the 2006-07 school

year. However, they are not the basis for a finding the employer was prejudiced with respect to the issues at this stage of the arbitration dealing with representative classes at Guildford Park Secondary School in the 2007-08 school year. This third claim of prejudice by the employer is not meritorious and is dismissed.

2. Background to Class Size and Composition Disputes (1970 - 2002)

[27] The background to the current dispute extends back decades and pre-dates the more recent and fresh memories described by the union as follows:

Undoubtedly, the elimination of freely negotiated class size and composition provisions, and the replacement with minimal statutory protection has been an emotionally charged issue for teachers, parents, and students. The legislation resulted in a province-wide walk-out and demonstration by teachers, and the continued use of government legislation to impose terms and conditions on teachers resulted in a 17-day strike in 2005.¹³

2.1 School Facilities Design and Average Instructional Space Capacities

[28] Throughout the testimony, teachers spoke of the impact the configuration and adequacy of classroom space have on the classroom learning environment, the choices it forces on them in selecting instructional techniques and activities and the safety risks that it can create for students in classes in dispute.

[29] School facilities are designed and built with assumptions about the number of students who will be accommodated within the physical space of the school facility. The space allocated for a school facility to safely accommodate a certain student capacity is the combined instructional classroom spaces and other facilities, which include hallways, multi-purpose spaces, media and technology room, gymnasium, library, special needs rooms and administration space. Many school facilities were built decades ago under design and area standards for classrooms, laboratories, workshops and other instructional, common and multi-purposes spaces in effect at the time.

[30] The Ministry of Education's current *Area Standards* assume the number of students who are to be accommodated in an instructional space in elementary, middle and secondary schools. The *Area Standards* prescribes areas and other standards in elementary, middle and secondary schools.

These standards apply to all facilities that are to be either newly constructed or enlarged. The standards are also to be used to establish the nominal capacity of existing schools.¹⁴

In this document *nominal capacity* represents the student capacity of a school based on the following capacities per instructional space:

- Kindergarten 40 half-time pupils per classroom
- Elementary 25 pupils per classroom
- Middle & Secondary 25 pupils per classroom and vocational module.

The *nominal capacity* for each new and existing school shall be based on the space standards for elementary, middle and secondary schools. The *nominal capacity* will form a base line capacity which will remain fixed, subject only to changes being made in physical space that would effect the nominal capacity and adjustments in the space standards. Examples include additions and/or renovations.

To accommodate capacity adjustments for grade structure and classroom student capacity, the *nominal capacity* will be adjusted to an *operating capacity*.¹⁵

The *operating capacity* of a school is determined by adjusting the *nominal capacity* to reflect grade structure and classroom student capacity. The *operating capacity* and *nominal capacity* may be the same value, as will be the case for most middle and secondary schools.¹⁶

The *Area Standards* also prescribes areas and standards for school sites, grounds and district service facilities.

[31] To ensure students with special needs are properly accommodated in schools, the Ministry has a resource for planning accessible school facilities intended to help schools by:

- supporting the Province's Special Education policy that all students should have equitable access to learning,
- providing information to school districts which promotes the inclusion of students with special needs,
- serving as a reference for school districts as they plan new schools and renovate existing facilities,
- providing further information for school districts which already have their own guidelines for accessible schools, and
- showing many features that are no-cost or very low cost when included at the design stage.¹⁷

[32] Because of fluctuations in student populations in neighbourhood school catchments areas, current school populations might be larger or smaller than the population range a school facility was designed to accommodate.

[33] Teachers and students must work and learn within the confines of the instructional space allocated in a school facility for general instruction, science, fine arts (choral music, music, art, drama and theatre), industrial education (drafting, general shops, and technology), home economics (food and clothing), business education and

gymnasium.

[34] The Ministry of Education *Area Standards* have average classroom capacities for grade levels.

2.4.1 Elementary Average Classroom Capacities

Determining the nominal and operating capacity of an elementary school depends on the capacity per instruction room and the grade structure of the school. The current classroom capacities are as follows:

- Kindergarten 38 (half-time pupils per classroom)
- Elementary grades 1 to 3 21 pupils per classroom
- Elementary grades 4 to 7 25 pupils per classroom.

The following table, based the above current classroom capacity, gives the average elementary classroom capacities for a variety of grade structures. The average classroom capacities are to be used in the determination of nominal and operating capacities for new and existing schools.

| <u>Grade Structure</u> | <u>Average Classroom Capacity</u> |
|------------------------|-----------------------------------|
| 1 | 21.00 |
| 1 – 2 | 21.00 |
| 1 – 3 | 21.00 |
| 1 – 4 | 22.00 |
| 1 – 5 | 22.60 |
| 1 – 6 | 23.00 |
| 1 – 7 | 23.29 |
| 2 – 3 | 21.00 |
| 2 – 4 | 22.33 |
| 2 – 5 | 23.00 |
| 2 – 6 | 23.40 |
| 2 – 7 | 23.67 |
| 3 – 4 | 23.00 |
| 3 – 5 | 23.67 |
| 3 – 6 | 24.00 |
| 3 – 7 | 24.20 |
| 4 and greater | 25.00 |

The average elementary classroom capacity for grades 1 - 8 to 1 - 12 schools is 23.29.

2.4.2 Middle and Secondary Average Classroom Capacities

The current pupil capacity per construction module for middle and secondary schools is 25. Since the nominal capacity is based on the same criteria, middle and secondary schools will have the same nominal and operating capacities.

2.2 Teacher Rally and Government Reduction of Pupil-Teacher Ratio (1970s)

[35] In the 1970s, the Ministry of Education maintained calculations of the provincial pupil to professional teacher ratio. It was the ratio of full-time equivalent (FTE) pupils to

all full-time equivalent enrolling and non-enrolling teachers, including principals and vice-principals, who, at the time, were members of the British Columbia Teachers' Federation, and other educators employed by school districts who had a British Columbia teaching certificate.

[36] During the 30th Parliament from 1972 to 1975, the government mandated Kindergarten and committed to reducing the provincial pupil to professional teacher ratio. On February 4, 1974, Premier Barrett announced the government had funded the hiring of more teachers in the past year and the ratio had been reduced by 1.2 pupils, which he said was "the largest single year of decrease since 1916." He said the 1973 ratio was 21.26, down from 22.79 in 1970.¹⁸

[37] The next day, Opposition Member Gordon Gardom commented on the Premier's announcement: "Indeed, the reduction of class size - and I appreciate the problems with that and the economic consequences, but it is a need. It's a need that's been expressed in this House ever since I've been a Member"¹⁹ Opposition Member G. Scott Wallace took issue with the government's claimed accomplishment:

We had a very strong defence of the government position by the Premier last night on behalf of the Minister of Education. He quoted figures, but he didn't refer to the actual document that I happen to have in my hand right now, which is the BCTF brief, which quotes a survey from early November 1973, which is pretty up to date. I'm talking about the number of pupils in a class. No matter how much we argue about specific figures, let it be made very plain that in the sense of this amendment, the government is not meeting its election commitment to do for education what it promised to do. I propose in a moment just to refute some of the figures the Premier mentioned last night. I thought it was really pretty pathetic that he had to go back to 1916 to draw comparisons.

The fact is, I have a copy of the maiden speech which the Minister of Education made in 1967, January 30, and I'd just like to quote a sentence or two from the Minister's maiden speech:

"Large classes and lack of special services such as remedial teachers and counsellors are certainly not creating a good learning environment in our schools today. School boards are well aware of these needs in their district, but are, of course, reluctant to initiate these vital services because of the financial impact on the local taxpayer."

This is really the relevant part.

"It is to be hoped that this session of the Legislature will see a considerable change announced in the school entitlement figures in both secondary and elementary grades."

The Minister is clearly on record in the years I've been in this House, when she spoke as education critic, that she indeed recognized that the quality of education must inevitably depend, and does depend, on the number of pupils,

and that if a teacher has an unreasonably high number of pupils, then the learning environment is indeed unfair. I don't think anybody's debating that.

Of course, this is an element which is mentioned in the BCTF brief, November, 1973, page 3: "The long-standing inadequacy of B.C. class sizes has now become a crisis."

The lady candidate for North Vancouver-Capilano confirmed in public the other night that indeed this remains priority number one in the educational platform in the NDP, as indeed it should. I would certainly go on record right now as saying it would also be the number one goal of our educational programme.

But the point is, Mr. Speaker, that when you look at promise and performance, the performance which the Premier claimed last night is hardly borne out by the figures quoted in the top of page 3 in this brief. It states that the average number per class is only 0.7 lower than the 30.1 standard in effect six years ago, in 1967.

Now, let's not repeat a negative debate such as I am sorry I took part in last night when all we did was slam the errors and omissions of the past. Let's see where we're at today and where we think we should go in the future and try and be positive about this.

The fact is, just to put the record straight, regardless of the figures which the Premier quoted last night, these figures were accumulated from a survey completed by elementary school principals and 1,080 out of the 1,168 elementary schools where the average size of the classes was 29.4 in September 1973. They finish the paragraph by saying that, incredibly in 1973, 21 districts in British Columbia actually increased the average size of their elementary classes over 1972. So the fact, in our view, Mr. Speaker, is that if the NDP government is committed to this as a number one priority, it is certainly falling far short in implementing it in a practical way.²⁰

[38] A week later, the Premier announced the government was making supplementary funds available as emergency help for school districts with an "exorbitantly high student-teacher ratio."²¹

[39] Debate continued and another week later, Opposition Member Harvey Wilfred Schroeder, commented on the large class sizes in some school districts, particularly Surrey.²² The next day, February 20th, following a rally by teachers from Surrey on the lawn of the Legislative Assembly the previous Friday, February 15, 1974, the Minister of Education announced a government policy to implement a staged reduction of the pupil-teacher ratio over the next three years.

The provincial average of the number of students to the number of professional teachers in this province works out to 21.5.²³

It's the government's intention to bring the provincial average pupil ratio to the professional teacher level down by 1.5 per year for the next three years. In other words, we are aiming for a drop of 1.5 students to the ratio of the professional teacher, on an average, and we intend to carry out this commitment over the next three years.²⁴

This would reduce the provincial pupil to professional teacher ratio to 17 from 21.5.

[40] The rationale for the target of a provincial ratio of 17 pupils per professional teacher was not defended with empirical research identifying the pupil-teacher ratio that was most effective for student learning at any or a specific grade or by reference to the norm in other public school systems in Canada or elsewhere. By some accounts, the 1.5 per year reduction for each of three years was simply a figure negotiated between the Premier and the British Columbia Teachers' Federation following the rally.²⁵

[41] A reduction in the provincial pupil-teacher ratio could be achieved by an increase in the number of enrolling teachers for instruction, which would impact average class size. Or it could be accomplished by an increase in counselling, student support services and other non-enrolling teachers or the number of certified teacher administrator without an impact on average class size.

[42] The Legislative Assembly debate continued. On March 20, 1974, Opposition Member Schroeder was advocating a class size based measurement.

The class sizes, as we have them listed for us now in the Province of British Columbia, are 21.5, give or take a few. This is not the actual class size; this is just the all student-all teacher ratio. I would like to suggest, Madam Minister, that as early as possible you stop relating class size or student-teacher ratio to the all teacher-all student ratio, and take the actual number of students in the classroom.

I looked at a breakdown and I was appalled at how many classes have 36 or more students in them. I was appalled at how many classes had 30 to 35 in them. In some school districts, the greatest percentage of the classes were greater than 30 students in the class. To say that our student-teacher ratio is 21.5 to 1 is meaningless when class sizes are actually at that level. Why don't we tell it like it really is and divide the number of students by the number of classes? Then we have the proper student-teacher ratio. Does that make any sense to you, Mr. Chairman? That would seem to me to be the logical way to do it. Then let's strive to get the class ratio to 25 or lower. Then we would be doing something to develop the proper atmosphere in which the learning process can take place.²⁶

[43] In taking action to achieve a staged reduction in the pupil to professional teacher ratio, a balance had to be struck between the goal of a reduced ratio and the requisite increase in local taxation by school district boards of trustees. It was believed the staged reduction could be achieved, without the seventy-four local school districts imposing unreasonable increase in taxes, through a combination of more effective assignment of teachers and supplementary funding from the provincial government to

employ more teachers. This challenge was reflected in the next Throne Speech on February 18, 1975.

The importance of the quality of education has been recognized with the reduction of the pupil-teacher ratio throughout the public school system by 1.74 over the past year.

My government intends to continue its long-term policy of alleviating the burden of rising educational taxes.²⁷

[44] As early as 1979, some local teacher associations and school districts negotiated district class size averages in their working and learning conditions agreements.²⁸

[45] For the 1978-79 school year the provincial pupil-teacher ratio was 17.8. A ratio of 16.7 was achieved in the 1981-82 school year.²⁹ In the 1986-87 school year, with a name change, the provincial FTE enrolment to FTE educator ration was 17.7.³⁰

2.3 Royal Commission, Class Size and Special Needs Learners (1980s)

[46] On March 14, 1987, the government appointed one of the infrequent royal commissions on education. Commissioner Barry M. Sullivan, Q.C. wrote about the standardization and variation in British Columbia's public schools in his 1988 report *A Legacy for Learners: Report of the Royal Commission on Education*. The variations included school sizes and architectural styles; their purpose and mission; diversity in programming; programs for First Nations children; and special education programs.³¹ Schools provided these variations while fulfilling a custodial function of providing a safe environment for children in the care of adults, a socializing function and an educational function, which encompasses the hard work of children learning to think at advanced levels, preparing for vocational life, development of moral and civic responsibility and individual development.³²

[47] The proper scope of the responsibilities and mandate of public schools "held captive by learners and vice versa" was a troubling issue for the Commissioner.

The school is the only public agency required, by law, to deliver services to all children in a given age range. If some of these children are troubled by health or social shortcomings, they inevitably bring them to school, where such problems are sometimes further aggravated by their need to adapt to the culture of the school and the expectations for learning set out for them. Moreover, these problems, whether physical, social, cultural, mental, or emotional in nature, must somehow be accommodated by their teachers and classmates.

In the end, the Commissioner concluded:

In earlier discussions, we have spoken of “social capital”, a term we use to refer to those benefits accruing to children which, if held in appropriate quantity and quality, make adequate learning possible and probable, and which, if lacking, impair learning. We note that, increasingly, some children appear at schools devoid of such capital advantages. Recent attempts by teachers to provide meals, family counselling, extensive social guidance, and mental health services attest to this problem. We realize that such actions speak well to the social conscience of teachers and to their concern for others; nevertheless, we do not favour this pattern of support.

From the Commission's own study of this matter, and on the basis of considerable public and professional opinion, we have concluded that it is inappropriate for schools to provide such services and, moreover, that the quality of such services rendered currently by schools is limited to the extent that some learners in need of assistance are short-changed. We have further concluded that educators are not appropriately trained to develop, implement, and supervise many of the programs required to alleviate students' special needs and that provision of such ancillary services drains financial resources intended for children's education.³³

[48] Class size was addressed by the Royal Commission when discussing teachers' work environment as part of the teaching profession. Reduced class size was the first of five working conditions teacher seek: “reduced class sizes; better classroom support services (additional teacher aides, larger library allocations, expanded counselling services); more time for planning and preparation; improved status within the community; and increased professional development opportunities.”³⁴ Class size was identified by teachers “as the most formidable obstacle to effective teaching and learning” and the greatest source of stress for beginning teachers.³⁵

[49] The Royal Commission reported on class size, but did not make any recommendations, as it did on other aspects of the teaching profession. In part, it reported:

Submissions to the Commission generally supported the notion that small classes improve the quality of classroom life for teachers and students alike. In short, there appears to be general acceptance of the belief that small classes are advantageous despite the overall inconclusiveness of class size research. Where disagreement is evident, however, is in regard to the jurisdictional aspect of class size. Teachers' associations seek to apply class size prescriptions through formula, a position embodied in the British Columbia Teachers' Federation policies on class sizes and staffing allocations. Such formulas effectively seek to place control of the class size issue within professional jurisdiction. School boards, however, while appearing sympathetic to smaller classes, view formulas establishing class size maximums as inflexible: In addition, boards resist providing teacher associations with what trustees see as inordinate control over district educational policy-making and school management. Further, school boards are naturally concerned about the costs for

the additional teachers and facilities likely to be incurred under class size formulas.

In sum, the position taken by this Commission is that students at different levels of personal and intellectual development require different learning conditions for the realization of desired levels of progress, growth, and achievement, and that class size is one important and critical factor to be considered in this regard. Small classes have the potential to offer better opportunities for teaching and learning. However, since schools differ in terms of the needs of their teachers and students, and since class size is so inexorably related to other school and classroom factors influencing achievement, rigid formulas dictating maximum class sizes are no guarantee of improved achievement. Class sizes are best established at the school level, on a case-by-case basis, and with meaningful participation by classroom teachers. That is not to say that general guidelines at the district or provincial level are unnecessary. Rather, lack of rigidity allows for an essential degree of individual school autonomy in organizing the school for instruction.³⁶

In doing so, Commissioner Sullivan had noted that “considerable evidence shows that individuals who choose to teach are among the most idealistic members of the community.”³⁷

[50] The Royal Commission reported that since the 1960s, in response to changes in social attitudes, there had been pressure to integrate in the public school system children previously excluded because of their physical and mental handicaps. In the 1987-88 school year there were 9,138 students or 6.0% of the Kindergarten to Grade 12 student population enrolled in special education programs.³⁸ The total student numbers by special needs designation categories at the time in the 1987-88 school year were:

| Program | Enrolment |
|--|------------------|
| Trainable Mentally Handicapped | 1,287 |
| Severe/Profound Handicapped | 376 |
| Physically Handicapped | 508 |
| Visually Impaired | 409 |
| Hearing Impaired | 812 |
| Autistic | 153 |
| Severe Learning Disabled, Educable Mentally Handicapped, Severe Behaviour, Rehabilitation | 16,488 |
| Gifted | 9,105 |

[51] Many of these children’s interests in school, like many other children, were social rather than academic, as they grew, struggled with adolescence and asserted independence. At the same time: “Parents of special needs children are generally not in favour of a system which serves educational, custodial and socialization functions: they seek a system which meets the complete developmental needs of their children, as they perceive them.”³⁹

[52] At the same time, research and an increasing sophistication of professional expertise identified the “hidden handicapped or students with specific learning disabilities” often mislabelled as slow or lazy. Despite differences in approach, parents and advocates of these children wanted the teachers to receive special training and “few, if any, limits should be placed on the resources allocated to meet the needs of these special children and to enhance their full potential.”

[53] Generally, all teachers and parents were concerned about the potential for placing other children in the class at a disadvantage, especially if teachers were “not provided with adequate personnel and material support.”⁴⁰

[54] The Royal Commission’s recommendations were:

29. That present policies, programs, and services aimed at providing appropriate learning experiences for special needs learners of the province be continued.
30. That the appropriate ministries of the provincial government provide additional educational support services for both special needs learners and their teachers in normalized classroom settings.
31. That, where necessary, special needs learners and their families be provided with extended social and educational services designed to assist learners in overcoming the educational challenges they face.
32. That rights of special needs learners and their parents be clarified in the *School Act*, together with provisions by which any disputes between parents and school authorities would be referred to, and settled through, appropriate third-party action.⁴¹

[55] Since 1989 amendments to the *School Act*, a school age person is entitled to enrolment in an educational program offered by a board of education of a school district.⁴² The current provisions of a Ministerial Order issued in 1989 directs:

- (1) A board must ensure that a principal, vice principal or director of instruction offers to consult with a parent of a student with special needs regarding the placement of that student in an educational program.
- (2) A board must provide a student with special needs with an educational program in a classroom where that student is integrated with other students who do not have special needs, unless the educational needs of the student with special needs or other students indicate that the educational program for the student with special needs should be provided otherwise.⁴³

[56] In 1989, British Columbia also published a policy on inclusion of students with special needs as participating members of a student community in the public school system. The current parameters of this policy are outlined below.

2.4 Negotiating and Arbitrating Class Size and Composition (1990s)

[57] The economic recession of the early 1980s was the setting for provincial expenditure restraint and the *Compensation Stabilization Program* enacted by the 32nd Parliament. There followed a period of heightened acrimony between the provincial government and public school employees that some referred to as *School Wars*.⁴⁴

[58] After the *Canadian Charter of Rights and Freedoms* came into effect in 1986, the first session of the 34th Parliament in 1987, gave teachers the right, effective January 1, 1988, to organize into local school district unions and to engage in collective bargaining with their school board employers. Prior to this legislative decision, the BCTF had commenced a constitutional challenge to the exclusion of teachers from collective bargaining legislation and had successfully made a complaint to the International Labour Organization Freedom of Association Committee.⁴⁵

[59] Principals, vice-principals and directors, coordinators or supervisors of instruction, included as professional teachers in the pupil-teacher ration, were designated Administrative Offices. Effective January 1, 1988, they were excluded from teacher bargaining units. Teachers became unionized salaried professional employees and principals and vice-principals became managers.⁴⁶

[60] Teachers quickly exercised this newly recognized right and there followed three rounds of local school district collective bargaining from 1988 to 1994. School district employers and local teacher unions negotiated collective agreements that included provisions addressing class size and composition limits and services for students with special needs.

[61] They were negotiating teacher workload; seeking to agree on service delivery models that best provided an affordable environment for student achievement and desired education outcomes; and striking a balance between district guidelines and formulas and school autonomy to set class size and composition. In doing so, negotiators were balancing conflicting views over whether student achievement and educational outcomes were determined more by school resources or more by student background and socioeconomic factors.

[62] In agreeing to collective agreement provisions, the local unions and school

districts gave contractual import and enforcement to existing school district policies and practices and made decisions about the role of class size and composition in teacher workloads and the delivery of quality education at elementary, middle and secondary school grades and in district educational programs.

[63] In the diverse local collective agreement provisions, negotiators recognized various other factors, some of which were: variations in neighbourhood school populations; nature of the curriculum; range of student needs and abilities; nature and extent of available service beyond classroom teaching; physical restrictions of equipment and space, especially in specialty subject areas; and secondary school programming to complete course or subject requirements for graduation.

[64] The extent and detail of collective agreement provisions varied among the school districts. Some had no numbers or formulas. Some were formulistic and based primarily on numbers. Others were quite nuanced and specific in their application. Some of the class size provisions in local collective agreements in the seven school districts with the representative schools were as follows:

- Class size maximums for kindergarten, primary (Grades 1-3); combined and multi-year primary grades, intermediate (Grades 4-7); combined and multi-year intermediate grades; middle school single and combined grades; secondary (Grades 8-12); Special Education (High Incidence/Low Cost); Special Education (Low Incidence/High Cost); Multi-Programmed/Minimum Essentials for (Grades 9-12); science labs and workshops limited to 24 students where student safety is a factor “provided space and workstations are available”; Home Economics (24 students); secondary minimal essential class (20 students); and other identified science, technology, band and choir classes;
- Flexibility factors to allow the maxima in a class to be increased;
- Allowance to increase a class size for “educationally sound reasons” or in special circumstances (e.g. “external constraints beyond the Board’s control”) or after consultation with the teacher or local union or with provision of some form of staff assistance or reasonable compensation for the teacher;
- Times at which class size limits become effective for non-semester and semester classes;
- Requirements for appropriate support services in some identified situations;
- Maximum weekly student teaching load in Middle and Secondary schools
- Reduced class size, to be determined by consultation and consensus, where the class includes students with behavioural problems, learning difficulties or special needs;
- Limits in a lab oriented science class or workshop where student safety is a factor “provided space and workstations are available”;

- Class size limits shall be paramount in determining school district annual budget;
- Teachers may request larger groupings to fulfill an educational purpose; and
- Expedited arbitration or troubleshooting of disputes.

[65] The local collective agreements included supports for the inclusion of students with special needs. Some of these were:

- Constitution, operation and interaction of School Based Team and District Screening Committee;
- Identification of Low and High Incidence categories of special needs;
- Designation status of students who come to the district with a designation in accordance with Ministry Guidelines from another school district;
- Time limits within which assessments must be completed after referral and Individual Education Plans must be prepared after designation;
- Role of School Based Teams in placement of students with special needs, the factors to be considered and the conditions necessary for safe and successful integration;
- Requirements for clear emergency evacuation procedures;
- Commitments to limit the number of students with special needs in each class;
- Roles and responsibilities for development of Individual Education Plans;
- Special Education Teacher Assistant allocations;
- Trained replacements during the absence of special education assistants;
- Teacher responsibility to administer medication or medical procedures;
- Responsibility for supervision of certain special needs students outside the classroom;
- In-service professional development for teachers affected by placement of students with special needs;
- Training for teachers-on-call;
- Release time for School Based Team members and for consultation between teachers and special education assistants;
- Limits on the number of low incidence and total number of special needs students in a class with exceptions (e.g., when the limit necessitates relocation of a student to another school) and offsetting reductions in class size and additional teacher assistant time when the number is higher; and
- Resources room and Learning Assistant Teachers' caseload limits.

[66] In some instances, impasses in local collective bargaining led to a strike⁴⁷ or interest arbitration awards⁴⁸ or both.⁴⁹ In 1995, local school district collective bargaining was displaced in favour of provincial collective bargaining between the British Columbia Teachers' Federation, rather than local school district teacher unions, and the British Columbia Public School Employers' Association, rather than local school districts.⁵⁰

[67] After two years of negotiations and the enactment of legislation to ensure health and education services were not disrupted during a provincial election,⁵¹ the BCTF and

BCPSEA, with mediation assistance, signed their first provincial collective agreement in May 1996. It preserved all local agreements and added some provincial language, a grievance procedure and harassment provision.

[68] The first provincial collective agreement, referred to as the Transitional Collective Agreement, agreed to establish “a tri-partite process for review of all issues related to staffing of schools including class size, non-enrolling service levels and other resources.” The participants were BCTF, BCPSEA and the Government of British Columbia. The chair of this ten person committee was the Deputy Minister of Education, Skills and Training. Its work was to be completed by December 15, 1996. The resulting report, finalized in April 1997, was to be available for the next round of collective bargaining.

[69] From the 1980-81 school year to 1995-96, the pupil-teacher ratio, now called the student-educator ratio, had decreased from 17.3 to 16.7 after rising as high as 18.0 in 1985-86. During the period that class size and composition was locally negotiated, the student-educator ratio declined from 17.7 in the 1986-87 school year⁵² to 16.1 in the 1990-91 school year. It increased to 17.0 in the 1996-97 school year.⁵³

[70] In 1995, the provincial average elementary class size was 23.5, up from 22.8 in 1980-81, and the average secondary class size was up to 24.3 from 22.9.⁵⁴

[71] Since the 1987-88 school year, the enrolment of students with special needs had increased 108% to 34,225. There were corresponding or larger increases in enrolment of children with English as a Second Language and Aboriginal children.⁵⁵

[72] The BCPSEA submitted a brief to the Staffing and Class Size Review Committee identifying the workload and cost determinants as preparation time, class size, non-enrolling staffing, provisions respecting special needs students, provisions respecting ESL students and noon hour supervision flowing from collective agreement provisions. It categorized existing collective agreement workload provisions into six models and concluded:

It is the BCPSEA submission that a new process and system is required to properly address workload provisions in the collective agreement. Teachers should have provisions which create a manageable workload while retaining the necessary flexibility for schools/districts to avoid, for example:

- excessive split classes

- atypical small classes
- the need to re-organize school during the school year and/or the requirement to transport students to other schools after the commencement of school
- educationally unsound or administratively inefficient school organizations

Further, it is our submission, that some special needs students do impact the workload of teachers. Current approaches, such as reducing the class size maxima, however, do not necessarily or always address the needs of a particular student or the teacher.

Therefore, any provisions which address workload issues must contain terms which provide the necessary flexibility to address the needs of a particular student or students and create a manageable workload for teachers. This workload system must be supported in the collective agreement by a review process when a teacher considers her/his workload is unmanageable.

Finally, if workload provisions are to be the subject of collective bargaining, like salary, the cost of these provisions must be directly tied to the funding allocation system.⁵⁶

[73] The BCTF's brief to the Committee, rooted in teachers' experience and stories, said: "It feels like there is more to do with fewer resources." One of its themes was:

An examination of trends - both short-term and long-term - indicates that there has been little change in average class sizes in B.C. schools since the 1970s. In contrast, the staffing of non-enrolling teacher positions has varied over time. In periods of declining financing for schools, it is non-enrolling positions that contract. In times of expansion, the new resources tend to go into the services that provide support to students and teachers in the regular classroom. However, even in periods of additional resources, the staffing for special needs and ESL has not kept up with the growth in the number of students identified as needing additional support.⁵⁷

[74] The Staffing and Class Size Review Committee commissioned a baseline data study, a review of published literature on class size issues and a special needs policy impact study. The Committee members achieved the following consensus.

Literature Review

Much of the research is inconclusive. Many of the class size studies have limitations in scope, methodology and ability to account for a wide variety of variables and outcomes.

There is little class size research on the effect of the inclusion of special needs students on education outcomes or on the human and social or career development of students.

Changing Aspects of the School System

Changing expectations of parents and society are placing greater demands on schools and teachers.

Provincial government requirements and changes demand increased time commitment by teachers; these demands include curriculum changes and Integrated Resource packages, criterion reference reporting, the IP process, more formal requirements for IEPs and the consultation that goes into creation of

IEPs. Also increasing the demands on teachers are the policies and policy interpretations of local boards.

Demographic changes add to the demands on school and teachers, including differing program expectations and range of evolving demands.

Special Education

The inclusion of some types of students with special needs affects the ability of teachers to work with other students in the classroom as well as the particular students with special needs.

Increases in both the number of some types of students with special needs and the degree of integration of these students in the classroom add to the demands on teachers.

The addition of non-teacher adults who work with students with special needs (e.g. Severe Behavior, Dependent Handicapped, Low Incidence High Cost, High Incidence Low Cost) integrated into the regular classroom adds complexity to the work and demands on teachers.

Inclusion of students with special needs is a significant pre-service, in-service and teaching practice issue.

The key issues with respect to special needs students include:

- class composition;
- class size; and
- appropriate resources to support program delivery.

Funding

The distribution of funding by the Ministry of Education, Skills and Training does not align with actual school district costs, including collective agreement provisions.

Staffing/ Workload

A wide range of elements affect school district staffing decisions, including Ministry policies, school board and administrative decisions, district demographics and geography, facilities and collective agreements.

Collective agreements contain a variety of provisions which address teacher workload.

[75] Settlement of the next round of provincial collective bargaining in April 1998 was an agreement between the BCTF and Government of British Columbia, not the BCPSEA as accredited employer organization for the school district employers. There was no salary increase for teachers. A Memorandum of Agreement K-3 Primary Class Size and an Agreement in Committee (AIC) provided, among other things, for school district ratios for non-enrolling teacher. The employer school districts voted to reject the AIC. The legislature enacted the settlement as part of a renewed collective agreement for the term July 1998 to June 2001.⁵⁸

[76] The government agreed to give school districts additional funding in the 1998-99 school year and each of the following two school years to help achieve the primary

maximum class sizes and non-enrolling teacher ratios. By September 30, 2000, the maximum class size was to be reduced to 20 students for Kindergarten and to 22 students for Grades 1 to 3 classes. The lower maximum applied to a K-1 class.⁵⁹

[77] For each school year throughout the 1990s, schools and classes were organized in accordance with the negotiated class size and composition provisions in the local school district collective agreements or the provincial collective agreement when it came into effect. Differences were referred to third party dispute resolution processes, some of which were expedited resolution processes.⁶⁰

[78] There were preliminary issues about procedure and jurisdiction.⁶¹ There were specific class disputes such as a principal's failure to consult a Grade 5 teacher, in accordance with the collective agreement requirements, about whether it was appropriate for a student designated in November to remain in the teacher's class.⁶²

[79] Other disputes included whether a course is an Arts course with an agreed class size limit of 30 students or a Technical course with a limit of 24 students;⁶³ how does the "fudge" or "flex" factor apply;⁶⁴ has the employer fulfilled district class size average commitments;⁶⁵ and whether summer programs were covered by collective agreement class size provisions⁶⁶ or the later class size provisions of the *School Act*.⁶⁷

[80] There were differences over changes in ESL service delivery models and the application and interpretation of negotiated ESL staffing ratios;⁶⁸ whether ESL students were special needs students;⁶⁹ the date in the school year at which agreed district averages were to be in place;⁷⁰ and negotiated urgent intervention processes.⁷¹

[81] Some differences involved the interaction of subsequent legislated provisions and pre-existing local collective agreement provisions.⁷² And some differences, like combined all day Kindergarten and Grade 1 classes in the Vancouver School District, persisted and were grieved and arbitrated for years.⁷³

[82] Arbitrators had to address the pressures employers confronted when faced with previously negotiated contractual obligations and current inadequate funding to meet those obligations.⁷⁴

[83] Appropriate remedies for contraventions of class size provisions were argued and varied in diverse circumstances,⁷⁵ including the effect of a collective agreement

provision that an arbitrator must consider "the impact of any decision on the quality of education for students in the class and school."⁷⁶

[84] Arbitrators generally accepted that the integration of special need students into classrooms created extra work for teachers and collective agreement class size and composition provisions were a negotiated benefit for teachers. It was commonly accepted that local teacher unions and school district employers had correctly assumed in collective bargaining that good education practise directed that classes with special needs students be smaller than those without.⁷⁷

2.5 Class Size and Composition Deleted from Collective Agreement (2002)

[85] In August 2001, in anticipation of the third round of provincial teacher collective bargaining, essential services legislation was amended.⁷⁸ Teachers took a strike vote and commenced limited job action in the fall. On October 16, 2001, the Minister of Labour directed the Labour Relations Board to designate essential services.⁷⁹

[86] In January 2002, the BCTF announced it would begin withdrawal of instruction at the end of the month. That decision included the intended BCTF immediate and long-term response to any legislation to resolve the dispute. On Friday, January 25th, the government introduced legislation (Bill 27) that enacted outcomes for collective bargaining.⁸⁰ The legislation, passed and enacted by Monday, January 28th, eliminated nine local agreements where there had not been voluntary consolidation of local agreements in school districts amalgamated in 1996; mandated a 7.5% wage increase; and provided for the appointment of a commission to make recommendations to improve teacher and employer collective bargaining.

[87] Amendments to the *School Act* in the *Public Education Flexibility and Choice Act*⁸¹ (Bill 28), enacted at the same time, fundamentally altered the scope of teacher collective bargaining by excluding school organization, class size and composition, and student and non-enrolling teacher ratios from collective bargaining. Specifically, section 27(3) of the *School Act*, to which (d) to (j) were added, states:

- (3) There must not be included in a teachers' collective agreement any provision
 - (a) regulating the selection and appointment of teachers under this Act, the courses of study, the program of studies or the professional methods and techniques employed by a teacher,

- (b) restricting or regulating the assignment by a board of teaching duties to principals, vice principals or directors of instruction,
- (c) limiting a board's power to employ persons other than teachers to assist teachers in the carrying out of their responsibilities under this Act,
- (d) restricting or regulating a board's power to establish class size and class composition,
- (e) establishing or imposing class size limits, requirements respecting average class sizes, or methods for determining class size limits or average class sizes,
- (f) restricting or regulating a board's power to assign a student to a class, course or program,
- (g) restricting or regulating a board's power to determine staffing levels or ratios or the number of teachers or other staff employed by the board,
- (h) establishing minimum numbers of teachers or other staff,
- (i) restricting or regulating a board's power to determine the number of students assigned to a teacher, or
- (j) establishing maximum or minimum case loads, staffing loads or teaching loads.

[88] The *Public Education Flexibility and Choice Act* rendered existing collective agreement provisions void and directed arbitration to implement the legislation by May 11, 2002, by deleting and revising provisions of the collective agreement related to the subjects no longer within the permissible scope of collective bargaining.

[89] An arbitration decision to this effect was made on August 30, 2002⁸² after three appointed arbitrators resigned and the BCTF refused to appear before the fourth after he dismissed a BCTF objection to jurisdiction and denied an adjournment application.

[90] The British Columbia Supreme Court reviewed and quashed the arbitration decision on January 22, 2004. The Court held the arbitrator overreached in the exercise of the deletion mandate and failed to examine and preserve existing provisions to the extent they were not inconsistent or did not conflict with section 27(3) or the manner or consequences of the exercise of a power or discretion by a board of education. In doing so, the arbitrator failed to read the legislation in a manner that harmonized with the collective agreement. In making the decision to quash the arbitration decision, the British Columbia Supreme Court wrote:

Counsel for the Attorney General submits that this case calls for the court to exercise its discretion to refuse to grant a remedy to BCTF. She contends that unless there has been a substantial miscarriage of justice, the court should decline to quash the arbitrator's Determination. She submits that an order quashing the Determination could result in disruption and uncertainty in the

education system. Counsel for BCPSEA supports the Attorney General in this submission.

In my view, I should not refuse the remedy BCTF requests. The errors of law that I have found are of such fundamental importance to a correct determination of the issues put to arbitration that it would be wrong to refuse a remedy. I have considered the conduct of BCTF withdrawing from the arbitration hearing, but I do not think that is a significant factor here because BCTF provided the arbitrator with a written submission on the key points of law before leaving the hearing.⁸³

[91] That judicial decision was not appealed, but overridden by legislation in April 2004 that reinstated the earlier arbitration decision effective July 1, 2002.⁸⁴ The British Columbia Court of Appeal characterized this move as “purging with legislative vigour.”⁸⁵

[92] The union held a Day of Protest on Monday, January 28, 2002, in which many teachers participated. It adopted an action plan to which BCPSEA and the Surrey school district responded with applications to the Labour Relations Board.⁸⁶ Adoption of a public education advocacy plan was consistent with the BCTF’s historical role as testified by its president at a 2003 arbitration:

David Chudnovsky gave evidence on behalf of the Union. His evidence is that the Union has been engaged in conduct like this for some 30 years. It is very much in the tradition of the Federation: advocating and lobbying. There were campaigns for lower class sizes together with leaflets and discussions with parents and demonstrations at the School Board in 1978. He also gave evidence about the “under 40” campaign where the Federation took various steps to campaign against classrooms with 40 students. As he put it, a week has not gone by that the Federation has not been engaging in these kinds of activities to improve things for students.⁸⁷

[93] The union commenced an ongoing constitutional challenge against the 2002 legislation.⁸⁸ In 2007, the third statute enacted in the same emergency legislative session did not survive constitutional challenge.⁸⁹

[94] The union expressly pursues these grievances to enforce legislation it challenges in the courts without prejudice to that constitutional challenge. It acknowledges that this arbitration must proceed on the assumption the legislation was validly enacted.

[95] The union complained on February 2, 2000 to the International Labour Organization. The Government’s response to the complaint about the *Public Education Flexibility and Choice Act* was summarized by the ILO as follows:

The Government states that Bill No. 28, which came into force on 28 January 2002, was enacted to provide a more flexible, more responsive and better managed education system by returning decision-making to parents and locally elected school boards regarding issues such as class size, the structure of the

school day and school year; the legislation gives school boards some flexibility on class size, within certain limits established in the Act. For non-classroom educators (librarians, counsellors, etc.), Bill No. 28 allows these decisions to be driven by student needs, parent concerns and local priorities, and not by rigid, provincially imposed, ratios, negotiated at the bargaining table. Collective bargaining continues as regards teachers' wages and benefits.

The March 2003 recommendation of the ILO Freedom of Association Committee was:

...the Government establish, with appropriate safeguards of neutrality and independence, the Commission provided for in Bill No. 27 to review the structure and procedures of collective bargaining in the education sector, and that it include in its mandate the issues raised in connection with Bill No. 28.

In arriving at its conclusion, the Committee commented:

The Committee recalls that, while the determination of broad lines of educational policy is not a matter for collective bargaining between the competent authorities and teachers' organizations, it may be normal to consult these organizations on such matters. This is particularly important in cases such as the present one, where the issues in question were previously negotiated, with the usual give and take process, which means that the parties probably gave away some demands in return for concessions, which are now being taken away through legislative decision. Such a unilateral action by the authorities cannot but introduce uncertainty in labour relations, which in the long term, can only be prejudicial.⁹⁰

3. Statutory Interpretation and Evidence of Legislative Facts and History

3.1 Modern Approach to Statutory Interpretation

[96] Interpretation and application of the *School Act* and regulations is central to a final resolution of these grievances.

[97] Today, the preferred approach to interpreting a statute is no longer application of rules such as plain meaning, mischief, to express one thing is to exclude another [*expression unius est exclusion alterius*], of the same kind [*ejusdem generis*], golden, etc. Statutory interpretation is a more principle directed activity aided by the use of the rules to understand the text and legislative intention and to establish harmony with other legal norms. It is a purposeful activity analyzing and integrating word definitions, legislative purpose, presumptions, consequences and other factors to interpret the words, resolve overlapping laws, address gaps in legislation and give modern application to statutory rules.

[98] This "modern approach" that has been adopted repeatedly by the courts and arbitrators in a broad range of situations was succinctly stated in 1983 as follows:

"Today there is only one principle or approach, namely, the words of an Act are to be

read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”⁹¹

[99] An interpretive analysis looks to the text, the intention, the purpose or purposes sought to be achieved and the consequences of a proposed interpretation. Hopefully, the meaning of the text coincides with the intention and produces results that fulfil the purpose.

[100] This class size and composition dispute is over the meaning of words and phrases in section 76.1 of the *School Act* that are susceptible to differing interpretations. The union and employer variously relied on analyses of the text, the legislative scheme, the policy or values and concerns that informed both the intention and purpose, as they constructed it, and the consequences of their and opposing interpretations. They liberally used legislative sources, evolution and history to support their analysis. The union and employer differed on how the legislation applied to the facts in the representative schools and classes.

[101] While the union and employer share common educational goals, they formulated their competing interpretations and applications of the disputed text by assigning differing importance and value to the 2002 legislation removing class size and composition standards from the collective agreement and future collective bargaining; teacher workload and student learning conditions; and pedagogical and financial considerations. As is to be expected in relationships with extended history disputing a complex and contentious issue, at times rhetoric and an element of cost free moral posturing trumped analysis. For example:

... BCTF argues the Arbitrator’s interpretative approach must take into account and reflect the fact that freely negotiated collective agreement provisions which provided class size and composition limits, matters which the Court of Appeal has determined as crucial to teachers’ working conditions, were unilaterally eliminated without consultation, by a series of actions which at the very least were high-handed, and contrary to the principles of free collective bargaining, even if they have not yet been determined to be illegal.

The interpretive approach of BCPSEA and school boards to the meaning of “consult” and “appropriate for student learning” is both narrow and cynical. Its fundamental position, reflected throughout this hearing, is that all that is required by consultation is the informing of a teacher by a principal of his or her decision regarding class size and composition, and all that is required to establish that a classroom is appropriate for student learning is to demonstrate that at least some

students learned something during the course of the year, or at least some students passed.

This approach is completely inconsistent with the recognition by the Court of Appeal that class size issues are a significant part of the employment relationship affecting both working conditions and the health of teachers. It also is an interpretative approach which disregards the Minister of Education's statement that "teachers are the centre of [the] discussion" regarding class size and composition.

It is critical for the Arbitrator to understand, as was reflected consistently by teachers in their evidence throughout the hearing, that BCTF is more than a trade union concerned solely with workplace issues. It is also an organization of professionals with a history of advocacy for all teachers in British Columbia, activism on social justice issues, and is a tireless supporter of improving the educational needs of students. For the members of the BCTF, the proper interpretation and application of the provisions of the *School Act* is critical to the functioning of the education system.⁹²

The Union is raising in these proceedings the same positions and arguments it raised in the Learning Roundtable discussions.

The Union is raising in these proceedings the same positions and arguments brought forward by the Opposition during the debate on Bill 33.

The Union in these proceedings is attempting to achieve what it specifically did not achieve in the Learning Roundtable discussions and in Bill 33.

The Union is requesting the Arbitrator to substitute his opinion for a class organization that is appropriate for student learning. The object and intent of Bill 33 was to have the professional expertise of Principals and Superintendents used in the forming of the opinions.

The existence in Bill 33 of an enforcement mechanism should result in a more limited and restricted role for an Arbitrator. The arbitrability of the provisions of Bill 28 was based on the lack of any enforcement mechanism in Bill 28.

Decisions on class size and composition must be based on public policy considerations and not on teacher workload or terms and conditions of employment for teachers.

There are three main components of the public policy consideration. First, the education system, supported by the *Charter* and human rights legislation mandates full integration of special needs students in schools. Second, parents' and students' needs and requirements must be given considerable weight in any interpretation of Bill 33. Third, the provincial government determines the levels of resource allocation. An Arbitrator must recognize and accept that reality.

There is very little if anything to fix in our current education system. The student educator ratios have decreased from 17.4 to 16.2 since 2002-2003. The achievement of British Columbia students in Canada and internationally is outstanding.

It is agreed that one can always make classes smaller with fewer designated students. The numbers and size of classes advocated by a number of the Union witnesses would surely produce a reduced workload for teachers. There is, however, no research or evidence to support enhanced student learning if class sizes are reduced at the grades 8 to 12 levels.

Finally, the theme of the Union's evidence throughout the entire proceedings was more funding from the provincial government is needed.

The Union throughout the proceedings did not take serious, if any, issue with the class organizations in place in each of the representative schools.

The Union's underlying and at times expressly stated issue was the inadequate level of funding for resources for the schools in British Columbia.

These proceedings cannot and will not result in increased provincial funding for British Columbia schools. The level of funding is determined by the provincial government and all School Districts must organize their schools within those resources.⁹³

3.2 Evidence of Legislative Facts and Legislative History

[102] Not all facts have to be proven in an adjudicative process. Some are stipulated as true or formally admitted as not being in dispute by the parties. Some are presumptions of fact arising out of a proven set of facts, sometimes called a *prima facie* case, which will be conclusive proof unless there is evidence to rebut the presumption.

[103] For reasons of efficiency, adjudicators may take notice of matters of common and general knowledge. Collective agreement arbitrators are assumed to have a fund of common knowledge and to know specific facts about an industrial sector, enterprise or collective agreement under which they frequently arbitrate. Sometimes, the knowledge the arbitrator is assumed to have is very specific and technical. Unions and employers frequently rely on and refer to that common knowledge or knowledge about specific facts in successive arbitrations without adducing evidence.

[104] Similarly, arbitrators frequently take notice of the history of collective bargaining, the relationship, the industrial conflict and the recurring issues in dispute between the parties to a collective agreement. This is part of the expertise arbitrators bring to their selection and role as a consensual collective agreement arbitrator and permits a broad scope for notice of adjudicative facts.

[105] In constitutional litigation and other adjudication disputes there are legislative facts that are relied on to establish the background, purpose and context of legislation, including its "social, economic and cultural context."⁹⁴ These "facts" are not easily amenable to either truth seeking or inclusion in the record of evidence in adjudicative procedures.⁹⁵ And the process of adjudicative reasoning often assumes things that have not been proven as part of the record of evidence.

[106] The rules and process for considering legislative facts beyond the record of

evidence to establish the context in which a statute or regulation was enacted are neither precise nor mandated by the courts. Some suggest there is emerging a third category of evidence beyond adjudicative and legislative facts, called social fact evidence – social science research used to decide crucial issues in a dispute.⁹⁶

[107] The range of evidence admitted to establish legislative facts can be broad and include newspaper articles and studies. Sometimes, if it is presented in final argument, its introduction can surprise one party and place that party at an unfair disadvantage. Parties may want to subject the statements and conclusions in the materials to the rigour of testing in an adversarial evidentiary process. There may be party objection to inclusion of these materials in books of authorities as “bootlegging evidence in the guise of authorities.”⁹⁷ Although legislative facts are rarely uncontroversial and notice may be taken of them for an understanding of the background and context of legislation, controversial evidence that may prejudice one party is beyond the scope of facts so commonly known and uncontroversial that notice may be taken of them.⁹⁸

[108] Legislative facts often involve contentious issues of social policy that are the subject of legislation. There will be conflicting or competing compendiums of social data, research, studies and published or online works. What is authoritative and the extent to which an adjudicator should look beyond the legislative fact related material presented by the parties to the dispute to formulate an understanding of the social issues are unsettled questions. Caution must be exercised when the legislative facts relate to an issue that will be dispositive of the dispute.⁹⁹ Appeal and reviewing bodies or courts may consider other legislative facts, make their own findings or draw different conclusions from the legislative facts on which the original decision-maker relied.

[109] The union objected to the employer including in its books of authorities a literature review on class size and its effects commissioned by and appended to the 1997 final report of the tri-partite Staffing and Class Size Review Committee. I requested and received the entire report. The union responding by including in its supplementary book of authorities two 2002 and 2008 research papers on class size.

[110] The extent to which class size reduction alone or in conjunction with other policy and practice initiatives at what grade levels has optimal and cost effective educational outcomes and contributes to student achievement and other policy goals is complex

and contentious. I ruled I did not intend to admit or consider any of these three or other studies and if I did I would afford the union and employer an opportunity to adduce further evidence and make further submissions. I have not read or considered these or other similar studies.

[111] At the same time, I have noted the 2005 comments of the dissenting opinion in the Court of Appeal that: “Arguably, the size of a child’s class could have an effect on his or her performance at school. Some students require more teaching attention than can be accommodated by those who teach large classes.”¹⁰⁰

[112] The history of legislation is admissible evidence to determine the background and purpose of legislation. The history includes legislative debates in Hansard, which are to be considered with care.¹⁰¹ The 2002 and 2006 amendments to the *School Act* in dispute have a lengthy and complex history. Because of the representative nature of this phase of this arbitration; the comprehensive nature of the submissions with frequent reference to, and reliance on, Hansard and the processes preceding the amendments; and the broader impact this ruling is intended to have for the parties in the 2006-07, 2007-08 and later school years, the legislative history is reviewed in detail.

4. Legislated Maximum Primary Class Sizes and Class Size Averages

4.1 *Public Education Flexibility and Choice Act - Bill 28 (January 2002)*

[113] In introducing the *Public Education Flexibility and Choice Act*, which was passed without amendment, the Minister said:

Education is the cornerstone of our society, and this bill continues in our commitment, this government's commitment, to put students first. This bill puts class size into the School Act so that it is clear that it is a matter of provincial public policy. This bill protects special needs students by returning decision-making to teachers, parents and local districts.

This bill returns flexibility to local districts by removing fixed and rigid ratios for non-enrolling teachers, such as counsellors and librarians. The bill allows local school boards to decide how the school day and the school year will be structured.

In British Columbia's colleges and institutes we are providing better access for students by ensuring that control of the classroom is returned to the institutions, along with class size, constraints on distributed learning and semester scheduling.

These changes put the needs of students first and help our education dollars go further by giving the locally elected school boards and college boards the flexibility to create a top-notch education system.¹⁰²

[114] On second reading, the Minister further explained the purpose of the legislation as follows:

Mr. Speaker, this bill helps government restore sound fiscal management by increasing operating flexibility in our K-to-12 — kindergarten-to-grade-12 — and college and institute systems.

This bill is intended to put students first by giving the local school boards and the college boards the flexibility they need to effectively manage British Columbia's K-to-12 education system and our province's public colleges and institutes. It's about getting collective bargaining in education away from setting education policy and back to focusing on wages and benefits. But most of all, this bill is about putting students first and about making the tough changes that need to be made to continue putting students first in the face of a difficult fiscal environment.

This bill, most importantly, enshrines the kindergarten-to-grade-12 class size through legislation in the School Act. We'll be one of the few jurisdictions in Canada that does that.

It's also about giving school boards and college boards more flexibility to manage class sizes and the composition of those classes. It takes the question of how many non-classroom educators — people such as counsellors and librarians — there should be in each school and removes rigid ratios that were imposed by the previous government on school boards. This now allows school boards and individual schools to make their own decisions on how best to meet students' needs. It takes decisions on how the school day and the school year will be structured, removing those from the bargaining table and returning those decisions to local school boards, as well as to college and institute boards so that decisions can be made that are in the best interests of all of our students.

These changes provide local, elected school boards and college boards with the flexibility they need to make better use of the facilities and the human resources to place students' needs ahead of rigid imposed ratios and formulas. The bill puts students first by providing significantly more flexibility to our public education system.

In the area of class size, this bill says that class sizes — and we as a government say this — are too important to students to be left as a bargaining chip between the BCTF and employers. This government supports class size limits in our K-to-12 system, and that's why we're placing these limits in legislation into the School Act.

At the same time, we're increasing the flexibility on how class size limits are implemented so that we can protect students and their families from the ridiculous situations that have been common across our province over the last few Septembers — that adjusting period — when common sense hasn't always applied with respect to the student. I'm talking about situations like the busing of five-year-olds 45 minutes each way in the North Okanagan-Shuswap school district because rigid class size limits left them without a place at their closest school. I'm talking about situations like that faced by a Saanich first nations student, who was in the catchment area of a school that has a first nations program. That particular student was forced to attend a different school — one that did not have a first nations resource program — because of inflexible class limits.

Under this bill, class sizes are off the bargaining table, and they are entrenched in legislation in the School Act. The average class size across the district will be

limited to 19 for kindergarten, 21 for grades 1 through 3 and 30 for grades 4 through 12. In addition, and importantly, an absolute upper limit for any individual class size will be established for kindergarten. The kindergarten class size is 22 students, and at grades 1 through 3 it's 24 students. That's the specific class size.

This bill will ensure that our public colleges, university colleges and universities will have the right to determine class sizes — how many students can be enrolled and how many students an instructor may be assigned. By giving these institutions and local, elected school boards more flexibility, we are making clear that contracts are not where these decisions should be made. The well-being of students is far too important to be left as a bargaining chip.

In the area of non-classroom educators, such as our librarians, counsellors and others, special needs assistants and English-as-a-second-language teachers, this bill again says that education decisions should be driven by student needs, parent concerns and local priorities, not by rigid, provincially imposed ratios that have been negotiated and bargained. Nowhere else in Canada are these educators assigned by a rigid, formula-driven process, and there's a reason for that. It prevents local school boards and individual schools from matching teaching resources with student needs. The previous government rammed these formulas into place after the employers themselves voted 86 percent against them.

This bill allows school districts to decide the appropriate number of non-classroom educators in each school, so that if more counsellors and fewer librarians are needed they can make that change. If it's the opposite, and we need more librarians in that particular area and fewer counsellors, then that can happen — reasonable, rational and putting students first. The needs of students should be the deciding factor.

By restoring management flexibility, we are restoring good sense to the system. We're removing difficult issues that are really more properly public policy issues from the bargaining table. The same is true about the decisions in respect to the school year and the school day. By removing these issues from the collective bargaining process, we are giving school districts, colleges and institutes the ability to make the best possible use of their resources and their institutions, in mind of what's best for students.

Locally elected school boards will now be able to listen to parents, students and educators and then decide for themselves on how to make the best possible use of the facilities and their staff. If it makes sense through discussion that a school should operate on extended hours so that students have more flexibility and expensive facilities are in use for more hours of the day, then school boards will be able to make that change. If a school board decides after consultation with affected parents that facilities should be used more efficiently and effectively by adopting a different school calendar, then they will have the flexibility to do that as well. ...

The bill is called the Public Education Flexibility and Choice Act because that's what it's all about — flexibility and choice for local elected school boards, schools and teachers, colleges and institutes and instructors and, most importantly, students and their parents. School boards and colleges need more flexibility to adjust to changing students' needs over time and varying needs from one district to another, from one school to another. They need more flexibility to make better use of our schools and colleges, those facilities which are expensive, which have

the potential to provide increased educational opportunities while reducing the need to build additional facilities.

This bill reverses some of the damage that was done by the previous government, and it allows us to take a big step in fulfilling our new-era commitments to more flexibility and choice in education and, most importantly, putting students first. I am pleased that this bill delivers on our commitment to do just that, in putting students first, and that it provides the increased flexibility and choice as we promised before the election.

These are significant changes, but they are good changes. They will provide colleges and institutes and school boards, individual schools and teachers, and students and their families with a better-managed system. They allow us to return the focus of labour relations in the education sector to where it belongs: on salaries and benefits. They show that this government values the contribution of educators as educators and values their input in developing good public policy decisions — good public policy decisions, Mr. Speaker, that put students first.¹⁰³

[115] On the primary class size limits, the Minister explained:

We have structured this piece of legislation to speak to two things — first, the fact that research does support the fact that fixed class size limits for kindergarten to grade 3 do result in better educational outcomes. What we heard from school districts and from parents is that they supported fixed class size limits. They wanted, though, to have a little bit more flexibility because of the horror stories we've seen where children, like the children in the Shuswap district, were bused for an hour and a half every single day because they couldn't be accommodated at their local neighbourhood school, and they couldn't be accommodated at the school next to the local neighbourhood school. Those children were five years old. That's not right. We all recognize that's not right.

We've put some strict class size limits in for kindergarten-to-grade 3. We are also, for the very first time, putting in class size limits that are averages for grades 4 to 12. That means that no district will be able to exceed those sizes, on average, for any grade. These are great protections for children. We recognize that class size is important. We also recognize that flexibility is important. The way the previous government decided to structure class size meant that decisions about children's best interests were made at the bargaining table. They were made by people who had no knowledge of the individual child whose future is at stake.

What we're saying with this legislation is that that's not the right way to do it. The right way to do it is to look at a child, assess what that child needs and then make decisions about the resources that will be assigned to that child, that will be there to support that child based on that child's unique needs.¹⁰⁴

[116] A proposed amendment that combined primary grades classes be limited to the lower limit of the combined grades was defeated.¹⁰⁵ The class size provisions enacted as section 76.1 of the *School Act* and effective for the 2002-03 school year were:

- (1) A board must ensure that the average size of its classes, in the aggregate, does not exceed
 - (a) for kindergarten, 19 students,
 - (b) for grades 1 to 3, 21 students, and

- (c) for grades 4 to 12, 30 students.
- (2) Despite subsection (1), a board must ensure that the size of any primary grades class in any school in its school district does not exceed
 - (a) for kindergarten, 22 students, and
 - (b) for grades 1 to 3, 24 students.

[117] The Lieutenant Governor in Council was give authority to, and did, make class size regulations effective August 12, 2002.¹⁰⁶

[118] There was no specific requirement for reporting by boards of education or specific mechanism for enforcement of the legislated class size averages and limits. The union grieved in November 2002 that certain school districts had failed to comply with the legislated class size averages and limits in organizing classes for the 2002-03 school year. The employer successfully objected before Arbitrator Munroe in January 2004 that such a grievance could not be arbitrated.¹⁰⁷

4.2 Commission Report on Teacher Collective Bargaining (December 2004)

[119] Section 5(1) of the *Education Services Collective Agreement Act* provided that:

- (1) The minister may appoint a commission, consisting of one or more persons, to do the following:
 - (a) inquire into the structures, practices and procedures for collective bargaining by the employers' association, school boards and the BCTF;
 - (b) make recommendations, after taking into consideration the factors referred to in subsection (2), with a view to improving those structures, practices and procedures;
 - (c) report the recommendations to the minister within the time set by the minister.

[120] The Minister engaged former Deputy Minister of Education Don Wright for advice prior to establishing the commission. Mr. Wright issued a report in November 2003¹⁰⁸ and was subsequently appointed as the commissioner. He made his final report in December 2004. Among his observations are the following:

In my report last year, I suggested that teaching is a "moral profession that is a calling". Committed teachers are passionate about what they do. Teaching has become a more challenging profession over the past quarter century or so. There are two key reasons for this. First of all, educational research and philosophy has ingrained into the committed teacher the value of a much more individualized approach to students. Students in the same class have vastly different aptitudes, interests and learning styles. The committed teacher feels compelled to provide as much of this individualization as possible. This is more of a challenge than teaching the whole class at the same speed and with the same style.

Secondly, the composition of the typical class has changed dramatically. As a society we have made the decision to integrate all students as fully as possible into the school and classroom. We have sought to, and have been very successful at, retaining a greater share of students in the system all the way through to Grade 12. In the major urban school districts, children for whom English is a second language make up a large and growing percentage of the student population. The system is becoming more successful at maintaining the participation of aboriginal children.

The recognition of the value of providing more individualized instruction and the greater heterogeneity of the student body have made teaching more challenging for the committed teacher.

For the classroom teacher, collective agreement language around class size, class composition and staffing ratios was how these challenges were being addressed. Furthermore, I would posit that this language represented, symbolically, recognition by society that teaching is a respected and challenging profession.

The removal by legislation of the class size, class composition and staffing ratio provisions from the collective agreement has been taken by many teachers as a devaluation of their role in society – a sign of disrespect.

There are legitimate differences of opinion about where the most constructive table to discuss / negotiate class size, class composition and staffing ratios is. I can see the legitimate interests of teachers in their working conditions. On the other hand, I can understand the concerns of those who believe that collective agreements may not be the most efficient and effective way to deal with complex educational and professional issues. I frankly was unable to bridge the divide between these two camps in my engagement with them over the past year, and I am afraid that if I were to recommend something at either end of the spectrum it would not encourage a maturing of the relationship.

If I were to recommend a return to full scope bargaining at this stage, I fear that both sides would approach negotiations from hardened positions which would significantly reduce the probability of mature collective bargaining emerging. We could be sentencing ourselves to a repeat of the past dozen years.

On the other hand, I do not believe telling the teachers, in essence, “trust us to deal with your working conditions in a fair way” is going to give teachers a feeling of sufficient voice on one of their most important issues.

What I recommend in light of this is that the government establishes policy discussions, parallel to the bargaining table.¹⁰⁹

4.3 Class Size Legislation Enforceable at Arbitration (February 2005)

[121] In February 2005, the union successfully appealed Arbitrator Munroe’s decision to the British Columbia Court of Appeal, which wrote, in part:

The parties also agreed, of course, that the setting of class sizes in school districts throughout British Columbia is no longer a proper subject for collective bargaining or for inclusion in a collective agreement. But the legislation which accomplished that result did not and does not address the question of whether a dispute about an alleged violation of the class size requirements of the *School Act* and the *Class Size Regulation* is to be resolved by arbitration under the

process mandated for violation of a collective agreement by the *Labour Relations Code*, or is to be resolved only by every individual school teacher who is affected by an alleged violation seeking judicial review of the breach of statute in the Supreme Court of British Columbia in a proceeding against the individual school board.

The Legislature did not deal with this question in the *Public Education Flexibility and Choice Act* or in the other related legislation to which I have referred, though there are countless examples of legislative enactments prohibiting resort to tribunals, on the one hand, or prohibiting resort to the courts, on the other. But what seems certain is the Legislature cannot have intended either that there be no remedy for violation of the careful scheme it enacted to set class sizes, or that there be either flexibility or choice in the remedy. Indeed it would be contrary to the decision of the Supreme Court of Canada in *St. Anne Nackawic v. Canadian Paper Workers*, [1986] 1 S.C.R. 704 and the Supreme Court of Canada cases which have followed it, to decide that if there is jurisdiction in an arbitrator under the *Labour Relations Code* and a collective agreement, then there can still be concurrent jurisdiction in the courts over the same dispute.

So the real question is whether an arbitrator appointed under the collective agreement between the parties has jurisdiction over a claim by the B.C.T.F. that there have been violations by school boards of the class size limits set out in the *School Act* and in the *Class Size Regulation*, when both parties agree that the setting of class sizes themselves cannot be the subject of collective bargaining nor can they be explicitly set out in the collective agreement.

It seems to me that it is significant that the subject of class sizes was negotiated in collective bargaining between teachers and school boards before the 2002 legislation and was clearly, in the past, regarded by the parties as a term or condition of employment. The fact that the subject of class sizes can no longer be negotiated nor have any place in the collective agreement of the parties does not make that subject any less a term or condition that affects the employment relationship. The legislation simply transfers those terms or conditions from negotiated determination to statutory determination. So I regard class sizes and aggregate class sizes as a significant part of the employment relationship. If the statutory determination of class sizes is violated that would surely constitute an improper application of the management rights clauses in the collective agreement, in breach of s. 76.1 of the *School Act* and the *Class Size Regulation*. But it would also affect other terms of the collective agreement such as a decrease in the number of teaching staff leading to dismissals or lay offs, and such as health issues arising from stress. These are only examples. The point is that such a violation is closely connected in a contextual way to the interpretation, operation, and application of the collective agreement and directly affects it.

Bearing in mind the precepts that I have drawn from the Supreme Court of Canada decisions and which I have set out in Part VI of these reasons, I believe that a flexible and contextual approach to the position that should be adopted by an arbitrator on the application of a statutory provision to the interpretation, operation, and application of a collective agreement, and to an alleged violation, does not depend on an "incorporation" of the statutory provision in the collective agreement but rather on whether there is a real contextual connection between the statute and the collective agreement such that a violation of the statute gives rise, in the context, to a violation of the provisions of the collective agreement,

often, but not exclusively, a violation of the right expressed or implied in the collective agreement to set principles for management of the workforce in accordance with the laws of the Province. In short, the collective agreement must be interpreted in the light of the statutory breach.¹¹⁰

On September 15, 2005, the employer's application for leave to appeal was denied by the Supreme Court of Canada.¹¹¹

[122] The upshot is that while authority to make standards for class size and composition has moved from private negotiation to public legislation, the forum for enforcing the standards remains the same.

4.4 Four Threshold Issues Decided on 2002-03 Grievance (January 2006)

[123] The grievance concerning the 2002-03 school year returned to Arbitrator Munroe in November 2005 and in January 2006 he decided four questions submitted to him. By this time, the *Class Size Regulation* had been amended.¹¹² He decided:

With reference to the 2002-03 school year, I find and declare that the school boards were required to ensure compliance by September 30 with the maxima established by Section 76.1(1) and (2) of the Act, and to maintain compliance thereafter.

I find and declare that the rounding advocated by the BCPSEA is a misinterpretation of the Act and the Class Size Regulation; that the BCTF is correct in its argument that the averages fixed by Section 76.1(1) of the Act cannot be exceeded, even fractionally.

I find and declare that at the material time, the maximum permissible class size for a K/1 split class was 22; and that the maximum permissible class size for a grade 3/4 split class was 24.

Speaking by way of example, Lambert J.A. states that, "If the statutory determination of class sizes is violated that would surely constitute an improper application of the management rights clauses in the collective agreement, in breach of s. 76.1 of the School Act and the Class Size Regulation"; that, "The point is that such a violation is closely connected in a contextual way to the interpretation, operation, and application of the collective agreement and directly affects it". Lambert J.A. additionally speaks of a violation of the statute giving rise, in context, to a violation of the provisions of the collective agreement "... often, but not exclusively a violation of the right expressed or implied in the collective agreement to set principles for management of the workforce in accordance with the laws of the Province ..."

In that latter connection, I was informed that some of the local agreements between school districts and teacher associations have management rights clauses, while some do not. However, in the interpretation and application of collective agreements, the arbitral jurisprudence has long recognized a presumptive, residual right in an employer to manage the enterprise. And in my

view, on the reasoning of the Court of Appeal, whether management rights and responsibilities are explicit in the collective agreement or simply present by presumptive implication, there exists "... a real contextual connection between the statute and the collective agreement such that a violation of the statute gives rise, in the context, to a violation of the provisions of the collective agreement". The collective agreement, including its implicit terms, "... must be interpreted in the light of the statutory breach".¹¹³

The issue of combined K-1 and Grades 3/4 classes was addressed in amendments to the *Class Size Regulation* effective September 8, 2006.¹¹⁴

4.5 Legislated Collective Agreement, Strike and Settlement (October 2005)

[124] The collective agreement legislated into effect in January 2002 expired June 30, 2004. A new agreement had not been achieved by the time of Mr. Wright's report in December 2004 recommending policy discussions parallel to collective bargaining.

[125] Impasse was reached on September 15, 2005 and the Minister appointed Associate Deputy Minister Rick Connolly as a fact finder. It was his finding there was no prospect for voluntary resolution and his opinion that: "... Government should develop an approach to engage with teachers and education stakeholders including parents, trustees, superintendents and principals in an effective and meaningful dialogue regarding this critical issue that is entirely separate from the collective bargaining process."¹¹⁵

[126] On September 28, 2005, teachers began limited job action. On October 3, 2005, the legislature enacted the *Teachers' Collective Agreement Act*¹¹⁶ extending the collective agreement to June 30, 2005.

[127] Teachers across British Columbia withdrew services completely on October 7, 2005. Vince Ready was appointed as Industrial Inquiry Commission to facilitate the next round of collective bargaining on October 10, 2005. His mandate was expanded to include facilitating a return to work on October 17th and he made recommendations to end the walkout on October 20th, which the Government and BCTF accepted. The strike ended October 24, 2005.

[128] On acceptance of Mr. Ready's recommendations,¹¹⁷ the Government issued a statement that includes the following:

The Learning Roundtable:

Mr. Ready acknowledges that this “broad stakeholder group can be effective to identify and rectify problems that have been critical to this dispute.” He recommends that “Government increase the number of BCTF nominees at the Learning Roundtable” to increase the effectiveness of that process.

The Province welcomes this acknowledgement of the Learning Roundtable on behalf of all education partners and British Columbians.

The Province has been consistent in its commitment to improving learning conditions under the *School Act* through the Learning Roundtable and other processes and welcomes additional representation by the BCTF. The Roundtable will meet for the first time on October 24 with the Premier and the Minister of Education.

Class Size and Composition:

Mr. Ready highlights that the need to address problems of class size and class composition “have been acknowledged by both parties and by Government.” He recommends that “Government increase its commitment for learning conditions in this fiscal year from \$150 million to \$170 million,” with the additional resources “entirely targeted to issues of class size and special needs students.” This increase should be included in the ongoing funding base.

The Province has consistently been committed to working with the BCTF and education stakeholders to address learning conditions. To meet this end, the Province increased grants to school districts by an additional \$150 million in this current school year – the largest single increase to district funding in over a decade.

Mr. Ready has recommended an additional \$20 million on top of the \$150 million to be provided annually beginning this fiscal year. The Province accepts this recommendation, as it has already anticipated a \$20 million lift to funding next year. The Province will accelerate that committed lift to commence this year, and will further ensure that it is expressly targeted to address learning conditions as recommended.

Fiscal Implications: \$20 million annually, beginning in this fiscal year. This year, it will be funded through savings accrued due to the illegal strike action. Next year, the recommended lift will be fully funded as was announced in a Government News Release on March 15, 2005, in which the Province explicitly committed that “School district operating funding will increase by another \$20 million a year in 2006-07 to \$4.047 billion.”

Mr. Ready also highlights the need for “an effective mechanism for enforcement of the class size limitations set out in the *School Act*,” and recommends the *Act* be amended to include such a mechanism.¹¹⁸

4.6 Learning Roundtable – Efforts to Achieve Consensus

[129] The Government had publically committed to a new Learning Roundtable on October 6, 2005 “to discuss class size, class composition and other issues related to learning conditions in the public school system.”¹¹⁹ As announced, the members met for the first time on October 24, 2005.

[130] By April 2006, some common ground had emerged with respect to some of the

class size issues. It was agreed that school districts must respect legislated class size requirements that are to be enforced. Steps should be taken to reduce or limit class sizes in Grades 4-7, which the data gathered disclosed was a pressure point, because class size and composition affected these students more than students in Grades 8-12 who were not in the same class for most or all of the day, as the Grade 4-7 students were. The view of the Ministry of Education is reported as

- Grades 4 to 7 is an area of concern as students tend to be in these classes all day, so if the class is large the impact may be high.
- Principals need to be asking the question, “is the learning situation acceptable?”¹²⁰

[131] The Learning Roundtable discussed consultation with those affected in situations when a class varied from a standard. The BCTF wanted the expected nature of consultation clarified and observed it could be complex, especially in secondary schools.

[132] The divergent views on managing the inclusion of students with special needs are captured in the following extract from the April 21, 2005 minutes of the Learning Roundtable:

Premier - Do we agree that we need to reduce and limit the numbers of students with diagnosed special needs in classes?

BCSTA [BC School Trustees' Association]

- BCSTA is opposed to a firm cap on the number of students with special needs assigned to a class. A designation is not necessarily a disability in every class.
- Students with special needs are sometimes grouped for instruction in a single class so they can be supported.

BCCPAC [BC Confederation of Parent Advisory Councils]

- Parents do not support the introduction of provisions capping the numbers of students with special needs.
- Support inclusion but allow schools to be accountable for all the students.
- Special Education is a complex issue that needs more discussion.

BCPVPA [BC Principals' & Vice-Principals' Association]

- No caps – best decisions made at school level.

BCTF [BC Teachers' Federation]

- Teachers support inclusion.
- Firm caps support inclusion.
- Some categories of students create significant challenges to the learning environment.

BCSSA [BC School Superintendents Association][

- Do not support caps on the number of students with special needs in classes.
- Believe that schools can provide greater supports for students with special needs without caps.
- Too complex for simple rules.
- Even students within same categories have greatly different needs.
- Teachers need to be involved in the complex decisions affecting class composition.

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- Principal and teachers should decide class composition based on professional judgement.
- When parents are concerned, the principal should be accountable to provide a rationale regarding learning conditions.

[133] All of the discussion, summarized as follows, was to be considered by the Government in preparing legislation to be enacted in time for the 2006-07 school year.

Summary of meeting

- Dialogue will continue – Learning Roundtable will continue to seek solutions to optimize learning conditions for students.
- All members agree that the legislative requirements should be observed by Boards and that there should be consequences for non-compliance.
- The members of the Roundtable agree that grades 4 to 7 are a “pressure point” in respect to class size. With the exception of the BCTF members do not agree that firm limits are a solution to this problem. Flexibility is necessary. Firm limits constrain flexibility. The BCTF supports firm limits for K to 12 and expressed view that no limits in grades 4 to 7 should be implemented in the absence of limits in grades 8 to 12.
- Members, with the exception of the BCTF, do not endorse limits on the numbers of special needs student in classes but do agree this is an important consideration respecting learning conditions. Integration must be thoughtfully determined in a consultative and inclusive manner. Teachers and parents need to be engaged in the consultation about class composition and principals need to provide explanations of decisions reached that are understandable to all. BCTF support firm “caps” on the number of special needs students integrated in classes.

4.7 New Class Size Averages and Standards – Bill 33 (June 2006)

[134] Six days later, on April 27, 2006, the Minister introduced the *Education (Learning Enhancement) Statutes Amendment Act 2006* (Bill 33) with this explanation of the Government’s purpose:

I am pleased to introduce Bill 33. This act introduces legislative changes that will address class size and composition in British Columbia schools, and meets our throne speech commitment to ensure that all school districts live within class-size limits established in law. Amendments to the School Act will also define and recognize distributed learning and help school boards offer more choice to students who are taking their courses electronically. Finally, amendments to the

Teaching Profession Act will enable the B.C. College of Teachers to collect statistical information for the release of its annual report.

The amendments set out the following: (1) new class-size limits for grades four through seven and for students with special needs, as well as new requirements for consultation and reporting and a mechanism to ensure that boards comply with the legislation; (2) a requirement that school boards enter into an agreement with the ministry in order to offer distributed learning courses; and (3) the kind of statistical information that school boards, the Francophone Education Authority and the independent school authorities will be required to provide to the B.C. College of Teachers.

These legislative changes deliver on government's commitment to build on our students' record of excellence, to balance the needs for smaller classes with the need to maintain flexibility, to ensure that there is accountability and transparency in the system, and, most importantly, to continue to improve our students' achievement.¹²¹

The comment in the February 14, 2006 Throne Speech the minister referred to was:

The information your government has recently collected and published on class sizes gives us new data for discussion. It points to the need for legislative changes that will ensure all districts live within current class-size limits established in law. If there are variations that make sense for students, parents should have a say in those decisions. While superintendents should be required to approve those decisions, school boards must ultimately be accountable.¹²²

[135] When introducing the legislation for second reading on May 4th, the Minister's comments included the following:

Last week the Learning Roundtable met for the fifth time. The meeting was significant in that there were clearly areas where there was a consensus. The parties were able to agree on some important things, like the fact that school boards should be held responsible for complying with the legislation contained in the School Act.

We were also able to agree that decisions about class size and composition should involve consultation, but there was still not consensus about how to deal specifically with class size numbers. In fact, there were a variety of viewpoints. Parents, teachers and members of the public can see the discussion that takes place at the round table by looking at the minutes of those meetings.

If a school board fails to comply with the class size and composition requirements, the province will appoint a special administrator, and if a school board fails to follow the direction of a special administrator, the board may be dissolved and an official trustee appointed to conduct the affairs of the school district.

With respect to class size and composition, this legislation addresses many of the concerns we heard at the Learning Roundtable; in our meetings with student and parent groups; and, most recently, during numerous visits to schools, to school districts and, in fact, to dozens of classrooms across the province. All of our education partners have provided valuable input, and it is obvious that each one of them wants what's best for British Columbia's students.

It's also clear that our partners — whether it's parents, teachers, superintendents, principals, vice-principals, school trustees.... There is not necessarily agreement on the best way to improve learning conditions in our classrooms through class size and composition. For example, principals were concerned about fixed class-size limits in legislation, although they recognize that large classes in grades four to seven, and pressure points are experienced there.... That is an issue for them. Parents expressed concern that fixed numbers in secondary schools limit student elective choices, though they had some concern about the pressure points once again, and somewhat larger classes in grades four to seven. Teachers, of course, made it clear that they support firm class-size limits in grades four through 12.

This legislation balances many of the concerns that we've heard. There was a common view that classes in grades four to seven have pressure points when it comes to class size. This legislation places firm limits on class sizes in grades four to seven.

All members of the round table agreed that there should be an enforcement mechanism for school boards that are not in compliance with class-size legislation. This legislation includes an enforcement mechanism for that class-size legislation. Round table members also agreed that parents and teachers need to be engaged in meaningful and genuine consultations about class size and composition. This legislation provides teachers with a stronger role in class-size organization.

Teachers must consent to class size numbers in grades four to seven that exceed 30 students. Teachers must also be consulted on any class in grades eight to 12 that is proposed to exceed 30 students. Teachers must also be consulted on any class that is proposed to have any more than three students with special needs in the class.

Today's legislation will move us several steps forward to improving student achievement, but we haven't reached our destination yet. We will continue to talk with our education partners about students' learning conditions. We will continue to monitor class organization with the new annual report on class size and composition. By working with all of our partners, we can ensure that B.C. students have the chance to reach their full potential. British Columbia, as a result, will reach its goal of being the best educated, most literate jurisdiction on the continent.

Bill 33 makes positive and significant steps forward. We have much work yet to be done, and we are committed to an ongoing dialogue, to an increasingly positive relationship with partners across the province. We all share the same goal: the absolute best learning opportunities for our students, making sure that they have every opportunity to be successful.¹²³

[136] On moving second reading of Bill 33 on May 4th, the Minister stated:

I do appreciate many of the comments that were made by the members opposite, because if there's one thing we've learned, it's that education is important on both sides of this House. What the debate often centres around is actually how we get to the outcomes. None of us want anything different than the absolute best for the students of British Columbia.

However, I do want to say, and I want to make one thing perfectly clear: this government has always believed that class size is important. We believed it was

so important that we enshrined it in legislation and took it out of contract negotiations, where often students became pawns at that table. We said, "It's so important, we're going to make it law in British Columbia," and we know that's important.

As we move forward, the debate about class size and composition doesn't end with Bill 33. In fact, Bill 33 brings a clause that says we will be required to review these amendments and other issues. The issues are not simple. It's been interesting as I've listened to speaker after speaker bring the same issues to the floor of this House. Remarkably, they're very similar to one of the other voices that we hear in this debate regularly.

I would urge the members opposite to go back to the Roundtable minutes, to go back to the speakers who spoke on behalf of education across the sector. There wasn't unanimous agreement about class sizes. In fact, the grade eight-to-12 classes actually brought much debate and discussion.

It's not one voice we need to listen to. It's all of the people who are important in public education. That includes parents. It includes those people who are involved in meaningful discussion. This bill tries to bring to the floor of this House a balanced and reasonable approach based on all the voices we've heard at the provincial Learning Roundtable and as I've travelled across this province.¹²⁴

[137] During the section by section review in Committee of the Whole, the Minister made the following statements on these subjects:

Secondary Classes:

In fact, the member opposite would know very well that there are very different complexities when organizing classrooms in the secondary school classrooms than there are in grades four to seven.

This isn't about being professional. In fact, this bill tries to capture and deal with an issue that we heard about from teaching professionals at the Learning Roundtable over and over and over again. It captures the concept that there was not consistent consultation with the professionals who are in our classrooms across the K-to-12 sector in the entire province.

The bill is an attempt to bring balance to a very complex issue. There is no magic class-size number, particularly in the secondary school classrooms. We know that across the province, teachers and professionals make decisions every year about how students are organized in classrooms to focus on student choice and flexibility. This bill represents the best and the largest degree of consensus that we could find with all of the partners in education at the Learning Roundtable.

"Oversize" – Choice – Review:

Well, I think it would be very interesting to hear the member opposite describe and define the word "oversize." With all of the partners at the Learning Roundtable for five meetings — for hours and days spent together — no one could define.... No, that's not accurate actually. There was one particular group that had a strategy for class sizes. In fact, there was no consensus about class size numbers in grades eight through 12.

The absolutely prevailing thought at the round table in grades eight to 12 was: how do we make sure that our students have choices? How do we make sure

that classrooms actually look at balancing the needs of our students so that, yes, you can have one of the thousands — and I would repeat thousands — of small classes in this province balanced off by a slightly larger class?

In fact, we listened to what we heard at the round table. Parents had a very strong view about what, for example, should happen in grades eight to 12. We value those views. We think that making sure we preserve the ability to have flexibility and choice in grades eight to 12 is critical. We've also said in a section that we will debate at some point.... Maybe that one will go with less debate. We've said that we want to move forward with this bill and that there's more work to be done.

One of the things we've committed to in this legislation is saying: "Let's go back during the next year and look at these amendments and see what other work can be done." This best represents what we heard at the round table from all of the partners.

"Consult":

What does "consult" mean? It means that we need to find a way to deliberate with one another, to sit down, to ask for advice, to consult and to have that conversation. In fact, one of the other commitments that we made at the round table was that this was an issue that we would have further discussion about.

I'm actually disappointed that I have to put in legislation a requirement to consult. I believe that it's best practice. It's ironic that the member opposite would suggest that as a principal, I need to explain how to do that and look at how it should be the same in every school.

We spent five meetings of the round table being reassured by the principals and vice-principals that consultation takes place regularly and consistently across this province. The reason that "consult" is included in the legislation is to provide the assurance to teachers in this province that they will be included in the discussions that take place.

It was a surprise and, in fact, a disappointment to learn that there are places within which that does not occur. That is best practice. People who are professionals, including the lead educator, who is the principal in a school, should sit down and talk to one another. We do believe that there are different ways of doing that, depending upon a number of things: the size of your school, the complexity of it, whether it's elementary or secondary.

There are a number of factors. We're simply saying this: best practice, what's best for our students, would require people to actually talk to each other. Was I surprised that that doesn't occur everywhere? You bet I was.

Accountability:

The other thing we agreed on at the Learning Roundtable was the issue of accountability. This bill actually builds in a system of accountability.

Principals will be required to talk to teachers. Now, one would think we wouldn't need legislation to make sure that happens, but apparently we do. So principals will talk to teachers, and eventually they'll include parents in that discussion through school planning councils, the board and the district parent advisory council.

Ultimately the superintendent is responsible to take the school organization plan to the board of trustees. Principals and superintendents will work together to make those decisions at the school level, but the superintendent is ultimately responsible to the board. The board is ultimately accountable to its community, who chose it, and to the government to be able to demonstrate that that plan is acceptable and appropriate for the children in that district.

Class Organization:

This bill says that what is best practice is that a principal and a teacher, first and foremost.... It starts there. It doesn't start with the superintendent and the principal making a decision and going: "By the way, let's involve the teacher." It starts in a classroom in a school in every part of this province by saying: "How do we organize our school?" That is the fundamental piece of this bill. Teachers will have a role in that discussion. That reflects the concerns that were expressed. It's a response to the concerns that we heard. In fact, that consultation will take place.

I can't say it enough times. I've heard it from parents across this province, from trustees and from others. There is no magic formula or number or perfect set of expectations that means that classrooms can be organized in a one-size-fits-all way. Are there principles that should be used? Absolutely. Are there things that are essential to that? Yes, and the bill reflects that. But there is no magic number. There is no classroom that's like another classroom.

We're simply saying this. We want those classrooms to be put together in a way that concentrates on students at the centre, looking at individual classrooms, with decision-making made as close to those classrooms as we can possibly have it take place.

Teachers:

First of all, I want to clarify for the member opposite one more time that teachers do not come into the process later on. They are the heart of the discussion. It starts with teachers and principals in schools and classrooms across this province. Teachers are the centre of this discussion. We think that's important. We also believe that there eventually needs to be a series of accountability measures in place. People expect that, so teachers are at the centre of the discussion.

We could take every what-if circumstance, but as I've travelled across the province, schools work collaboratively, and teachers talk to each other. They talk to the other support and resource staff that are in the schools. From time to time there is a new principal, but there still remains a series of dedicated professionals who actually understand their students. That is the dialogue that will take place at the school level.

Students as Individuals:

I do want to say this, though: the reason that we wrote the legislation we did was to absolutely look at students as individuals. This legislation allows the professionals who should make those decisions to decide what the best class configuration is. If it's the opinion of the principal, in consultation with the teacher, that a group of students with special needs — perhaps it's four; perhaps

it's five — is perhaps the best way we can serve those children in a classroom, then that is permitted and absolutely appropriate under this legislation.

Consultation:

The whole point of this legislation is to allow what's best for students. That absolutely means that if it's appropriate and educationally the best for those children, then we can have four in a classroom. We're simply saying: "Discuss it. Consult." The legislation absolutely allows for that to happen. We expect professionals across this province to meet, to discuss and to meet the needs of our students in the best way possible.¹²⁵

Secondary School Flexibility and Choice:

I live in northern British Columbia, and in my own riding we have very small and very large schools. That's actually the whole point. There isn't a magic formula. There is not a specific number, and there is not a particular set of circumstances that would dictate that a classroom should look in a particular fashion.

We believe, and this bill reflects our belief, that there are professionals at schools across this province, including teachers, principals and administrators. Our view, and certainly the view shared at the provincial roundtable, was that the area we needed the most degree of flexibility in was the secondary school area. The language in the bill actually captures the fact that we want to be able to have the flexibility at those levels to focus on student choice and that we want our students to have as many options as possible. The member opposite, being from a rural riding, would know that is challenging in some of the parts of the province that we live in.

We want to leave every opportunity for there to be discussion with professionals, which is meaningful and thorough, but at the end of the day the consensus at the roundtable was that there were pressure points in grades four to seven — and the bill addresses that issue — and also that we wanted flexibility and choice to be the key factors in the decision-making in grades eight to 12.

Consult:

I think the bill clearly outlines that principals will now be required to talk to their professionals, their teachers, about the class that they're about to put children and professionals into.

Special Needs Students:

But I need to continue to clarify for the member opposite and for others in the province — and we will continue to do this — that the bill is about the best placement for students in this province, whether they are typical or special needs students.

If, in the opinion of those professionals who work in a school setting, there is a more appropriate number of students, such as four or five, that will be completely acceptable and appropriate under this bill. We were very careful, when we were looking at the issue of special education students, as to how we reflected that in this bill. It is clear, by reading the legislation that is presented here, that districts will make the decision, with their principals and teachers, on how many special education students are in any classroom.

This particular section is before the House because it reflected what best we could get as a sense of a balanced approach to this. Parents of special needs children need to be reminded that this piece of legislation says this: that if in the opinion of those experts that are at the school level — which includes a discussion with the teacher, the principal and, ultimately, the superintendent and board of trustees — there is a reasonable expectation that children will do well with more than three special needs students in a classroom, that is absolutely permissible.

We continue to look at the complexity of classrooms. The member opposite is absolutely correct. Classrooms are complex. That's why this bill takes an approach that is not about formulas and assuming there are certain circumstances which we can dictate from Victoria. This bill, which is what we're discussing today, actually allows for the people who work in schools to discuss how best to serve all of our students, whether they're ESL students, special needs students or typical students.

Choices and Consensus:

Well, you know, organizing schools and classrooms is all about making choices. I would assume that many of those are not easy as we balance how best to serve students who have English as a second language, those who have special needs and, yes, even those who are typical. It's all about those decisions. It's all about making the choices that are putting students at the centre of that.

There's no guarantee. You can't legislate consensus. What we're actually trying to do in this bill is say: "There is a process that you now must follow. You must involve people in the decision-making." Will parents be happy? Not always. Will teachers be happy? Not always. But the point of the bill is to say that we recognize consultation is important and that there are a number of people who should be included in that.¹²⁶

[138] The 2002 legislation set school district aggregate class size averages and maxima for primary classes with a difference of three students between them for both Kindergarten (19 average and 22 maximum) and Grades 1-3 (21 average and 24 maximum). Neither the maximum number of students in a class nor the district aggregate average could be exceeded in any circumstance. At one of the representative schools, Frank J. Mitchell Elementary School (School District No. 5 (Southeast Kootenay)), the district aggregate class size average for Grade 1-3 directed the organization of one of the combined grades classes in dispute.

[139] The 2002 legislation set a district aggregate class size average of 30 students for Grades 4-12 that could not be exceeded, but did not set a maximum for individual classes in any of these grades.

[140] In February 2006, the Government published a class size report. For the 2005-

06 school year, the provincial class size averages were 17.7 for Kindergarten and 20.8 for Grades 1-3. The provincial class size average was 25.0 for Grades 8-12.¹²⁷ For intermediate Grades 4-7 it was higher at 26.3.¹²⁸

[141] In the 2005-06 school year, only three school districts had aggregate class size averages above 28 students per class for the intermediate Grades 4-7 group. The amendments proposed a new school district aggregate class size average of 28 for Grades 4-7. If the same three student difference between the average and maxima set for primary had been used for the intermediate classes and the average set at 27 students per class, that average would have been lower than the average for Grades 4-7 classes in sixteen school districts in the 2005-06 school year.

[142] In contrast, one school district had an aggregate class size average above 27 students per class for the Grades 8-12. The school district aggregate average of 30 students per class for Grades 8-12 was not changed.¹²⁹

[143] Provincial class size averages decreased in the next two years but, despite the legislative changes, the average for Grades 8-12 decreased more, and continued to be lower, than the average for Grades 4-7.¹³⁰

| | Kindergarten | Grades 1-3 | Grades 4-7 | Grades 8-12 |
|----------------|---------------------|-------------------|-------------------|--------------------|
| 2005-06 | 17.7 | 20.8 | 26.3 | 25.0 |
| 2006-07 | 17.5 | 20.3 | 25.8 | 24.4 |
| 2007-08 | 17.4 | 20.4 | 25.8 | 24.4 |

[144] Despite the driving belief in 2002 when class size and composition provisions were removed from the collective agreement and any future collective bargaining, that formulistic or inflexible class size and composition standards do not appropriately meet the needs of all students and inefficiently determine resource allocation, the response to the problem or pressure in Grades 4-7 was to adopt a legislative prescription that was almost as rigid as the one adopted in 2002 for Kindergarten and Grades 1-3.

[145] The 2006 amendments imposed a more rigid class size limit for Grades 4-7 than enacted in 2002 by providing that no Grades 4-7 class may exceed 30 students unless the school principal obtains the consent of the teacher of the class and the principal and district superintendent each are of the opinion "the organization of the class is appropriate for student learning."¹³¹

[146] As had been the situation since 2002, classes in Grades 8-12 could continue to have more than 30 students. In the 2005-06 school year, many classes from Grades 4-12 had more than 30 students. There were more classes in Grades 8-12 and the range and distribution of class sizes was broader in Grades 8-12 than in Grades 4-7. There were many more classes in Grades 8-12 than Grades 4-7. There were many more classes with more than 30 students and with twelve or fewer students.¹³² It was this distribution that produced lower class size averages in Grades 8-12 than Grades 4-7.

[147] Class composition had not been addressed in 2002. The 2006 amendments provide that a class at any grade must not have more than three students with an individual educational plan unless the school principal has consulted with the teacher of the class and the principal and district superintendent each are of the opinion “the organization of the class is appropriate for student learning.” A “student with an individual education plan” is a “student for whom an individual education plan must be designed under the Individual Education Plan Order, Ministerial Order 638/95, but does not include a student who has exceptional gifts or talents.”¹³³

[148] There is no clear explanation why the number of three students with an individual education plan was chosen and made applicable to each grade regardless of the class size maximum or aggregate district average for the grade level groups. The distribution of students with an individual education plan is uneven across the grades. The range and number of classes into which they can be placed or can select is uneven across the grades. There is no required average that can serve as a form of restraint on the number in a class. No reports are required on the rationale for classes with more than three students with an individual education plan.

[149] For the 2005-06 school year, there was data on the number of classes with more than three special education students, who were students for whom “A supplemental program is provided by the school to assist students identified as having “special requirement(s)”, in achieving a Certificate of Graduation (Dogwood) and/or other outcomes as specified in the student's Individual Education Plan (IEP)”, excluding gifted students.

[150] The distribution by number of special needs students and by two grade groupings was as follows:¹³⁴

| 2005-06 | 0 | 1 | 2 | 3 | ≥4 | Totals | % of ≥4 |
|--------------------|----------|----------|----------|----------|-----------|---------------|----------------|
| Grades K-3 | 3,501 | 2,224 | 1,030 | 438 | 240 | 7,433 | 3.229% |
| Grades 4-12 | 19,033 | 13,434 | 10,014 | 6,883 | 10,702 | 60,066 | 16.211% |
| Total | 22,534 | 15,658 | 11,044 | 7,321 | 10,942 | 67,499 | 16.210% |

The lower numbers and percentage in Kindergarten and Grades 1-3 is predictable with the caution and delay in making designations at this stage of development.

[151] In the 2005-06 school year, there were 599,505 students by headcount, not FTE, in the public school system.¹³⁵ There were 61,277 special needs students of whom a very small percentage were designated gifted.¹³⁶ This was 10.221% of the public school student population. The total number of special needs students by district and designated special needs categories and their percentage of the total student population were known.

[152] In primary and intermediate, a special needs student will spend all or most of the day in a single class. In secondary and to a lesser extent in intermediate, a special needs student will be in several classes in a school day. Some of those classes will be offering courses specifically for students with lower abilities and different interests than required for higher level academic courses.

[153] Choosing a common standard of three special needs students per class in classes of 30 or fewer students was creating predictable pressure points for organizing Grades 4-12 classes.

- Fixed limits on class size will result in more combined grades classes.
- Pressure to reassign teachers from non-enrolling to enrolling positions.
- Unless there are more classes with fewer students, there will be principal-teacher consultation and additional resource expenditure on over 16% of the classes - every sixth or seventh class.
- Funding shortfalls will lead boards of education to examine staffing and resource allocation where there are opportunities for the exercise of board discretion, such as Grades 8-12 classes and non-enrolling allocations, because there is no provision for school districts to exceed class size limits when there are “external budgetary constraints” as in some deleted collective agreement provisions.
- The distribution of special need students across the province is uneven. There

are a higher percentage of students with special needs in some districts and in some geographic areas within districts. These districts and schools will have more difficulty meeting the standard of three special needs students per class.

- Enrolment of special needs students is not equally distributed among educational programs. For example, francophone and French Immersion programs may have a lower percentage of special needs students. Other programs designed for students with lower academic achievement will attract a higher percentage of special needs students.
- Enrolment of special needs students is not equally distributed among classes within a school. Some courses, such as senior mathematics and sciences attract fewer special needs students. Others designed to enable students to meet the requirements for a Certificate of Graduation attract more special need students.
- Categories of designated special need students are funded differently. At times classes are organized with groupings for instruction of students with special needs to provide shared support and maximize the use of limited resources.
- Standards, whether negotiated or legislated, influence behaviour. Treating all categories of designated students with special needs, except gifted, regardless whether they have a high or low prevalence rate, as a determining factor in class organization encourages vigilance in identifying all students with special needs.
- Consultation about the organization of a class based on its variation from the expected standard will generate requests for exceptional treatment and resource requests. Failure to respond will engender cynicism, with consequent culture and relationship costs, about the utility and sincerity of the consultation process and the commitment to achieving the standard.

[154] Consultation and reporting by principals is to happen at the beginning and busiest time in the school year.

76.2 In each school year, the principal of a school must, within 15 school days after the school opening day set out in the school calendar applicable to the school for the school year,

- (a) if applicable, obtain the consent of or consult with the teacher of a class as required by section 76.1 (2.1) (b), (2.2) (b) or (2.3) (b),
- (b) consult with the school planning council with respect to the proposed organization of classes within that school for that school year, and

- (c) provide the superintendent of schools with a proposed organization of classes for the school for that school year that is, in the opinion of the principal, appropriate for student learning.

As an administrative matter, "If authorized by the principal of a school, the vice principal of the school may perform any duties of the principal under sections 76.1 to 76.6."¹³⁷

[155] Superintendents must make reports and boards of education must hold public meetings on those reports in October. The reports are to be filed with the Minister, who must make them publicly available.¹³⁸

[156] There are comparable requirements and processes if there is an increase in the size of a class with more than thirty students or an increase in the number of special needs students in a class that already has four or more students with an individual education plan.¹³⁹

[157] There is a process for ministerial appointment of a special administrator to enforce compliance with the class size provisions if the Minister is of the opinion a board of education is not in compliance.¹⁴⁰ There is no provision to limit the union's access to grievance arbitration or to reverse the Court of Appeal's decision of February 2005.

[158] It is agreed by the union and employer that no additional funding was provided by the Government to implement the new class size and composition standards.

4.8 Statutory Review of New Class Size Averages and Standards (2008)

[159] The *Education (Learning Enhancement) Statutes Amendment Act 2006* required that the Minister appoint a committee to review the district aggregate class size averages and class size and composition standards and processes for consultation, reporting and accountability. Section 27 of the statute states:

- (1) In this section, "minister" means the minister charged with the administration of the *School Act*.
- (2) Within one year after the date of the coming into force of this section, the minister must appoint a committee in accordance with this section to review the amendments made to the *School Act* by sections 11, 12, 22 and 24 of this Act.
- (3) The committee is to consist of the following:
 - (a) two representatives of the Ministry of Education;
 - (b) four representatives chosen by the British Columbia Teachers' Federation;
 - (c) two representatives chosen by each of the following organizations:

- (i) The British Columbia School Trustees Association;
 - (ii) The B.C. Confederation of Parent Advisory Councils;
 - (iii) the B.C. Principals' and Vice-Principals' Association;
 - (iv) the British Columbia School Superintendents' Association.
- (4) The failure by an organization referred to in subsection (3) (b) or (c) to choose representatives for the committee does not invalidate the appointment or functioning of the committee.

[160] The fourteen member committee was constituted in the same manner as the Learning Roundtable. In February 2007, the Minister proposed and the members of the Learning Roundtable agreed to be the members of the review committee.¹⁴¹ The organizations presented their views to one another on the operation and efficacy of the new legislation at a June 2007 meeting. It was decided the perspectives were to be explored further by a subcommittee, which met twice during the summer.¹⁴²

[161] The presentation of the British Columbia School Superintendent Association included the following:

Current enrollment trends suggest that enrollment will continue to decline in public schools and many districts report that the percentage of students identified as having special learning needs--both students that are experiencing academic difficulties and students who meet the requirements of designation will increase. This will mean that the aims and requirements of Bill 33 are likely to become more difficult to meet in an economic matter (e.g. creating very small classes). Second, the challenges for teachers to meaningfully differentiate their instructions will increase. Third the time for consultation respecting educationally sound practices (a major investment during 2006/07, particularly in secondary schools) will increase. Fourth, the need for resources and expertise to support classroom success for all students will continue to grow as an issue and possible source of conflict.¹⁴³

[162] The presentation by the British Columbia School Trustees Association included the following:

The most evident concern related to the implementation was the amount of time needed by district and school staff to complete teacher consultations and the reporting requirements. The tight timelines for implementation of the provisions negatively impacted the normal process for reviewing and reorganizing class assignments, and took administrative focus away from other priorities. In some districts higher TOC costs were incurred for consultation meetings with teachers. Although some districts reported improvements in communications with teachers, many others indicated that the process actually worsened teacher/administrator relationships. Teachers frequently had inaccurate expectations of how the provisions would reduce class size, which resulted in confrontational discussions and doubts among teachers that the consultation process was genuine.¹⁴⁴

[163] The subcommittee reported in December as follows:

- a. No recommendations for amendments to the existing legislation were forthcoming from the committee. The committee suggested that the effect of the amendments should be monitored on an ongoing basis.
- b. The committee agreed with some administrative changes, including electronic reporting of statements of rationale, that were intended to streamline and make reporting more efficient.
- c. A draft regulation intended to add clarity to the definition of what was intended by the “consultation” was circulated. Members of the Roundtable were asked to provide their views of this draft prior to the next meeting. Minister Bond asked for a response to the consultation draft by January 15.¹⁴⁵

[164] In January 2009, a draft consultation regulation was discussed and the minutes record:

- a. All members of the Roundtable with the exception of the BCTF, agreed with the draft definition provided by Minister Bond at the last meeting.
- b. Minister Bond restated her view that the intent of the legislation was to create meaningful and professional conversation between teachers and principals regarding the organization of classes.
- c. BCTF delegates indicated that this goal has not been reached and many teacher members of the BCTF did not view the consultation process as positive or resulting in any substantive outcomes.
- d. The BCTF provided an alternate to the ministry draft of the definition of consultation. Minister Bond undertook to consider the suggested changes and come back to a subsequent meeting with her decision.¹⁴⁶

[165] The next Learning Roundtable meeting was a year later in January 2009.¹⁴⁷ The *Class Size Regulation* was amended effective June 28, 2008 to define school principal and class teacher consultation with no express reference to actually meeting and engaging in a face-to-face dialogue.

For the purposes of Sections 76.1(2.2)(b), 76.1(2.3)(b), 76.2(a) and 76.3(8)(a)(i) of the Act, “consult” means

- (a) provision by the principal of a school to the teacher of a class with
 - (i) information relevant to a proposal for the size and organization of the class, and
 - (ii) 2 school days before a decision is made respecting the size and organization of the class for the teacher to consider the proposal and provide the principal with the teacher’s views in that regard, and
- (b) consideration by the principal of the teacher’s views, if any have been provided,

and “consulted” has a similar meaning.¹⁴⁸

5. Integration of Students with Special Needs and Individual Education Plans

[166] The legislated class size and composition standards in the *School Act* must

operate in conjunction with British Columbia's policy to include students with special needs in the public education system as fully participating members of a student community. Under the policy "all students are entitled to equitable access to learning, achievement and the pursuit of excellence in all aspects of their education."¹⁴⁹

[167] A student with special needs is a student "who has a disability of an intellectual, physical, sensory, emotional or behavioural nature, has a learning disability or has exceptional gifts or talents."¹⁵⁰ Boards of education must ensure they offer "to consult a parent of the student with special needs regarding the placement of that student in an educational program."¹⁵¹

[168] The hope is that the consultation will be collaborative, which Ministry of Education policy describes as:

Collaborative consultation is a process in which people work together to solve a common problem or address a common concern. A successful collaborative process is characterized by the following features: it is voluntary; there is mutual trust and open communication among the people involved; identification /clarification of the problem to be addressed is a shared task; the goal is shared by all participants; each participant's contribution is valued equally; all participants' skills are employed in identifying and selecting problem-solving strategies; and there is shared responsibility for the program or strategy initiated.¹⁵²

[169] This consultation and collaboration is intended to be an ongoing process, not a single time-limited event, but at times, the parent-school district relationship can become adversarial and litigious.¹⁵³

5.1 Placement in the "Most Enabling Learning Environment"

[170] One of the major strategies to achieve inclusion is "integration", formerly called "mainstreaming."

With integration, students with special needs are included in educational settings with their peers who do not have special needs, and provided with the necessary accommodations determined on an individual basis, to enable them to be successful there. The principle of "placement in the most enabling learning environment" applies when decisions are made about the extent to which an individual student is placed in regular classrooms, or assigned to an alternate placement.¹⁵⁴

[171] The policy of inclusion is succinctly stated in the Minister's *Special Needs Students Order*. Boards of education must provide students with special needs with an educational program "in a classroom where that student is integrated with other

students who do not have special needs, unless the educational needs of the student with special needs or other students indicate that the educational program for the student with special needs should be provided elsewhere.”¹⁵⁵

[172] Effective inclusion of students with special needs in safe and welcoming learning environments requires timely and comprehensive assessment of their needs and an appropriate response to their strengths and needs in the delivery of educational programs. Educating students with special needs in neighbourhood school classrooms with students their age and grade can include use of resource rooms, self-contained classes, community-based programs and specialized settings. Students with special needs may be placed in other settings after the board has made all reasonable efforts to integrate the student and integration cannot meet their educational or social needs or, after considering their education needs and those of others, placement in another setting is the only option.

5.2 Support Services Accessible to all Students

[173] Boards of education provide school-based and district support services that are accessible to all students. They include:

- School-based learning assistance services to support classroom teachers and students with mild to moderate difficulties in learning and behaviour. The learning assistance services include consultation, collaborative planning and co-ordination with the school-based team and instruction. Learning assistant teachers have a key role in the identification, assessment and designation of students with special needs.
- Counselling services support students, families and educators. They facilitate the educational, personal, social, emotional and career development of students in schools and in the community.
- Psychology services support students, school personnel and parents in enhancing academic, adaptive and social skills. They have a supportive role in identifying, assessing, planning, implementing, reporting and evaluating processes for individual education plans.
- Speech-language pathology services are designed to support students whose education is adversely affected by oral communication difficulties.¹⁵⁶

- Physiotherapy and Occupational Therapy.
- Hospital education services for hospitalized students.
- Homebound education services for students absent from school and homebound for extended periods.
- Distributed or distance learning programs.

[174] Boards of education also supply more direct classroom services that assist classroom teachers to provide an inclusive educational program for special needs students. These include para-professional support from special education assistants, with various job description titles, who provide academic, behavioural, social, physical and emotional supports. Methods for allocating special education assistant hours to schools varied among the representative school districts. Some allocated hours for special needs students in high incidence category designations. Others did not.

5.3 Funding Support Services for Students with Special Needs

[175] The Ministry of Education has policies and guidelines on the development of programs and services to enable students with special needs to meet the goals of education. There are procedures and processes for accessing provincial programs, services and funding. The Ministry policy for supplemental funding for special needs services begins:

Students with special needs may require additional support and accommodations to enable them to access and participate in educational programs. The Basic Allocation, a standard amount of money provided per school age student enrolled in a school district, includes funds to support the learning needs of students who are identified as having learning disabilities, mild intellectual disabilities, students requiring moderate behaviour supports and students who are gifted. Additional supplementary funding recognizes the additional cost of providing programs for students with special needs in the following categories: dependent handicapped, deafblind, moderate to profound intellectual disabled, physically disabled/chronic health impaired, visually impaired, deaf/hard of hearing, Autism Spectrum Disorder, and intensive behaviour interventions or serious mental illness.

In order to provide an inclusive education system in which students with special needs are fully participating members of a community of learners, additional support may be required by means of additional staff, specialized learning materials, physical accommodations or equipment, and assessments to enable them to meet their educational and social needs.¹⁵⁷

[176] The basic allocation includes funds to help boards of education provide learning assistance, speech-language pathology services, hospital and homebound services, and assessment services for all students.

[177] To qualify for special needs funding in addition to the base allocation, a student must have an Individual Education Plan (IEP); be provided with a special needs program in which the student receives special education services in addition to services available to all students; and have been reported on a Ministry Form 1701 in one of three special needs funding levels.

[178] The three funding levels, the distribution of the eight designation categories among the three funding levels and the funding per student FTE are as follows:

| <u>Level</u> | <u>Funding Category</u> | <u>Amount</u> |
|--------------|--|---------------|
| 1. | <ul style="list-style-type: none"> • Dependent Handicapped (A) • Deafblind (B) | \$32,000 |
| 2. | <ul style="list-style-type: none"> • Moderate to Profound Intellectual Disabled (C) • Physically Disabled, Chronic Health Impaired (D) • Visually Impaired (E) • Deaf/Hearing Impaired (F) • Autism Spectrum Disorder (G) | \$16,000 |
| 3. | <ul style="list-style-type: none"> • Intensive Behaviour Interventions / Serious Mental Illness (H) | \$8,000 |

[179] The other three designation categories - Mild Intellectual Disability (K), Learning Disability (Q) and Moderate Behaviour Support/Mental Illness (R) - are funded through the core, block funding.

[180] Designated funding categories have changed over the years. The 1985 categories of Moderately Mentally Handicapped or Trainable Mentally Handicapped and Severely and Profoundly Mentally Handicapped became Moderate to Profound Intellectual Disability (C). Mildly Mentally Handicapped or Educatibly Mentally Handicapped (3.27) became Mild Intellectual Disability (K). Severe Behaviour Problems (3.28) became Intensive Behaviour Interventions/Serious Mental Illness (H). Autistic (3.25) became Autism Spectrum Disorder (G) in 2006.

[181] Collective agreement negotiators attempted to keep their agreements current with Ministry of Education guidelines and policy, designation category numbering or lettering and category definitions. A 1993 review led to new guidelines and funding in 1994 for the new categories H and M. One interpretive dispute over the existing collective agreement language led to a decision on the language that the new category M students were not included and not counted in class composition limits.¹⁵⁸

[182] Later, category Rehabilitation (R – formerly 3.29) replaced categories M (Behaviour Disorders – Moderate) and N (Behaviour Disorders (Rehabilitation)). There is no current equivalent to the Rehabilitation (R) category. Changes in 2002 created more rigorous criteria for designation in category H. A new Ministry manual in July 2006 introduced changes to several categories, including an expansion in the Q category that had replaced the J category (Learning Disabilities – Severe). The currently categories established by the Ministry of Education are listed in Appendix 3.

[183] The accumulative effect of the evolution and changes in categories since 1985 is a broadening of the students for inclusion in the behaviour, learning disorders and autism spectrum disorder categories. As a consequence, no direct comparison can be made between the former class composition provisions deleted from the collective agreement and those in the current *School Act*.

[184] Presumably, broadening category definitions and the sophistication of professional knowledge that led to the broadening reflects a better understanding and identification of students with hidden special needs and impacts the number or percentage of students who become designated special needs students.

[185] The special needs funding categories are intended to identify the educational needs of the student. The general categorization guidelines are as follows:

- The current 'categorical' system is not intended to specifically identify all medically diagnosed conditions and syndromes that may have an impact on the student's needs and educational program.
- A medical diagnosis by itself does not determine the appropriate special needs category or service required.
- Identifying and reporting students for funding purposes should involve careful determination of the nature, extent and impact of their disabling condition(s) and the nature and extent of educational interventions required.
- Students with diagnosed conditions should be identified for funding purposes in the educational category that best reflects the type and intensity of educational interventions documented in the IEP.
- Students who have an identifiable disability or diagnosis, whose needs are addressed through the support of the regular classroom teacher and/or learning assistance, counselling, speech-language pathology, should not be reported in a category that generates funding.¹⁵⁹

[186] The Ministry prepares and circulates a category checklist that reduces the descriptive narrative for category designation to more precise features listing required documentation and support for the designation.¹⁶⁰ There is variation in rigour in

assessment and designation among the categories.

[187] The behaviour categories have more room for judgement than other categories.

For example, for the H category:

Students identified in this category are those most in need of intensive interventions.

They are expected to be less than one percent (1%) of the student population province-wide. These students should have access to co-ordinated school/ community interventions, which are based on inter-service/agency assessment processes that are required to manage, educate, and maintain the students in school and in their community.

Students Requiring Intensive Behaviour Intervention are eligible to be claimed in this special education funding category if they exhibit:

- antisocial, extremely disruptive behaviour in most environments (for example, classroom, school, family, and the community); and
- behaviours that are consistent/persistent over time.¹⁶¹

Unlike annual review for other categories, the Ministry requires “Evidence of planned interagency/ service review at least twice annually with a view to reducing the intensity of service as soon as it is no longer essential.”¹⁶² Entering and exiting this category in a short span of time because of modified behaviour is the hope and expectation.

However, is likely to be difficult if the standard of intensity and frequency of behaviour to qualify for the category is met. Often a school’s response that helps change behaviour is to change the student’s learning environment.

5.4 Identification and Assessment of Students with Special Needs

[188] Some students enter school with identified needs. For others, the teacher will be the first person to identify the existence of a student need.

For most students, the identification/assessment phase begins in the classroom, as the teacher observes exceptionalities in learning and behaviour. The teacher responds by entering the first phase of the process, initiating in-depth, systematic classroom observation and evaluation. Further, while beginning a comprehensive assessment of learning needs, the teacher should also introduce variations in instructional approaches, evaluating the success of using such teaching techniques and instructional materials with the student.

The teacher should consult with the parent and, when appropriate, the student regarding concerns and progress. The teacher should discuss with the parent the appropriateness of a referral to a physician for a comprehensive medical examination to exclude the possibility of a medical basis for the concerns.

If these efforts prove insufficient to meet the student's educational needs the teacher should embark on a process of consultation and collaboration with the school-based resource personnel. This may take the form of classroom

observation, additional assessment, the consideration of additional classroom intervention strategies, and implementation of those strategies.

For many students, such collaborative planning and the resulting interventions will successfully address the student's needs. However, if this is not the case, the teacher can approach the school-based team for further assistance.¹⁶³

[189] The assessment and planning process for students with special needs must account for language, culture and other factors.

Except for cases of obvious disability (e.g., profound intellectual disability, physical or sensory disability), teachers should fully consider cultural, linguistic and/or experiential factors that can affect learning before assuming the presence of a disability or impairment. Consideration should be given to prior educational experience, and the student should be allowed sufficient time for second-language learning and social adjustment. Students may need additional support for language development, and academic upgrading (e.g., math), or assistance with social integration, without necessarily presenting with a disability.¹⁶⁴

[190] School districts have processes for school-based teams to identify and refer students to a central district screening process for assessment and, if necessary, designation in a special needs category. Student designation can generate allocation of resources to schools and a requirement to have a principal-teacher consultation. Delays and backlogs in screening processes can delay both resource allocation and consultation requirements.

5.5 Individual Education Plans (IEPs)

[191] With certain exceptions, as soon as is practicable after a student is identified as a student with special needs, a school district must ensure an Individual Education Plan (IEP) is designed for the student. The exceptions are when:

- a) the student with special needs requires no adaptation or only minor adaptations to educational materials, or instructional or assessment methods,
- (b) the expected learning outcomes established by the applicable educational program guide have not been modified for the student with special needs, and
- (c) the student with special needs requires in a school year, 25 hours or less remedial instruction, by a person other than the classroom teacher, in order for the student to meet the expected learning outcomes referred to in paragraph (b).¹⁶⁵

[192] An IEP is an individualized documented plan designed for a student that identifies goals and objectives and the nature of the commitments the educational system makes to assist the student to attain the goals and objectives. It includes one or more of the following:

- (a) learning outcomes for a course, subject and grade that are different from or in addition to the expected learning outcomes for a course, or subject and grade set out in the applicable educational program guide for that course, subject and grade, as the case may be;
- (b) a list of support services required for the student to achieve the learning outcomes established for the student;
- (c) a list of the adapted materials, or instructional or assessment methods required by the student to meet the learning outcomes established for the student in the IEP, pursuant to a ministerial order or in a local program.¹⁶⁶

[193] An IEP is more extensively described in the Ministry policy manual as follows:

An IEP should also include the following:

- the present levels of educational performance of the student;
- the setting where the educational program is to be provided;
- the names of all personnel who will be providing the educational program and the support services for the student during the school year;
- the period of time and process for review of the IEP;
- evidence of evaluation or review, which could include revisions made to the plan and the tracking of achievement in relation to goals; and
- plans for the next transition point in the student's education (including transitions beyond school completion) and linkages to Graduation Portfolio during Grades 10-12.

It serves as a tool for collaborative planning among the school, the parents, the student (where appropriate) and, as necessary, school district personnel, other ministries and/or community agencies.

Typically an IEP includes individualized goals with measurable objectives, adaptations and/or modifications where appropriate, the strategies to meet these goals, and measures for tracking student achievement in relation to the goals. It also documents the special education services being provided as these relate to the student's identified needs.

Some students require small adaptations and minimum levels of support; other students with more complex needs may require detailed planning for educational modifications, adaptive technologies, or health care plans. The IEP will reflect the complexity of the student's need and, accordingly, can be brief or more detailed and lengthy.

For example, the IEP for a student who needs examinations with adaptations and support with note-taking can be relatively simple. In contrast, a student with multiple disabilities who requires the involvement of a variety of professionals, adaptive technologies and major curricular modifications will require a much more extensive IEP.¹⁶⁷

[194] While the Ministry policy speaks of support for note-taking as being relatively simple, the evidence in some of the representative schools was that Ministry authorization requirements for readers and scribes for adjudicated provincial

examinations create an impetus for including a requirement to have a reader or scribe in IEPs so the requirements for authorization can be met when the student reaches a grade level with adjudicated examinations.

[195] Having and recruiting enough adults to act as readers and scribes during regular classes and examinations, whether adjudicated provincial examinations or otherwise, can be a recurring irritant and source of distraction for classroom teachers. The prevalent attitude exhibited by the teachers who testified was: “we make it work somehow.” Some teachers link a need for additional special education assistant hours in their class or school to meeting scribing needs for examinations and at other times.

5.6 Adapting and Modifying the Regular Curriculum

[196] The policy goal is that, with special support, each student with special needs will achieve all, most or some of the provincial curriculum outcomes. For some students, their individualized education plan will retain the prescribed learning outcomes of the regular curriculum and participation in the education program with adaptations.

Adaptations are teaching and assessment strategies made to accommodate a student’s special needs, and may include alternate formats (e.g., Braille, books-on-tape), instructional strategies (e.g., use of interpreters, visual cues and aids) and assessment procedures (e.g., oral exams, additional time, assistive technologies). Students with education programs that include adaptations are assessed using the standards for the course/program and can receive credit toward a Dogwood certificate for their work.

Other individual education plans will call for a modified education program.

A modified education program has learning outcomes that are substantially different from the regular curriculum, and specifically selected to meet the student's special needs. For example, a Grade 9 student in a modified math program could be focusing on functional computational skills in the context of handling money and personal budgeting. Or, in language arts, a Grade 5 student could be working on recognizing common signs and using the phone. In these examples the learning outcomes are substantially different from those of the curriculum for most other students. To enable achievement, a student's program may include some courses that are modified and others that have adaptations.¹⁶⁸

[197] Program support is often required to implement each IEP and usually includes one or more of the following:

- adaptations to make the learning environment more accessible;
- alternate approaches to instruction and/or evaluation;
- use of adaptive/assistive technologies;

- provision of intensive, direct instructional intervention (e.g., remedial, compensatory);
- modifications to the curriculum content;
- provision of services that are beyond those offered to the general student population and are proportionate to level of need.; and/or
- provision of specialized training (e.g., Braille, orientation and mobility, speech reading and sign language instruction).¹⁶⁹

[198] Adaptations in class can include reader, scribe, summary of required content, photocopy of teacher's notes, oral or visual presentation instead of written presentation, seating in an area of minimal distraction, assignment of a teaching assistant or peer tutor, adjusted length or time for assignment, avoiding oral reading, use of calculator, no demerit for spelling mistakes, access to videos, tapes, computer, spell checker or daily agenda book review. Test adaptations can be reader, scribe, calculator, computer, segregated seating, adjusted length or time of test or oral test.

[199] One issue to which all school-based professionals are attentive is the circumstances in which adaptations, supports and alternate programs single out students and focus attention that they, or their parents, may find socially embarrassing and, as a consequence, resist or reject the designation, support and attention. This can manifest itself in many ways that teachers and administrators must deal with.

5.7 Evaluating Learning for Student with Special Needs

[200] An evaluation of learning for students with special needs must accommodate program modifications and adaptations.

There are many students whose learning outcomes are identical to those of their classmates, but for whom teachers use adapted evaluation procedures (e.g., an oral exam rather than a written one). Use of adapted evaluation procedures should be noted in the student's IEP. For these students, evaluation is based on whether the learning outcomes for the course/program have been met. The methods of evaluation and reporting progress must be consistent with ministry grading and reporting policies for the K-12 program.

Some students may require extensive modifications to their program. Some or all of their learning outcomes will be substantially different from the regular curriculum.

Evaluation will be based on the degree to which such outcomes are achieved. In this case, evaluation must be referenced to individually established standards.

Parents can assist the school in achieving and evaluating progress toward learning outcomes - particularly with respect to achievement of social goals, acquisition of life skills, and career exploration and development.¹⁷⁰

5.8 Reporting Progress for Students with Special Needs

[201] Reporting progress for students with special needs and students receiving English as a second language service (ESL) is to be done in accordance with the Ministerial *Student Progress Report Order*.¹⁷¹

- (3) Unless a student with special needs is able to demonstrate his or her learning in relation to the expected learning outcomes set out in the curriculum for the course or subject and grade, a student progress report for that student must contain written reporting comments in relation to the expected learning outcomes set out in that student's IEP.
- (4) Until an ESL student is able to demonstrate his or her learning in relation to expected learning outcomes set out in the curriculum for the course or subject and grade, a student progress report order for that student must contain written reporting comments.
- (5) Student progress reports referred to in subsection (3) must contain
 - (a) a statement that the progress of the student is in relation to the expected learning outcomes for that student in his or her IEP and is not in relation to the expected learning outcomes set out in the curriculum for the course or subject and grade, and
 - (b) where deemed to be appropriate by the teacher or principal, vice principal or director of instruction, written comments describing
 - (i) ways to enable the student to demonstrate his or her learning in relation to expected learning outcomes set out in the curriculum for the course or subject and grade, and
 - (ii) the time period required to enable the student to demonstrate his or her learning under subparagraph (i).
- (6) A letter grade may only be assigned for a student with special needs or an ESL student where that student is able to demonstrate his or her learning in relation to the expected learning outcomes in the curriculum for the course or subject and grade.

5.9 Principals' Responsibility for Placement and Program Implementation

[202] Responsibilities for the equitable participation of students with special needs in the educational system are shared between the Ministry of Education and boards of education.

[203] At the school level, principals have the responsibility to place students with special needs and implement their educational programs.

To accommodate students with special needs, schools should be organized in ways which allow flexibility in their response. Principals should ensure that teachers receive the information they need to work with students with special needs who are assigned to them, and that the school is organized to provide some first-line resource support on-site.

Principals should ensure that a school-based team is operational in the school, and facilitate the collaborative efforts of the team members in meeting the special needs of students.¹⁷²

5.10 Responsibilities of Teachers and Teachers' Assistants

[204] For teachers and teachers' assistants, the Ministry policy manual states:

The teacher responsible for a student with special needs is responsible for designing, supervising and assessing the educational program for that student. Where the student requires specialized instruction, this is best done in consultation with resource personnel available, with the parents and with the student.

Where the student's program involves specialized instruction by someone other than the classroom teacher, collaborative processes are required to make best use of the expertise of the specialists available to assist and to ensure a co-ordinated approach.

In secondary schools, where several teachers may be involved in the student's program, co-ordinated planning is especially important.

Teachers are expected to design programs for students with special needs. Teachers' assistants play a key role in many programs for students with special needs, performing functions which range from personal care to assisting the teacher with instructional programs. Under the direction of a teacher they may play a key role in implementing the program.

While teachers' assistants may assist in the collection of data for the purpose of evaluating student progress, the teachers are responsible for evaluating and reporting on the progress of the student to parents.¹⁷³

[205] It is clear that in implementing the provincial integration policy the classroom teacher is the primary source of assistance and support for each student and has the primary responsibility for all students enrolled in the class. Regardless of the number and variety of other supports for individual students, the classroom teacher has to request, coordinate and integrate those supports and services for the benefit of the student.

[206] Schools seek to organize themselves so all students can be successful in the classroom with their peers. Teachers have to respond to the classes placed in front of them and address the learning needs of each child, whether designated special needs or not.

[207] As a consequence all teachers are special needs teachers and many teachers demonstrated that they consider each child to be special. Supporting the needs of students can have sometimes burdensome work consequences for a teacher. Extra help with the class can mean extra work for the teacher. Pull-outs can require

additional work and cause distractions. Detention for a student can mean a later detention for the teacher preparing work for the student.

[208] In class, students with learning disabilities require teachers to instruct differently. Students with intensive behaviour act out, are impulsive, unpredictable, challenge authority and are often highly verbal and loud with adverse effects on the ambiance and emotional environment of the group. Managing and adapting takes time, a limited resource in a school block, day and year. The common theme in the testimony is that workload creep is as prevalent in the public education system as it is in other workplaces.

[209] The testimony of the teachers demonstrates they often strive for excellence in a system that offers access to a culturally and linguistically diverse population from all socio-economic situations. Their challenge is to have students develop to think critically, be creative, ambitious, adventuresome, individualistic and willing to challenge conventional thinking and authority. For many, their nature is to push the boundaries and be models of this thinking and behaviour for their students. One of the boundaries is the operational and resource constraints in the organizational structure of the public education system where there is a culture of collegiality and striving for equitable allocation of work and resources. Administrators must work within the box and reshape it from within. Teachers can challenge convention from within and without.

6. Annual School Organization, Timetabling, Supports and Specific Classes

6.1 School Organization Cycle – January to September

[210] The provincial government and elected boards of education co-manage the K-12 public school system. Each year the provincial government budgets the amount for its Ministry of Education and the amount of grant funding for school districts. It uses a formula to allocate this money to the boards of education, which allocate and manage the funds based on their priorities. The province also funds capital costs and special programs through supplemental grants to boards of education.

[211] The provincial funding system allocates operating grants to school districts using individual district enrolment and other factors, such as a supplement for decline in enrolment, salary differential, transportation, unique student needs (e.g., special needs, aboriginal and ESL/FSL), funding protection and geography. The operating grant is not

activity based funding. It is block funding that allows local board allocation among its needs and priorities

[212] The provincial government gathers and uses data from schools and districts and formulas to distribute the funding.¹⁷⁴ A key element in the data collection is Ministry of Education form 1701 used by school districts to report enrolment at snapshot dates in February, May, and June and September 30th. These dates fix the schedule for projected enrolment and provincial government funding allocation to school districts. The dates also direct the schedule for the districts projecting allocations to schools and setting budgets for July to June fiscal years. Ministry policies and reporting schedule determine the allocation of funding based on enrolment at September 30th, which is subsequently verified through echo reports and adjusted throughout the year.

[213] District projections of enrolment adjusted through discussion with principals is submitted to the provincial government in February. Projected provincial government funding is received in March, after which proposed district budgets with staffing allocations to schools are prepared.

[214] Boards of education adopt policies and formulas for the allocation of resources to district administration and programs, schools and other programs.

[215] In each school district, a high value is placed on equitable distribution of funds and resources among schools. Formulas based on student FTE and divisors are used to determine enrolling teacher FTE allocations, which are calculated to the second or third decimal point, to elementary, middle and secondary schools.

[216] District formulas based on student to non-enrolling teacher ratios or another basis are used to allocate non-enrolling teacher FTE to schools. The legislated class size and composition standards do not set or direct these ratios or formulas for non-enrolling teacher FTE allocation to schools, as was provided under deleted provisions of the collective agreement after the contentious 1998 Agreement in Committee. Two school districts, Vancouver and Surrey, made formula adjustments to respond to the 2006 legislated class size and composition standards.

[217] The non-enrolling teacher allocation formula in the Vancouver school district is the number of student FTE in the school divided by three plus the number of ESL

student FTE and the number of aboriginal student FTE plus three times the number of designated special needs student FTE, including those in the R category, all divided by ninety. It is expressed as: $(N/3 + \text{ESL} + \text{Aboriginal} + 3 \text{ MD}) \div 90$.

[218] In Surrey, three components are used for secondary staffing allocations. The first is regular FTE teacher allocation calculated using a ratio of 24 students FTE to one teacher multiplied by eight blocks converted to teacher FTE by multiplying the number of blocks by 0.125 FTE. A special education integration factor is calculated by determining a special education equivalent enrolment projection using an estimate based on experience with programs and categories of special education students and the number of average blocks in which special education students are integrated in regular classrooms. This is used to determine the special education integration factor. The third is an ESL integration factor based on ESL student head count.

[219] Tentative staffing and resource allocations to schools are made and adjusted in discussions between principals and district administrators in March, April and May while proposed budgets are being prepared and submitted to boards of education for review and approval.

[220] As June approaches, school staffing allocations are becoming more firm and less susceptible to being increased on the basis of principal pleas or teacher, parent, union or other advocacy. The extent to which there is school autonomy is difficult to discern. In June, schools, classes and timetables are becoming firm and final and tentative teacher assignments for the following school year are being made. Teaching position vacancies are posted and filled and the changes they cause are being addressed. A parallel process is occurring for school support staff.

[221] At the end of June, teachers in elementary and middle schools are placing students in classes organized for the following school year by the principal based on resource allocation to the school. There are variations in the manner in which this is done from school to school; the role receiving teachers have in the composition of their class for the next year; the role counsellors and others have; and the manner in which parents' choices of teachers for their children are addressed. By the end of June, there are tentative class lists for September. At secondary schools there are individual student timetables that are distributed in July.

[222] Throughout July and August, enrolments change and teachers request leave or successfully apply for vacancies. These and other factors may affect the organization of the school and necessitate changes in class size and composition and teaching assignments. Principals make changes and inform or involve teachers as they become aware of increases above or decreases below projected enrolment in a grade. Teachers start to attend the schools after mid-August to prepare for the coming year based on the information they had in June or received since June.

[223] In September, there will be minor or major adjustments to classes and teaching assignments as students do, or do not, attend and actual enrolments vary from the projections; there are changes in teaching staff; and other events that affect the overall school organization plan. Students are making the transition back to school and teachers are engaged in intense activity to learn from available sources about their students. There are many in-passing and more formal conversations about individual students between receiving teachers and parents, past teachers, counsellors, student support service teachers, administrators and others. Files are reviewed and IEPs are examined.

[224] There are various processes that began in the spring and information on students as part of grade and course articulation for students moving from elementary to middle or from elementary or middle to secondary schools.

[225] Schedules are made and changed for special education assistants. Pull-out programs for students to leave class to attend learning assistance or other programs are implemented with many conversations between enrolling teachers and others.

[226] The pace and activity is hectic with little time for scheduled or formal meetings. Information is exchanged, requests made, choices explained and decisions made in the staff room, hallway, at the photocopier, by email and some more formal settings. The principal will use a weekly newsletter delivered to individual teachers' mail slops, bulletin boards and email to distribute information and communicate with professional and other school staff.

[227] The union staff representative or, perhaps, a local union executive member will convene a meeting before or after school or at lunch, perhaps in conjunction with the

first staff meeting scheduled by the principal. One of the subjects on the agenda of both the union and school staff meetings will be upcoming class size and composition consultations between the principal and affected teachers.

6.2 Secondary Timetabling

[228] Class formation for secondary schools, where students are with teachers for a timetable block, rather than all or most of a day, creates dynamics that must be given attention to understand the broader range of class sizes in Grades 8-12 than Grades 4-7 and some of the class composition challenges in organizing secondary classes.

[229] Class formation is a function of timetabling to have each student scheduled to take all required courses and to respond appropriately to each student's elective choices. As students progress from Grades 8 or 9 to 12, the number of required courses decreases and the number of elective courses increases.

[230] Course offerings for the coming school year are finalized in January or February. Core subjects required for graduation are offered and most electives in the current school year are carried forward. This is the time decisions are made to eliminate under-subscribed courses and to offer and incubate for a period of one or more school years new courses proposed by a department or teacher. The new courses can be new provincial Integrated Resource Package courses, existing provincial courses or new board authorized courses. New courses might take time to be accepted and lower class sizes might have to be supported until they do.

[231] Departments and teachers will advocate for new courses or for longer incubation periods or retention of courses whose enrolment is low. Principals make decisions about new course offerings and course continuation during timetabling. The decisions are affected by subscription numbers, but also by the desired character and richness of the educational program offered by the school.

[232] A booklet is prepared describing course and program offerings. It is distributed to students and parents in hard copy and online. Administrators and counsellors visit feeder schools to introduce the incoming students to the course offerings for the next year at their new school. Administration and student support services teams at the feeder schools will provide information about students in the incoming grade to their

counterparts at the secondary school to assist in class and program placement and to acquaint the receiving teachers with the students. In some instances, individual students with special needs will receive individual placement in programs and classes following discussion between counsellors and teachers.

[233] Students select courses for the following year. Some will choose to take more than the minimum by selecting courses like Band or Theatre that are offered outside the regular block timetable. Some higher grade students will take more or fewer than eight courses depending on their post-graduation plans.

[234] Teachers inform the administration of their anticipated FTE teaching time for the next school year, their preferred assignments and any special circumstances, such as anticipated leaves of absence.

[235] In the spring, the principal with data entry assistance works with vice-principals to determine the number of sections of each course to include in the timetable. The number of sections depends on the number of students who have selected the course and the margin allowed for the inequitable distribution of students among the courses because of scheduling complexities. For example, scheduling four sections for 112 students will not assure each class has twenty-eight students because of conflict with other courses offered at the same time.. The students' other selections will affect the scope of the range of distribution among the four sections. It might be relatively narrow (e.g., 26 to 30) or much broader (e.g., 20 to 36).

[236] The next step is creation of a master timetable. At Claremont Secondary School there were approximately fifty teachers assigned to approximately one hundred and fifty first semester sections delivered in four blocks per day. It included part and full-time teaching assignments, preparation time and non-enrolling assignments.

[237] From May to September, the timetable is constantly adjusted and refined. Department heads provide input on teacher requests and department needs. Tentative assignments to learning assistance, integration support and other student support services are made and adjusted.

[238] Decisions are made about whether a course is to be offered in the first or second semester. Some are offered in the first to accommodate students who wish to take the

course as a prerequisite to a course offered in the second. Some courses may have to be offered in a specific block during the day because of the availability of certain facility space, collaboration with another institution or the availability of a teacher.

[239] Limiting the size of a class, such as a laboratory, workshop or home economics class, to fewer than thirty students may increase the size of other classes.

[240] The timetabling software placing all students in all selected courses will produce a wide range of class sizes and compositions. Student placement can be changed by changing software program parameters. Decreasing or increasing the limit on the number of students in a course will redistribute them. Moving sections within the timetable will also redistribute students.

[241] The timetabling software testified about in the representative secondary schools does not accept a parameter that limits the number of students with an IEP in a class. Student elective choices can result in large numbers of students with an IEP being placed in a specific core subject or elective course class. These have to be individually identified, reviewed and adjusted.

[242] After the adjustments achievable with the software have been accomplished, it is necessary to manipulate the timetable by movement and placement of individual students. This involves dozens of iterations of the timetable. At the same time, some students will miss course selection deadlines and some will want to change course selections. Teachers will be actively speaking about their courses to students. Some will attract more than thirty students to their classes. Some courses will be under-subscribed. Course sections will be added or deleted. Tentative teaching assignments will be adjusted.

[243] When student selections result in courses having fewer than twenty students in a class, decisions must be made whether it is in the best interests of the students, the teacher and the school, in the short or long term, to continue to offer or to cancel that course.

[244] As the process moves toward July and a final timetable, the principal and vice-principals will be in continuous discussion with department heads, teachers, counsellors and support personnel. Student support services teachers will be reviewing course

selection and planning case management assignments that will be continuously adjusted and finalized in early September. Creating the final timetable and individual student timetables is an intricate, time consuming, collaborative, team endeavour. As a final check at Guildford Park Secondary, the principal engaged a retired counsellor to bring her expertise to review and adjust class composition for equitable distribution and appropriateness.

[245] The timetabling drivers are graduation course requirements and student course selection. The highest priorities being balanced in the timetabling process are meeting student course selections and assigning teachers the course they wish to teach at the times in the timetable they prefer. Students provide second choice electives. When a class is full a student may not receive a first choice.

[246] Teachers and students are sent their individual timetables in early summer. A deadline for any student proposals for changes to their individual timetables is communicated.

[247] In late August and early September, counsellors and others may make small adjustments shifting the placement of some students. Support services for some students are adjusted and changes are discussed with, and communicated to, teachers. New students enrolling in September will be accommodated as best as is possible or directed to other schools.

6.3 Combined Grades or Split Classes

[248] Throughout the testimony of teachers and administrators some common education beliefs were either assumed or clearly stated. One is that small classes in Kindergarten and primary grades provide children with a more solid foundation and start in their formal education and development. This is reflected in the legislated class size standards for Kindergarten and Grades 1-3.

[249] Another is that multi-grade or combined grades or split classes require more work from a teacher. Teachers and administrators spoke of the unique circumstances, challenges and benefits for some students being placed in a combined grades class. They spoke of the challenges teaching two or more curricula to a group of children with a broad range of development, abilities and achievement and adapting and modifying

lessons and education programs for special needs students in a combined grades class. They spoke of selection and placement of students in combined grades classes and strategies to teach combined grades classes or minimize the workload and challenges with these classes.

[250] While some subjects can be taught to all students in a combined grades class without differentiation for age and grade, one teacher expressed the belief universally held by teachers and commonly held by principals that combined grades classes add complications just as paving a highway makes driving smoother.

[251] There was some evidence about teacher or school choice to organize combined grades classes for educational or enrichment benefits. However, the overwhelming evidence was that combined grades classes are not organized as a matter of preference in Grades 4-7, but to meet class size and composition standards, to maximize the use of allocated resources or to meet school district aggregate class size averages.

[252] Formulas allocating teacher FTE to a school based on enrolment do not include a factor that allows for more classes and teachers at a school to avoid organizing combined grades classes. If possible, the number of students in a combined grades class is kept lower than in other straight grade classes in the school to make the teaching assignments more equitable. Declining enrolment contributes to the number of combined grades classes.

[253] In Grades 8-12, combined grades classes are frequent in certain elective courses and necessary if the school is to continue to offer certain courses that attract a small number of students. Some of the disputed shop and fine arts classes are combined grades classes.

[254] None of the teacher workload or student learning issues with combined grades classes are addressed in the class size and composition standards in the *School Act*, as they were in many deleted collective agreement provisions.

6.4 Workshop, Home Economics and Science Classes

[255] Many workshop, home economics and laboratory oriented science classes are held in specialized classroom facilities. For safety, effective student participation,

facilities design, historical and other reasons, these classes have often been, and in some school districts continue to be, organized with fewer students than in other classes. This practice was reflected in many of the deleted collective agreement provisions that agreed to smaller classes of varying sizes. In some there was a flexibility factor that could be applied to increase the agreed number.

[256] In several of the disputed classes teaching these courses there was evidence of the physical space and facilities for these classes. There were ingrained preferences and commitments to smaller class sizes, although smaller classes for these courses are not mandated by the class size and composition standards in the *School Act*.

6.5 Lower and Under Achieving Students and Courses Designed for Them

[257] The prevailing current view is that promotion to the next grade with intervention is better for a student than retaining a student to repeat a grade and that children should not repeat a primary grade.

Most students achieve the prescribed learning outcomes each year and progress to the next grade or level. Where areas of concern remain at the end of the school year, these should be identified, so that the receiving teacher can make appropriate learning plans for individual students early in the next year.

As soon as a student begins to show signs of not meeting expectations, the teacher should clearly identify the problem and set out a plan of action to remedy it. When a student does not achieve expected learning outcomes in one or more areas by the end of a school year, but is promoted to the next grade, a concrete intervention strategy should be developed. The intervention plan should involve both the promoting teacher and the receiving teacher, in order to determine the best course of action to address the student's learning problem.

Where a student is identified as a student with special needs, policies and procedures are in place to provide him or her with an IEP In other cases, a plan for intervention is developed based on a diagnosis of the problem, including information about what has been done previously to assist the student.

Schools must structure learning environments that help students achieve expected learning outcomes. Intervention may also include programs offered in the community or workplace.¹⁷⁵

[258] Teachers receive students who have fallen behind their expected grade level of achievement and are not meeting expectations. At the higher grades the gap often widens and teachers will receive students who are two or more grades below the current grade in reading, writing or mathematics. Some students never close the gap as they advance into Grades 8-12. In some respects, through course rigour and

student selection, integration in the highest grades is displaced by a form of streaming as classes become less homogeneous.

[259] To enable some students to achieve a Certificate of Graduation, they are offered less rigorous academic and elective courses in Grades 8-12. In addition to attracting these students, the same courses attract a high percentage of the designated special needs students. Often students with an IEP are placed in these classes for social development. Often ESL students are placed in these classes to learn social English or because they do not have the English language skills for more rigorous academic courses.

[260] Some teachers of these courses have a high degree of empathy for students on the margin of a secondary school's main academic stream and focus on post-secondary education. At this age and grade level in groups larger than in primary or intermediate classes, the challenge to build relationships and instruct or assist students develop and mature can present challenges to the most empathetic teacher.

[261] Schools seek ways for students to achieve positive attachments to their teachers and school to support achievement, even if the student has no attachment relationships with parents, guardians or other adults. Many will look to class size and funding as vehicles to help underachieving students.

[262] There is no lower class size standard in the *School Act* for these classes, but they are subject to the same class composition standard as any other class.

7. Class Size and Composition Threshold Requiring September Consultation

[263] The organizational foundation of our public education system is teaching children in age equivalent heterogeneous groups with all the diversity, family background, circumstances and individual characteristics, talents, abilities and needs each child brings to the group each day at their neighbourhood school. The school and class is their learning community.

[264] There can be groupings of children that present an especially challenging cluster of characteristics and behaviours. Some schools have a disproportionately high percentage of students with especially challenging life circumstances, characteristics and behaviours. As one teacher testified they can be "gifts from hell" who upset any

plans for the day, week or month. In extreme cases, the interests of the school require the removal of a student.

[265] In any group there is a range of development and a range of literacy and numeracy. As children move with their age peers into higher grades, the range broadens and some children will be one or several grades behind or ahead of their current grade in academic achievement. Because advancement is virtually assured under current social promotion and retention policies and practices,¹⁷⁶ the range in physical, social and emotional development will also broaden.

[266] Those students who have fallen behind their expected grade level of achievement and are not meeting expectations are often referred to as grey area students. While not designated as special needs students, these students can require a disproportionately higher amount of support and teacher attention if they are not to be lost and are to achieve a Certificate of Graduation. Some of these children might be students who qualify for and should be designated special need students, but their parents or guardians will not agree.

[267] As special needs students advance in grades with their age peers, the range of diversity in skills, ability and achievement will extend if they experience a greater gap between their learning and that of their peers. Some intermediate and secondary grade courses require a grade equivalent literacy and numeracy ability to comprehend the texts and other assigned materials.

[268] The range of abilities and development in any class can require the teacher to engage in differentiated instruction – planning, creating and using multiple paths in one lesson to provide students with different interests and learning needs appropriate ways for them to individually engage, learn and achieve. One lesson taught, but different expectations for each ability level group. It may include the use of technology. It requires teachers to know the abilities of the children in the class and children willing to work to their ability level.

[269] Teachers use a variety of instructional strategies – chunking information into small pieces; creating ability groups in the class; creating mixed ability groups to facilitate peer teaching and support; etc. The overall challenge in setting the pace is to

have students challenged, but not stretched to the point of frustration and shutdown or becoming bored and checkout. The broader the range of abilities in the group, the greater the challenge.

[270] The curriculum for a grade or course proposes what is to be learned and provides plans for its implementation, teaching and evaluation. Ministry of Education Integrated Resource Packages for grade and course curriculum contain the prescribed learning outcomes that are the required content standards for the provincial education system. These standards are intended to be developmentally appropriate goals and expectations, achievable with sufficient adult support.

[271] Placing each child, whether typical, grey or special needs, in a class at the center of individual instruction, support, assessment and evaluation of achievement while adapting and modifying daily lessons and education programs to implement individual education plans is a formidable task. This happens in a classroom environment where intellectual development is important, but the teacher and the school must also consider each child's overall welfare and personal, social and moral development. It happens in facilities where equipment deficiencies and backpack clutter can affect the environment and present hazards.

[272] First-year teachers, undoubtedly eager, ideal and confident in their preparation for the challenges ahead, can be given teaching assignments that would challenge experienced and mature teachers.

[273] These and many other characteristics of student groupings into single and combined grades classes were prominent features of the testimony of the teachers at the representative schools whose classes were grieved.

[274] Equally prominent was the school and district funding model used by school districts to allocate resources. There were clear tensions between the class and school focus of the neighbourhood school staff and the necessarily broader district focus of the superintendents. One reflection of the tensions was shared school-based efforts by teachers and principals to increase resource allocation to their school.

7.1 “class” Requiring Consultation

[275] There is no definition of “class” in the *School Act* and, in this phase of the

arbitration, there were no submissions on whether any group of students is to be excluded from the consultation requirement.

[276] Under section 76.1(3) of the *School Act*

The Lieutenant Governor in Council may, by regulation,

- (a) establish the methods to be used by a board for determining average class size in the aggregate, including, without limitation, methods of providing for students with special needs,
- (b) exclude any type of class, course, program, school or student from the determination of average class size in the aggregate,
- (c) set dates by which determinations must be made under this section,
- (d) define terms used in this section for the purposes of a regulation under this section,
- (e) require boards to prepare, submit to the minister and make publicly available, in the form and manner specified by the Lieutenant Governor in Council, for each school district and each school within the school district,
 - (i) reports respecting class size, and
 - (ii) plans respecting allocation of resources, services and staff in order to comply with subsection (1),
- (f) specify matters that must be considered by a board in preparing a plan under paragraph (e)(ii) and the information required to be included in reports or plans under paragraph (e), and
- (g) require a board to establish, in respect of plans and reports under paragraph (e), process of consultation with parents of students attending school in the school district.

The *Class Size Regulation* excludes a limited number of students and classes.¹⁷⁷ None were in dispute in this phase of the arbitration.

[277] The *Class Size Regulation* defines “class” as “a group of students regularly scheduled to be together in a classroom for the purposes of instruction in an educational program”¹⁷⁸ for determining average class size in the aggregate and, since June 27, 2008, for the new definition of “consult.” The regulation also defines a class for the purposes of determining the number of students in combined classes containing students from Kindergarten to Grade 7. Kindergarten is a class with Kindergarten students and students in any other grade. Grades 4 to 7 is a class containing students in those grades and any other grade except Kindergarten and Grades 1 to 3, which is a class containing students in those grades and any other grade except Kindergarten.¹⁷⁹

[278] With an expansive interpretation of “classroom” to include all the settings in which teachers give instruction, the *Class Size Regulation* definition of “class” is

appropriate for the interpretation and application of Section 76.1 of the *School Act*. By employing this definition of class, each class that is included in the determination of the district average class size in the aggregate for primary, intermediate and secondary is a class that might be subject to the principal's duty to consult.

[279] A listing of classes with more than thirty students and "a rationale for the organization of any class in the school district that has more than 30 students" are to be included in each superintendent's annual report.¹⁸⁰ Classes with more than three students with an individual education plan are reported at the school level without a rationale for the organization of each.

[280] It has been and continues to be common experience that certain courses in Grades 8-12 frequently have more than thirty students in a class. The most often cited examples are Band, Choir, Drama and Physical Education classes. It was common for deleted collective agreement provisions, as reflected in those formerly in effect in the representative school districts, to address this situation with express negotiated exemption from class size maxima after consultation with the affected teacher or local union or by a process of documented teacher request.

[281] Previously negotiated class size maxima provided for reduced maxima for certain course and learning environments. The common situations were combined grades classes, laboratory oriented science courses, workshops and home economics. Less common were reduced maxima for specific courses such as secondary Language Arts or minimum essentials courses. Some teachers strenuously disagree with the elimination of those lower maxima and there were strongly voiced opinions that classes with more students are not appropriate learning environments. In some school districts, as a matter of board of education policy, maxima lower than thirty students have been adopted for some classes. An example is workshops in the Surrey school district.

[282] There are no such similar approaches in the *School Act*. It does not make distinctions among classes and does not set higher or lower class size standards for different types of classes within the same grade groupings. An amendment to introduce a class size standard of twenty-four students for shops, laboratories, home economics and similar hands-on activity classes was turned away.¹⁸¹

[283] The *School Act* makes no distinction among the variety of classes, courses and classroom environments that exist in Grades 4-12 in establishing a class size standard of thirty students and using any number of students more than thirty in a class as the trigger for seeking teacher consent in Grades 4-7 and for requiring principal-teacher consultation in Grades 8-12. As a consequence, there will be some courses with more than thirty students that require recurring annual consultation. There will be some courses with thirty or fewer students that will be regarded as inappropriate by teachers and, when their size or composition triggers consultation, the issue will be the subject of recurring disputes.

[284] Similarly, some previously negotiated class composition provisions distinguished between high and low incidence categories of special needs students and limited the number of low incident students or the number of any designated special education needs students in a class. There were no negotiated limits in many school districts.

[285] In establishing a class size standard of three students with an individual education plan for Grades K-12 and using four or more students with an individual education plan in a class as the trigger for requiring principal-teacher consultation, the *School Act* makes no distinction among the variety of classes, courses and classroom environments that exist in these grades or, with one exception, the difference in special needs funding designations that lead to a student being entitled to an individual education plan. The single exception is in section 76.1(5) of the *School Act*, which states:

In this section, "student with an individual education plan" means a student for whom an individual education plan must be designed under the Individual Education Plan Order, Ministerial Order 638/95, but does not include a student who has exceptional gifts or talents.

These excluded students are in designation category "P."

[286] There is no evidence that previous collective agreement provisions factored the number of grey area students into class size or composition.

7.2 Teacher Re-arranged Classes

[287] The principal of a school is responsible for administering and supervising the school including:

- (a) the implementation of educational programs,

- (b) the placing and programming of students in the school,
- (c) the timetables of teachers,
- (d) the program of teaching and learning activities,
- (e) the program of student evaluation and assessment and reporting to parents,
- (f) the maintenance of school records, and
- (g) the general conduct of students, both on school premises and during activities that are off school premises and that are organized or sponsored by the school,

and shall, in accordance with the policies of the board, exercise paramount authority within the school in matters concerning the discipline of students.¹⁸²

[288] By agreement between or among teachers, with or without the prior approval of a principal, teachers may make special organizational arrangements to provide instruction to students at a grade level or in a course.

[289] This happened in the instruction of two Foods 9 courses at Guildford Park Secondary School; the exchange of two Community Recreation courses at Claremont Secondary School; the organization of single gender Physical Education class at Qualicum Beach Middle School; and the platooning of students across classes to group and teach students with similar levels of mathematics and reading ability as happened in different instances.

[290] These are not necessarily principal decisions on class organization or student placement. If these re-arrangements result in class sizes and compositions that would otherwise trigger a duty to consult if the decision was made by the principal, they do not trigger that duty when the decision is made by the teachers.

7.3 “students with an individual education plan”

[291] While determining the size of a class – the number of students taking the same grade or course at the same time with the same teacher – is straight-forward, identifying the students with an individual education plan in a class can be less apparent.

[292] There are some record keeping issues as children move from school to school, school district to school district and from other provinces and countries. The public education system is dynamic and there are some assessments and special needs designations that are made and changed during the summer and throughout the year. Often a student’s individual education plan that was in place and implemented in the previous school year was not updated in the spring and will not be updated until

October or later. The *Individual Education Plan Order* requires:

Where a board is required to provide an IEP for a student under this order, the board

- (a) must ensure that the IEP is reviewed at least once each school year following the year the IEP is developed and, where necessary, it is revised, or cancelled, and
- (b) must offer a parent of the student, and where appropriate, the student the opportunity to be consulted about the preparation of an IEP.¹⁸³

[293] Students designated as having exceptional gifts or talents (P) are not counted when determining whether four or more students with an IEP are included in the composition of a class. Otherwise, all students entitled to an IEP are to be counted because, for the purposes of the consultation threshold, a student with an individual education plan means a “student for whom an individual education plan must be designed under the Individual Education Plan Order, Ministerial Order 638/95, but does not include a student who has exceptional gifts or talents.”¹⁸⁴ This includes a student entitled to an IEP, whether one has been developed or updated in September.

[294] The principal is responsible to determine the number and identity of the students with an IEP in each class organized in the school. Although, it was not done in any of the classes in dispute in the representative schools, the employer submits:

... the first step is a determination of whether the students that have designations in that class have designations that have an impact on or for that particular class.

If the designation has no impact on the class, the Principal and Superintendent can conclude that the class has fewer designated students to be considered.¹⁸⁵

The essence is that designations does not equate with disability or special needs for a class or course.

[295] Relying on this approach – no impact on the class – the employer identified classes in which:

- a student had a full-time special education assistant and was or was not in the class but did not participate in the class;
- a student was in the class once a month;
- students participated only “for short periods of time”;
- the student was hearing impaired, participated fully and received a high mark;
- the students’ visual impairment had no relevance to the Physical Education or Woodworking course;

- the student attended with a full-time special education assistant but did not participate fully in the Physical Education course;
- the students' learning disability related to academic courses and "has no relationship whatsoever"¹⁸⁶ to elective non-academic courses, such as Home Economics, Art, Drama, Design Craft and Woodworking;
- designations in Physical Education classes, including Community Recreation, "were of no relevance or impact";¹⁸⁷ and
- enrolled designated special needs students with an IEP on a class list who do not attend class or seldom attend should not "be considered as students enrolled in the regular classroom" because inclusion on the list was simply to honour the policy of inclusion.¹⁸⁸

[296] There is no legislative basis cited for this approach. It is not contemplated by, and cannot be inferred from, the legislation. There is no provision for reporting classes to have fewer students with an IEP than are enrolled in the classes or not fulfilling the duty to consult with the teacher of a class because the principal has formed the opinion, without consultation with the teacher, that a student's designated will not have an impact on the class. The only students with an IEP who are exempted from inclusion for the purposes of the numerical class composition standard from any class, and it is from all classes, are students designated as having exceptional gifts or talents.

[297] Designated special needs students do not lose their designation as they move from class to class. There are no partial designations. Hopefully, the students are always in classes in which they can succeed with or without individualized support. The nature of a special needs student's designation and IEP and participation in a class, if examined by the principal and forming part of the principal's opinion that a class exceeding the class size and composition standard is appropriate for student learning, will be a relevant consideration when reviewing that opinion. Some teachers testified the special needs designation and IEP of specific students had no relevance to their participation in the teachers' classes and no impact on the class. There will be situations in which this will properly be part of the basis for the principal's opinion.

[298] An issue arose about students at Qualicum Beach Middle School with an IEP enrolled in Grade 6 and 7 French classes, but exempt from French. The employer

submits students are not to be considered as either a student or a student with an IEP for the French class even if they remained in the class assigned other work during the French lesson.

[299] There is no legislative basis cited for this approach and it cannot be inferred from the legislation. It may be there are matters for consultation about the attendance or supervision of an exempt student during the French period. The student may be the centre of the consultation. The student's exemption from French does not remove the student from the composition of the class for the purposes of requiring consultation just as the attendance of a student with an IEP at a pull-out program for Language Arts or Mathematics does not remove that student from the composition of the class for the purposes of requiring consultation.

[300] The legislative scheme for class size, composition, consultation, opinion forming and reporting is not a highly nuanced scheme. While the scheme has been variously referred to as arbitrary, blunt and inflexible, the class size and composition standards are based on fixed numbers and the consultation and reporting requirements are driven by the numbers, not the character of students' IEPs. The scheme is to be inclusive and comprehensive with only clearly defined exemptions in the *School Act* and *Class Size Regulation*.

7.4 “the teacher of that class”

[301] The class size and composition standard may be exceeded in a specific class if the principal of the school has first consulted with “the teacher of that class.”

[302] There is no evidence of a consistent interpretation by school districts of the teachers who are to be consulted. In School District No. 63 (Saanich) the 2007-08 school year start-up information told principals: “The teacher of the class is the enrolling teacher or teachers (e.g. job share). It does not apply, for example, to librarians or to teachers who provide preparation time relief for enrolling teachers.”

[303] There is frequent reference to “enrolling” teacher in education. An enrolment record reports to the Ministry of Education that a student is receiving an education program leading to graduation. A student may be reported as enrolled in more than one school. There is no evidence of an enrolment record for a teacher who may be

employed in more than one school or school district and no reference to enrolling teachers in the class size and composition standards.

[304] The employer submits: “There is no requirement to consult with more than one classroom teacher for any given class and/or course. The legislation requires consultation with ‘the’ teacher of the class.”¹⁸⁹

[305] Some classes have more than one regularly scheduled teacher. Under the collective agreement and board of education policies, teachers may job share and co-teach a class with an equal or unequal share of an 1.0 FTE teaching assignment. Relying on section 8 of the *Interpretation Act*,¹⁹⁰ which states “Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects”; reading the singular “teacher” as plural to give the word a meaning that accords with and fulfills the inclusive and comprehensive nature of the professional consultation contemplated in the legislation; and reading the legislation and collective agreement in harmony, I conclude the duty to consult extends to all teachers of a class and not simply to the teacher who spends the greater or greatest portion of time with the class.

[306] In elementary schools, when a teacher is assigned to a division or class that group of students is with another teacher who relieves the classroom teacher during that teacher’s preparation time negotiated under the collective agreement. The other teacher may be a “preparation relief” teacher as was the situation at Frank J. Miller Elementary School, Merritt Central Elementary School and Thornhill Elementary School. The preparation relief teachers may teach the class Library, Music, Computers or some other subject. They will teach several classes in the school.

[307] The class size and composition consent and consultation provisions do not address these common situations. The principals’ practice in the representative schools was to consult preparation relief teachers separately or jointly with the classroom teacher. This was facilitated in three of the four schools by the fact the preparation relief teacher was also the union staff representative and attended consultation meetings.

[308] The employer submits “no consultation is required with preparation relief

teachers.”¹⁹¹ Again, I disagree for the same reasons as I find the duty to consult extends to all job share teachers.

8. Principle-Teacher Consultation - Context, Content and Outcomes

8.1 Union Submissions

[309] The union submits the principal-teacher relationship and the purpose and subject of consultation is similar to the duty to consult governments have about proposed courses of action when potential Aboriginal title or rights claims are pending decision before the courts or through treaty negotiation.

Teachers have an integral voice in the quality and provision of education and in the implementation of the goals of the *School Act*. The voice of teachers in public education is not parallel to the voice of workers in an industrial plant. Teachers have frequently put the interests of students and their education above their own interests and have foregone wage and benefit issues for class size limits in bargaining. It is the nature of the interest in the consultation, the quality of education, and the role of the parties consulted, teachers, which gives rise to the need for meaningful consultation. This is similar to the need for meaningful consultation which arises in First Nations law, as discussed above.¹⁹²

[310] Drawing on decisions about government consultation with First Nations, the union submits meaningful consultation encompasses process and substance – information and an opportunity to participate in an informed debate.¹⁹³

[311] The union submits meaningful principal consultation with teachers, who are in the Minister’s words “the heart of the discussion”, includes clear procedural guidelines, a full exchange of views about the criteria to be applied by the principal in formulating an opinion and assurance all concerns raised by the teacher will be investigated and addressed.

At the core of BCTF’s dissatisfaction with the process of consultation is the failure of principals to articulate how they defined and intended to measure whether a class was appropriate for student learning and, in many cases, the failure of the principal to consider the views of the teachers. To a large extent, these shortcomings are due to the failure of the Legislature to set out criteria for consultation. The determination of whether the School Districts have complied with their statutory duty to consult with teachers requires the definition of the standard of consultation and the identification of measurable elements of consultation by the Arbitrator.¹⁹⁴

[312] The union submits the critical procedural elements are:

- a) sufficient paid release time to prepare for consultation including reviewing student records and Individual Education Plan information;

- b) sufficient information of the students requiring additional assistance, including ESL and grey area students including meeting with resource teachers;
- c) involvement of staff representatives;
- d) consultation with all teachers teaching the class, including preparation relief teachers and job share teachers; and
- e) ongoing consultation with the addition of every student with an IEP or students numbering over 30.¹⁹⁵

[313] The union's submission is that the substantive elements of consultation include:

- a) review of all students in the class, including students without IEPs, by the principal, teacher, and staff representative;
- b) review of student IEPs and a determination if the IEPs can be met with resources available;
- c) a discussion of appropriate for student learning criteria,
- d) soliciting the teacher's opinion on class and whether it is appropriate for student learning;
- e) principal advocating for additional resources if necessary; and
- f) if concerns continue and the principal believes the class is appropriate for student learning, explaining why his opinion differs from that of the classroom teacher.

There is to be follow-up by the principal on teacher concerns and positions; advocacy for more resources for the class and school; scheduling follow-up meetings; and reporting unresolved concerns to the superintendent.

[314] The union developed a consultation matrix for examining and evaluating a principal-teacher consultation. The matrix elements are as follows:

Information

- Teacher provided an opportunity to review IEPs and student records
- Teacher provided an opportunity to meet with non-enrolling teachers to discuss student IEPs and special needs of students
- Consultation proceeding after teacher has knowledge of students and assigned resources

Time

- Adequate paid time for consultation meeting with release time from teaching
- Adequate notice of consultation meeting with paid release time to prepare

Discussion

- Involvement of staff representative during consultation meeting
- Principal and teacher review of class lists and discussions of all students and IEPs
- Teacher was asked if additional resources were required
- Discussion of criteria of appropriate for student learning

- Opinion of the teacher on whether class is appropriate for student learning solicited by and communicated to principal

Commitment

- Principal advocacy for additional resources if necessary
- Additional consultation with teacher if necessary
- Principal communicates teacher concerns to superintendent if concerns unresolved

[315] These elements extend beyond the union’s opening position on the content of consultation; they extend beyond the practice and procedures the union staff representatives agreed to and participated in at the representative schools in September 2007; and they extend beyond the union’s description of consultation to teachers in September 2007, which was:

What does it mean to be consulted?

It is more than being given mere notice. It includes an exchange of information between parties in which each has an active role to discuss, express opinions, make their views known, and have a say. It means teachers must be provided with all relevant information regarding the class and students involved. The principal must be open to suggestions, other options, and input and must make an effort to address the concerns raised by the teacher before the final decision is made.¹⁹⁶

[316] Finally, the union submits:

Indeed it is hard to imagine there could be any other plausible, efficacious, or just definition of consultation than one which requires the full participation of all parties, a discussion of why the classes are or are not appropriate for student learning, and gives full consideration to the views of the classroom teacher who will be in working in the classroom five days a week for 10 months.

8.2 Employer Submissions

[317] The employer submits there is no reference to “meaningful dialogue” in the *School Act*, which does not require teacher agreement or principal reporting for classes on which there must be consultation. “The implication to be drawn from this legislative scheme is that the Legislature intended principals at each school to devise appropriate consultation processes to meet the particular context, needs and requests of the teachers and staff representatives at that school.” Further, “all that is required is that the teacher have information relevant to the class size or class composition issue pertaining to him or her and that the Principal be open to hearing the teacher’s views and input concerning the matter.”¹⁹⁷

[318] The employer’s position is stated as follows:

In order to meet the requirement of consultation under Bill 33 a teacher must be given the opportunity to provide the Principal their input with respect to the organization of the class. The Principal must consider the input prior to reaching a final decision on whether the organization of the class is appropriate for student learning.

The purpose of a consultation meeting in mid-September when classes are already established and in session is to provide an opportunity for the teacher to provide the principal with relevant information with respect to the class, students in the class, resources provided to the class, and resources considered to be needed by the teacher.

In order to meet the test of consultation under the legislation, the principal must approach each consultation meeting with an open mind and must be prepared to seriously consider any legitimate concerns raised by teachers.

Consultation is a two-way dialogue that includes a genuine sharing of all information relevant to the discussion by the teacher and a genuine attempt by teachers to work with and problem solve with the principal concerning issues with the class.

There is no specific amount of time that need be allocated to a consultation meeting. The length of a consultation meeting will vary depending upon the quality and length of dialogue and the needs of a particular class.

The legislation requires the principal and the teacher to be in attendance at the consultation meeting. Whether there are any additional individuals present at the consultation meeting is a matter for discussion in each school district and in each school.

When interpreting the legislative requirement to consult, "context" must be considered. The "context" may include:

- a. discussions with the classroom teacher in the previous spring and in early September by administration, by counsellors and by other teachers concerning students in their class;
- b. the knowledge the teacher has gained of the class during the school days in September prior to the consultation meeting;
- c. discussions and flow of information between and among teachers, both enrolling and non-enrolling, respecting the size and composition of the class in early September;
- d. classroom teachers' involvement in the building of the class in the spring prior to the consultation meeting;
- e. the teacher's previous knowledge of students in the class through past involvement with the students and their siblings/families; and
- f. information available at the school accessible to teachers concerning students in the class.

There is no requirement for the Principal to share his or her rationale or opinion of what is appropriate for student learning at consultation meetings. The forming of the Principal's final opinion on a class organization appropriate for student learning will occur after the consultation process and after the Principal has considered the content of and the discussion at consultation meetings.

There has been much evidence concerning the various [recording and reporting] forms that were used. The form itself is not important. What is important is what information was shared by the teacher with the Principal.

Information contained on a Union form that was not shared with the Principal is information that cannot be considered as relevant in these proceedings.

The forms are the recording of the information flow that occurs at the consultation meetings. There is no legislative requirement to have a form or to share the forms with the other party.¹⁹⁸

8.3 Overview and Context for Meaningful, Professional Dialogue

[319] Under section 76.2 (a) of the *School Act*, the principal of a school must within fifteen school days after the opening day of school “consult with the teacher of a class” in Grades 8-12 with more than thirty students or any grade with more than three students with an individual education plan. Sections 76.1(2.2)(b) and (2.3)(b) require the principal to consult “with the teacher of that class” with more than thirty students or more than three students with an individual education plan.

[320] At September 30th, following consultation with the teacher, classes in Grades 8-12 may have more than thirty students or more than three students with an individual education plan or both, and classes in Grades 4-7 may have more than three students with an individual education plan if “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.”¹⁹⁹

[321] The structure of the legislation lists the principal and superintendent opinions as the first condition to exceeding the class size and composition standard of thirty and three. The second is principal-teacher consultation. This structure is consistent with the manner in which classes are organized and assigned by principals prior to the statutory consultation by the principal of the school with the teacher of the class.

[322] In the 2007-08 school year, September 4, 2007 was the day school opened under the standard school calendar.²⁰⁰ The fifteenth school day was September 24, 2007, a date that had some influence in the events at Claremont Secondary School where the principal was ill in September.

[323] The teacher’s agreement with the organization of the class for which there is consultation may be an outcome of the consultation, but the teacher’s consent to the organization of the class is not required as it is for classes in Grades 4-7 with more than thirty students.

[324] As a practical and operational matter, all students are placed in classes on the

first day they attend school in the school year. The thirty-first student or fourth student with an IEP enrolled in a class is not supernumerary. They do not wait at home or in the hallway or cafeteria for completion of the principal's consultation before being enrolled in and attending the class.

[325] Although students may withdraw from a class or move to another school at any time during the school year, the teacher knows in September with a high degree of probability that he or she has a class that has been organized in a manner that will require the principal to consult with him or her.

[326] The teacher may have previously known or anticipated having a class for which a consultation would be required from the spring notice of class organization, the June student placements by last year's teachers, the students' course selections, the history of class organization in the school, a discussion with the principal, a vice-principal, school secretary, counsellor or student support services teacher or in some other manner. The employer expressly acknowledges the teachers' participation in June in student placement in classes organized by the principal for the school year commencing in September is not part of the requisite consultation or an acceptance by a teacher of the class organization. It is, however, part of the context in which consultation with some teachers will occur.

[327] With new hiring, spring and summer position vacancy postings, reassignments and class reorganization in September, which were factors in September 2007 at Claremont Secondary and Frank J. Mitchell Elementary schools, the number of students in the teacher's class or the number with an IEP may be completely unknown to the teacher until the first or a subsequent day in the first fifteen school days.

[328] The mandatory principal's consultation with the teacher about the organization and composition of a class does not take place before, but after, the class has been organized, the students are placed in the class and the teacher has been assigned to the class. Often the principal has had a minimal role in student placement.

[329] Some would say it is an exercise in asking forgiveness rather than prior agreement to consult about a class already in session. The reality everyone is focused on is fine-tuning, not dramatic change. Everyone wants to avoid disruption for students

after a couple of weeks of school. It is not a setting and context for the collaborative consultation defined in the Ministry of Education special education policy manual. The class building is finished and the students and parents have been engaged. It is unlikely the building permit is to be revoked or have restrictions imposed after the fact.

[330] The context and timing is more akin to having simply supportive consultation. With some merit, some teachers realistically view it as after-the-fact. With this reality, they do not want to transform a collegial principal-teacher relationship into an adversarial one. Or to speak publically about their students and their teaching challenges to impeach the organization of the class after-the-fact. Having good teachers testify about bad student behaviour and the failings in their classes is an enterprise that this system should not perpetuate.

[331] In some cases, there are discussions with the teacher in September before an additional student or an additional student with an IEP is placed in the teacher's class because the student is newly enrolled in the school or there are changes in a student's choice of exploratory or elective courses.

[332] The annual cycle of school organization – enrolment projection, district staffing and resource allocation, student course selection, principal organization of classes, teacher assignment, student placement – followed by the requirement to consult within the first fifteen school days of the new school year means the legislated consultation will be about what has been decided, not what is to be decided. The thirty and three standard is exceeded before, not after, consultation.

[333] The timing and context of this consultation requirement is unlike consultation frequently seen in other contexts where persons who are to be impacted by or will implementing a decision are consulted before the decision is made. This process does not support the Minister's statement: "I think the bill clearly outlines that principals will now be required to talk to their professionals, their teachers, about the class that they're about to put children and professionals into."²⁰¹

[334] As was clear from the evidence, the focus of the consultation discussion is how to support the class or make the existing organization work. It is not about changing the size or composition of the class. Teachers are loath to suggest the principal remove

one or more students from their class and place them in a colleagues' class or to deny a student that elective in that semester. Teachers correctly assume the principal has stretched the resources allocated to the school as far as possible and any suggestion that an additional class be organized and staffed is futile.

[335] As was seen in the representative schools, there can be varying degrees of teacher input and decision-making on class organization and student placement in classes in Grades 4-12 in the differing contexts of elementary, middle and secondary schools. It is the exception that Grade 4-7 teachers are completely passive recipients of whoever appears in their classrooms in September. It is closer the norm in the many more classes in Grades 8-12.

[336] Differences over the nature of the required consultation were foreseen in the following exchange in the legislative debates

N. Macdonald: The question I have for the minister is this: if the principal of the school needs to consult with the teacher, what exactly does that mean? Is it something that can be verbally given? Is it something given in the hallway? Is it something that the teacher needs to go into the office of the principal and sit down for? Does it need to be written? You need to be very clear in exactly what you mean by consultation.

Hon. S. Bond: I think one of the things that we did hear at the round table consistently and one of the things we had consensus about was the fact that it is important for people to talk to each other. That doesn't just include the principal and the teacher and the superintendent. It actually includes parents.

What does "consult" mean? It means that we need to find a way to deliberate with one another, to sit down, to ask for advice, to consult and to have that conversation. In fact, one of the other commitments that we made at the round table was that this was an issue that we would have further discussion about.

N. Macdonald: The minister is putting forward a bill that will become law, that will be used by the people on the ground. What you're talking about is politics. You want the language of flexibility. You want to say these things, but the minister needs to be clear what exactly is meant by consultation, because somebody is going to have to go and consult with the teachers. You want a principal to do that. Have you thought through exactly how that works?

It should be the same in every school. You talk about flexibility. At some point, this is going to be sorted out. It will be sorted out either by lawyers through a grievance procedure which will apply to this bill, or it will be clearly stated by the minister. What does consultation mean? Does the principal just come to the door of the class and say: "Will you take this student?" Is that consultation? Does it mean that you have to call the teacher in, sit down at a time of mutual agreement and talk through the implications?

Now, I know that for the minister, this seems like a minor thing, but you are laying out the framework for how a principal and a teacher are going to make this

decision, and it needs to be set out, otherwise it will be decided in a different forum.... If the minister has not thought that through, then you need to spend more time with this. That's one of the reasons why you would have it clear, that you would have consent instead of consultation. Right now, what exactly does consultation mean? Would the minister please give, with some detail, what consultation means?

Hon. S. Bond: I'm actually disappointed that I have to put in legislation a requirement to consult. I believe that it's best practice. It's ironic that the member opposite would suggest that as a principal, I need to explain how to do that and look at how it should be the same in every school.

We spent five meetings of the round table being reassured by the principals and vice-principals that consultation takes place regularly and consistently across this province. The reason that "consult" is included in the legislation is to provide the assurance to teachers in this province that they will be included in the discussions that take place.

It was a surprise and, in fact, a disappointment to learn that there are places within which that does not occur. That is best practice. People who are professionals, including the lead educator, who is the principal in a school, should sit down and talk to one another. We do believe that there are different ways of doing that, depending upon a number of things: the size of your school, the complexity of it, whether it's elementary or secondary.

There are a number of factors. We're simply saying this: best practice, what's best for our students, would require people to actually talk to each other. Was I surprised that that doesn't occur everywhere? You bet I was.

N. Macdonald: I think the minister misses my point. The fact is that what the minister is doing is talking about political points. It sounds good to say that it's flexible. What I'm telling her is, as a principal on the ground, you need clarity. I can understand that the minister, not having been in that position, would not understand it. But you need to be clear what exactly "consult" means. If you're not clear on that, you are inviting it to be decided in some other place.

Now the reason that you have clarity is so that there are not difficulties in moving through and making decisions around class formation. I can tell you that it was in contract language, because that clarity was important. Then you just go and deal with it. If you're asking to consult, it means something. If the minister does not define it, it will be defined somewhere. It'll be defined by lawyers somewhere and given clarity, but it should come with the group that is putting forward the bill.

What does consult mean? It's a very simple question. What does consult mean? Does it mean that a principal simply needs to ask a teacher, as they go into a class, if they can take the extra student? Does it mean a more formalized process than that? The minister.... I would invite her to be clear. She has her staff with her. I'm sure they have considered this. Be clear on it, or leave it for the lawyers to decide later.

Hon. S. Bond: I guess I choose to look at the examples that I've had the absolute privilege of seeing over the last number of months. Despite the fact that there are some places where we need to make sure that consultation occurs, the vast majority of schools across this province actually have educational leaders who find the most appropriate way to sit down and work with professionals, teachers, and include parents in that discussion.

I have been in dozens and dozens of classrooms and schools over the last number of months where we've seen collaboration, cooperation and enthusiasm

about how schools are organized. That shows educational leadership. It shows professionalism. In fact, it shows that people actually talk to each other about what's best for students. This bill simply captures those principles and makes sure that students are at the centre of those discussions.²⁰²

[337] Generally, consultation required by legislation or contract has been interpreted to mean more than a perfunctory exchange or exercise. It is not merely participation as a matter of form. The requirement is often referred to as “meaningful dialogue”, not a ritualistic process. Consultation involves exchanging and explaining any conflicting views or positions.²⁰³

[338] In the circumstance where the exercise of a statutory authority by a board of a college was conditional on prior consultation, the Alberta Court of Appeal approached the interpretation of “consultation” as follows:

What did the legislators intend take place when they required a consultation? Because the Colleges Act contains no definition of consultation the court must refer to dictionary definitions and judicial considerations and the purpose of the statute.

Arriving at a functional definition of consultation is essential to the disposition of this case, for all parties agree that adequate consultation is a necessary precursor to designation or redesignation under s. 10(2). In other words, the statutory interpretation of the word "consultation" confers power on the Board to exercise its designation and redesignation authority.

The statutory interpretation of s. 10(2) -- a power conferring provision -- is a question of law which this Court reviews for correctness because of that section's jurisdictional consequences: *U.E.S. Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048 at 1088.

The Oxford English Dictionary, vol. 3, 2nd ed. (Oxford: Clarendon, 1989) sets out the meaning of "consult" to be "[to] confer about, deliberate upon, debate, discuss, consider (a matter)", and the meaning of "consultation" as "[a] conference in which the parties consult and deliberate; a meeting for deliberation or discussion". It was essentially these definitions that the chambers judge referred to when he concluded that the term consultation must be "afforded a substantial meaning" and "must amount to considerably more than a form of lip service."

The words "consult" and "consultation" have received judicial consideration in a number of contexts, in legislation and in contracts. The following principles can be gleaned from them: consultation involves,

1. a fact-specific analysis to determine whether, under the circumstances, the measures taken do in fact constitute consultation: ...
2. a duty upon the decision maker to fully inform the other side of its own position, as well as to fully inform itself of the position of the other:...
3. an opportunity for both sides to be heard and to state the factors they feel should guide the decision: ...

In summary, a consultation should involve a bilateral interaction by parties informed of each other's position where each has the opportunity to give and

receive information. This definition is as much founded in common sense as in dictionaries or learned judicial writings and would seem unlikely to cause discomfort to anyone charged with consulting before making an important decision, especially those responsible for administering an educational institution.

The Court concluded:

The failure of the Board to consider the collective agreement and the impact of the redesignation on Ms. Kaai's collective bargaining rights; the failure of the Board to provide any reason for the exercise of its power under s. 10(2); the failure to provide any information for the basis for the redesignation; the narrowness of the criteria used to determine Ms. Kaai's status; and the one-sided nature of the hearing, all lead to the conclusion that the Board did not meet the standard required for a proper consultation under s. 10(2) of the Colleges Act. In the result, there was no consultation as required by the Act.²⁰⁴

This failure to comply with a mandatory prerequisite to making a decision was an error that made the college board's subsequent decision void or of no effect.

[339] This statutory principal-teacher consultation about class organization is not a relationship or issue involving the honour of the Crown in fulfilling a fiduciary duty to consult and potentially accommodate before exercising discretionary control over Aboriginal interests.²⁰⁵ This analogy of consultation is not apposite for the principal-teacher relationship or consultation context. The principal-teacher consultation about a specific class is not the consultation between state authorities and teachers' organizations contemplated in ILO and UNESCO Recommendations to their member states.²⁰⁶

[340] The principal-teacher consultation on class organization is not in the nature of the consultation a workers' compensation board must undertake with an injured worker entitled to compensation benefits to fulfill the board's obligation to provide appropriate rehabilitation assistance.²⁰⁷

[341] In grievance arbitration under a collective agreement, a negotiated right to be consulted – to gain the ear of the other or to have the opportunity to persuade – is of value and its loss is compensable.²⁰⁸ In the context of collective bargaining,

... the parties to many collective agreements agree to postpone for discussion any number of subject matters until after the main negotiations without intending any change in the relationship on failure of those discussions. A perusal of almost any collective agreement will reveal the existence of such clauses. These "discussion clauses" are often negotiated as a compromise in difficult bargaining. They are intended to give either party another opportunity to negotiate something that it was perhaps unable to obtain in the context of full collective bargaining. That party is content in those circumstances with an opportunity to persuade – to

gain the ear of the other. In the absence of agreement nothing is intended to change.²⁰⁹

This is not the context of principal-teacher consultation about the organization of a Grade 4-12 class that is to exceed the thirty and three class size and composition standard.

[342] Some deleted class size articles in the collective agreement provided a requirement for consultation and, in some circumstances, “full consultation.”²¹⁰ Once the requirement for formal consultation arose, it could not be satisfied by past informal discussions.²¹¹

[343] The *School Act* requires consultation by school districts with parents of special needs children about their education. In 2006, after an eight week trial, a school district was held to have failed in its statutory duty to consult the parents of an autistic child.

The court observed:

In the education context, where the duty to consult is one based on statute and exists between parents and a school board, the historical and policy considerations that inform the source and scope of the duty to consult in the aboriginal context do not come into play. However, where the interests of a child are at issue and where it is adults with unique perspectives on a child's needs who are empowered to make decisions on behalf of children, there are considerations to support the existence of a similarly defined right to consultation.

It was relevant that the school district's relationship with the child was “fiduciary-like.”²¹²

The school district failed in its duty to consult by failing to seriously consider the parents' representations and failing to make reasonable accommodation.

[344] The court's discussion of a statutory duty to consult is instructive, but again the principal-teacher relationship and context of class organization consultation is qualitatively different than the fiduciary-like relationship a school district has with a child.

[345] The statutory consultation between the principal and teacher under section 76.1(2.2)(b) and (2.3)(b) is to be a meaningful professional dialogue in a specific operational and organizational context during the initial three weeks of a new school year. The timing of the September statutory consultation is most instructive of the intended nature of the consultation. In the abstract, it would be axiomatic that to involve someone in discussion after the fact is not meaningful consultation. It could easily lead to a sense that the consultation is futile, merely paying lip service and a ritual without

meaning. This was a sentiment expressed by teachers who had been involved in two or more September consultations before they testified about the consultation in September 2007. The message they took away from the experience the first year was the cupboard is bare and there is no money to order take-out.

[346] By the time of the consultation in mid-September, one of the most dynamic periods in the annual organizations of schools and classes, the size and composition of classes is a reality and it is this fact that triggers the requirement to consult. The context and circumstances do not permit timely discussion of information in the consultation before the decision that triggered the consultation. The size and composition of a class is a fact the teacher has been dealing with, and will have to continue to deal with for the remainder of the year, term or semester.

[347] The consultations did have some educational value for teachers and principals. Teachers learned more about the organizational constraints under which principals operate and organize classes and schools and the limits of their autonomy. Principals had a greater appreciation of the instructional, classroom management and assessment challenges teachers face to meet the diverse and varied learning needs of a unique group of students. These were by-products, not the purpose of the consultation.

[348] The statutory consultation requirement imposes obligations on the principal to meet with “the teacher of that class” in an agreed place, at a scheduled time, for sufficient time to permit meaningful dialogue. The consultation is to have a measure of formality. It is not a happenstance or haphazard event. There must be some notice of the time and place to meet for the specific purpose of conducting the consultation.

[349] This may be difficult to schedule in some of the busiest weeks in the school year, particularly if there are many classes for which there must be a consultation, as there have been in secondary schools.²¹³ The teacher’s cooperation to facilitate consultation is presumed. In all instances in the representative schools in September 2007 the teachers were cooperative and obliging.

[350] The date for reporting class size averages under the *School Act* is September 30,²¹⁴ the same date at which the school district reports enrolment to the provincial government for funding. It is agreed this is the date at which class size and composition

standards must be met or, if exceeded, by which the statutory requirements to exceed must be met. As Arbitrator Munroe determined in 2006, there is no grace period after September 30th to achieve compliance as there was in deleted collective agreement provisions that sometimes set the compliance date at October 15th.²¹⁵

[351] In 2006, the employer unsuccessfully argued the legislation required compliance for what Arbitrator Munroe concluded was only one day of the year with the right to exceed the class size limits any other day of the year. He found this was not in keeping with the scheme of the legislation.

[352] Similarly, the employer submits in this arbitration: "If it is determined that the class had 30 or fewer students for all or part of the school year or semester, a decision of compliance for all or part of the year or semester must be made."²¹⁶ This is not consistent with the scheme of the legislation or with timely dispute resolution. Events after September 30th might be relevant to issues of remedy, but they are not relevant to determining compliance with the class size and composition standard as of September 30th, unless in other circumstances the applicable date is January 15th or May 15th.²¹⁷

[353] Consultation must take place "within 15 school days after the school opening day."²¹⁸ There is no issue in this arbitration about the calculation of the date by which consultation was required in September 2007. There is no justiciable issue about any obligation to consult between the fifteenth or sixteenth school day and September 30th.

[354] The requirement to consult can recur when there is a subsequent change in the organization of a class after the date for which a superintendent's signed report must be submitted to the board of education and any district parents' advisory council. Section 76.4 of the *School Act* states:

- (1) In this section, "student with an individual education plan" has the same meaning as in section 76.1.
- (2) If the size of any class for any of grades 4 to 12 in any school in a school district exceeds 30 students, subject to subsection (4), the board of that school district must ensure that the class size does not increase unless
 - (a) in relation to a class for any of grades 4 to 7, the requirements of section 76.1 (2.1) (a) and (b) are met, or
 - (b) in relation to a class for any of grades 8 to 12, the requirements of section 76.1 (2.2) (a) and (b) are met.
- (3) If any class in any school in a school district has more than 3 students with an individual education plan, subject to subsection (4), the board of that

school district must ensure that the number of students with an individual education plan in the class does not increase unless the requirements of section 76.1 (2.3) (a) and (b) are met.

- (4) Subsections (2) and (3) apply to a board, in relation to a school year, after the date under section 76.3 (5) on the report that the board submits to the minister under section 76.3 (10) for that school year.
- (5) Subsection (6) applies if, after the date under section 76.3 (5) on the report that the board submits to the minister under section 76.3 (10), the size of a class for any of grades 4 to 12 in a school in the school district changes and, as a result of the change, the size of the class
 - (a) exceeds 30 students, or
 - (b) increases, in accordance with subsection (2) of this section.
- (6) As soon as practicable after the change in the size of a class referred to in subsection (5),
 - (a) the principal of the school must provide the school planning council with the rationale for the change in the organization of the class,
 - (b) the superintendent of schools must provide the board and the district parents' advisory council, if established for the school district, with the rationale for the change in the organization of that class, and
 - (c) the board must provide the minister with the rationale for the change in the organization of that class.
- (7) The minister must make available to the public the rationale received under subsection (6) (c).

[355] There is one situation in this phase of the arbitration where the union grieves that a consultation required by section 76.4 did not occur.

8.4 Paid Release Time and Staff Representative Attendance

[356] There was no circumstance in which a union staff representative requested or claimed entitlement to paid release time for teachers to prepare or attend a consultation meeting. There were situations when the principal arranged classroom coverage and the consultation was during instructional time. There were instances when teachers gave up professional development time to facilitate consultation. A teacher's work day is not limited to instructional time, and there were meetings during scheduled preparation time, before and after school hours, during recess and at lunch.

[357] It is the principal's obligation to consult and the principal will schedule the time and place for consultation if there is an absence of agreement or collaboration to facilitate a consultation. Teachers may forego their right to be consulted.

[358] Class size provisions in the *School Act* are part of the terms and conditions of employment of teachers.²¹⁹ Their terms and conditions of employment do not include

paid release time from teaching unless it is otherwise provided in the collective agreement. The union made no claim that any teacher at the representative schools was entitled to be paid release time under a provision of the collective agreement.

[359] Similarly, the class size provisions of the *School Act* do not address attendance and participation by union staff representatives at consultation meetings. It may be addressed in the collective agreement. In School District No. 36 (Surrey), principals were informed by district Human Resources that under the collective agreement the decision to have a union representative attend a consultation meeting “resides solely with the teacher.” In six of the seven representative schools, the principals and staff representatives collaborated to ensure the process was organized and carried out in a timely manner with involvement of staff representatives.

8.5 Information and Professional Dialogue

[360] In the context of the annual, time driven, interactive process of school and class organization reliant on funding being appropriately allocated and available to principals, there are presumed and essential components of information that form the foundation of the consultation dialogue.

[361] The shared knowledge about curricula, instruction, assessment and evaluation strategies and requirements and similar professional knowledge, together with knowledge about the policies and practices of the school district and school, form a foundation and background for this dialogue between education professionals. Principals may have to ensure new teachers are informed about relevant matters specific to the school and how it operates.

[362] There is no requirement to have at hand and discuss at the consultation the Integrated Resource Packages for the classes or their prescribed learning outcomes. It might be that a teacher who has not taught a curriculum for some time or is teaching a curriculum for the first time or is teaching a new curriculum will have concerns and want to discuss them. It might be that a teacher has concerns that the composition of the class does not lend itself to teaching the prescribed curricula and its size and composition will be a barrier to achieving the prescribed learning outcomes at an acceptable level. If these concerns are sincerely raised by the teacher, they are within the realm of legitimate concerns that should seriously engage the principal’s interest,

attention and thoughtful consideration.

[363] In many, but not all, circumstances and especially at secondary school the class organization is driven by numbers, not students' names. Principals in elementary and middle schools have a greater familiarity with the individual students in their smaller community of learners. It is not a prerequisite to a meaningful dialogue in consultation at any grade level that the principal attend and observe the class during the first weeks of September.

[364] For all principals, the consultation is an essential feedback loop. The principal will be looking for reinforcement from the teacher that the class formation assigned to the teacher is considered by the teacher to be, in the vernacular of the profession, "educationally sound" or an "effective learning situation" or, in the language of the *School Act*, "appropriate for student learning" despite exceeding the class size and composition standard in some respect.

[365] That reinforcement will often come from teachers who tell the principal the class size and composition is "O.K."; is acceptable; is as was previously discussed; is as requested by the teacher; is as decided by the department; or in some other manner communicates acceptance of, or agreement with, the organization of the class.

[366] The teacher's knowledge of the students in the class may be more than what was acquired in the school days in September before the consultation. The teacher may have taught some of the students in a previous year; have taught siblings of students and know their families; know students from school, community and neighbourhood activities; have spoken to the students' previous school year teachers; have read the students' paper or electronic school files and IEPs; have spoken to the student services support, learning assistance or resource teacher; or in some other manner gathered information about the students. Many of these are more likely in lower grades where an enrolling, not a preparation relief, teacher will have a single class all day than in higher grades where a subject teacher may have four classes and over 120 students in a term.

[367] In some cases, teachers choose not to inquire and gather information about students. They prefer to make their own assessments through their interactions with

the students and observations in the classroom. In some cases, there is no readily available information because the student is new to the school from another school district, province or country or is an international student with no previous connection to the school or country. In some cases of citizen and resident students, there are no or not easily accessible avenues of communication with the students' families, whatever that may be and how committed or chaotic they may be. Language skills can be another barrier to readily gathering information from and assessing a student.

[368] Principals can have broad knowledge about the students in their schools, particularly those who have come to the principal's attention because of their behaviour. Principals may have knowledge about some students through teaching them or interacting with them in school activities. They will have knowledge about some students' families. The more problematic a student's behaviour is in the school community, the more likely the principal will have knowledge about and, perhaps, an established relationship with the student.

[369] Once a consultation is required, the principal must gather relevant information for the consultation dialogue, which is not a one-way conversation. Class lists and IEPs outlining the supports and learning activities they require to be implemented and to fulfil the school district's obligations to the child and parents contain relevant information.

[370] In many principal-teacher consultations, the functional and operational context of the consultation and the individual or shared experience of the principal and teacher will provide a presumed and broad knowledge base and framework for the discussion that does not have to be documented and confirmed.

[371] Simply holding a consultation does confer on the board of education the power to exceed the class size and composition standard regardless of the effects it may have on the teacher and students. The consultation must be thoughtfully, carefully organized and conducted in good faith.

[372] There is a reciprocal obligation on teachers to participate fully and in good faith in the consultation process. There must be reciprocal disclosure of information about any matter that may affect the appropriateness of the class for student learning and some dialogue about this critical issue. As School District No. 39 (Surrey) Associate

Superintendent Brian Bastien aptly told principals in August 2007:

The Act does not limit the scope of consultation with teachers. As such, consultation could be about anything to do about the class or class composition. It is imperative, however, that the consultation include a discussion about whether or not the class is appropriate for learning. That, after all is the bottom line. It is what you and the Superintendent are required to attest to in writing during the reporting phase of the process.²²⁰

It may be informative, but is not essential, for these two professionals as a matter of form or rote to engage in general discussion or debate about ideals or the nuances of each others understanding of the elements of a class appropriate for student learning. However, the focus is a specific class with a specific composition in a specific grade or course in a specific school that provides an education program to an identifiable community of students with its unique characteristics.

[373] There is an expectation the principal and teacher will discuss all the relevant issues and information that arise in the dialogue. If it is the teacher's opinion that the organization of the class is not appropriate for student learning, then the teacher is expected to articulate some basis for the opinion why the organization of the class will likely adversely affect the normal learning expectations for a class that meets the class size and composition standard, which is presumed in the *School Act* to be appropriate for student learning.

[374] There may be a hope or expectation the dialogue will be a collaborative consultation with a problem-solving focus. However, this is not an essential feature of the consultation and, as the British Columbia School Trustees Association reported in 2007, some discussions may become confrontational. The reality is that often personal style, relationships between the principal and teacher and within the school, the availability of resources and the importance of the outcome to either will influence the extent to which the nature of the consultation is collaboration, accommodation, compromise, competition or avoidance.

8.6 Outcomes from Consultation

[375] The consultation process may close at the end of the consultation meeting or it may extend by agreement beyond the meeting or if there is a principal's commitment to pursue further information or to investigation or explore options.

[376] The principal must have engaged in earnest listening and sincerely consider the teacher's information and opinion before affirming, with or without changes in size, composition or supports, that the class is appropriate for student learning. Good faith dialogue, like sincerity, can be faked, but was not by any of the principals in the representative schools.

[377] There are essential outcomes of a principal-teacher consultation. Teacher agreement is not a necessary outcome of the consultation. The principal has the right to form an opinion about the appropriateness of the class organization for student learning and to leave the class as organized or make changes in the size, composition and supports for a class after the consultation.

[378] As a full participate in the process in good faith, the teacher must, before the close of the consultation process, communicate to the principal whether he or she agrees or disagrees with the organization of the class. The teacher's statement to the principal that he or she does not agree that the organization of a class is appropriate for student learning is a reciprocal responsibility to the principal's to earnestly listen to the feedback from the teacher and to sincerely consider the information and the teacher's opinion.

[379] There is no requirement for any follow-up written communication from the principal to the teacher, but the teacher must be informed that the process is over and told what the outcome is.

[380] Although the teacher's opinion was not offered or asked and sometimes deliberately kept confidential between the teacher and union staff representative in some of the consultations in the representative schools, it is imperative the teacher communicate and the principal know and consider the teacher's disagreement with the organization of the class as appropriate for student learning. The principal must know whether this is a class about which the principal and teacher share a common point of view or have differing perspectives. This is essential information for subsequent action by the principal and district administrators and the formation of the principal's and superintendent's opinions.

[381] Knowledge of teacher disagreement is important in the formation of the

principal's opinion if the teacher's role in the consultation is to be a central role. It is important and relevant information to communicate to the superintendent for the formation of his or her opinion. It may be information that school planning councils, district parent advisory councils and boards of education consider relevant in the accountability scheme for class size and composition standards. This may be particularly so when the principal's organization of a class is the consequences of meeting a district average class size in the aggregate or the teacher's disagreement is rooted in district resource allocation decisions.

[382] Boards of education and superintendents may want to explore including teacher agreement in the stated rationale for classes with more than thirty students as some boards of education and superintendents do. They may want to subsequently assess and evaluate student performance in classes organized with size and composition or both in excess of the class size and composition standard. Teacher agreement or disagreement with the organization of the class might be a relevant factor to track in assessing and evaluating success.

[383] Finally, unequivocal communication of disagreement, timely notice to school districts by local unions and timely grievance filing by the union, followed by prompt identification of classes in dispute, are basic for timely resolution of differences that might benefit students as well as teachers.

[384] There are no reporting requirements for individual consultations and various reporting forms were used in the representative schools. In School District No. 5 (Southeast Kootenay), there was collaboration between the school district and local union that ensured common, shared and timely information reporting for the school district and local union, including teacher agreement or disagreement. Some of the other reporting forms used by school districts and local unions separately captured the same and some additional information.

9. Dual Opinions Appropriate to Exceed Thirty and Three Class Standard

[385] Boards of education must not organize a class with more than thirty students or more than three students with an individual education plan or a class with both unless there has been principal-teacher consultation and "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.”²²¹

[386] At the commencement of this phase of the arbitration, there was some difference over whether “appropriate for student learning” was the same as or different than the phrase “educationally sound” which is commonly used by educators. As the hearing proceeded, the phrase “educationally sound” recurred in testimony, union and employer communications and collective agreement provisions. It is a phrase that has been central in some grievance-arbitration disputes.²²²

[387] No one testified to a general accepted definition of “educationally sound” or if a program, activity or situation had to be grounded in or consistent with a known, established or proven effective educational theory in order to be educationally sound. The difference, over whether there is a difference between “appropriate for student learning” and “educationally sound” dissipated as both teachers and administrators testified the phrase “appropriate for student learning” was foreign to their professional vocabularies and they repeatedly reverted to using the more familiar phrase “educationally sound.”

9.1 Union Submissions

[388] The union submits the 2006 amendments to the *School Act* were a deliberate restriction on the open-ended class size limitations enacted in 2002 and, although schools are collaborative learning communities, there is no shared understanding or articulation of what is meant by “appropriate for student learning.”

[389] The union submits it is impossible for a principal or superintendent “to determine whether a class is appropriate for student learning without a meaningful consultation and discussion with the classroom and resource teachers that know the students and learning situations in a classroom best.”²²³ Further:

The ambiguity in the lack of a definition for the term “consult” is compounded by the lack of a definition for the term “appropriate for student learning”. While the direction “organization of the class” is clear and plainly requires consideration of the learning situation in the individual classroom, the latter part of the phrase is not as clear.²²⁴

[390] The union submits the singular focus is on the organization of the class and its learning situation, not the organization of the school. Classes may have more than

three students with an individual education plan and be appropriate for student learning if there are adequate supports for the students and teacher in the classes.

[391] The union submits the class size and composition standard is not designed to “maximize course offerings and timetable flexibility which benefit a majority of students at the school if it negatively impacts the education of students” or to “require that the educational experience of students in one class be truncated by violating the class size and composition limits in order to increase the variety and number of classes offered at the school.”²²⁵

[392] As stated in the preamble to the *School Act*, boards of education must provide an educational program that enables each student to develop their individual potential.

WHEREAS it is the goal of a democratic society to ensure that all its members receive an education that enables them to become literate, personally fulfilled and publicly useful, thereby increasing the strength and contributions to the health and stability of that society;

AND WHEREAS the purpose of the British Columbia school system is to enable all learners to become literate, to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy;

The meaning of “appropriate” for student learning is, therefore, “exceptional educational achievement.”²²⁶

[393] Further, because “appropriate” is an ambiguous word it must be given an objective and measurable meaning that can be consistently applied to all classes in the public school system in British Columbia. Otherwise, it will be rounded or stretched out by school districts in the name of flexibility, as was done under the 2002 enactments,²²⁷ or interpreted in a manner that does not fulfil the scheme of the legislation.²²⁸

[394] The union submits clarity whether the concept is stated as “appropriate for student learning” or “educationally sound” is essential for focused and meaningful consultation. Being capable of objective measurement, such as being able to fully cover all requirements of the prescribed learning outcomes and meet all the requirements of IEPs, will lessen potential for divided opinions and decrease the potential for arbitration. The definition must ensure students and teachers can meet all their obligations.

Finally, the standard of appropriate for student learning should produce the same result when applied to different teachers, classes, and schools. A complex split

grade class with several students with IEPs should not be appropriate for student learning only because it is taught by an experienced teacher with a masters degree in special education. A standard of appropriate for student learning which varies depending upon the skills and abilities of the teacher invites differing class sizes and workloads for teachers.

Not only is such a system unfair, it becomes unworkable when another teacher is required to teach the class, either as a TOC, or teaching the class another subject. A class with four students with IEPs that is not appropriate for student learning in affluent Metro Vancouver suburb because it does not fit the historical pattern of classes at that school or profile of other classes at the school should be not appropriate for student learning at a small interior community school simply because a principal determines that the class composition fits the historical pattern of classes at that school.²²⁹

[395] The union submits guidance interpreting “appropriate” can be obtained from decisions of courts that have “struggled” with defining it. In determining an appropriate and just remedy under section 24(1) of the *Canadian Charter of Rights and Freedoms*, the majority in the Saskatchewan Court of Appeal looked to dictionary definitions of appropriate:

One must determine whether "appropriate" and "just" and "convenient" and "juste" comprise two concepts, that is, appropriate on the one hand as well as just on the other or whether they are synonymous. Is the concept of justness contained in the term appropriate, or must there be an appropriate remedy which is also a just remedy? Appropriate is defined as follows: The Random House Dictionary of the English Language, unabridged ed. (1966): 1. suitable or fitting for a particular purpose, person, occasion, etc. ... Syn. 1. befitting, apt, meet, felicitous, suited, proper, due, becoming, pertinent. The Shorter Oxford English Dictionary on Historical Principles (3d ed.): . . . 4. Specially suitable, proper. Webster's Collegiate Thesaurus (1976): 1, applicable, apt, befitting, felicitous, fitting, just, meet, proper, suitable. The New Webster Encyclopedic Dictionary of the English Language: a. Set apart for a particular use or person; hence, belonging peculiarly; peculiar; suitable; fit; proper.²³⁰

[396] Section 742.6(4) of the *Criminal Code* dealing with a hearing of an alleged breach of a sentencing condition states: “An allegation of a breach of a condition must be supported by a written report of the supervisor, which report must include, where appropriate, signed statements of witnesses.” A majority of the British Columbia Court of Appeal referred to the definitions above and concluded: “Thus, in its ordinary meaning, the word “appropriate” connotes suitability for a particular purpose, something that is fit and proper in the circumstances.”²³¹

[397] Under section 8(2) the Ontario *Education Act*, the Minister was to ensure special needs children have “appropriate” special education programs and services. Parents dispute over the placement of their child was reviewed by the court, which wrote:

I cannot help but think that the language of s. 8(2) should not be read in any more absolute sense than the words reasonably require. To do so would ignore the practicalities previously averted to. The idea of an “appropriate” special education programme, and the “appropriateness” of the placement of the pupil, surely involves the idea of suitability, and is not to be confused with a placement which amounts to perfection.²³²

[398] A Saskatchewan Minister of Education unsuccessfully applied to have the court strike out a claim by parents that their children with learning disabilities were not receiving an education and educational services “appropriate” for their needs and circumstances. Despite the vagueness of the claim, the court allowed it to proceed because of an allegation of failure to accommodate the children’s needs contrary to the constitution. In doing so, the court wrote:

Rather, it was contended, the plaintiffs can succeed in this action if they can establish that the infant plaintiffs are an identifiable class, and that they “are not being adequately educated”. What would be “appropriate education” is, they contend, a matter of evidence. The plaintiffs concede, however, that if they were, at trial, unable to establish that “there are things out there that would be better” than what is currently provided, they could not succeed.

With respect, this position is, in my view, untenable. The defendants have demanded and are entitled to particulars of the respect in which the education currently provided to the infant plaintiffs and other children with learning disabilities is claimed to be “inappropriate” and what it is alleged the defendants have a duty to provide instead. Without this information it is impossible to defend the action. In the context of the plaintiffs’ particular claim “inappropriate” must, logically, be understood as a relative term, defined in relation to what would be “appropriate”. That is because mere proof of general lack of success on the part of these children does not necessarily entail the conclusion that the current educational methods are inappropriate, for those failures may be an inevitable, if tragically regrettable, consequence of their disability. Thus, in this context, “inappropriate” provision of education can only mean failure to do what would be more effective for the education of these children.²³³

[399] Relying on various sources, the union submits: “A class that is appropriate for student learning should be a class which is suitable to permitting students to meet the standards of learning articulated by the Ministry of Education, Government, and educators.”²³⁴ The union submits application of the following matrix to a class provides an objective and measurable method of assessing the appropriateness of the class for student learning.

Standard of appropriate for student learning

All students should have equitable access to learning, opportunities for achievement and the pursuit of excellence in all aspects of their educational programs.

Source of standard

Special Education Services: Manual of Policies, Procedures, and Guidelines B.C. Ministry of Education, July 2006 at 1

| | |
|---|---|
| A situation which enables all learners to become literate, to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy; | Preamble, <i>School Act</i> |
| a system that will foster the growth and development of every individual, to the end that she or he will become a self-reliant, self-disciplined, socially and environmentally aware member of a democratic, pluralistic society | Declaration of Teaching and Learning Conditions BCTF Policy 3.J.01 |
| developmentally appropriate goals and expectations as “challenging but achievable with sufficient adult support” | English Language Arts Integrated Resource Package, Grade 6 at 29 |
| Prescribed Learning Outcomes are content standards for the provincial education system; they are the prescribed curriculum. Clearly stated and expressed in measurable and observable terms, learning outcomes set out the required knowledge, skills, and attitudes - what students are expected to know and be able to do - by the end of the specified course. | English Language Arts Integrated Resource Package, Grade 6 at 45 |
| Where a board is required to provide an IEP for a student under this order, the board must offer each student learning activities in accordance with the IEP designed for that student | Individual Education Plan Order, Ministerial Order 638/95 (Amended by M261) |
| The whole point of this legislation is to allow what's best for students. That absolutely means that if it's appropriate and educationally the best for those children, ... We expect professionals across this province to meet, to discuss and to meet the needs of our students in the best way possible | S. Bond, Debates of the Legislative Assembly, May 10, 2006 at 4664 |
| Our mission is to create a caring, accepting learning community where students fulfill their potential individually and collectively, participate in quality learning experiences, recognize and celebrate diversity and accomplishments, and prepare for a lifetime of challenges and opportunities. | Guildford Park Secondary School Mission Statement |
| The students, staff, and parents of Claremont Secondary encourage lifelong learning within a safe and respectful environment where students pursue their highest possible levels of academic achievement and personal growth. | Claremont Secondary School Mission Statement |

[400] The union submits it will be only in the rarest of circumstances that the class size and compositions limits, arbitrarily imposed in legislation rather than freely negotiated in a collective agreement, should be exceeded.

[401] The union separates the formation of the principal's opinion from the definition of appropriate for student learning. It submits the principal's opinion must be reasonably held as assessed against the definition. “A principal must make an objectively reasonable determination that the organization of a class is suitable to permit students to meet the standards of learning articulated by the Ministry of Education, Government,

and educators in order for a class to be appropriate for student learning.” The opinion cannot be based on subjective criteria.

[402] The union submits the classroom teacher is best able to determine the learning situation in a class and “it should only be in the most extreme circumstances in which a principal can reasonably hold a different opinion.” If the principal does and an arbitrator disagrees with the principal, then the principal’s opinion was not reasonably held. To be a reasonably held principal’s opinion, it must be:

- a) based on knowledge of the students and their learning needs and abilities;
- b) objectively reasonable and capable of assessment;
- c) when different from the class room teacher, defensible; and
- d) in the best interests of the students in the particular class.²³⁵

[403] To establish a principal’s opinion meets the criteria, the union submits, the following must be established: (1) meaningful consultation occurred; (2) the principal allocated additional resources (3) the principal reduced class size or addressed class composition; (4) comparison of class composition with previously bargained collective agreement provisions; (5) evaluation of all student learning needs and abilities; (6) the principal determined whether IEP requirements could be met with sufficient time to do the necessary adaptations and modifications; (7) the principal determined whether prescribed learning outcomes for the curriculum could be met; (8) the principal had sufficient chance to observe class; and (9) the principal provides a rationale to explain rejection of the teacher’s view that the class is not appropriate for student learning or why the teacher disagrees with its organization.²³⁶

[404] The union has similar submissions with respect to the superintendent’s opinion, which must be informed; reasonable from an objective perspective; made with awareness of the concerns of the teacher; and made with full compliance with legislation. Because there is no express or implied delegation in the *School Act* of the superintendent’s formation and holding of an opinion, it must be formed and held by the person given the authority.²³⁷ Therefore, the superintendent cannot rely on delegation and opinions developed and held by assistant superintendents.

From the evidence heard, it is apparent that opinions of several of the superintendents in the Grievance were not formed by their own knowledge and review of class situations, but were formed through reliance upon the opinions of others in administration, such as assistant and associate superintendents and

directors of instruction. This reliance on the opinions of others that classes were appropriate for student learning resulted in superintendents reporting on classes without any knowledge of the individual classes and without knowledge that the teachers of those classes disagreed with the organization of the classes and, in the case of Thornhill Elementary, without knowledge that the principal found the classes were not appropriate for student learning.

Under the provisions of Bill 33, exceeding the class size and composition limits requires important safeguards, one of which is the review of the superintendent who reports to elected trustees. Surely any opinion made by the superintendent and reported to the Board must be made with an assurance that classes were appropriate for student learning based on knowledge of the classes at issue.

This is not a point which is raised frivolously by the BCTF, but rather one demanded in reaction to the circumstances of the evidence. In particular, in School District 82, superintendent Rob Greenwood, submitted a report to the Board on October 1, 2007 stating that he had reviewed the reports of the principals and the classes in the district were appropriate for student learning.

However, the principal of Thornhill submitted his declaration to the superintendent on October 2, 2007 stating the classes were not appropriate for student learning. The Board accepted Greenwood's report without any knowledge the classes at Thornhill were not appropriate for student learning. Clearly this is [a] contravention of Bill 33 and illustrates the problems with the failure of superintendents to make informed opinions based on actual knowledge of events and circumstances.²³⁸

[405] To establish a superintendent's opinion meets the criteria, the union submits, the following must be established: (1) full review of consultation forms; (2) full knowledge of teacher views on whether the class is appropriate for student learning; (3) rationale to explain rejection of teacher's view of whether class is appropriate for student learning; (4) full disclosure to board of trustees of all of teacher's concerns; (5) consideration of allocation of additional resources to class; (6) superintendent has explained why each class is appropriate for student learning; and (7) consideration of reduction of students in classes.

9.2 Employer Submissions

[406] The employer submits the organization of a class refers to the teacher, the students, the class or course to be taught and the resources provided. These are the elements that are structured or arranged in a systematic way for each school year. The employer has the presumptive right to organize and structure operation of schools.²³⁹

[407] The employer refers to dictionary definitions that define "appropriate" as suitable, proper or fitting for a particular situation and a Supreme Court of Canada statement, referring to a section of the *Criminal Code*, that: "The word "appropriate" ("indiqué")

generally confers a very broad latitude and discretion.”²⁴⁰ Consistent with this, the employer submits, there are no legislated limits on the factors to be considered by principals and superintendents in arriving at their opinions about a class.²⁴¹

Principals have the authority to organize classes pursuant to section 5(7) of the School Regulation. To place restrictions on the Principal’s authority to organize classes in addition to the consultation requirement of Bill 33 would be in breach of the School Regulation and would be tantamount to adding restrictions on the exercise of the discretion that are not in the legislation. In other words, adding restrictions to the Principal’s exercise of the discretion would be rewriting the legislation.²⁴²

[408] The employer submits the analysis of appropriateness of the organization of a class for student learning centres on the opinion of the principal and superintendent “without any restrictions or criteria placed on that decision making in the legislation.”²⁴³ It is their approval and the accountability scheme that ensures appropriate learning standards are maintained, provided there has been consultation. They are held accountability by the boards of education, as clearly happened in School District No. 39 (Vancouver) in the 2007-08 school year; by consultation with school planning and district parents’ advisory councils; and by submission of reports made public by the Ministry of Education.

Another reason to support the interpretation put forward by the Employer is the lack of any requirement in the legislation for the reporting of the reasons for the formation of the opinions of the Superintendents and the Principals. It is clear that the Superintendents and Principals have been given the sole decision making authority based on their expertise and experience.²⁴⁴

[409] Further, the employer submits, the class and opinion formation happens within a legislative scheme that restrains class size and composition through mandatory district class size averages in the aggregate; requires published rationale for organization of classes with more than thirty students; requires two separate opinions; centres on student learning, not teacher workload; distinguishes when teacher consent is required and when consultation is required; and speaks to “appropriate”, not ideal or some other standard. In addition, there are school district directions and policies on minimum class sizes. School district mission statements or core value statements are goals and ideals, they do not deal with classes appropriate for student learning.

[410] The employer submits the legislative provisions “must be interpreted in the context of the public interest; they must be interpreted in the context of rights of parents

and students; and they must not be interpreted as a workload issue or terms and conditions of employment for teachers as would be the case if the provisions were contained in the provincial collective agreement.”²⁴⁵

[411] The employer submits the legislated class size and composition standard is directed at students learning not teacher workload, as it could be argued collective agreement provisions were. Consequently, several factors teachers testified affected their workload are not relevant to the issue of an opinion the organization of a class is appropriate for student learning. These include additional work when a student leaves for a planned absence or returns from a brief or long absence; adaptations and modifications for students with an IEP; teacher designed classes; and any disruptions that occur with student pull-outs to attend support programs. A teacher’s workday is longer than the instructional hours. For purposes of insurable employment it is 9.1 hours per day.²⁴⁶

That is not to say that classes that created significant workload issues for a teacher will be appropriate. The classes that are in dispute in these proceedings are not classes that create significant workload issues. They are all classes “at the margin”.²⁴⁷

[412] The employer submits teacher judgments as testified about the appropriateness for student learning of a class were “based on ideal or optimal learning” not what is appropriate.²⁴⁸ They ought to be expressed in the consultation process, but to place “any weight on the opinion of the teachers would amount to a rewriting of the legislation.”²⁴⁹

The opinions of the teachers were all premised on a higher level of resource allocation from the provincial government. Their measure or standard was not based on the current legislation nor was it based on current funding levels. The teachers in reality seek more funding from the provincial government and for small classes with fewer designated students in any one class.²⁵⁰

[413] In addition, the employer submits the teacher’s testimony does not accord with the student achievement in their class as reflected in grade marks introduced by the employer, which show there was significant student learning in the classes.

[414] The employer submits that disruption by students in class is not a relevant factor in assessing whether a class is appropriate for student learning.

Several of the Union witnesses testified with respect to disruptions in the classes caused by some of the behaviour students and also by some of the non-

designated students. Their evidence was that these disruptions affected the appropriateness of the class for student learning.

It must be acknowledged that all students, including the behaviour students, have a legal right to be in a classroom. All students have a right to an education.

No matter which class these students are placed in there will be disruptions and they will need to be dealt with in the context of the provisions of their IEP and school and district procedures.

It would be astounding if the conclusion to be drawn from the inclusion of these students in classes is that the class then becomes a class organization that is not appropriate for student learning.

The emphasis must be on how the teacher and the Principal deal with the disruptions and with the student's continued right to be in a regular classroom.

The evidence is overwhelming and uncontradicted that Principals have to and do deal with these students within the bounds of the legislation. ...

There are numerous examples of students spending time in the Principal's office; of suspensions; of partial day programs; of home schooling; of placement in other schools; and of placement in District programs.

In response, various Employer witnesses testified that these disruptions were "for a moment in time". What happens when there is a disruption is that the teacher deals with it and the class then proceeds. The evidence was overwhelming from the Employer's witnesses that classes do have disruptions but that those disruptions do not make the class organization inappropriate for student learning.²⁵¹

[415] The employer submits there are other avenues under the *School Act* to review class size and composition – by a special administrator and parent and student appeals.²⁵² Arbitral review must be consistent with those reviews.

[416] The employer submits, in the tradition of review of public decision-makers, arbitral review of principal and superintendent opinions must recognize the opinions are formed in a discrete and special system in which the principals and superintendents have expertise and that there can be more than one reasonable opinion on the organization of a class. An arbitrator should defer to any defensible principal or superintendent opinion in the range of possible acceptable organizations of a class unless it was made in bad faith or arbitrarily.²⁵³ The principal and superintendent are in a better position to make the assessment than a reviewing arbitrator, who should not substitute his or her opinion unless there is "some extreme deviation from an accepted educational practice and conclusion."²⁵⁴

[417] This is consistent with the deference arbitrators give to employer exercise of management rights in decisions based on the employer's opinion about the suitability of probationary employees²⁵⁵ and the skill and ability of job applicants²⁵⁶ and the obligation

to post a vacancy when there is adequate work to justify a new position.²⁵⁷

[418] The employer submits the legislative debates make it “very, very clear” principals and superintendents were given authority to decide.²⁵⁸ Teachers were give consent approval to organize classes with more than thirty students in Grades 4-7. Otherwise, approvals to have classes exceed the class size and composition standard were given to principals and superintendents.

[419] The employer submits the disputed classes generally have four to six students with an IEP in academic courses. Those with more have either reduced class sizes or supportive assistance. Classes with a larger number of students with an IEP are non-academic classes “specifically designed for those types of students.”²⁵⁹ Class with more than thirty students are mainly at the margin with thirty-one or thirty-two students. The speciality and Science classes are within the range of previously negotiated collective agreements in the districts. None is a substantial deviation from the norm.

[420] The employer submits: “The Principal’s and Superintendent’s opinions cannot be based on unknowns, that is events that occur after September and cannot be anticipated in September, such as change of teacher for the class or a class not being what the teacher expected and chose.”

The determination of the opinion in September is also based on the Principal’s and Superintendent’s knowledge that resources are available at the school and in the School District to be used if issues arise after September 30. There is considerable evidence to show that when circumstances changed during the year, the Districts responded in a reasonable and acceptable manner.²⁶⁰

[421] The employer submits the appropriateness of the classes in dispute is affirmed by the simple fact that other similarly organized classes in the same schools in the same school year were not grieved – presumably because they were considered by the teacher and local union to be appropriate for student learning.

[422] The employer submits a decision upholding the grievance, in whole or in part, will require resource reallocation across the system and have dire consequences, including: reduction in non-enrolling support helping a broad spectrum of teachers in favour of more enrolling teachers; exclusion of special needs students from schools with high numbers of special need students; separation of students clustered under current practice for important educational reasons; elimination of advanced placement courses

with small enrolments; reduction in timetabling choices to accommodate teacher requests; fewer smaller secondary classes adversely impacting the vibrancy and choice in secondary schools; disruptive holdbacks in resources to be allocated after consultations in September; and a reduction in the number of special education assistants.²⁶¹

9.3 Combined Principal and Superintendent Opinions

[423] The dispute on this issue underscores the tension between what would like to be done in education programs in the public Kindergarten to Grade 12 system and what is achievable with available resources budgeted by the provincial government. It underscores labour-management tension between teachers and administrators in neighbourhood schools striving for the best for the students in their schools and district administrators equitably allocating resources in accordance with board of education priorities and Ministry of Education policies and directives.

[424] At provincial and district levels, rationing resources among competing needs, priorities and demands creates operational limitations. In this decade in the Kindergarten to Grade 12 public education system, a central focus has been on class size and composition as a driver of resource allocation and education goals.

[425] As has been its tradition, the union advocates for an interpretation of the legislative standard for class size and composition that, effectively, makes a teacher's opinion determinative. This is rooted in a solid conviction that the classroom teacher has a relationship with the students whose names, character and families the teacher knows. The union's approach to developing the proposed matrices for both consultation and formation of principal and superintendent opinions on appropriateness for student learning effectively and essentially converts teacher consultation to teacher consent and substitutes the class teacher's opinion for the principal and superintendent opinions.

[426] This is consistent with the union's roles and responsibilities and its commitment to education, teachers, students and a civil society. It is not consistent with the scheme of the class size and composition provisions in the *School Act* and the compromises among competing interests it enacts.

[427] Language and the law are replete with words that are not easily susceptible to

objective definition and determination, e.g., beauty (eye of the beholder); pornography (I know it when I see it); and practicable (if it works). Negotiators and legislators will deliberately use imprecise and adaptive language to allow for or to encompass a broad range of situations and leave others to administer the language as best as they can.

[428] Experience with the administration of the negotiated or legislated language is then assessed to determine if the original goals are being achieved in the use and application of the language. Often the true test is whether the administration of the language produces situations that are statistical outliers, attract controversy or are commonly viewed as unintended or undesirable.

[429] To some extent, this happened between 2002 and 2006 with class size provisions in the *School Act* that were determined to be inadequate and too broad or flexible to meet the needs of students, particularly in Grades 4-7. Board of education discretion was limited by the enactment of more prescriptive standards and rules. The district average for these grades in the aggregate was reduced. Through the mechanism of requiring their consent, classroom teachers were given a veto over classes larger than thirty students.

[430] School principals were left with authority to make decisions for Kindergarten to Grade 12 about the appropriateness for student learning of a class with more than three students with an IEP and for Grades 8-12 about the appropriateness for student learning of a class with more than thirty students or both more than thirty and more than three with an IEP. But the principals' exercise of their scope of authority was restrained. They are required to consult with the teacher and the superintendent must agree with their opinion before the exercise of their power to organize a class that exceeds the class size and composition standard can be legitimate.

[431] Administering schools, which includes placing and programming students, is the principals' responsibility.²⁶² It is in keeping with the organizational scheme for schools that decisions to exceed class size and compositions standards are assigned to principals. The basis for these decisions may be factors beyond the class size and composition, including the organization of the school and school district and the supports available to the class within and beyond the school. No factor is presumptively or legislatively excluded from the principals' consideration. This does not mean factors

such as the class having a first year teacher should not be examined when the reasonableness of the principals' opinion is under review.

[432] "Appropriate for student learning" is a phrase that is not addressed to equitable distribution of workload among affected teachers any more than the class size and composition standard of thirty and three, which can result in inequitable workloads.

[433] This phrase implies the focus of the principals' decision is to be the goal of successfully providing an education program to the students in the class. At the same time, while individual student development to its fullest is a goal, it is not a guarantee in the Kindergarten to Grade 12 education system. There are many factors beyond a class and a school that will affect success for each student today, as it was at the time of the Royal Commission. Principals are constrained to act within the mandate of the public education system and direct resources as effectively as possible to achieve competing goals.

[434] All of this was well known when the *School Act* was amended in 2006 and the word "appropriate", which is not amenable to pre-determined definition, was selected as the descriptive foundation for principal and superintendent opinions. Perhaps the reason "appropriate" was chosen was because it does not provide clarity or certainty or carry preordained constraints.

[435] At the same time, "appropriate" is not an unfettered term. It must take its meaning from the context in which it is used.²⁶³ That context is that the first mandate for a board of education is to "ensure" the class size and composition standard is met for each class. Ensuring is not a goal or ideal. It is a clear direction. Exceeding the class size standard is not to be a norm, but a permissible anticipated exception to occur with some frequency in Grades 8-12. There is no easily discernible measure of how frequent it was anticipated the class composition standard of three students with an IEP would be exceeded at any grade level.

[436] The context in which "appropriate" is used includes the consultation requirement, superintendent opinion and reporting requirements that flow from a principal opinion that a class that does not meet the class size and composition standard is appropriate for student learning.

[437] There will be conflicting opinions about whether a specific class is appropriate for student learning. The principal's opinion is subject to review and confirmation by the superintendent. Their dual opinions is what is intended to prevail within the education system despite contrary opinions by teachers, parents, members of school planning councils, members of district parents' advisory councils or individual members of boards of education. I deliberate make no comment on the process or consequences that flow from a board of education instruction to a superintendent to reorganize a class and revise a report.²⁶⁴

[438] A grievance over the organization of a class will come before an arbitrator after the legislated review process within a board of education has been completed and the board of education has submitted a report to the minister that is made public and includes the organization of classes that exceed the class size and composition standard. The report will include the rationale for any class with more than thirty students in which some school districts make extensive statements, including when teachers have agreed to the organization of the class. Others, usually larger school districts, more narrowly construe the requirement to report "a rationale for the organization"²⁶⁵ as what caused the class to have more than thirty students.

[439] There is no legislative requirement to provide any rationale for organizing a class with more than three students with an IEP. It is known that most individual education plans require more teacher time to plan, prepare resources and instruct. Time, like resources, is limited. More time for one student can mean less time for another. The choice of three students with an IEP as the standard, regardless of the nature of the special needs designation, the needs of the student or the impact on the class, may be inexplicable. However, as stated above, there is no exemption except for designated gifted students and no basis to minimize the needs or impact of student in a class because it is assumed the student's needs do not relate to the subject of the class. A principal's opinion must be more fact based than merely an enumeration of student special needs designations in the class.

[440] At grievance-arbitration, against the background of public review and accountability in the legislative scheme; the legislative history and evolution of the legislated class size and composition provisions; the deliberate choice of the imprecise

term “appropriate”; the general principles of deference to the exercise of delegated legislative authority in public administrative systems; and the organizational reality that principals, schools and school districts have processes and systems to respond to emergency and difficult situations, as was seen in the evidence at the representative schools, an arbitrator must be restrained in questioning the merits of the dual principal and superintendent opinions and accord them a broad deference.

[441] The factors to be considered by an arbitrator in reviewing a principal’s decision to organize a class that exceeds the class size and composition standard and the principal and superintendent opinions the class is appropriate for student learning are factors that relate to transparency, the reason the class was organized as it is and the basis of the opinions the class is appropriate for student learning.

[442] Transparency will be fulfilled by meeting the consultation and reporting requirements. The reason for the organization of the class involves an explanation of the alternative class organizations explored and the reason the organization in dispute was chosen. The basis for the opinions that the class is appropriate for student learning involves all the reasons and factors that led the principal and superintendent to their opinions the class is appropriate for student learning. These may include teacher requests, class, school and district supports for the class and the students in the class.

[443] The evidence to be admitted and considered is evidence of the events and knowledge at the time the class was organized and the events and facts known or that ought to have been known or anticipated in September. In this first impression and learning phase of the arbitration, the evidence went far beyond September. There was extensive evidence of events after the date on which the principals and superintendents formed and communicated their opinions. This is not to be taken as a precedent for the next phase or subsequent arbitrations.

[444] The employer correctly submits information and concerns about a class that the teacher did not share with the principal cannot be relevant to impeach the reasonableness of the principal’s opinion unless the information should have been otherwise known to the principal. Equally, changes in class size and composition and other events after September, including student withdrawals or achievement in the class of which there was extensive evidence adduced by the employer, cannot be relevant to

the opinions formed and acted on in September.

[445] Kids grow, develop and change. Teachers work hard and collaboratively to teach the classes in front of them. Classes and schools are dynamic. There will seldom be any relevance and probative value to evidence of events after September to assessing the reasonableness of opinions formed weeks or months before the events. In the same vein, the probative value having dedicated and devoted teachers testify at length about the behaviour of special needs and grey students to make the case that the class they taught was not appropriate for student learning is outweighed by the potential tear it leaves in the collaborative and caring culture essential to their school's success. Timely dispute resolution within the school year will help remove the temptation to expand the scope of the evidence beyond what was known and considered by the principal and superintendent in forming their opinions.

[446] Principals and superintendents can reasonably hold and act on opinions with which others sharing common values and goals disagree. In their efforts to be wise professional decision-makers and stewards of school district resources, principals and superintendents can make decisions and have opinions about the appropriateness for student learning of a class influenced by both pedagogical and fiscal considerations that turn out to be incorrect.

[447] As chief administrative officers of schools and chief executive or education officers of school districts implementing board of education policy, school and class organization can be complex. Like the situations facing teachers every day in the classroom, administration is also about making choices every day. Review of principal and superintendent opinions that a class is appropriate for student learning must include a deferential approach that recognizes this operational and organizational reality.

[448] The superintendent does not stand in the principal's shoes, does not attend the consultation and cannot be expected to have an opinion about individual classes that approximates the knowledge a principal can be expected to have. In large school districts, highly bureaucratized processes struggle to avoid objectifying children as numbers or categories. However, superintendents do not know, and cannot be expected to know, students' names as teachers and principals do. They cannot be expected to have the level of knowledge of the students and classes the teachers and

principals do. They are not required to consult the teacher. Their perspective is necessarily and intended to be broader, but not aloof.

[449] The approach to reviewing superintendent opinions is not a rights dispute matrix predicated on future advocacy and litigation. It must be based on an understanding that the requirement for the superintendent opinion is predicated on their organizational leadership accountability within a governance structure. Their role requires them to exercise due diligence that can be executed through structured processes and delegated responsibility. There is a second opinion dependent on the existence and reasonableness of the principal's opinion.

[450] As part of the due diligence, the superintendent must be informed about classes that exceed the class size and composition standard with which the teacher of that class agrees it is a class appropriate for student learning and those classes for which the teacher disagrees or did not express an opinion. Principals, superintendents, boards of education and, perhaps, parents need to know if teachers do not believe their classes are appropriate for student learning.

[451] If the principal's opinion is reasonably held, the superintendent's opinion cannot undermine the principal's opinion. If the principal's opinion is not reasonable held or is formed without the required consultation, the superintendent's opinion cannot resuscitate the failed process at the school.

10. Onus of Proof and Evidentiary Burden

[452] Throughout this arbitration there has been a difference between the union and employer about who bears the onus of proof. The union agreed to proceed first to adduce evidence of violations of the *School Act*, but did not accept the onus. On May 1, 2009, I ruled the union was to proceed first to adduce evidence at the two representative schools selected by the employer.

The procedural issue whether in any circumstance, or in what circumstances, it is appropriate for an arbitrator to direct the employer to proceed first to adduce evidence about the size and composition of classes organized by the employer is a significant issue that requires careful attention and consideration. The exercise of an arbitrator's authority under section 92(1)(a) of the *Labour Relations Code* to determine the procedure for an arbitration in a class size and composition dispute may or may not be related to who bears the burden of proof in all or some categories of disputes over class size and composition, which is a disputed

question in this arbitration that I have been informed will be addressed in final submissions.

The proposition that the employer proceed first to adduce evidence in the hearings on the two representative schools it selected was raised on April 14th. To direct the employer to proceed first would be a departure from the agreed manner of proceeding that has been followed in these hearings for the consolidated 2006-07 and 2007-08 school years grievances.

Whether the proposed manner of proceeding would or would not be a more efficient procedure, in light of the agreed representative school manner of proceeding to which the employer agreed to facilitate a more expeditious hearing of these consolidated grievances, I find that to direct the employer, at this stage of these proceedings, to proceed first on the two representative schools it selected could have the perception of imposing a procedural unfairness on the employer.

Consequently, I direct that we proceed in the hearings on the two representative schools selected by the employer in the same manner as was agreed for the hearings on the representative schools selected by the union.

[453] It has been understood throughout this is an issue to be decided at this phase of the arbitration. There are related issues of which party bears the evidentiary burden in what circumstances.

10.1 Union and Employer Submissions

[454] The union submits once it has identified classes alleged to be organized in violation of the *School Act* the employer must demonstrate meaningful consultation occurred. The employer must prove there were principal and superintendent opinions that the organization of the class is appropriate for student learning and that each opinion is reasonably held because the basis for the opinions are known only to the principal and superintendent and are not communicated to teachers. In addition, the school district controls the relevant information, such as communications between the principal and superintendent after the consultation.

[455] The union submits the situation is similar to other labour relations issues on which the employer has the onus of proof. The most prominent is the onus on the employer to establish the factual basis for an assertion it had just and reasonable cause to discipline an employee. "Similarly, in the case of the allegation of a Bill 33 violation it is incumbent upon the School District to demonstrate why their actions, which are an exception from the statutory limits, meet the tests of consultation and appropriateness."²⁶⁶

[456] The union submits the school districts are government actors subject to the *Canadian Charter of Rights and Freedoms*²⁶⁷ and, as such, their duty to consult is

similar to the government's duty "to demonstrate that it did provide for meaningful consultation with Aboriginal Peoples; Aboriginal peoples do not have to prove that the government did not adequately consult with them."²⁶⁸

[457] The union submits the employer invokes an exception to the standard for class size and composition and in doing so has the onus to prove it is entitled to do so. This was the situation when a school district employer invoked a negotiated external financial constraints exception to class size limitations. Arbitrator Bird for considerations of fairness determined: "In the present case the School Board was in the better position to explain why it was impossible to comply with the class size limitations. Presumably, those reasons lie chiefly within the knowledge of the Trustees and their principal advisors."²⁶⁹ The Labour Relations Board denied review:

The collective agreement provides that class size maximums can be exceeded only in certain circumstances. The onus lay with the Association to establish that the limits had been exceeded; that issue, however, was not in dispute (p. 19). The School Board argues the onus remained with the Association to show, in effect, that external financial constraint did not make it impossible to maintain those limits. I do not agree with that argument. Class size limits may be exceeded where external financial constraints beyond the Board's control make it impossible to maintain them. On its face, this language clearly put the onus on the School Board to show that the limits were exceeded because of factors which were beyond the School Board's control. The School Board established the joint committee to inform the bargaining units of its financial circumstances and to seek input into possible solutions. The management of the school district and the decision making authority, however, remained with the School Board. Accordingly, while the legal burden of proof remained with the Union throughout the hearing, once it was established that the class size limits were exceeded, the evidentiary onus shifted to the School Board to show that it was impossible to meet the negotiated limits. As the arbitrator concluded, the School Board simply failed to present persuasive evidence on this point.²⁷⁰

[458] The employer submits the union has to prove a breach of the *School Act*, it does not have to disprove a breach. The person who asserts a claim must prove it.²⁷¹

[459] The employer submits any exception placing an evidentiary burden on the employer because the subject matter of the allegation is within the knowledge of one party has no application to a union assertion there has not been meaningful consultation.²⁷²

[460] The employer submits any exception requiring a party relying on an exception to prove the factual basis on which the exception can be relied does not apply to either a union assertion there has not been meaningful consultation or to a class that has more

than thirty students or more than three students with an IEP or both.

When one examines the legislation it is obvious that classes that are over “30” and “3” are not meant to be an exception. The use of “30” as the average size for grades 8 to 12 is a strong indicator that a class with more than “30” at grade 8 – 12 is not an exception.

Further, the scheme of the legislation is for consultation and opinions to be reached for classes over “30” and over “3”. The legislation is a total scheme that does not have general rules and then exceptions to the rules.²⁷³

10.2 Discussion, Analysis and Decision

[461] Each year in over 1,400 schools, administrators and teachers organize over 68,000 classes that begin in September and many more classes in schools on a semester system. Their shared goal is to organize all classes so that each one is an appropriate learning environment for the students in the class and an appropriate working environment for the teachers.

[462] Because of the teacher’s role and responsibilities, the two environments – learning and working – are inextricably interwoven. Because of their knowledge of the students and the grade or course level curriculum, teachers have always had a keen interest and an integral role in class formation.

[463] School administrators must have a school-wide perspective as classes are organized within their school each year and they assign teachers to teach classes. Boards of education must assign resources and supports to schools to provide learning and working environments for all students and teachers.

[464] Invariably, classes and schools were organized and allocated resources using published or unpublished formulas based on guiding principles of average class size for grade levels within the physical constraints of the schools and the financial constraints of the boards. Teachers took their concerns about class size and composition and its impact on learning and working to school district boards and the provincial government that sets education policy and budgets funding for school districts.

[465] The formulas for building classes, organizing schools and providing shared district supports to students and teachers evolved and fluctuated over the decades. The sources of the formulas have been school district and government policy; working and learning conditions agreements between school districts and local teacher associations; collective agreements between local unions and school districts; collective

agreements between the BCTF on behalf of teachers and the BCPSEA on behalf of school districts; and, currently, the *School Act* and regulations.

[466] The current state is a single set of legislated class size and composition standards and school district and school processes for organizing classes that operate in a highly legal environment. The single set of standards applies to all school districts and schools regardless of their urban, rural, affluent, impoverished or other differences that distinguish neighbourhoods and schools. The standards must be adhered to regardless of differences in educational policy and approaches, administrative structures and styles and local school district and union relationships.

[467] When a single set of standards was legislated in this decade, the locally negotiated standards and processes were deleted from the collective agreement. The conscious decision was to displace private agreement with legislated uniform public policy to set class size and composition standards. The stated purpose was to have a standard and process that was less constricting by allowing student-centered flexible adaptation to diverse circumstances.

[468] Implicit was the view that the new provincial standards would make more effective use of education funding and resources. There does not appear to have been a discussion about the impact this shift would have on achieving prescribed learning outcomes in all curricula or the impact on the crucial culture in the over 1,400 schools operating as semi-autonomous organizational unit. There is no indication it was understood that review and enforcement of the standards would be at arbitration under the collective agreement from which all the previous standards were deleted.

[469] A grievance alleging a class has been organized contrary to the provisions of the *School Act* must be proven by the union asserting the contravention.

[470] Even though it will likely be a rare situation that it is not self-evident, the union must lead evidence to prove the disputed class is a class to which a specific grade level class size and composition standard applies. The union must lead evidence to prove who the teacher or teachers are who were to be consulted. Again, it will likely be the rare exception that these are not self-evident. If the allegation is that there was no consultation whatsoever, the union must lead evidence to establish this fact.

[471] If the union alleges there was a failure to consult in the manner required under the *School Act*, then the union has the onus to prove this and must lead evidence to establish the failure which is alleged to constitute a contravention of the *School Act*. There is no relationship between a teacher and principal similar to the fiduciary-like relationship between the Government and Aboriginals that justifies placing the onus on the employer to prove there was meaningful consultation in each disputed class simply because a grievance has placed it in dispute.

[472] These issues are straightforward and consistent with the traditions and norms of legal proceedings apart from and at grievance arbitration.

[473] Once it is established there is a class subject to a specific grade class size and composition standard for which there has been a consultation, the more challenging question is who should have the burden of adducing evidence to impeach or justify the principal and superintendent opinions on which the existence of the size and composition of the class depends.

[474] Just as there are policy reasons in the administration of justice for arbitration and courts to place a burden on an employer to prove just cause in discharge cases,²⁷⁴ there are policy reasons to use evidentiary presumptions and to place evidentiary burdens on parties who do not bear the ultimate onus of proof.

[475] Equally so, there are policy reasons to delineate situations of presumptive deference to principal and superintendent opinions about class organization.

[476] Grades 4-12 classes with thirty students of whom three have an IEP are presumptively appropriate for student learning. A Grades 4-7 class with more than thirty students is not unless the principal has "obtained the consent of the teacher of that class"²⁷⁵ to the inclusion in the class of the number of students in addition to thirty. Then regardless of its size, it is presumptively appropriate.

[477] If it is alleged the principal has not obtained the consent of the teacher of that class, the most efficacious way of proceeding is to place the burden on the employer to adduce evidence of the identity of the teacher who consented and the nature of the consent on which the employer relied to organize the Grades 4-7 class with more than thirty students. This is because the responsibility to obtain the consent and the

organizational due diligence to be assured a consent was obtained lies wholly with the employer. The circumstances on which it relies to assert there was consent justifying the size of the class typically will be within the knowledge of the school district which has not proceeded and reported without having obtained something it considers to be consent from the correct teacher. Ultimately, of course, the onus to prove there was no “consent” from the teacher of that class remains with the union.

[478] The circumstances are less clear-cut in the cases of Grades 4-12 classes organized with more than three students with an IEP and Grades 8-12 classes organized with more than thirty students or with both more than thirty and more than three with an IEP. The union has the onus to prove there has been a contravention of the *School Act*. The teacher is privy to some of the information available and relevant during September, but is not privy to the basis on which the principal and superintendent have formed their opinions. Much of the information may be exclusively known to and within the control of the employer. In some legislative schemes, this would justify requiring the employer to adduce evidence to explain why it did not “ensure” the size and composition of the class was in accordance with the class size and composition standard or why it decided it could exceed that standard and have a class appropriate for student learning.

[479] However, the purpose and intention of this legislative scheme, despite using clear word such as “ensure”, “exceed” and “unless”, is to give school districts a latitude in class organization and opinions about class organization appropriate for student learning to which there is to be arbitral deference. It is not absolute deference as submitted by the employer. It is deference to classes presumptively within a range of instructability. It is deference that:

- recognizes the intended measure of flexibility to organize classes with more than thirty students that is implicit in school district aggregate class size averaging;
- recognizes the legislative expectation that in some situations some classes must have more than three students with an individual education plan;
- allows for differences in schools and school districts operating under a single set of class size and composition standards;
- will provide a high degree of predictability that certain classes with more than

thirty students or more than three students with an individual education plan or both will, except in the rarest of situations, not be reorganized by an arbitrator, perhaps requiring expenditures from contingency funds reserved for other purposes;

- will minimize the instances in which teachers will be called to testify despairingly about past or current students and classes and their behaviours and deficits; and
- will facilitate expeditious identification of classes whose organization may be problematic and are to be avoided or organized, supported and approved with care and caution, especially in the future organization of classes.

[480] Using the class size and composition standard of thirty and three and with the benefit of the extended exposure to classes and their organization in the representative schools, I have concluded the formula to determine the disputed classes for which there should be presumptive deference to the principal and superintendent opinions on the organization of the class are those for which on September 30th the sum of the number of students in the class and the number of students in the class with an individual education plan equals or is less than thirty three. (students + students with IEP \leq 33)

[481] This allows for a wide range of classes from a class with seventeen students of whom sixteen have an individual education plan to a class with thirty three students of whom none has an IEP or a class of thirty-one students of whom two have an IEP. It encompasses more than classes on the margin.

[482] Some teachers and principals may consider this approach and formula as “arbitrary” as they consider the thirty and three class size and composition standard. As that standard attempts to strike a balance, this presumptive deference formula is an attempt to find a balance between respecting the intended deference to be given to principal and superintendent opinions and affording meaningful access to arbitration over class size and composition grievances.

[483] This does not mean these classes for which there is presumptive deference to the principal and superintendent opinions are beyond challenge. The union can challenge and lead evidence to challenge their appropriateness for student learning and the principal and superintendent opinions as of September 30th. The employer will adduce evidence to respond. The union will have the ultimate onus to prove a

contravention of the *School Act* and the collective agreement.

[484] Other class organizations should not be extended arbitral deference without explanation by the employer despite the opinions of the principal and superintendent and the public reporting and accountability scheme. In these classes exceeding the legislated standard poses a greater risk of compromising the educational goals for students in the class.

[485] Most will be classes whose combination of size and composition exceeding the legislated standard will be akin to statistical outliers among the 68,000 or so classes organized each year. They are classes not necessarily highlighted in the public reports and not necessarily immediately obvious on a review of the reports. They are not just classes with higher numbers of students, many of which are in programs in which the teacher agrees with the organization of the class. Most of the classes calling out for an explanation do not have teacher agreement and are less obvious and more complex classes.

[486] In this approach, there is sufficient evidence from the union that a class is not appropriate for student learning to require an evidentiary response from the employer if the union proves (a) the teacher told the principal during the consultation that the teacher disagreed with the organization of the class, (b) the sum of the students in the class and the students with an IEP is greater than thirty-three (students + students with IEP \geq 34) and (c) the union has filed a timely grievance.

[487] This union evidence is not a *prima facie* case that the class is appropriate for student learning. It is not evidence raising a presumption that must be rebutted, but it is sufficient evidence to place an obligation on the employer to adduce evidence to explain the reason it organized the class in excess of the class size and composition standard and why there were dual opinions it is a class appropriate for student learning.

[488] This is an evidentiary burden on the employer because the organization of the class is not given deference as being presumptively appropriate for student learning. It is not an onus to prove the class is not in contravention of the *School Act*. That onus remains with the union to prove there has been a contravention of the *School Act* and the collective agreement.

11. Representative Classes in Dispute - Discussion, Analysis and Decisions

11.1 Consultation Disputes

[489] Although there was a broad variation in consultation processes at the representative schools, the union did not acknowledge any of them met the standard it fashioned in its matrix and the employer did not acknowledge any did not meet the requirements of the *School Act*.

[490] In an *Issue Alert* dated September 4, 2007, the union encouraged teachers to continue to apply pressure to achieve smaller classes and firmer limits on class composition. In some school districts, this information was supplemented by literature from the local union and advice from local union executive members and school union staff representatives. Various, the advice was that the limits were the limits and any higher number of students was inappropriate; it was union policy not to agree to classes that had more students or more students with an individual education plan that the thirty and three standard; teachers should not agree to the organization of a class if the class has both more than thirty students and more than three students with an individual education plan; teacher should not agree unless confident the class organization will not negatively affect any child in the class; and teachers should not agree unless all requested additional resources are provided.

[491] Some teachers who testified were not willing to agree to the organization of any class that did not meet the thirty and three class size and composition standard. They attended the consultation meeting predisposed to disagree. As a consequence, the employer submits: "Many of the teachers did not approach the consultation process with an open mind in the spirit of the legislation."

In summary, prior advice from the BCTF to staff representatives and teachers coloured the process in such a way that many teachers did not participate in the consultation meetings in the true spirit of consultation, the true spirit of sharing ideas and addressing the learning environment of each class.²⁷⁶

[492] The teachers were teaching the classes about which there was consultation. Many classes with more than thirty students or more than three students with an IEP were not grieved and the teachers did not testify. There is no evidentiary basis to conclude any of the teachers who did testify were under undue pressure from the union. They were vocal and vigorous in stating and advocating that in their opinion the class in

dispute was not appropriate for student learning despite the contrary opinions of the principal and superintendent. Their prior predisposition or conviction to disagree is better characterized by the union as follows:

The teachers that came into the consultation meetings having already decided to disagree with the organizations of their classes testified that they did so as a result of the frustration they felt from the lack of any result from the Bill 33 process in the previous year and the difficulties with their classes.²⁷⁷

[493] The obligation and responsibility to consult is assigned to the school principal. The consequences of a teacher waiving the entitlement to be consulted, not disclosing information to the principal or not communicating an opinion about the appropriateness of the organization of a class for student learning to the principal are matters to be considered in assessing the reasonableness of the principal's opinion about the appropriateness of the class for student learning and whether to defer to that opinion.

[494] Similarly, any issues about the manner in which union staff representatives participated with the principal in the organization of the consultation process or identification of teachers required to be consulted mitigating a principal's failure to consult as required by the *School Act* are matters to be addressed when remedy is decided.

A. Frank J. Mitchell Elementary School

[495] The consultation process and individual consultations at Frank J. Mitchell Elementary School (School District No. 5 (Southeast Kootenay) were fully in compliance with the requirements of the *School Act*.

B. Merritt Central Elementary School

[496] With the exception of the Principal's failure to consult with preparation relief teacher Stephen Carroll, who taught Library and Computer Skills, about a Grades 4/5 class as required by section 76.4, the consultation process and individual consultations at Merritt Central Elementary School (School District No. 58 (Nicola-Similkameen) were fully in compliance with the requirements of the *School Act*.

[497] There was a consultation in September with the classroom teacher of the Grades 4/5 class and a consultation with Mr. Carroll. When three additional students in the class were designated special needs students, there was a consultation with the

classroom teacher, but not with Mr. Carroll.

[498] This was a failure to comply with the requirements of section 76.4. When two other students in the class were assessed and designated as special needs students in April and May, no consultation meetings were held with either the classroom teacher or Mr. Carroll. The union did not pursue this.

[499] The grievance is allowed with respect to the following class at Merritt Central Elementary School.

| | Class | Teacher | Size | IEPs |
|--|------------|-----------------------|------|--------------------|
| Merritt Central Elementary School (School District No. 58 (Nicola-Similkameen)) | | | | |
| 1 | Grades 4/5 | L. Dixon / S. Carroll | 25 | 6 (1D, 1G, 3K, 1Q) |

As agreed, I reserve and retain jurisdiction on a remedy if the union and employer are unable to agree.

C. Hastings Elementary Community School

[500] At the opening of the hearing on Hastings Elementary Community School (School District No. 39 (Vancouver)), the union stated it had received copies of the Principal's reports of individual meetings with teacher dated September 19, 2007, but it was unaware of any consultation meeting other than a perfunctory meeting held with a group of teachers at 3:10 p.m. on September 18th.

[501] The employer acknowledged there was a group meeting, but said there would be evidence there were subsequent individual principal-teacher meetings with each of the seven teachers. After the first day of testimony from the union's first witness, the employer informed it would not be pursuing its claim there were individual principal-teacher meetings after the group meeting. In its final submission, the employer states: "The consultation process at Hastings Community Elementary School was different than the consultation processes at the other six representational schools."²⁷⁸

[502] In 2006, the consultation process had been individual consultations with teachers. As a matter of expediency, on September 18, 2007 the consultations for the seven classes requiring consultation was done as a single ten or so minute group meeting. This group consultation was agreed to by the Principal and union staff representative, who informed the teachers at a school union meeting this is how

consultation was to be done in 2007. This process was intended to be the consultation contemplated by the *School Act*.

[503] The meeting was jointly chaired by the staff representative and Principal. There was no discussion about individual classes. The sole subject of the discussion was the lack of any additional resources available to the school and the loss of a teacher allocation that had been made in March 2006 for the remainder of that school year. All but one of the teachers completed union reporting forms for each of their classes before leaving.

[504] The Principal was unaware of the local union meeting. She did not inquire if each teacher agreed to conduct consultation in this manner. The next day, she completed separate forms dated September 19th that report individual consultations with each teacher for each class. The employer submits: "The group consultation meeting met the spirit and the letter of the legislation."²⁷⁹

[505] The union submits the fact there was a group consultation is indicative of the need for teachers to have paid release time to attend consultation meetings at one of the busiest time of the school year.²⁸⁰

[506] There is no provision in the *School Act* for the union or its representatives to waive the consultation to which teachers are entitled under section 76.1. Despite the good faith cooperation of the Principal and staff representative and the complicity of the teachers who attended the group meeting, the Principal failed to consult each teacher of the affected classes in the manner intended by section 76.1. There was no discussion about each class or any of the students in each class. The discussion was about the resources allocated to the school.

[507] The Principal did not speak to each teacher about the organization of his or her classes that were organized with more than three students with an IEP. She did not consult "the teacher of that class" about the class. In the context of the group meeting, the teachers did not have the opportunity to speak to the Principal about their classes as is intended. There was no meaningful, informed dialogue between the Principal and teacher about the organization of each class. The Principal acquired no information that would enable her to evaluate or address individual teacher concerns or to communicate

to the superintendent or anyone acting on his behalf.

[508] These seven classes were organized in a manner that exceeded the class size and composition standard without the requisite principal-teacher consultation that is a precondition to the classes continuing with this organization after September 30, 2007. In the circumstances, it is not necessary for me to determine whether Jennifer Chu attended the group meeting.

[509] The grievance is allowed with respect to each of the following classes at Hastings Elementary Community School (School District No. 39 (Vancouver)):

| | Class | Teacher | Size | IEPs |
|--|--------------|--------------------|-------------|--------------------|
| Hastings Elementary Community School (School District No. 39 (Vancouver)) | | | | |
| 1 | Grades 4/5 | L. Coulter | 25 | 4 (1C, 1F, 1H, 1R) |
| 2 | Grade 5 | S. Patrick | 24 | 4 (3Q, 1R) |
| 3 | Grades 5/6 | K. Appleton | 28 | 4 (1D, 2Q, 1R) |
| 4 | Grades 6/7 | G. Morrow / J. Chu | 27 | 4 (1H, 2Q, 1R) |
| 5 | Grades 6/7 | S. Brothers | 28 | 4 (1D, 1H, 1Q, 1R) |
| 6 | Grades 6/7 | A. Low | 28 | 4 (1Q, 3R) |
| 7 | Grades 6/7 | T. Hampel | 28 | 4 (2Q, 2R) |

[510] As agreed, I reserve and retain jurisdiction on a remedy if the union and employer are unable to agree. The circumstances in which the classes were organized and the failure to hold the requisite principal-teacher consultations relied on by the employer to support its submission there had been the requisite consultation will be relevant in the determination of an appropriate remedy.

C. Thornhill Elementary School

[511] With the exception of the Principal's failure to consult with preparation relief teacher Anne Hill, who taught Music to five Grade 4 and 5 classes for which there was a consultation, the consultation process and individual consultations at Thornhill Elementary School (School District No. 82 (Coast Mountains)) were fully in compliance with the requirements of the *School Act*.

[512] Ms Hill approached the Principal to inquire whether a consultation meeting was required between him and her. He did not tell her one should be scheduled. He did not include her among the teachers to be consulted, although he did include the other preparation relief teacher, who happened to be school's union staff representative.

Instead, he directed Ms Hill to speak to the same staff representative, who testified Ms Hill did not approach her. The Principal did not follow-up.

[513] The employer submits, in the circumstances, the failure to consult Ms Hill is not the fault of the Principal, but the staff representative. This is not the intended operation of the legislation. It was the Principal's responsibility to identify and consult teachers. It was the Superintendent's responsibility to ensure the required consultations occur.

[514] These five classes were organized in a manner that exceeded the class size and composition standard without the requisite principal-teacher consultation that is a precondition to the classes continuing with this organization after September 30, 2007. The grievance is allowed with respect to the following five classes at Thornhill Elementary School.

| | Class | Teacher | Size | IEPs |
|---|--------------|--------------------------------|-------------|--------------------|
| Thornhill Elementary School (School District No. 82 (Coast Mountains)) | | | | |
| 1 | Grade 4 | J. Billey / A. Hill (Music) | 26 | 5 (2D, 1G, 2Q) |
| 2 | Grade 4 | L. Yeats / A. Hill (Music) | 28 | 6 (2D, 4Q) |
| 3 | Grades 4/5 | C. Sneddon / A. Hill (Music) | 23 | 5 (2D, 1G, 2Q) |
| 4 | Grade 5 | L. MacBean / A. Hill (Music) | 25 | 4 (1C, 1D, 1K, 1Q) |
| 5 | Grades 5/6 | P. Kolterman / A. Hill (Music) | 25 | 5 (1D, 4Q) |

[515] As agreed, I reserve and retain jurisdiction on a remedy if the union and employer are unable to agree. Because of the decision on the opinions of the Principal and Superintendent on the appropriateness for student learning of these and the other classes at Thornhill Secondary School, the matter of remedy for this consultation contravention of the *School Act* will be addressed in the broader context of a remedy for the classes.

D. Qualicum Beach Middle School

[516] Through oversight, the Principal of Qualicum Beach Middle School (School District No. 69 (Qualicum)) failed to consult a teacher who taught a class one day in the six day cycle. Consequently, this class was organized in a manner that exceeded the class size and composition standard without the requisite principal-teacher consultation that is a precondition to the class continuing with this organization after September 30, 2007.

[517] The grievance is allowed with respect to the following class at Qualicum Beach

Middle School.

| | Class | Teacher | Size | IEPs |
|---|--------------------|-------------------------|------|--------------------|
| Qualicum Beach Middle School (School District No. 69 (Qualicum)) | | | | |
| 1 | Social Studies 7-3 | C. Johnsen / B. Worthen | 30 | 5 (1G, 1H, 2Q, 1R) |

As agreed, I reserve and retain jurisdiction on a remedy if the union and employer are unable to agree.

[518] The union submits the Principal failed to consult a teacher in February 2008 when a fourth student, who had been in the class throughout the year was designated a special needs student entitled to an IEP, which was completed in June. This is a class for which there had mistakenly been a consultation in September because it was thought the class had four students with IEPs when, in fact, there were three. The employer submits because there was prior consultation about a class that did not change, the student was in the class all year and the IEP was not in place until June, no further consultation was required.

[519] There were minimal submissions on the application and interpretation of section 76.4 of the *School Act* in this situation.

- (1) In this section, "student with an individual education plan" has the same meaning as in section 76.1.
- (2) If the size of any class for any of grades 4 to 12 in any school in a school district exceeds 30 students, subject to subsection (4), the board of that school district must ensure that the class size does not increase unless
 - (a) in relation to a class for any of grades 4 to 7, the requirements of section 76.1 (2.1) (a) and (b) are met, or
 - (b) in relation to a class for any of grades 8 to 12, the requirements of section 76.1 (2.2) (a) and (b) are met.
- (3) If any class in any school in a school district has more than 3 students with an individual education plan, subject to subsection (4), the board of that school district must ensure that the number of students with an individual education plan in the class does not increase unless the requirements of section 76.1 (2.3) (a) and (b) are met.
- (4) Subsections (2) and (3) apply to a board, in relation to a school year, after the date under section 76.3 (5) on the report that the board submits to the minister under section 76.3 (10) for that school year.
- (5) Subsection (6) applies if, after the date under section 76.3 (5) on the report that the board submits to the minister under section 76.3 (10), the size of a class for any of grades 4 to 12 in a school in the school district changes and, as a result of the change, the size of the class
 - (a) exceeds 30 students, or
 - (b) increases, in accordance with subsection (2) of this section.

- (6) As soon as practicable after the change in the size of a class referred to in subsection (5),
 - (a) the principal of the school must provide the school planning council with the rationale for the change in the organization of the class,
 - (b) the superintendent of schools must provide the board and the district parents' advisory council, if established for the school district, with the rationale for the change in the organization of that class, and
 - (c) the board must provide the minister with the rationale for the change in the organization of that class.
- (7) The minister must make available to the public the rationale received under subsection (6) (c).

[520] There was no change in the size of the class. Was there a change in class composition that triggered a requirement for consultation under section 76.4(3)? The class did not have more than three students entitled to an IEP at the time the fourth student was designated. It was not a class as described in section 76.4(3) and no consultation was required despite the fact there had mistakenly been a consultation in September.

[521] In all other respects the consultation process and individual principal-teacher consultations at Qualicum Beach Middle School were in accordance with the intention of the *School Act*.

E. Claremont Secondary School

[522] The consultation process and individual consultations at Claremont Secondary School (School District No. 63 (Saanich)) were in compliance with the requirements of the *School Act*.

F. Guildford Park Secondary School

[523] The consultation process and individual consultations at Guildford Park Secondary School (School District No. 36 (Surrey)) were in compliance with the requirements of the *School Act*.

11.2 Principal and Superintendent Opinions on Disputed Classes

[524] Despite the variation in size and composition of the disputed classes at the representative schools, the union did not acknowledge any of the classes met the standard it fashioned in its matrix. The employer did not acknowledge any of the disputed classes did not meet the requirements of the *School Act*.

[525] Thornhill Elementary School is a unique situation. After the consultations, the Principal was of the opinion that none of the classes that exceeded the class size and composition standard was appropriate for student learning. He communicated this orally to the director of instruction. On October 2nd, he modified the district form for principal reporting and clearly stated he could not confirm the class were “acceptable” in the wording of the form.

[526] Despite this, on October 3rd without speaking to the Principal, the Superintendent, accompanied by the Director of Instruction, reported to the Board of Education that evening that he had reviewed all the “Principal’s reports for all schools and classes for the 2007/08 school year and I confirm as of this date, the organization of classes is in compliance with the provisions of the School Act and is appropriate for student learning.” The Superintendent was mistaken. At the earliest, the Principal was not satisfied the classes were appropriate for student learning until a month later.

[527] There was no opinion by the Principal that the disputed classes were appropriate for student learning on September 30th and a mistaken opinion by the Superintendent. Consequently, the disputed classes were organized in a manner that exceeded the class size and composition standard without the requisite principal and superintendent opinions that is a precondition to the class continuing with this organization after September 30, 2007.

[528] The grievance is allowed with respect to the following ten classes at Thornhill Elementary School.

| | Class | Teacher | Size | IEPs |
|---|--------------|--------------------------------------|-------------|--------------------|
| Thornhill Elementary School (School District No. 82 (Coast Mountains)) | | | | |
| 1 | Grade 4 | J. Billey / A. Hill (Music) | 26 | 5 (2D, 1G, 2Q) |
| 2 | Grade 4 | L. Yeats / A. Hill (Music) | 28 | 6 (2D, 4Q) |
| 3 | Grades 4/5 | C. Sneddon / A. Hill (Music) | 23 | 5 (2D, 1G, 2Q) |
| 4 | Grade 5 | L. MacBean / A. Hill (Music) | 25 | 4 (1C, 1D, 1K, 1Q) |
| 5 | Grades 5/6 | P. Kolterman / A. Hill (Music) | 25 | 5 (1D, 4Q) |
| 6 | Grade 6 | D. Rivet / C. Lambright (Library) | 24 | 4 (4Q) |
| 7 | Grade 6 | S. Rusch / C. Lambright (Library) | 27 | 4 (1D, 3Q) |
| 8 | Grade 6 | S. Dhaliwal / C. Lambright (Library) | 27 | 4 (4Q) |
| 9 | Grade 7 | K. Fraser / C. Lambright (Library) | 26 | 4 (2D, 2Q) |
| 10 | Grade 7 | C. Killoran / C. Lambright (Library) | 28 | 5 (1C, 4Q) |

[529] For reasons explained above and after hearing extensive evidence about the following classes, I find there was compliance by the principals with the consultation requirements of the *School Act* and there were reasonably held opinions by the principals and superintendents that these classes were appropriate for student learning. In accordance with the determinations and explanations above I defer to the opinions of the principals and superintendents and dismiss the grievance with respect to these classes.

| | Class | Teacher | Size | IEPs | ≤ 33 |
|---|---------------------|---------------------------|-------------|--------------------|-------------|
| Frank J. Mitchell Elementary School (School District No. 5 (Southeast Kootenay)) | | | | | |
| 1 | Grades 4/5 | G. LeClair / M. Bellerby | 28 | 4 (3H, 1Q) | 32 |
| 2 | Grades 6/7 | B. Endicott / M. Bellerby | 26 | 5 (1C, 2H, 2Q) | 31 |
| Merritt Central Elementary School (School District No. 58 (Nicola-Similkameen)) | | | | | |
| 3 | Grade 5 | S. McIvor / S. Carroll | 28 | 5 (3D, 1H, 1R) | 33 |
| 4 | Grade 6 | P. Zaluski / S. Carroll | 26 | 6 (2H, 1K, 3Q) | 32 |
| Qualicum Beach Middle School (School District No. 69 (Qualicum)) | | | | | |
| 5 | French 6-3 | L. Murray | 24 | 3 (1D, 1Q, 1R) | 27 |
| 6 | Science 6-3 | M. Morgan | 24 | 3 (1D, 1Q, 1R) | 27 |
| 7 | Homeroom 6-4 | H. Indricksons | 27 | 5 (1F, 4Q) | 32 |
| 8 | French 6-4 | S. Verheyen | 27 | 5 (1F, 4Q) | 32 |
| 9 | Visual Arts 6 | C. Dempster | 21 | 5 (1H, 4Q) | 26 |
| 10 | Sewing 6 | J. Savage | 19 | 4 (1G, 2Q, 1R) | 23 |
| 11 | Home Ec. 6 (Foods) | E. Hansen | 23 | 4 (3Q, 1R) | 27 |
| 12 | Visual Arts 7 | C. Dempster | 27 | 5 (1G, 1H, 1R, 1Q) | 32 |
| 13 | Home Ec. 7 (Foods) | E. Hansen | 26 | 4 (1C, 1H, 1Q, 1R) | 30 |
| 14 | Sewing 7 | J. Savage | 26 | 4 (1C, 1G, 2Q) | 30 |
| 15 | Computers 7 | B. Davidson | 23 | 5 (1G, 2Q, 2R) | 28 |
| 16 | Drama 7 | J. Smith | 28 | 4 (1G, 2Q, 1R) | 32 |
| 17 | Homeroom 8-1 | C. Johnsen | 27 | 5 (1E, 2H, 2Q) | 32 |
| 18 | French 8-1 | G. Dodd | 27 | 5 (1E, 2H, 2Q) | 32 |
| 19 | Science 8-1 | E. Butts | 27 | 5 (1E, 2H, 2Q) | 32 |
| 20 | Phys. Ed. 8 | C. Johnsen | 25 | 4 (1D, 1G, 2Q) | 29 |
| 21 | Phys. Ed. 8 (Girls) | L. Sprague | 27 | 6 (3E, 2H, 1Q) | 33 |
| 22 | Computers 8 | B. Davidson | 24 | 5 (2D, 2G, 1R) | 29 |
| 23 | Design Craft 8 | D. Haynes | 19 | 5 (1E, 1G, 3Q) | 24 |
| Claremont Secondary School (School District No. 63 (Saanich)) | | | | | |
| 24 | English 12 | K. Andiel | 24 | 4 (3Q, 1R) | 28 |
| 25 | Social Studies 9 | G. Aujla | 28 | 5 (1D, 1H, 1R, 2Q) | 33 |

| | | | | | |
|----|---------------------|-------------|----|--------------------|----|
| 26 | Woodwork 10/11/12 | D. Beeston | 24 | 9 (1D, 1H, 3R, 4Q) | 33 |
| 27 | Intro to Business | R. Bussoli | 31 | 0 | 31 |
| 28 | French 10 | S. Card | 31 | 0 | 31 |
| 29 | Comm. Rec. 11 | K. Harris | 31 | 1 (Q) | 32 |
| 30 | Biology 12 Enriched | S. Hayes | 32 | 0 | 32 |
| 31 | Art 9 | C. Jardey | 26 | 5 (2D, 1G, 2Q) | 31 |
| 32 | Social Studies 10 | G. Mitchell | 31 | 1 (1Q) | 32 |
| 33 | History 12 | G. Mitchell | 31 | 2 (2Q) | 33 |
| 34 | Prin. of Math. 12 | K. Nelson | 31 | 0 | 31 |
| 35 | Math. 11 App. | M. Skanks | 24 | 4 (1H, 2Q, 1R) | 28 |
| 36 | Math. 12 App. | M. Skanks | 26 | 5 (3Q, 2R) | 31 |

Guildford Park Secondary School (School District No. 36 (Surrey))

| | | | | | |
|----|--------------------|-------------------|----|--------------------|----|
| 37 | Humanities 8 | Alexis Biggar | 27 | 6 (1A, 3H, 2R) | 33 |
| 38 | Home Ec. – Foods 9 | Robyn Mastroianni | 24 | 4 (1Q, 3R) | 28 |
| 39 | Home Ec. Foods 10 | Robyn Mastroianni | 26 | 6 (2C, 1D, 1K, 1R) | 32 |
| 40 | Humanities 8 | Laurel Cooper | 26 | 7 (2Q, 5R) | 33 |
| 41 | Humanities 8 | Laurel Cooper | 24 | 5 (1K, 1Q, 3R) | 29 |
| 42 | Art 8 | Myra Morgan | 20 | 5 (1C, 2G, 1Q, 1R) | 25 |

[530] The following nineteen classes at three schools are to be examined.

| | Class | Teacher | Size | IEPs | ≥ 34 |
|--|-------|---------|------|------|------|
|--|-------|---------|------|------|------|

Qualicum Beach Middle School (School District No. 69 (Qualicum))

| | | | | | |
|---|--------------------|----------------|----|--------------------|----|
| 1 | Phys. Ed. 6 (Boys) | H. Indricksons | 29 | 6 (1D, 1F, 3Q, 1R) | 35 |
| 2 | Homeroom 7-2 | C. Dempster | 30 | 4 (1G, 2Q, 1R) | 34 |
| 3 | French 7-2 | L. Murray | 30 | 4 (1G, 2Q, 1R) | 34 |
| 4 | Science 7-2 | M. Morgan | 30 | 4 (1G, 2Q, 1R) | 34 |
| 5 | Homeroom 7-3 | L. Murray | 30 | 5 (1G, 1H, 2Q, 1R) | 35 |
| 6 | Science 7-3 | J. Smith | 30 | 5 (1G, 1H, 2Q, 1R) | 35 |
| 7 | Mathematics 7-3 | J. Smith | 30 | 5 (1G, 1H, 2Q, 1R) | 35 |
| 8 | Phys. Ed. 7 (Boys) | H. Indricksons | 29 | 5 (1G, 1H, 2Q, 1R) | 34 |

Claremont Secondary School (School District No. 63 (Saanich))

| | | | | | |
|----|-------------------|-------------|----|---------------------|----|
| 9 | Chemistry 12E | M. Ewan | 36 | 0 | 36 |
| 10 | Social Studies 9 | S. Hooper | 29 | 8 (2G, 1K, 4Q, 1R) | 37 |
| 11 | Art 10/11/12 | C. Jardey | 31 | 4 (1G, 3Q) | 35 |
| 12 | Communications 11 | T. Orme | 26 | 15 (2D, 1K, 9Q, 3R) | 41 |
| 13 | Comm. Rec. 11 | D. Reisig | 31 | 3 (3Q) | 34 |
| 14 | Comm. Rec. 11 | S. Ryan | 28 | 6 (1G, 3Q, 2R) | 34 |
| 15 | Science 9 | Lucky Walia | 29 | 6 (1D, 1G, 3Q, 2R) | 35 |

Guildford Park Secondary School (School District No. 36 (Surrey))

| | | | | | |
|----|---------------|------------------|----|------------------------|----|
| 16 | Phys. Ed. 12 | Alexis Biggar | 31 | 5 (2H, 2Q, 1R) | 36 |
| 17 | Science 9 | Kirstin Farquhar | 32 | 4 (1H, 2R, 1Q) | 36 |
| 18 | Visual Arts 9 | Myra Morgan | 34 | 0 | 34 |
| 19 | Art 11/12 | Myra Morgan | 31 | 6 (1A, 2C, 1K, 1Q, 1R) | 37 |

[531] The evidence about these classes is summarized in Appendix 4 and will not be repeated in its entirety here.

A. Qualicum Beach Middle School**1. Physical Education 6 (Boys) – 29 Students with 6 IEP Students (H. Indricksons)**

[532] The composition of this class was organized by Mr. Indricksons and the teacher of a Physical Education 6 (Girls) class. They chose to teach gender based, rather than co-ed, classes. An imbalance in the number of boys and girls in the combined classes was by addressed in September by the two teachers deciding to place five boys each term with the class of girls. This resulting co-ed composition of the other class left Mr. Indrickson with twenty four students of whom no more than three or four were students with an IEP in each term. It was reasonable for the principal to hold the opinion this class operating with twenty four students, of whom three or four were students with an IEP was a class appropriate for student learning. The grievance with respect to this class is dismissed.

2. Home Room 7-2 – 30 Students with 4 IEP Students (C. Dempster)**3. French 7-2 – 30 Students with 4 IEP Students (L. Murray)****4. Science 7-2 – 30 Students with 4 IEP Students (M. Morgan)**

[533] These three classes had the same students. Ms Dempster was the homeroom teacher and taught Language Arts, Mathematics and Social Studies. At the time of the consultation, the class had thirty-one students but it was anticipated it would be thirty by September 30th and no teacher consent would be required. It was a class about which the Principal had reservations and he intended to carefully monitor it throughout the year. At Ms Dempster's request, additional special education assistant hours were assigned to her class.

[534] One of the students was French exempt but attended some of the French classes and was under Ms Murray's supervision.

[535] This new Principal was confronted with a difficult situation. There were 119 Grade 7 students of whom fifteen were designated special needs and entitled to an IEP. Four heterogeneous classes had been organized in the spring and the student placement had resulted in relatively balanced classes. Two classes of twenty-nine and thirty students each had three students with an IEP and met the class size and composition standard. One class of thirty students with five students with an IEP was also grieved. Creating combined grades classes would not avoid having classes that exceeded the class size and composition standard. There was no opportunity to obtain another 1.0 FTE or more teacher FTE allocation to allow a fifth Grade 7 class to be organized.

[536] This was a class recognized as potentially problematic, but one about which the Principal made a thoughtful and considered opinion it was organized in a manner that was appropriate for student learning. It was an informed and reasonably held opinion in all of the circumstances and one which arbitral review ought to respect and give deference. Consequently, the grievance with respect to these classes is dismissed.

5. Home Room 7-3 – 30 Students with 5 IEP Students (L. Murray)

6. Science 7-3 – 30 Students with 5 IEP Students (J. Smith)

7. Mathematics 7-3 – 30 Students with 5 IEP Students (J. Smith)

[537] These three Grade 7 classes had the same students. The grievance with respect to the Social Studies 7-3 class of this same group of students has been allowed because the Principal overlooked consulting with one of the teachers of that class.

[538] Ms Murray was the homeroom teacher and taught Language Arts and French. This Grade 7 class had five students with an IEP because one G designated student had a full-time special education assistant and spent only an hour or so a month in the homeroom class and did not attend the Science or Mathematics class.

[539] Again confronted with the number and composition of the Grade 7 student population, the Principal made a thoughtful and considered opinion this second class with more than three students with an IEP was organized in a manner that was appropriate for student learning. It was an informed and reasonably held opinion in all of the circumstances and one which arbitral review ought to respect and give deference. Consequently, the grievance with respect to these classes is dismissed.

8. Physical Education 7 (Boys) – 29 Students with 5 IEP Students (H. Indricksons)

[540] Mr. Indricksons taught this class of boys from the 7-1 and 7-2 homerooms, several of whom he taught the previous year. The boys and girls homeroom classes were similar in size (29 and 30 students) but there were seven boys and two girls entitled to an IEP. He did not discuss with the other Physical Education teacher balancing the students entitled to an IEP between the classes.

[541] Mr. Indricksons had extensive knowledge of the five designated boys. The concern he expressed to the Principal was managing the three behavioural designated students. He disagreed with the organization of the class because he did not know if all of the students' needs would be adequately met.

[542] The Principal considered Mr. Indricksons' disagreement with the organization of this class but decided gender split classes were appropriate for student learning. His opinion that this class was appropriate for student learning was a reasonably held opinion based on a reasonable expectation that any issues that arose with the behaviour of any of the designated special needs students, with whom Mr. Indricksons was well acquainted, or with any other student could be addressed by the teacher with assistance from the BOOST room or the Principal, if necessary.

[543] The Principal reviewed the individual education plans of the designated special needs students and was informed that some of the designated special needs students were good athletes and unlikely to require additional support for this class.

[544] I find that the Principal had an informed and reasonable held opinion that this class was appropriate for student learning. There is no compelling reason I should not defer to that opinion. The grievance with respect to this class is dismissed.

B. Claremont Secondary School**9. Chemistry 12E – 36 Students with 0 IEP Students (M. Ewan)**

[545] While Mr. Ewan had two classes in the semester of Chemistry 12 with thirty-five and twenty-two students, as the employer has submitted the focus is not the teacher's workload. The focus is on the class. This class exceeded the class size standard by one-sixth the standard of thirty.

[546] In the spring, the timetable was loading for the Principal with thirty-five or thirty-

six students in one Chemistry 12E class. He unsuccessfully tried ways to redistribute the students who selected this course between the two classes in the timetable. He testified that the whole idea is not to have classes this large, but he was having difficulty resolving the distribution.

[547] The Principal spoke to Mr. Ewan who agreed to a class of thirty-two for reasons associated with ensuring students acquire the necessary prerequisite to maintain the Advanced Placement Chemistry course in the second semester and an expectation that one or more students would drop the course. The Principal loaded this class with thirty-two students. To accomplish this he set the maximum in the software program for this class at thirty-four and at thirty-two for the other class. This achieved placement of all the students who elected Chemistry 12E in two classes of thirty-two and twenty-two.

[548] This is when the problem began. The Principal forgot to reset the maximum for these classes at thirty when he locked the master timetable. Others saw the maximum was set at thirty-four and added students without speaking to either Mr. Ewan or the Principal. The thirty-third student was added September 5th. The thirty-fourth student was added September 6th. The thirty-fifth and thirty-sixth students were added September 10th.

[549] The Principal surmises a now retired Vice-Principal spoke to Mr. Ewan because he thinks more students would not be added without someone speaking to Mr. Ewan despite the maximum of thirty-four was still in the locked master timetable and because he seems to recall the Vice-Principal said she had spoken with Mr. Ewan who agreed with the addition of the three students. Mr. Ewan does not recall anyone speaking to him and his agreement was not discussed or noted in the consultation meeting on September 24th. The Vice-Principal did not testify. The conclusion must be that Mr. Ewan did not agree to exceed the class size standard beyond thirty-two.

[550] The published rationale for this class is one that does not address what caused the class to have more than thirty students. It is: "This class is made up of highly motivated academic students. Additional support is provided for lab work." The former statement is a questionable assumption when it is known course selection is sometimes driven by parental expectations rather than informed, realistic independent student choice.

[551] By the date of the consultation, what the Principal found unacceptable and inappropriate in the spring had happened. The discussion was how to salvage the situation by supporting Mr. Ewan to make it happen. No other option was explored. Student timetables were not examined to determine if there were spares at the same time as the other class that allowed a change for one or more students between the two classes.

[552] The Principal set an agreed limit for the class above the class size standard after discussion with the teacher. That limit was exceeded without the Principal's knowledge. He did not confirm with the teacher that the additional number above the agreed limit had the teacher's agreement. There is no basis for recognizing the Principal's opinion that a class in September was appropriate for student learning when that size class for this course was not acceptable in June. This is not a situation where there ought to be deference to the Principal's changed opinion with no new circumstances to justify the change.

[553] The grievance is allowed with respect to this class. As agreed, I reserve and retain jurisdiction on a remedy if the union and employer are unable to agree.

10. Social Studies 9 – 29 Students with 8 IEP Students (S. Hooper)

[554] The composition of this and other Grade 9 classes was a result of the Principal accepting and placing in the timetable a parameter that scheduled a cohort dubbed "the lost boys", none of whom was designated a special needs student, in a specially designed class. As a consequence, the twenty-two Grade 9 students with an IEP were clustered in other classes. In the first semester, the four Socials 9 classes had 0, 3, 8 and 4 students with an IEP. The one Socials 9E class had two students with an IEP.

[555] The teacher assigned to this class with eight designated special needs students chose to relinquish her assignment to this class when she obtained an assignment as student Scholarship Advisor. She kept her assignment to another Socials 9 and the Socials 9E class. Commencing September 5th, Ms Hooper, a first year teacher, taught the class as a TOC. She successfully applied on a posting; became the assigned teacher effective September 18th; and attended a consultation on September 24th. Through the Principal's efforts, by September 18th Ms Hooper had achieved a 1.0 FTE temporary appointment to teach four courses in the first semester.

[556] Ms Hooper was excited and enthusiastic. At the same time, she was overwhelmed with preparing adapted and modified material for eight students for eighty-minute blocks for a curriculum she had not taught and had no notice she was going to teach with a group with whom she could not do group activities because of their behaviour. The full-time special education assistant assigned to the class was working her first full-time year and had not been in a Socials 9 class before. Ms Hooper had never worked with a special education assistant before.

[557] Because Ms Hooper was a TOC before September 18th, she was not included in communications about the consultation process from the Principal or local union. Some of the teachers told her you meet, you talk and nothing happens.

[558] At the consultation meeting, she was asked how things were going and she said it was a difficult, quite overwhelming class. She was told the class was organized with eight students with IEPs because of “timetable constraints” – a “quirk” of the timetable. She had a full-time special education assistant and could pull students out of class and send them to their case managers if she needed to. The Principal recorded she has “no other concerns at this time.” She decided at the meeting and signed the union form stating she disagreed with the organization of this class. She testified she did so because she met, talked and she still had eight students with IEPs. She did not propose that anything be done except reduce the number of students with IEPs. She did not know what else could be done or that she was expected to make suggestions.

[559] The Principal concluded the organization of the class was appropriate for student learning based on his knowledge of Ms Hooper’s abilities; the fact she had applied to teach the class in which she had taught as a TOC; there was a full-time special education assistant and other school supports; if she asked for more support he would try to give it; and she did not say she disagreed with the organization of the class. He had no knowledge of the students, but testified he considered the class appropriate because the teacher said it was O.K.

[560] The Principal’s opinion about this core academic class, thought to have thirty students at the time of the consultation, was not a reasonably held opinion demanding deference. The organization of the class in excess of the class size and composition standard was mechanistic and determined by factors unrelated to the students in the

class. The Principal knew the assigned experienced teacher had selected this class to relinquish from the first day of school. Regardless of his confidence in Ms Hooper and her ability to instruct and manage eight students with four special needs category designations and their IEPs, twenty-two other students and a special education assistant, he explored no options to rebalance the Socials 9 classes. He did not inform himself about the nature and character of the composition of this class despite the red flag of its numbers.

[561] The grievance is allowed with respect to this class. As agreed, I reserve and retain jurisdiction on a remedy if the union and employer are unable to agree.

11. Art 10/11/12 – 31 Students with 4 IEP Students (C. Jardey)

[562] Ms Jardey did not testify. Her concern at the consultation meeting about space for this combined grades class was addressed by giving her access to an adjacent classroom. While this class is flagged by the sum of its number of students and the number of them with an IEP, there is no basis on which it can be said the Principal's opinion that this class was appropriate for student learning was not reasonably held. The grievance with respect to this class is dismissed.

12. Communications 11 – 26 Students with 15 IEP Students (T. Orme)

[563] The sum of the number of students in this class and the number with an IEP is the highest of any disputed class. The evidence is that often a majority of the students in this course are designated special needs students with IEPs. This class had fifteen of twenty-six.

[564] This class was organized by the English Department after a combined Grades 11 and 12 class in 2006-07 with twenty-four students of whom fourteen had an IEP was determined not to have been a successful approach. To ensure there was sufficient enrolment for a single grade basic English skills building Communications 11 course, potential students were identified and teachers and parents were spoken to about enrolling in Communications 11 rather than English 11. The goal was to set the selected students up for success.

[565] This was a complex group of students. Four of the students who did not have an IEP were ESL international students. Ms Orme taught two classes of ESL this

semester.

[566] Because of the nature of the curriculum, supports in place, including the number of students with Student Learning Centre blocks during which they could do course work, and Ms Orme's experience, passion and rapport with the students, the Principal believed the organization of this class was appropriate for student learning. He anticipated there might be some difficult times, but he would be there if Ms Orme asked for support.

[567] The organization of this class may have been a mistake. However, the English Department championed this organization and sought to make its composition appropriate. Ms Orme wanted to teach this class and is an ardent advocate for the students who take this course to obtain the requisite credits rather than regular or enriched English Language courses. In the circumstances, it was reasonable for the Principal to hold the opinion this was a class appropriate for student learning. The grievance with respect to this class is dismissed.

13. Community Recreation 11 – 31 Students with 3 IEP Students (D. Reisig)

14. Community Recreation 11 – 28 Students with 6 IEP Students (S. Ryan)

[568] Neither Mr. Reisig nor Mr. Ryan testified. Community Recreation 11 is an elective Physical Education course that emphasis mini-units of lifetime recreational activities and is popular with international students. An undercurrent in the testimony was an opinion shared by some of the teachers of this course that it should be limited to twenty-eight because of the number of out-of-school class activities.

[569] While these classes are flagged by the sum of the number of students and the number of them with an IEP, there is no basis on which it can be said the Principal's opinions that each of these classes was appropriate for student learning were not reasonably held. The grievance with respect to these classes is dismissed.

15. Science 9 – 29 Students with 6 IEP Students (L. Walia)

[570] The Principal testified the Grade 9 "lost boys" cohort and the Technical Education 9 class with twenty-one students of whom none had an IEP directed the organization of this Science 9 class. Mr. Walia testified he was concerned about having twenty-nine students in a room with twenty-four desks and students at lab benches where they were not facing forward. He had to ensure distractible students did not sit at benches. A

special education assistant was assigned to the class. The class presented the greatest workload of his four classes in the semester and required the most time to meet with case managers and maintain contact with parents.

[571] The Principal testified he concluded the organization of this class was appropriate for student learning because there was adequate support in the class and more was available if needed or requested. Mr. Walia had a good rapport with the students and during the consultation he said things were going fine.

[572] This is a class whose organization was neither deliberate nor thoughtful, but an unintended consequence of decisions made about organizing classes for other students. It is a core academic class whose size and composition warranted closer attention from the Principal. It would have received that attention had Mr. Walia expressed any concerns and told the Principal it was his opinion that the organization of the class was not appropriate for student learning. Instead, during the consultation, Mr. Walia, whose opinion the Principal respected, said the class was going well and the support was adequate.

[573] While this class is flagged by the sum of the number of students and the number of them with an IEP, there is no basis on which it can be said the Principal's opinion that this class was appropriate for student learning was not reasonably held. The grievance with respect to this class is dismissed.

C. Guildford Park Secondary School

16. Physical Education 12 – 31 Students with 5 IEP Students (A. Biggar)

[574] Ms Biggar testified this was a big group with big kids and she was excited to teach them when they first met. The Grade 12 students behave like they rule the roost and she anticipated a group who would be active and would like to be appreciated. While their absenteeism is not good for their grades, it makes the group who attend a good group to be with.

[575] In September, Ms Biggar agreed to the addition of the thirty-first student, a teen mother with a special needs designation in the Growing Together program. In doing so, she effectively communicated that she thought she could teach this class with this composition.

[576] Ms Biggar knew some of the students from previous years and, as is her preference, did not ask for any special education assistant or peer tutor support for this class. She communicated nothing that would raise a concern for the Principal that the organization of this class might not be appropriate for student learning or warranted a second look during the consultation, in which she said she was more a spectator of exchanges between the staff representative and Principal than participant.

[577] Ms Biggar testified Physical Education classes, conducted in larger spaces than other classes, typically have thirty or more students of whom several are designated special needs students with an IEP. She accepted a thirty-second student in the class after the consultation. There was no evidence or dispute about a second consultation.

[578] The class had a thirty-first student, who was the fifth student with an IEP, added with Ms Biggar's agreement before the consultation. While this class is flagged by the sum of the number of students and the number of them with an IEP, there is no basis on which it can be said the Principal's opinion that this class was appropriate for student learning was not reasonably held. The grievance with respect to this class is dismissed.

17. Science 9 – 32 Students with 4 IEP Students (K. Farquhar)

[579] There were four Science 9 classes reported at September 30th with a total of 126 students. Ten of the students were Grade 10 students. Seventeen of the students were entitled to an IEP. One class had thirty students of whom three were entitled to an IEP. One class had thirty-one students of whom six were entitled to an IEP. The third class had thirty-three students of whom four were entitled to an IEP. As happened in Ms Farquhar's class, there is often attrition during the semester and the number declines.

[580] Confronted with this number of students requiring the Science 9 course, the Principal was unable to limit the four classes to thirty. The option of having six classes with a class size average of 25.2 students does not appear to have been explored, although the school class size average was 25.6 students per class.

[581] Ms Farquhar was the Science Department head and approached the consultation as a required formality or ritual. She testified her approach was just go, find out, sign papers and get back to work. Neither as Department head nor as the

teacher of this class did she raise concerns with the Principal about the size and composition of the class. She told the Principal she had a peer tutor, the Youth Care Worker does pull-out with one student from time to time and the HOPE (Helping Others Provide Education) teacher popped in at times to give support. For the Principal, there was nothing exceptional about this class.

[582] While this class is flagged by the sum of the number of students and the number of them with an IEP, there is no basis on which it can be said the Principal's opinion that this class was appropriate for student learning was not reasonably held. The grievance with respect to this class is dismissed.

18. Visual Arts 9 – 34 Students with 0 IEP Students (M. Morgan)

19. Art 11/12 – 31 Students with 6 IEP Students (M. Morgan)

[583] In 2009, Ms Morgan received the British Columbia Art Teachers' Association Award for Excellence in Art Education. Her commitment to the profession and her discipline was evident in her testimony and in her decision before attending the consultation meeting that she would disagree with the organization of these two classes and a third class in dispute to place on the record how needy Guildford Park Secondary School and its students are. By doing this, she would do her part to make others aware of the school's needs. The issue she raised in the consultation about these two classes was the possibility of having a peer tutor for the Art 9 class. One was assigned and assisted in the preparation of supplies for the class.

[584] Adequate space for structured projects in the lower grade classes and diverse individual projects in the higher grade classes that are often combined grades classes is a continuing issue and challenge for the Art classes. The presence of peer tutors and special education assistants can make the issues more problematic. Having enough students at the lower grades to ensure course demand at the higher grades is also a concern.

[585] While these classes are flagged by the sum of the number of students and the number of them with an IEP in each class, there is no basis on which it can be said the Principal's opinions that these classes were appropriate for student learning were not reasonably held. The grievance with respect to this class is dismissed.

11.3 Summary of Disputed Classes for Which Grievance Allowed

[586] The grievance is allowed with respect to each of the following classes. As agreed, I reserve and retain jurisdiction on a remedy if the union and employer are unable to agree.

| | Class | Teacher | No Consult | No Opinion | No Deferral to Opinion |
|--|--------------------|----------------------------|------------|------------|------------------------|
| Merritt Central Elementary (School District No. 58 (Nicola-Similkameen)) | | | | | |
| 1 | Grades 4/5 | L. Dixon / S. Carroll | ✓ | | |
| Thornhill Elementary School (School District No. 82 (Coast Mountains)) | | | | | |
| 2 | Grade 4 | J. Billey / A. Hill | ✓ | ✓ | |
| 3 | Grade 4 | L. Yeats / A. Hill | ✓ | ✓ | |
| 4 | Grades 4/5 | C. Sneddon / A. Hill | ✓ | ✓ | |
| 5 | Grade 5 | L. MacBean / A. Hill | ✓ | ✓ | |
| 6 | Grades 5/6 | P. Kolterman / A. Hill | ✓ | ✓ | |
| 7 | Grade 6 | D. Rivet / C. Lambright | | ✓ | |
| 8 | Grade 6 | S. Rusch / C. Lambright | | ✓ | |
| 9 | Grade 6 | S. Dhaliwal / C. Lambright | | ✓ | |
| 10 | Grade 7 | K. Fraser / C. Lambright | | ✓ | |
| 11 | Grade 7 | C. Killoran / C. Lambright | | ✓ | |
| Hastings Elementary Community School (School District No. 39 (Vancouver)) | | | | | |
| 12 | Grades 4/5 | L. Coulter | ✓ | | |
| 13 | Grade 5 | S. Patrick | ✓ | | |
| 14 | Grades 5/6 | K. Appleton | ✓ | | |
| 15 | Grades 6/7 | G. Morrow / J. Chu | ✓ | | |
| 16 | Grades 6/7 | S. Brothers | ✓ | | |
| 17 | Grades 6/7 | A. Low | ✓ | | |
| 18 | Grades 6/7 | T. Hampel | ✓ | | |
| Qualicum Beach Middle School (School District No. 69 (Qualicum)) | | | | | |
| 19 | Social Studies 7-3 | C. Johnsen / B. Worthen | ✓ | | |
| Claremont Secondary School (School District No. 63 (Saanich)) | | | | | |
| 20 | Chemistry 12E | M. Ewan | | | ✓ |
| 21 | Social Studies 9 | S. Hooper | | | ✓ |

AUGUST 21, 2009, NORTH VANCOUVER, BRITISH COLUMBIA.

James E. Dorsey

James E. Dorsey

Appendix 1: 2006-07 Grievance – 546 Classes in 28 Schools in 6 Districts

| School Districts (6) | Schools (28) | Gr. 4-7 | Grades 8-12 | | | Totals | |
|--|--------------------------|-----------|-------------|-----------|-----------|----------|------------|
| | | >3 IEPs | >3 IEPs | >30 | Both | | ?? |
| 08. Kootney Lake (2 schools - 6 classes) | Erickson Elementary | 2 | | | | 2 | |
| | Prince Charles Secondary | | 4 | | | 4 | |
| 36. Surrey (6 schools - 289 classes) | Queen Elizabeth | | 2 | | | 2 | |
| | L.A. Matheson | | 19 | 20 | 15 | 54 | |
| | Panorama Ridge Secondary | | | | 2 | 2 | |
| | Kwantlen Park Secondary | | 36 | 2 | | 39 | |
| | École Kwantlen Park Sec. | | 41 | | 2 | 43 | |
| | Guildford Park Secondary | | 100 | 28 | 21 | 149 | |
| 39. Vancouver (3 schools - 10 classes) | Lord Byng | | 2 | 2 | 1 | 5 | |
| | Charles Tupper | | 1 | | | 1 | |
| | Templeton | | 2 | 1 | 1 | 4 | |
| 53. Okanghan Semilkameen (3 schools - 21 classes) | Similkameen Elementary | 3 | | | | 3 | |
| | Similkameen Secondary | | 9 | | 1 | 10 | |
| | Osoyoos Secondary | | 7 | 1 | | 8 | |
| 62. Sooke (2 schools - 122 classes) | Journey Middle | 30 | 6 | 3 | 2 | 41 | |
| | Spencer Middle | 14 | 41 | 20 | 5 | 81 | |
| 67. Okanagan-Skaha (12 schools - 98 classes) | Columbia Elementary | 1 | | | | 1 | |
| | Giant's Head | 3 | | | | 4 | |
| | Parkway Elementary | 1 | | | | 1 | |
| | Queen's Park | 1 | | | | 1 | |
| | Trout Creek | 1 | | | | 1 | |
| | Skaha Lake Middle | 1 | | | | 1 | |
| | McNicholl Park Middle | 7 | 9 | | 1 | 17 | |
| | KVR Middle | 11 | 6 | | | 17 | |
| | Summerland Middle | 15 | 4 | | | 19 | |
| | Penticton Secondary | | 18 | | 1 | 19 | |
| | Summerland Secondary | | 1 | 4 | 2 | 7 | |
| Princess Margaret Secondary | | 5 | 2 | 3 | 10 | | |
| E. & O. E. | Total Classes | 90 | 313 | 83 | 57 | 3 | 546 |

Appendix 2: 2007-08 Grievance – 1,122 Classes in 129 Schools in 16 Districts

| School Districts (16) | Schools (129) | K | Gr. 1 - 3 | Gr. 4-7 | Grades 8 - 12 | | | Totals | |
|---|---------------------------------|---------|-----------|---------|---------------|-----|------|--------|----|
| | | ≥4 IEPs | ≥4 IEPs | ≥4 IEPs | ≥4 IEPs | ≥31 | Both | | ?? |
| 05 Southeast Kootney (13 schools – 106 classes) | Amy Woodland Elementary | | 5 | 4 | | | | 9 | |
| | F.J.Mitchell Elementary | | | 2 | | | | 2 | |
| | Isabella Dicken Elementary | | | 2 | | | | 2 | |
| | Kootney Orchards Elementary | | 1 | 2 | | | | 3 | |
| | Mountain View Elementary | | | 1 | | | | 1 | |
| | Pinewood Elementary | | 2 | 2 | | | | 4 | |
| | Rocky Mountain Elementary | | | 1 | | | | 1 | |
| | Steeple Elementary | | 2 | 6 | | | | 8 | |
| | T.M. Roberts Elementary | | | 1 | | | | 1 | |
| | Laurie Middle | | | 11 | | | | 11 | |
| | Parkland Middle | | | | | 32 | | | 32 |
| | Mount Baker Secondary | | | | | 14 | 2 | | 16 |
| | Sparwood Secondary | | | | | 16 | | | 16 |
| 08 Kootney Lake (2 schools – 14 classes) | Erickson Elementary | | | 1 | | | | 1 | |
| | Prince Charles Secondary | | | | 13 | | | 13 | |
| 20 Kootney Columbia (5 schools – 18 classes) | Robson Community | | | 3 | 1 | | | 4 | |
| | Twin Rivers Elementary | | 1 | | | | | 1 | |
| | JL Crowe Secondary | | | | | | 1 | 1 | |
| | Rossland Secondary | | | | 7 | 2 | | 9 | |
| | Stanley Humphries Secondary | | | | 2 | 1 | | 3 | |
| 28 Quesnel (4 schools – 17 classes) | Riverview Elementary | | | | 2 | | | 2 | |
| | Correliou Senior Secondary | | | | 6 | | 1 | 7 | |
| | McNaughton Centre | | | | 3 | | | 3 | |
| | Quesnel Senior Secondary | | | | 5 | | | 5 | |
| 36 Surrey (16 schools – 167 classes) | A.J. McLellan Elementary | | | 4 | | | | 4 | |
| | Bershire Park Elementary | | | 1 | | | | 1 | |
| | George Greenaway Elem. | | | 2 | | | | 2 | |
| | McLeod Road Elementary | | | 1 | | | | 1 | |
| | Old Yale Road Elementary | | | 1 | | | | 1 | |
| | Earl Marriott Secondary | | | | | 1 | 1 | 2 | |
| | Elgin Park Secondary | | | | | 2 | 1 | 3 | |
| | Fleetwood Park Secondary | | | | | 1 | | 1 | |
| | Fraser Heights Secondary | | | | | 4 | | 4 | |
| | Guildford Park Secondary | | | | 43 | 16 | 14 | 73 | |
| | Johnston Heights Secondary | | | | | 4 | 3 | 7 | |
| | Kwantlen Park Secondary | | | | 35 | 8 | 6 | 49 | |
| | L.A. Matheson Secondary | | | | 7 | 2 | 2 | 11 | |
| | Lord Tweedsmuir Secondary | | | | 4 | | | 4 | |
| Queen Elizabeth Secondary | | | | 2 | | | 2 | | |
| Sullivan Heights Secondary | | | | 2 | | | 2 | | |

| School Districts | Schools | K | Gr. 1 - 3 | Gr. 4-7 | Grades 8 - 12 | | | Totals |
|--|-----------------------------------|---------|-----------|---------|---------------|-----|------|--------|
| | | ≥4 IEPs | ≥4 IEPs | ≥4 IEPs | ≥4 IEPs | ≥31 | Both | |
| 39 Vancouver (29 schools – 149 classes) | Bayview Elementary | | | 3 | | | | 3 |
| | Edith Cavell | | | 2 | | | | 2 |
| | Franklin | | | 2 | | | | 2 |
| | Fraser | | | 3 | | | | 3 |
| | Graham Bruce | | | 6 | | | | 6 |
| | Grandview | | 1 | 3 | | | | 4 |
| | Hastings Elementary | | | 6 | | | | 6 |
| | Kingsford | | | 1 | | | | 1 |
| | Livingstone | | | 2 | | | | 2 |
| | MacDonald | | | 1 | | | | 1 |
| | Nootka | | | 5 | | | | 5 |
| | Quilchena | | | 1 | | | | 1 |
| | Southlands | | | 3 | | | | 3 |
| | Strathcona | | | 8 | | | | 8 |
| | Trillicum Annex | 1 | 2 | 2 | | | | 5 |
| | Trudeau | | | 1 | | | | 1 |
| | University Hill | | | 2 | | | | 2 |
| | Britannia | | | | 2 | 7 | 8 | 17 |
| | Churchill Secondary | | | | 3 | 42 | 2 | 47 |
| | Eric Hamber Secondary | | | | 2 | 5 | | 7 |
| | Gladstone Secondary | | | | 7 | 1 | 1 | 9 |
| | John Oliver Secondary | | | | 4 | 3 | 3 | 10 |
| | Killarney Secondary | | | | 5 | | | 5 |
| | King George Secondary | | | | | 2 | | 2 |
| | Lord Byng Secondary | | | | 2 | | | 2 |
| | Point Grey Secondary | | | | 7 | 2 | 1 | 10 |
| | Templeton Secondary | | | | 13 | 2 | 2 | 17 |
| | Tupper Secondary | | | | | 5 | 7 | 12 |
| | University Hill Secondary | | | | | 1 | | 1 |
| 44 North Vancouver (7 schools – 41 classes) | Lynnmour Elementary | | 1 | | | | | 1 |
| | Ross Road Elementary | | 4 | | | | | 4 |
| | Westview Elementary | | 1 | 3 | | | | 4 |
| | Balmoral Secondary | | | | 1 | 3 | | 4 |
| | Carson Graham Secondary | | | | 17 | 5 | 2 | 24 |
| | Seycove Secondary | | | | | 1 | | 1 |
| | Sutherland Secondary | | | | 2 | 1 | | 3 |
| 58 Nicola Similkameen (6 schools – 26 classes) | Bench Elementary | | 1 | | | | | 1 |
| | Merritt Central Elementary | | 6 | | | | | 6 |
| | Diamondvale Elementary | | 1 | 4 | | | | 5 |
| | Nicola Canford Elementary | | 3 | | | | | 3 |
| | CMS Middle | | 1 | 7 | | | | 8 |
| | Merritt Secondary | | | 3 | | | | 3 |
| 61 Greater Victoria (8 schools – 52 classes) | Strawberry Vale Elementary | | 1 | | | | | 1 |
| | Colquitz Middle | | 1 | | | 1 | | 2 |
| | Lambrick Park Secondary | | | | | 13 | 2 | 15 |
| | Mt. Douglas Secondary | | | | | 11 | 1 | 12 |
| | Oak Bay High School | | | | | 5 | | 5 |

| School Districts | Schools | K | Gr. 1 - 3 | Gr. 4-7 | Grades 8 - 12 | | | Totals | |
|---|-----------------------------|----------|-----------|------------|---------------|------------|------------|----------|--------------|
| | | ≥4 IEPs | ≥4 IEPs | ≥4 IEPs | ≥4 IEPs | ≥31 | Both | | ?? |
| | Reynolds Secondary | | | | | 1 | | 1 | |
| | Spectrum Community | | | | | 3 | 1 | 4 | |
| | Victoria High School | | | | 6 | | 6 | 12 | |
| 62 Sooke (10 schools – 246 classes) | Crystal View Elementary | | 1 | | | | | 1 | |
| | Ecole John Stubbs | | 1 | 2 | | | | 3 | |
| | Hans Helgesen Elementary | | | 1 | | | | 1 | |
| | John Muir Elementary | | | 1 | | | | 1 | |
| | Wishart Elementary | | | 1 | | | | 1 | |
| | Dunsmuir Middle | | | | 45 | 7 | 4 | 56 | |
| | Journey Middle | | | 38 | 4 | 20 | 11 | 73 | |
| | Spencer Middle | | | | 35 | 11 | 5 | 51 | |
| | Belmont Secondary | | | | 27 | 10 | 6 | 43 | |
| | Pacific Secondary | | | | 16 | | | 16 | |
| 63 Saanich (3 schools – 61 classes) | Claremont Secondary | | | | 13 | 10 | 2 | 25 | |
| | Parkland Secondary | | | | 16 | 6 | 4 | 26 | |
| | Stelly's Secondary | | | | 6 | 4 | | 10 | |
| 68 Nanaimo (9 schools – 48 classes) | Bayview Elementary | | 1 | | | | | 1 | |
| | Brechin Elementary | | 2 | | | | | 2 | |
| | Fairview Community | | 1 | | | | | 1 | |
| | North Oyster Elementary | | 7 | | | | | 7 | |
| | Park Avenue Elementary | | 1 | | | | | 1 | |
| | Dover Bay Secondary | | | | 5 | | | 5 | |
| | John Barsby Community | | | | 14 | 4 | 5 | 23 | |
| | Nanaimo Dist. Sr. Secondary | | | | 3 | 2 | | 5 | |
| Woodlands Secondary | | | | 3 | | | 3 | | |
| 69 Qualicum (6 schools – 64 classes) | Bowser Elementary | | 3 | | | | | 3 | |
| | Ballenas Secondary | | | 4 | 2 | | | 6 | |
| | Kwalicum Secondary | | | 8 | | | | 8 | |
| | Oceanside Middle | | | 6 | | | | 6 | |
| | Qualicum Beach Middle | | | 39 | | | | 39 | |
| | Springwood Middle | | 2 | | | | | 2 | |
| 70 Alberni (1 and 1) | Eighth Avenue Elementary | | 1 | 1 | | | | 2 | |
| 73 Kamloops Thompson (3 schools – 9 classes) | Arthur Hatton Elementary | | 3 | | | | | 3 | |
| | Sa-Hali Secondary | | | 2 | | | | 2 | |
| | Westsyde Secondary | | | 4 | | | | 4 | |
| 82 Coast Mountains (7 schools – 57 classes) | Clarence Michiel Elementary | | | 3 | | | | 3 | |
| | Kiti K Shan | | 1 | | | | | 1 | |
| | Kitwanga Elementary | | | 2 | | | | 2 | |
| | Thornhill Elementary | | | 11 | | | | 11 | |
| | Uplands Elementary | | 1 | 1 | | | | 2 | |
| | Calendonia Secondary | | | 4 | | | | 4 | |
| | Skeena Jr. Secondary | | | | 11 | 8 | 4 | 23 | |
| Second Semester | Skeena Jr. Secondary | | | | 6 | | 1 | 7 | |
| | Calendonia Secondary | | | | 4 | | | 4 | |
| E. & O. E. | Total Classes | 1 | 59 | 241 | 475 | 238 | 107 | 1 | 1,122 |

Appendix 3: Ministry of Education Designated Special Needs Categories

| Ministry Code | Description |
|---|--|
| A Physically Dependent | Students who are physically dependent with multiple needs. Dependent on others for meeting all major daily living activities. |
| B Deaf/Blind | Students with visual and auditory impairment which results in significant difficulties in developing communication, education, vocation and social skills. |
| C Moderate to Severe Profound Intellectual Disability | Students with intellectual functioning greater than 3 standard deviations below the norm (as per C level intellectual functioning assessment), delayed adaptive behaviour and functioning of similar degree as well, usually significant delay in social emotional development. |
| D Physical Disabilities or Chronic Health Impairments | A student is considered to have a physical disability or chronic health impairment due to nervous system impairment, musculoskeletal condition, or a chronic health condition when their education is adversely affected by their physical disability or chronic health impairment. |
| E Visual Impairment | Visual impairment includes a range of categories: blind, legally blind, partially sighted, low vision, critically visually impaired. A student whose visual acuity is not sufficient to participate with ease in everyday activities and where there is interference with optimal learning and achievement is considered visually impaired. |
| F Deaf or Hard of Hearing | A student who has a medically diagnosed hearing loss which results in substantial educational difficulty or a central auditory processing dysfunction must have an additional diagnosis of peripheral hearing loss in order for the student to be considered deaf or hard of hearing. |
| G Autism | The diagnosis of autism must be made by an appropriately qualified professional. Autism is a condition characterized by marked communication disorder and severe disturbance of intellectual, emotional and behavioural development. A student with autism exhibits impairment in reciprocal social interaction; verbal and non-verbal communication; imaginative activity; restrictive, repetitive and stereotyped patterns of behaviour, interests and activities. |
| H Intensive Behavioural Interventions / Serious Mental Illness | Students who exhibit antisocial, extremely disruptive behaviour consistently/persistently over time or with severe mental health conditions which result in profound withdrawal or other internalizing behaviours. These behaviours must be serious enough to be known to the school, district and community agencies and to warrant intensive interventions. |
| K Mild Intellectual Disability | Students with intellectually functioning between 2 and 3 standard deviations below the norm, as per C level intellectual functioning assessment, delayed adaptive behaviour and functioning of similar degree as well as possible gross and fine motor, communication, social reasoning, memory, problem solving and conceptual skill acquisition |

| | |
|--|---|
| P Gifted | Student who possess demonstrated or potential abilities of an exceptionally high capability with respect to intellect, creativity, or skills associated with specific disciplines. Students who are gifted often demonstrate outstanding abilities in more than one area. They demonstrate extraordinary intensity of focus in their area of talent or interest. |
| Q Learning Disabilities | Learning disabilities vary considerably in their severity and impact on learning. Students require an educational plan that builds on strengths while remediating or compensating for their disabilities through intense direct instruction and/or instruction in learning and compensatory strategies. Students with learning disabilities meet the following criteria: persistent difficulties in acquisition of pre-academic skills and/or acquisition of reading, writing and/or numeracy skills and/or a significant discrepancy between estimated learning potential and academic achievement as measured by norm-referenced instruments in Gr. 4-12; significant weakness in one or more cognitive processes (perception memory, attention, receptive or expressive language abilities, visual-spatial abilities) relative to overall cognitive functioning; not the result of other disabling conditions. |
| R Moderate Behaviour Support / Mental Illness | Students in the moderate behaviour category may exhibit one or more of the following: aggression, negative or undesirable internalized psychological state (anxiety, stress, depression); behaviours related to social problems (delinquency, substance abuse, child abuse or neglect); behaviours related to other disabling conditions like thought disorder, neurological or physiological conditions. The severity and frequency of the behaviour over an extended period of time have a very disruptive effect on classroom learning, social relations or personal adjustment. Students in rehabilitation programs jointly funded by the Ministry for Children and Families are included in this funding category when they meet the above criteria. |

Appendix 4: Representative Schools and Grieved Classes

4.1 Frank J. Mitchell Elementary School (SD No. 5 – Southeast Kootney)

Witnesses:

| | |
|-----------------------|--|
| Rob Allen | Superintendent (retired) |
| Margaret Bellerby | Teacher and Staff Representative |
| Trudy Colonello | Principal, Frank J. Mitchell Elementary School |
| Stephen Fairbairn | Co-Chair, Cranbrook and Fernie Teachers' Association |
| Robert G. (Rob) Norum | Secretary Treasurer |

Hearing: Sparwood, May 4 to 6, 2009

Disputed Classes at September 30, 2007:

| | Class | Teacher | Size | IEPs |
|----|------------|-----------------------------------|------|----------------|
| 1. | Grades 4/5 | G. LeClair / M. Bellerby (Music) | 28 | 4 (3H, 1Q) |
| 2. | Grades 6/7 | B. Endicott / M. Bellerby (Music) | 26 | 5 (1C, 2H, 2Q) |

1. School District No. 5 (Southeast Kootenay) – 2007-08 Classes Grieved

[587] In the 2007-08 school year, School District No. 5 (Southeast Kootenay) had approximately 5,400 students enrolled in its schools in the resource and tourism communities of Cranbrook, Jaffray, Fernie, Sparwood and Elkford in the Elk Valley.

[588] As at September 30, 2007, the school district reported class size and composition data for 946 classes in nineteen neighbourhood schools. There were 70 classes for Grades K–3 and 876 classes for Grades 4-12. (Ministry of Education's published report *Overview of Class Size and Composition in British Columbia Public Schools 2007/08 (School District 005 Southeast Kootenay)*)

[589] There were 24 classes with more than thirty students. Twelve were Grade 7 classes, for which the district reported the teachers or administrator teaching the classes agreed to, or requested, the class configuration. The remaining 12 classes in Grades 8 and higher did not require the teacher's consent.

[590] There were four or more students entitled to an IEP in 9 of the 70 Grades K-3 classes (12.9%) and 207 of the 876 Grades 4-12 classes (23.6%).

[591] In the fall of 2007, the maximum potential number of classes in the district that could be subject to a grievance challenging the class organization because of either its size or composition was 219 classes or 23.2% of the classes. These are the 12 classes with more than 30 students for which there was no reported teacher consent plus the

207 classes with more than 3 students entitled to an IEP. The actual number might be slightly lower because some of the classes with more than 30 students also had more than 3 students entitled to an IEP.

[592] The union's particulars of the 2007-08 school year grievance list 121 of the potential 219 classes at the following 13 schools:

| Elementary Schools | Classes |
|---------------------------|----------------|
| Amy Woodland | 10 |
| Frank J. Mitchell | 2 |
| Isabella Dicken | 2 |
| Kootenay Orchards | 3 |
| Mountain View | 1 |
| Pinewood | 4 |
| Rocky Mountain | 1 |
| Steeples | 8 |
| T.M. Roberts | 1 |
| Middle Schools | |
| Laurie | 11 |
| Parkland | 32 |
| Secondary Schools | |
| Mount Baker | 30 |
| Sparwood | <u>16</u> |
| Total | 121 |

[593] The district and provincial class size averages at September 30, 2007:

| 2007-08 | K | Grades 1-3 | Grades 4-7 | Grades 8-12 |
|----------------|----------|-------------------|-------------------|--------------------|
| Maximum | 19.0 | →21.0 | 28.0 | 30.0 |
| District | 17.3 | →21.0 | 24.1 | 22.5 |
| Provincial | 17.4 | 20.4 | 25.8 | 24.4 |

The steps the district took not to exceed the maximum permissible class size average of 21.0 students for Grades 1-3 was a significant influencing factor in the organization of classes at Frank J. Mitchell Elementary School, which the union selected as one of its representative schools. The class size averages for all district elementary schools were:

| Elementary School | K | Grades 1-3 |
|--------------------------|----------|-------------------|
| Amy Woodland | 16.5 | 21.7 |
| Frank J. Mitchell | 19.0 | 20.4 |
| Gordon Terrace | 20.0 | 22.4 |
| Grasmere | - | 08.0 |
| Highlands | 17.5 | 21.2 |
| Isabella Dicken | 14.5 | 21.9 |
| Jaffray | 13.0 | 19.5 |

| | | |
|-------------------|------|------|
| Kootenay Orchards | 22.0 | 21.3 |
| Mountain View | 21.0 | 22.3 |
| Pinewood | 13.0 | 23.4 |
| Rocky Mountain | 15.0 | 21.0 |
| Steeple | 21.0 | 18.8 |
| T.M. Roberts | 16.7 | 20.0 |

2. District Teacher Allocation to Frank J. Mitchell Elementary School (2007-08)

[594] Frank J. Mitchell has a homogeneous student body with no large subgroups in a community where there are frequent family movements into and out of Sparwood with the ebbs and flows of the Elk Valley economy.

[595] For the 2006-07 school year, the district reported Frank J. Mitchell had Grades K-7 with the following enrolment, number of students entitled to an IEP in each grade and class size averages. "KH" is Kindergarten half-time.

| 2006-07 | KH | 1 | 2 | 3 | 4 | 5 | 6 | 7 | Totals |
|--------------|------|------|----|----|------|----|----|----|--------|
| Students | 22 | 21 | 20 | 19 | 21 | 18 | 27 | 22 | 170 |
| IEP Students | 4 | 1 | 2 | 1 | 2 | 3 | 1 | 3 | 17 |
| Averages | 22.0 | 20.0 | | | 22.0 | | | | |

[596] Enrolment in Frank J. Mitchell had declined annually from 230 FTE students in 2001-02 to 159 FTE students ($170 - (0.5 \times 22) = 159$ FTE) in 2006-07. Secretary Treasurer Robert G. (Rob) Norum projected an enrolment of 156.5 FTE students for September 2007. This was a head count of 168 students with 23 attending half-time Kindergarten ($168 - (0.5 \times 23) = 156.5$ FTE). An assumption in this projection is that all students advance each year to the next grade. Principal Trudy Colonello testified that in her years as Principal at Frank J. Mitchell since 2005, no child has been retained in the same grade from one school year to the next.

[597] Ms Colonello received this projection in January 2007. With her local community knowledge from public health officials and others, she anticipated an increase, not a decline, in enrolment in September. She was concerned about the projected enrolment for Kindergarten, but less concerned about Grades 1-7 because of the transient nature of the community.

[598] The district's projected enrolment is reported in February to the Ministry of Education. The Ministry uses the data to make projected funding allocations in March, which are used by the district to build its budget for the upcoming July 1st to June 30th

fiscal year.

[599] The district's preliminary staffing allocation to the school was 7.0 FTE enrolling classroom teachers plus library, special education and administration for a total of 9.0 FTE. The staffing would be eight teachers and the principal. This was a reduction of 0.5 FTE from the 2006-07 school year when there had been seven single grade classes and half-time Kindergarten.

[600] Ms Colonello responded to this preliminary allocation with three class organization scenarios:

- (1) eight single grade classes with 7.5 FTE enrolling teachers;
- (2) eight classes of which only Kindergarten and Grade 7 would be single grade classes and all others would be two grade combined classes with 7.5 FTE enrolling teachers; and
- (3) all single grade classes with two half-time Kindergartens and 8.0 FTE enrolling teachers.

In each scenario, no class had more than three students entitled to an IEP.

[601] Mr. Norum received similar responses from two other elementary schools – Steeples and Highlands. No additional teaching staff was allocated to Frank J. Mitchell. The practice was to make spring staffing allocations based on enrolment projections and to wait until September, when the district sees “the whites of the students’ eyes” to make adjustments.

[602] The anticipated enrolment in Grades 4, 5 and 6 was 17, 21 and 17 students, respectively for a total of 55 students. On March 29th, after discussion with Director of Human Resources Terry Kirkum, who said Frank J. Mitchell could operate with two combined grade classes for the 55 students in Grades 4, 5 and 6, of whom seven were students entitled to an IEP, Mr. Norum set the school enrolling teacher staffing at 7.5 FTE, not 8.0 FTE, for seven, not eight, classes.

[603] The allocation of 7.5 FTE for enrolling teachers includes 0.5 FTE preparation time (1,335 minutes per work week with 90 minutes per week preparation time: $(90 \times 7 = 630) \div 1,335 = 0.472$ FTE rounded up to 0.5 FTE). Staffing allocations are usually rounded up to the nearest tenth of an FTE.

[604] Mr. Norum used this staffing allocation for budget preparation. If the enrolment for Kindergarten was higher than projected, it would be dealt with in September.

[605] The district staffing ratio for administration is one principal FTE for 300 FTE students. For Frank J. Mitchell this produced 0.521 FTE, which was rounded up to 0.6 FTE. The principal would teach the remaining 0.4 FTE time.

[606] The district ratio for library staffing is one teacher FTE for 825 students. It had been 750 students, prior to a 10% reduction for cost savings a few years ago. The ratio had been 1:702 under the provincial collective agreement in 2001 before the decrease to 1:750 and then to 1:825. For Frank J. Mitchell, the library allocation on a projected enrolment of 156.5 FTE students for 2007-08 was $156.5 \div 825 = 0.189$ FTE rounded up to 0.2 FTE.

[607] The Special Education allocation was 0.7 FTE teaching staff. The district calculates \$87,500 per FTE for salary, benefits and Teacher on Call time. Frank J. Mitchell was projected to receive \$128,000 special education funding based on five Level 2 students (C to G categories) at \$16,000 per student and six level 3 students (Category H) at \$8,000 per student. There were no Level 1 (A and B category) students funded at \$32,000 per student. The district withholds 2% for later distribution among all schools on a needs basis. The 98% of \$128,000, or \$125,440, was allocated to Frank J. Mitchell to support the eleven students.

[608] An allocation of 0.7 FTE special education teaching staff was calculated at ratios of 1:425 students for categories not funded (K, Q and R) or 0.368 FTE plus learning assistance for all students at a ratio of 1:450 or 0.348 FTE ($0.368 + 0.348 = 0.716$, which was rounded down to 0.7 FTE). At \$87,500 per FTE, a funded rounded down 0.7 FTE allocation for teaching staff produced a special education school credit of \$1,400 ($\$87,500 \times 0.016 = \$1,400$).

[609] There was an allocated cost of \$125,116 for Education Assistance support staff, which was considered to be appropriate by the Principal, the District Principal of Special and Aboriginal Education and a district director. The cost for special education supplies was \$1,100 calculated at \$160 for each Level 2 student and \$50 for each Level 3 student. The annual cost was \$124,816 with the \$1,400 credit. This left a school credit

of \$624 ($\$125,400 - \$124,816 = \624).

[610] In mid-April, Mr. Norum met with all school principals to discuss enrolment, IEP students, bussing, noon hour coverage, class configuration, special education needs and before and after school supervision. Ms Colonello projected Kindergarten enrolment at 32, not 23. She was concerned about the desirability of the class configuration flowing from a 7.5 FTE enrolling teacher allocation, although she considered the number of students entitled to an IEP to be workable even with four additional students in the process of being assessed and potentially designated.

[611] Ms Colonello was concerned about the reduction of a 0.5 FTE teacher staffing allocation from the previous school year and believed her option with all single grade classes and 8.0 FTE classroom teachers was more appropriate. She knew the children in her school, who are the first concern for her and the teachers dealing with the children each day, and she had to support the teachers. She made her case and waited to hear back. There was no change in the initial January allocation. With school allocations for a secretary, supplies and equipment, the total school budget was \$1,017,978 or \$6,505 per projected student FTE.

3. Discontent with June Organization and Assignments for September

[612] In June, based on tentative and anticipated student registrations and after balancing the needs of the school with teachers' experience and expressed preferences for teaching assignments, Ms Colonello informed the teachers about the intended class organization and their assignments for September.

[613] Throughout the testimony, it was clear Ms Colonello has an open, collaborative, respectful and cooperative collegiality with the teachers at Frank J. Mitchell and their union representatives. Collectively, their first interest is the welfare of the children in their school. Stephen Fairbairn, Co-chair, Cranbrook and Fernie Teachers' Association, testified Ms Colonello "works really hard on behalf of children and teachers and is good at what she does."

[614] The organization of classes with the anticipated number of students entitled to an IEP in each class that Ms Colonello configured was as follows:

| Grade | KH | KH | 1 | 2 | 3 | 4/5 | 5/6 | 7 | Totals |
|---------------------|-----------|-----------|----------|----------|----------|------------|------------|----------|---------------|
| Students | 18 | 18 | 21 | 24 | 20 | 18/11 | 11/18 | 28 | 187 |
| IEP students | 0 | 0 | 1 | 1 | 1 | 5 | 5 | 1 | 14 |

The Grades 4/5 and 5/6 combined grades classes were larger and had more than three students entitled to an IEP.

[615] Student support services were assigned to Ms Colonello and Ms Barbara Endicott, who was to share a Grade 3 class assignment with Ms Jane Adachi, who was to have a half-time Kindergarten assignment. Ms Margaret Bellerby was assigned Music and Library, which provided preparation time for the other teachers. Her assignments were 0.5 FTE Kindergarten; 0.3 FTE Teacher-Librarian; 0.16 FTE Music; and 0.04 FTE technical support for a total 1.0 FTE.

[616] As is the practice, in June the teachers met to review the class lists for the coming school year and placed students in classes. The goal is classes that are balanced for gender and ability, while separating or putting siblings together and placing children who do, or do not, work and play well together. Ms Colonello deals with parental requests for student placement with specific teachers and communicates any of these placements to the teachers. The class lists are tentative and subject to change throughout the summer and into September.

[617] The teachers were distressed about the proposed organization of combined grade classes, the number of IEP students in these classes and the prospect of managing three well known Grade 5 boys progressing to Grade 6, one of whom had displayed exceptionally disruptive behaviour since Kindergarten.

[618] The class organization was the best Ms Colonello could do with the allocated staffing and other resources until after the summer when student registration would be more certain. She and the teachers hoped the school would be allocated another teacher and classes of combined grades could be avoided.

[619] Ms Colonello testified any single grade class can have a range of students at different levels and combined grade classes can work fine. Teachers do well with them, although there is more work teaching to two or more sets of prescribed learning outcomes. Some of the learning outcomes are progressive, as in Language Arts and Mathematics, while others, like Science and Social Studies, have distinct learning

outcomes. Teachers have to make choices all the time aware they are unable to do everything. She observed teachers make good choices all the time for children doing the best they can.

[620] The tentative class organization and uncertainty reverberated among the teachers who met, on their own initiative, to discuss the situation and to support their principal. On June 29th, seven teachers wrote Superintendent Ron Allen, with copies to several others, expressing concerns about the loss of a 0.5 FTE teacher allocation despite increased enrolment; combined grade classes; class sizes; possible relocation of students for one year to Mount View Elementary, which was to be amalgamated with Frank J. Mitchell for the 2008-09 school year; perceived inequitable staffing allocations between Frank J. Mitchell and Mount View; the impact of larger classes on IEP students; and the overall educational soundness of the decisions that had to be made as a consequence of the reduced teacher staffing allocation to the school. The teachers likely did not know the projected enrolment for Mount View was 196.0 FTE students, which was 39.5 FTE more than projected for Frank J. Mitchell.

[621] Mr. Allen had prior notice of the letter from Ms Colonello and spoke to the Assistant Superintendent and the Director of Human Resources. On July 3rd, Mr. Fairbairn, after telephoning Ms Colonello on receipt of a copy of the teachers' letter, wrote Mr. Allen about the situation and proposed a class organization of eight single grade classes. He wrote, in part:

... it seems to me that the two teachers who will be facing the 4/5 and 5/6 split classes will have a very tough year. Even if there is to be a re-organization in the fall (after school begins) those two teachers will have an added level of stress over the summer as they look toward the class composition that they have been assigned.

Mr. Allen thinks he spoke to Mr. Fairbairn about the letter, but he did not reply in writing to either him or the teachers.

[622] Mr. Allen testified the possibility of moving students from Frank J. Mitchell to Mountain View was considered and discussed by district management, but considered not to be a viable option that benefited the children.

[623] Mr. Fairbairn has taught combined grade classes in Elkford Valley schools. He testified it involves twice or more times the work required teaching a single grade class.

In the early grades, a few months difference in age can make huge differences in development. Combined grade classes compound the challenge of meeting the expectations of the curriculum, parents and teachers. He proposed single grade classes because it would improve the learning environment – “period.”

[624] Ms Bellerby testified classes of two combined grades include students with double the range of intellectual development. It requires a teacher to organize groups within the class that can work independently, which can be more difficult when there are students with behavioural problems.

4. More Student Registrations and New Class Organization – September 2007

[625] Because of the number of Grade 2 students registering over the summer, Ms Colonello anticipated organizing a combined Grades 2/3 class with the allocated teacher staffing. She forewarned two of the teachers who met with a third teacher to select top academic Grade 2 students to be placed in the combined class. In September, there were four more Grade 2 students than projected.

[626] New students registered for Grade 7 and the possibility of a combined Grades 6/7 class was discussed. A tentative class list of students was prepared by Ms Colonello, Ms Endicott and the two Grade 6 and 7 teachers. Ms Endicott expressed interest to teach this class. An increase in the number of Grade 7 students meant an extra block for band class at the high school. Contingency plans were made for this. In September, there were six more Grade 7 students than projected. One was a designated special needs student entitled to an IEP.

[627] In the last week of August, Mr. Kirkham acceded to Ms Colonello’s request for an additional 1.0 FTE teacher allocation and she reconfigured the class organization. Her new class organization for the first day of school on September 4th was as follows:

| Grade | KH | KH | 1 | 2 | 2/3 | 4 | 5 | 6/7 | 7 | Totals |
|---------------------|-----------|-----------|----------|----------|------------|----------|----------|------------|----------|---------------|
| Students | 17 | 20 | 24 | 24 | 3/19 | 21 | 21 | 19/7 | 27 | 202 |
| IEP students | 0 | 0 | 1 | 1 | 1 | 1 | 4 | 5 | 3 | 16 |

[628] Ms Endicott was willing to teach the Grades 6/7 class which had all the Grade 6 students in the school, of whom three were entitled to an IEP. The Grade 7 students to be added to the class were selected by the Grade 7 teacher, Ms Endicott and Ms Colonello. The only Grade 5 class had four students entitled to an IEP and one of them

could not be assigned to another class.

[629] The class organization seemed to be settled. There would have to be formal consultation meetings with the teachers of the two classes that had more than three students entitled to an IEP.

[630] At September 30th, the enrolment at Frank J. Mitchell was 182 FTE students with 16 entitled to an IEP. It was 197.5 FTE at Mount View. The January projections of 196 FTE students for Mount View had been accurate, but the 156.5 FTE student projection for Frank J. Mitchell had been low. There were more students than projected in Grades 2 and 7.

5. District Directs Reorganization to Meet District Primary Class Size Average

[631] Toward the end of the first week of school in September, Mr. Kirkham telephoned Ms Colonello to tell her the district primary class size average in the aggregate was above 21.0 FTE students. As a consequence, Frank J. Mitchell, Steeples and Highland elementary schools had to reorganize their classes.

[632] Primary Grade 3 students were to be combined with intermediate students in a Grades 3/4 class. Spreading the primary students over more classes helped lower the primary Grade 1-3 class average. Additional teacher allocations were being made at Steeples and Highlands, but not at Frank J. Mitchell.

[633] Mr. Kirkham told Ms Colonello the class organization she was to have at the school and the number of students in each class. There would be four classes with combined grades. Ms Colonello testified "I expressed dismay." It was not good for the school and she had concerns about the appropriateness of the resulting classes with combined grades. She learned she had limitations on her power and authority to organize classes with the resources she was allocated and had to follow this direction.

[634] Mr Allen testified similar changes in September had been done in previous years in primary grades. These changes, which sometimes create more combined Grades 3/4 classes was not a first choice, but a necessary one. One benefit was that the reorganization ensured there was space at Frank J. Mitchell for late enrolments in primary grades.

[635] Mr. Allen testified there can be positive benefits for learning in combined grades

classes and he has been at schools in his career where teachers insisted all classes, except Grade 1, are combined grades classes. Teachers had a focus on children for two years, rather than ten months, and each year they had to get to know only half the number of new children. It is his opinion there is no negative impact on students because they are in combined grades classes. In his view, the teacher's workload is not necessarily increased in a combined grades class. It may depend on the teacher.

[636] On Friday, September 7th, Mr. Allen and Assistant Superintendent Bill Gook telephoned Mr. Fairbairn to tell him the reason for the reorganization and that Ms Colonello had said she could handle it.

[637] Mr. Fairbairn testified it was clear to him the issue was not the quality of education for students at Frank J. Mitchell, but avoiding contravention of the class size average in the aggregate requirement of the *School Act*. This is what he reported after September 30th to the BCTF on its standardized forms for local unions reporting classes for consideration for inclusion in the provincial class size and composition grievance for the school year. Until this arbitration, neither Mr. Allen nor Ms Colonello was aware of this internal union process, the BCTF form or what Mr. Fairbairn reported.

[638] The resulting class reorganization, done on Monday September 10th, was:

| Grade | KH | KH | 1 | 2 | 2/3 | 3/4 | 4/5 | 6/7 | 7 | Totals |
|---------------------|-----------|-----------|----------|----------|------------|------------|------------|------------|----------|---------------|
| Students | 17 | 21 | 24 | 18 | 8/11 | 8/13 | 8/20 | 19/7 | 27 | 201 |
| IEP students | 0 | 0 | 1 | 1 | 1 | 1 | 4 | 5 | 2 | 15 |

The Grade 2 class was reduced to 18 from 24 students.

[639] Stacey Gatzke, the teacher assigned the Grades 3/4 class was new to the school. She had been teaching the class as a TOC after Ms Endicott took the student support services assignment, but this was her first home room teaching assignment. The number of students did not increase. The additional four students for the Grades 2/3 class were selected by the teachers and Ms Colonello.

[640] The Grade 5 teacher was upset with the change. Her assignment had gone from Grades 5/6 to Grade 5 to Grades 4/5. If she had previously taught Grade 4, it was not in the recent past and there had been no time to prepare to teach the new curriculum. The eight Grade 4 students for placement in the Grades 4/5 class were selected by Ms Endicott, the Grade 4 and 5 teachers and Ms Colonello. They were above average

achievers and none was a student entitled to an IEP.

[641] Based on enrolment of 182 FTE students, the total teaching staff allocation, including the principal and special education, was 10.3 FTE. The decrease from the projections in funding for three Level 2 and ten Level 3 designated special needs students with district staffing ratios resulted in a debit to the school of \$20,385. This is characterized by Mr. Norum as a district subsidy that resulted from Ms Colonello persuading the District Principal Special/Aboriginal Education to allocate an additional Education Assistant to support the Grades 4/5 and 6/7 classes. Education Assistants provide “direct and indirect support to teachers in the implementation of education programs for students.” The total school budget increased to \$1,172,083 or \$6,440 per student FTE. This was \$65 less per student FTE than projected (\$6,505 - \$6,440 = \$65).

[642] In September, Ms Colonello had 0.3 FTE of her time allocated to student support services. She gave assistance to needy students in the Grade 7 class by teaching them Mathematics in the library. She recruited a Teacher-on-Call for the vacant 0.7 FTE student support services position. Because she needed an experienced teacher, she persuaded Ms Endicott, who was knowledgeable in the Special Education program and its administration, to apply for the 0.7 FTE position and to retain 0.3 FTE to teach Language Arts to the Grades 6/7 class.

[643] The school district posted a 0.7 FTE teaching assignment for the Grades 6/7 class and a 0.5 FTE assignment to job share the Grades 2/3 class.

[644] A teacher new to the school successfully applied for the 0.7 FTE position relinquished by Ms Endicott. That teacher also had a 0.3 FTE assignment as Aboriginal Education Support Worker working with children of native ancestry. The school had a 0.3 FTE Youth Care Worker supporting in the management of student behaviours that interfere with personal, education and social growth. It had 0.2 FTE Counsellor and 0.3 FTE district Speech Language Pathologist, who serviced a collection of schools.

6. District and Local Union Approach to Consultation Meetings in 2007

[645] The school district and the Cranbrook and Fernie Teachers' Association (CFTA) jointly decided, after their experiences in September 2006 with the first round of class

size and composition consultations, to improve the process and flow of information. They designed a single reporting form for use by both the employer and local union to delineate meeting expectations, to ensure all issues are covered and to record and accurately report each consultation meeting.

[646] Copies of completed and signed forms are sent by the principal to the school district's administration and by the school union staff representative to the CFTA. Superintendent Allen and CFTA Co-chairs Steve Fairbairn and Chris Jones wrote an explanatory letter to all principals and teachers in January 2007 that reminded: "For the process to work effectively and for all parties to be current with information, these forms need to be sent as soon as possible following the consultation dialogue."

[647] The form is to be signed by the principal and each participating teacher. It records the date; attendees at the meeting; proposed organization of the class being discussed; points and alternatives identified by the teacher; other alternatives discussed; and the rationale for the organization of the class as determined by the principal after the discussion. The latter includes classes with more than three students entitled to an IEP as well as classes with more than 30 students. At the time the form is signed, the classroom teacher(s) tick a box indicating whether there is agreement or disagreement with the organization of the class.

[648] Following the September 2007 consultations, the Superintendent and senior management met with the union Co-Chairs to review any additional resources that had been allocated as a consequence of, or following, the consultations. Mr. Fairbairn did not recall specifics of this "numbers parade", as he characterized it, which was delivered with the message that the school district had done what it could with the resources it had. He characterized the meeting as a low key information exchange, not a problem solving session. From his perspective, the classes with which teachers disagreed had been identified to the BCTF for inclusion in the provincial grievance and there was no reason to have class size and composition disagreements addressed at this local district meeting.

[649] In preparation for consultation meetings for the 2007-08 school year, the BCTF distributed an *Issue Alert* dated September 4, 2007 that Ms Bellerby understood was clear in its message. Before a teacher agrees to a class with more than three students

entitled to an IEP, the teacher should be assured the children are in an educationally sound situation. If the teacher is not certain, the teacher might not want to agree to the organization of the class. But if the teacher does, the teacher is saying the situation is fine and he or she can make it work and fully deliver the education program.

[650] Mr. Fairbairn views teacher agreement with the organization of a class that includes more than thirty students or more than three students entitled to an IEP, or both, as an acceptance of professional and legal responsibility to cover the curriculum in its entirety with each child and a declaration that the resources are sufficient to provide the time needed for each child. That is, each day each child in the class will receive a solid education with his or her individual needs met in a safe environment conducive to learning the curriculum.

[651] Mr. Fairbairn postulates there is a possible scenario that has not happened in this school district or that he knows has happened anywhere else. It is that the teacher's agreement to the organization of the class is used against a teacher by the employer, a parent, the College of Teachers or others to hold the teacher, instead of the district board of education, accountable. If the teacher's judgment proves to be incorrect and he or she requests more resources, the response might be: "You said you could do it, so go do it."

[652] The consternation and reorganization at Frank J. Mitchell in the first weeks of September 2007 set the stage for the consultation meetings. Mr. Fairbairn's opinion was there could not be meaningful consultation when the class organization was directed by senior management to meet district averaging objectives unrelated to the school.

[653] None of the eight classes at Frank J. Mitchell for the 2007-08 school year had more than the maximum number of students for the grade level. Both the Grades 4/5 and 6/7 classes had more than three students entitled to an IEP. The upcoming consultation meetings were discussed at staff meetings and Ms Colonello encouraged all teachers to read all IEPs for students in their class, which had been updated in June.

[654] It was known to all the teachers that the Grades 4/5 class was organized as a consequence of organizing a Grades 3/4 class to meet the district primary class

average. There was no requirement for a consultation meeting about the Grades 3/4 class because it had 21 students with one student entitled to an IEP. There was a requirement for the principal to consult about the Grades 4/5 class.

[655] There was a requirement for a consultation meeting about the Grades 6/7 class. Its organization was not done to meet the district primary class average, but because there were more than thirty Grade 7 students.

7. Grades 4/5 Class – 28 Students with 4 IEP Students at September 30, 2007

[656] On Monday, September 17, 2007, Ms Colonello convened meetings with Gary Leclair and Ms Bellerby, the teachers of the Grades 4/5 class and with Ms Endicott and Ms Bellerby the teachers of the Grades 6/7 class. Mr. Leclair, who was on medical leave at the time of the hearing, and Ms Endicott did not testify in this arbitration.

[657] Ms Bellerby was the Union Staff Representative, BCTF Peer Counsellor and Safety Representative for the school. She taught half-day Kindergarten in the morning; Music from 12:30 to 1:30 p.m.; Library from 1:30 p.m. to 2:00 p.m.; and either an hour of Music or two half-hours of Library from 2:00 p.m. to 3:00 p.m. She taught each of the Grades 1 to 7 classes a one-half hour block of Library and a one hour block of Music each week.

[658] Ms Bellerby attended each consultation meeting as both the Union Staff Representative and a teacher of the class. The consultation meetings were cordial, problem-solving sessions exploring alternatives with no constraints on the time available for discussion. Each participant knew the students and those entitled to an IEP.

[659] Ms Colonello described the consultation meeting focus as “how are we going to manage these students?” while identifying foreseeable difficulties and appropriate supports to make the class educationally sound. The joint reporting form had to be completed and signed.

[660] The Grades 4/5 class had three students with H designation – intensive behaviours warranting intensive interventions. Ms Colonello testified she knew the students from previous years at the school and they were not as intensive as some H designated students. One student with a Q designation – learning disabilities – was needy, but well behaved. All four students were in Grade 5. There were two students

who had adapted or modified programs although they did not have a Ministry of Education designation.

[661] One of the Grade 5 students left the school before September 30th and the class was reported at September 30th to have 28 students of whom four were entitled to an IEP. The class became 27 students, of whom three were entitled to an IEP, when a student with an H designation left the school in October. In January, at Mr. Leclair's request, two students had their designation changed from H to Q.

[662] In September, there were two other children who were candidates for assessment for special needs designations, which were made in January. It was recognized the seven Grade 4 students in this class of 29 were children placed in the class because they did not have any known behavioural issues. This was done to lessen the burden on the teachers of the class. However, Ms Bellerby testified two of the four presented behaviour challenges in her Music class.

[663] Because she did not expect to learn anything new, Ms Bellerby knew she would disagree with the organization of this class before she attended the consultation meeting. She did not review the students' IEPs because their number, not their designation or the content of their IEPs, is the relevant fact for her.

[664] Ms Bellerby testified a Grades 4/5 class is manageable in Library because of the wide range of materials available to her and the progressive nature of the skills being taught. She had taught the Grade 5 students the year before as Grade 4 students and was familiar with the four students entitled to an IEP. She had taught the Grade 4 students the year before as Grade 3 students.

[665] The Music curricula for Grades 4 and 5 do not overlap. Ms Bellerby had the Grade 5 students repeat what they learned in Grade 4 on the recorder as a review for them while she brought the Grade 4 students along. Then she jump-started the Grade 4 students on the Grade 5 curriculum. She was anxious about the Grade 5 students building the skills required for high school band. The range of skills in the class was broad. Some students were not particularly strong in Grade 4 and some Grade 5 students had high skill levels. The class performed well at Christmas and again in the spring.

[666] Ms Bellerby's approach was that a class "appropriate for student learning" or "educationally sound" (interchangeable phrases for her) is an environment in which students will be able to rise to their capabilities. A combined grades class with behaviour problem students who distract others does not provide such an environment for struggling students who need attention or for academically strong students who do not receive attention from a teacher regularly engaged in firefighting. She acknowledged the level of disruption in the Grades 4/5 class was lower than with the older students in the Grades 6/7 class.

[667] The main message from Ms Bellerby and Mr. Leclair to Ms Colonello in the consultation meeting was to get rid of this combined grades class by hiring another teacher and reorganize the classes. Other alternatives were to support the class with additional time from an Education Assistant and Learning Assistance.

[668] Ms Colonello testified Mr. Leclair, who did not testify, was more unnerved by the prospect of the combined grades class than having a class with the four students entitled to an IEP, each of whom they discussed in the meeting.

[669] Ms Colonello did not see asking for another teacher allocation as a viable option. Because a fifth Education Assistant was being allocated to the school, assigning more Education Assistance time to the class was. However, not all teachers welcome or work well with Education Assistants. Mr. Fairbairn echoed this in his testimony that having an Education Assistant in a classroom creates more work for teachers; generates more noise; and creates more movement. Consequently, it can take teacher time away from children who need enrichment. Because the school's special education teacher allocation had increased to 0.7 FTE, Ms Endicott taught Grade 5 Mathematics to six students from the Grades 4/5 class and other Grade 5 students.

[670] Ms Colonello reported the rationale for the organization of the class on the form as follows:

- compliance with Bill 33 which resulted in a split
- in the structure of a straight gr 5 class, the IEPs may have been more manageable
- the grade 4's were selected because of academic similarity & no known behavioural issues.

[671] Ms Colonello believed the class organization could work. It was not ideal, but not

an unusual teaching assignment and there was support for the class. Students were removed for Mathematics for two blocks each morning and an Education Assistant was in the class each afternoon for 1.5 hours.

[672] She testified that throughout the year, the teachers managed with this class; no issues arose; and the range of marks at year end was within the norm with all students advancing to the next grade. The Youth Care Worker worked with all three H designated students in the Grades 4/5 class until the father of one requested the student be removed from the peer support group, noon hour support and homework program.

8. Grades 6/7 Class – 26 Students with 5 IEP Students at September 30, 2007

[673] The Grades 6/7 consultation meeting on September 17th was with Ms Bellerby and Ms Endicott, who, as it turned out, was not the classroom teacher after September 30th. Both Ms Bellerby and Ms Endicott knew and, in previous years, had taught some of the students in the Grades 6/7 class, which on September 17th had 26 students of whom five were entitled to an IEP. Ms Endicott had agreed to teach this class.

[674] One student designated C – moderate to severe profound mental disability – had been in the school and was known to the teachers. This student had one-on-one full time Education Assistant support. Two students were designated Q – learning disabilities – and would receive Learning Assistance support. Two students were designated H - intensive behaviours warranting intensive interventions – and were known to the teachers. Ms Endicott had taught the two H designated students in the previous school year and may have written IEPs for these students in previous years.

[675] There were 18 boys and 8 girls in the class. This mix meant the aggressive and impulsive behaviour of the boys escalated opportunities for discord. Ms Bellerby described the escalation like hosting a party at which there were too many inebriated persons.

[676] The teachers raised hiring another teacher to reconfigure the classes; having a full time special education teacher in the school to allow more work with the students in this class outside the classroom; and obtaining more Education Assistance time to work with Learning Assistance students inside the class. Both Ms Bellerby and Ms Endicott

disagreed with the organization of this class.

[677] Ms Bellerby believed students in the class presented foreseeable disruptive behaviours; disrespect for teachers; great deficits in willingness to engage; low energy levels; and disorganization and attendance without materials for class. There were additional challenges with designated students.

[678] Ms Colonello would have liked to have another teacher, but Mr. Kirkham had made it clear she should be able to organize and manage the school without additional teaching staff. She did not inquire or ask for more teaching staff allocation. She did ask for and received more Education Assistant time. She did not speak to the principal of Mountain View about creating a Grade 7 class with students from both schools. The two schools were amalgamated at Frank J. Mitchell in June 2008 and Mountain View Elementary School was closed.

[679] It was unusual, but Ms Colonello testified it was necessary to assign two Education Assistants to the homeroom class. One was assigned to two H designated students in the Music and Library classes. The C designated student had been socially promoted and did not attend Music often, because the student did not have the cognitive or management skills to keep up with the class. The two Q designated students generally did not present behaviour problems.

[680] Ms Colonello taught Grade 7 Mathematics throughout the year to four students from this class and one from the single Grade 7 class for 1.25 to 1.5 hours each morning. Through the cooperation of Ms Endicotte, Grade 7 teacher Gail Pidgeon and Ms Colonello, all the Grade 7 students were removed from the class for Mathematics. Ms Gatzke had the full class until morning recess after which the Grade 7 students left for their Mathematics class.

[681] In January 2008, the number of students entitled to an IEP increased to seven with two students designated R – moderate behaviour disruptive of the classroom warranting support. There were 27 students in the class.

[682] Ms Colonello held a consultation meeting with the enrolling teachers, Ms Endicott and Ms Gatzke, and Ms Bellerby. There were behavioural problems with the boys and inadequate parental support. Hiring a teacher, obtaining additional Education Assistant

time and reorganizing the class with one at Mountain View were discussed. Ms Bellerby testified the teacher of a Grade 7 class at Mountain View had taken a leave. The replacement teacher took a leave and then a TOC taught for two weeks, but did not apply for the vacant position to teach that class. The proposal was to reorganize into single grade classes and separate some of the IEP students.

[683] Ms Colonello recorded that the other Grade 7 class was full and there were no available options. Some parents had transferred their Grade 7 children from Mountain View in anticipation of amalgamation of the schools in the 2008-09 school year.

[684] Ms Endicott managed the students' behaviour with her 0.3 FTE assignment teaching Language Arts in the afternoon, but Ms Gatzke was challenged by the behaviour of some of the students.

[685] On February 5, 2008, it was proposed two students in the class without special needs designations be designated category R. District approval was given for both on February 14th.

[686] Ms Colonello spoke to Mr. Allen and proposed a means of providing more support to Ms Gatzke and the class. On February 6, 2008, the district posted a 0.5 FTE vacancy teaching Mathematics, Science, Social Studies and Physical Education to some students in the class for the remainder of the school year. Leah Spergel successfully applied. She taught a morning program to four of the designated students in a separate room and Art and Planning in the afternoon.

[687] Ms Colonello held a consultation meeting with Ms Spergel attended by Ms Bellerby because her class, which had only four male students, had more than three students entitled to an IEP. Ms Bellerby testified that both Ms Spergel and the union agreed this class was appropriate for student learning. One of the four boys was expelled from school in May and supported with a home study program.

[688] Ms Colonello testified this was an exceptional thing to do, but a smart and necessary thing to do to support the enrolling teachers and the class. It was done with the consent of the boys' parents. The goal was to change the behaviour of the four boys and to foster success for both them and the other students in the class.

[689] Ms Bellerby testified this did not help her with Music and Library with this class.

The crew of four returned in the afternoon “ready to rumble.” Although there was an Education Assistant in the room, she was unable to deal with all the bush fires involving the four boys and other grey area students at risk and minimally meeting expectations.

[690] Ms Bellerby testified that throughout the school year, she disliked dreading the children arriving for her class and being thankful when some did not appear. She was discouraged when she was unable to achieve what she had planned for a class. Some children who were musical did not advance as she knew they could have with more instruction and attention from her. This was the only year she did not have a class showcase performance with senior students at Christmas. She was spinning her wheels and not making progress. It was one of the two worst classes she ever taught.

9. Principal and Superintendent Opinions Classes are Appropriate

[691] The superintendent, senior management and principals in School District No. 5 (Southeast Kootenay) discussed what is meant by the phrase “appropriate for student learning” in the *School Act*, meaningful consultation and the timeline and processes required under the *Act*. Mr. Allen did not issue a checklist or written guideline. He testified he relied on the principals’ knowledge and experience as educators and administrators.

[692] Ms Colonello declared in writing on September 26, 2007 that the organization of classes at Frank J. Mitchell Elementary School was “in compliance with the provisions of the School Act and is appropriate for student learning.” She did so with her knowledge of the school, the students and a staff of “smart, competent teachers.” There were classes of combined grades with students entitled to an IEP as there always is. It does not mean the classes were unworkable. There were resources to support them. She believed the school was safe, the resources were adequate and all the classes were appropriate for student growth academically, socially and emotionally.

[693] Ms Colonello and the teachers did not discuss the meaning of “appropriate for student learning”, or “educationally sound”, terms with similar meaning for her in the consultation meetings. She believed they had a conversation based on a common understanding.

[694] She testified a class can be appropriate for student learning even though the

teacher has to abbreviate the materials covered or adopt different methods of teaching, as all teachers must do. The path might not be the most interesting, but a teacher can still get to the destination. Having to cut enrichment activities does not make a class educationally unsound. Teachers have to be versatile and teach in ways they did not plan and are not their favourites. Teachers want to spend as much time as possible with each child and often cannot spend as much time as they would like. Teaching is not perfect and “there are always problems – we are professionals – we try to fix things – we are fixers.” The objective is that all students achieve the prescribed outcomes, but if a student fails that does not make the class educationally unsound. Teachers always wish for more and better outcomes for their students.

[695] Ms Colonello testified Mr. Leclair may have been anxious about teaching the combined Grades 4/5 class, but he had taught classes with combined grades before and she had confidence he could teach this class with the supports in place to help him. Ms Endicott had expressed interest and willingness to teach the Grades 6/7 class. She did not discuss with Ms Bellerby whether they had differing perspectives on what constitutes an educationally sound class.

[696] Ms Colonello respects Ms Bellerby’s opinion and characterization of the behaviour of the Grades 6/7 class throughout the year. It was a difficult class and she would know best what happened in her class. However, the supports were increased and changed as circumstances changed during the year. The children did well in that class. Those on the honour roll remained on the honour roll. The marks given and reported by the teachers reflect achievement and success.

[697] Ms Colonello testified it was not a surprise the teachers signed the joint reporting form stating they disagreed with the organization of the classes, but it was unlikely a disagreement over educational philosophy, values or goals. She surmises it was because rules are rules. If there are more than three students entitled to an IEP in a class they will not agree.

[698] Mr. Allen reported to the Board of Education there were two classes for which consultation meetings had been held at Frank J. Mitchell and additional Education Assistance time had been added to the school’s resources. The Board accepted and approved his report for the district and discussed the use or internally restricted surplus

funds to pay for additional support staff in the district. Mr. Norum testified there were unrestricted funds in the amount of \$1.6 million reserved for contingencies. He likes to maintain it at 1% of the operating budget or approximately \$500,000. In 2008-09 there was a change in funding from the Ministry for Grades 10-12 and money from the fund was used to balance the budget.

[699] Mr. Allen certified for the Minister by letter dated October 22, 2007 that district classes were organized appropriately for student learning. For the classes at Frank J. Mitchell, he relied on Ms Colonello's opinion; discussions with and reports from district senior management; the subsidy of \$20,385 at the school that the enrolment and district formulas did not generate; the adequacy of the resources; the competency of the teachers; and his knowledge that the school had an effective, strong learning environment in which children thrive academically, emotionally and physically. He knew Mr. Leclair and had been in his class in the past. He had some acquaintance with Ms Endicott and Ms Bellerby and knew them to be experienced and competent teachers.

[700] In his opinion a class is appropriate for student learning when students' academic, social, emotional and physical needs are met, they have an opportunity to learn and there adequate resources to support their learning. Reduced activities or covering fewer materials in a school year does not mean a class is not appropriate for student learning. The prescribed outcomes can still be met through adaptive teaching strategies.

[701] Mr. Allen had reviewed the consultation forms and realized the teachers may not be pleased with the class organization, but the classroom teachers' opinions is only one factor in forming his opinion. Others also have opinions to be respected – principals, student support services teachers, other support workers and district personnel. And under the *School Act*, the determinative opinion that prevails is the principal's opinion that informs the superintendent.

4.2 Merritt Central Elementary School (SD No. 58 – Nicola-Similkameen)

Witnesses:

| | |
|-------------------|--|
| Stephen Carroll | Teacher and Staff Representative |
| Lynn Dixon | Teacher |
| Sandy Fukushima | Principal, Merritt Central Elementary School |
| Shelly-ann Mclvor | Teacher |
| Byron Robbie | Superintendent |

Hearing: Kamloops, May 7 - 8, 2009; Merritt, 8 – 9, 2009

Disputed Classes at September 30, 2007:

| | Class | Teacher | Size | IEPs |
|----|------------|---|------|--------------------|
| 1. | Grades 4/5 | L. Dixon / S. Carroll (Library/Computer Skills) | 25 | 6 (1D, 1G, 3K, 1Q) |
| 2. | Grade 5 | S. Mclvor / S. Carroll (Library/Computer Skills) | 28 | 5 (3D, 1H, 1R) |
| 3. | Grade 6 | P. Zaluski / S. Carroll (Library/Computer Skills) | 26 | 6 (2H, 1K, 3Q) |

1. School District No. 58 (Nicola-Similkameen) – 2007-08 Classes Grieved

[702] School District No. 58 (Nicola-Similkameen) has a small, declining student enrolment in a geographic area encompassing the former Nicola Valley and Princeton school districts, which were amalgamated a decade ago. In the 2007-08 school year, there were approximately 3,000 students of whom a third were aboriginal students. Over 400 students had Ministry of Education special needs designations. There were only three children identified as ESL/ESD students.

[703] As at September 30, 2007, the school district reported class size and composition data for 348 classes in ten schools in Merritt and Princeton. There were 31 classes for Grades K–3 and 317 for Grades 4-12. There were 6 classes with more than thirty students. Three were Grade 7 Band classes and one was a Grade 11 and 12 Music class. There were four or more students entitled to an IEP in 2 of the 31 classes for Grades K-3 (6.5%) and 82 of the 348 classes for Grades 4-12 (23.6%). (Ministry of Education's published report *Overview of Class Size and Composition in British Columbia Public Schools 2007/08 (School District 058 Nicola-Similkameen)*)

[704] In the fall of 2007, the maximum potential number of classes in the district that could be subject to a grievance challenging the class organization because of either its size or composition was 90 or 25.9% of the classes. These are the 6 classes with more than 30 students plus the 84 classes with more than 3 students entitled to an IEP. The actual number might be slightly lower if some of the classes with more than 30 students

also had more than 3 students entitled to an IEP.

[705] The union's particulars of its 2007-08 school year grievance lists 26 of the potential 90 classes at the following six schools: Bench Elementary (1); Merritt Central Elementary (6); Diamond Vale Elementary (5); Nicola Canford Elementary (3); Coquihalla Middle (8); and Merritt Secondary (3). The six classes listed in the particulars at Merritt Central Elementary are three divisions listed once for the homeroom teacher and once for the preparation relief teacher.

2. Merritt Central Elementary School

[706] Merritt Central Elementary School has Kindergarten to Grade 6 classes for a needy student population from low social economic circumstances. The school has an experienced, stable teaching staff. The students live in the neighbourhood or travel to the school by bus for as long as an hour from rural areas and communities. Half the students are aboriginal and there is a full-day Kindergarten for aboriginal students.

[707] Because there was a high incidence of students with behaviour that generated discipline and other issues, the school added an Effective Behaviour Support (EBS) program in 2004 after an in-service during the summer to teach behaviour throughout the school using a common language. A behavioural Special Education Assistant is assigned to work with children on social and organizational skills. The school uses WITS, a literature-based conflict solving program – Walk away, Ignore the bully, Talk or tell the person and SeeK help. Other strategies are incorporated into teaching Health and Careers.

[708] From Monday to Thursday, the period from 9:45 a.m. to 10:30 a.m. is a reading time with children attending two PCI Education Reading levels with Special Education Assistants, three Corrective, one Primary and one primary First Nations reading groups. A Special Education Assistant conducted a guided reading group for two students. The goal is to reduce the reading range among students in the classes. The school has common reading strategies with resource books incorporated into classroom teaching.

[709] Five days a week, for primary students in the morning and intermediate students in the afternoon, Diane Clark, a Special Education and Learning Assistance teacher, with Special Education Assistant support delivered a sensory integration program that

incorporates Brain Gym® for a number of designated special needs students and other students who it is thought will benefit.

[710] Learning Assistance was provided by Ms Clark (0.5 FTE) and Principal Sandy Fukushima (0.1 FTE). Teachers made referrals and the Learning Assistance teacher prepared a schedule that Ms Fukushima reviewed.

[711] Ms Clark had a Primary Play Group five times a week during recess for four students to have them learn how to play appropriately. She conducted a thirty-minute Taming Worry Dragons program for three children three times a week to teach them how to deal with stress. She had a Problem Solvers group for five males for forty minutes, three times a week and a separate program for four females for forty-five minutes, three times a week. It was an extension of the WITS program.

[712] Two First Nations Support Workers provided 6.0 hours a day support for aboriginal students in primary and 7.0 hours per day for students in intermediate.

[713] The school had SuccessMaker® and Kurtzweil, computer assisted learning programs that were in a multipurpose room off the resource room and used by Ms Clark and a Special Education Assistant, but it was not easily accessible nor well utilized by enrolling teachers.

[714] The district had a 0.8 FTE Principal of Aboriginal Education, Opal Charters, who worked with the First Nations Support Workers and with the Okanagan and Thompson languages programs. Ms Charters provided the primary First Nations reading group at Merritt Central Elementary.

[715] The district had a 0.6 FTE position supporting technology in the schools and a 0.5 FTE teacher supporting literacy and numeracy. Merritt Central Elementary had the services of a district counsellor one day a week. Teachers and Ms Fukushima made referrals. Parents made requests. There was a 1.0 FTE district Co-ordinator of Special Education (Kim Williams). There was a 1.0 FTE Speech and Language Pathologist working from an office at Merritt Central Elementary who, in 2007-08, had an assistant.

[716] As at September 30, 2007, the district reported the class organization and composition of the twelve divisions at Merritt Central Elementary as follows:

| Grade | KH | KF | 1 | 1 | 2 | 2/3 | 3 | 4 | 4/5 | 5 | 6 | 6 | Totals |
|---------------------|-----------|-----------|----------|----------|----------|------------|----------|----------|------------|----------|----------|----------|---------------|
| Students | 10 | 21 | 19 | 17 | 17 | 6/14 | 22 | 25 | 11/14 | 28 | 26 | 24 | 230 |
| IEP students | 0 | 0 | 3 | 3 | 2 | 2 | 3 | 5 | 6 | 5 | 6 | 5 | 40 |

The classes grieved are the Grades 4/5, Grade 5 and one of the two Grade 6 classes.

[717] Ms Fukushima testified it was not realistic to have an additional intermediate teacher and configure the classes so there were two Grade 4 classes with 18 students each; two Grade 5 classes with 21 students each; and two Grade 6 classes with 25 students each. Having 18 students per class was not financially realistic. Each class would have more than three students with an IEP. Also, at times, in small classes there is not the same enrichment of discussion there is in a larger class. Mr. Robbie testified a fourth class would not be sustainable over the years, even with an expenditure of funds from the district surplus reserve.

[718] Ms Fukushima testified there had been combined grades classes in each school year since 2004 when she came to the school. She tries to avoid them because teachers do not prefer them, but she has taught two and three grades combined classes in her career and testified they can be, but might not be, more work for the teacher. Each class regardless of its configuration presents different challenges. Superintendent Byron Robbie testified the Board of Education directed him not to organize combined classes with three grades.

[719] Ms Fukushima testified that there should be an effort to place more capable and independent students in the lower grade when organizing combined classes. They can benefit from exposure to the higher grade curriculum; the study and other skills and activities of the older students; and higher achievement expectations. Teachers manage by using common themes from the curricula and grouping regardless of grade and age.

[720] Stephen Carroll testified that, even with his experience teaching for thirty years, combined classes with two curricula, different learning outcomes and a wider range of development among the normal range of similar aged students plus students with IEPs can be overwhelming. The series of decisions in planning and instructing, using the Madeline Hunter method, involves many more steps in a combined class with students with IEPs. Teaching is concerned with individual student needs. Children are

designated students with special needs because they have exceptional characteristics requiring support and resources. The workload volume increases with each designated special needs students with an IEP who requires daily work by the teacher and diminishes the learning potential of other children in the class.

3. District Budget and Staffing Allocations

[721] A draft annual budget presented to the Board of Education on April 12, 2007 projected a district decline in enrolment of 85.38 FTE students. There had been a 20% decline since 2000. At Merritt Central, there was a projected decline from 236 FTE students in the 2006-07 school year to 227 FTE students in the 2007-08 school year.

[722] The total district teaching staff was projected at 172.9 FTE. The proposed budget had a 1.65 FTE reduction in district Special Education Assistants reflecting a decrease of 16 Level II designated students in the district. The approach was to staff tightly to avoid layoffs and forced transfers between schools in September.

[723] Mr. Robbie requested a 2.40 FTE "flex factor" to address issues that arose in the fall when the district saw the "whites of the eyes" of students arriving at the schools, although some of the flex factor was allocated in the spring. For example, 0.1 FTE was added to the staffing at Merritt Central. An example of its allocation in September was the addition of 0.5 FTE teaching staff at Diamond Vale to provide literacy and numeracy pull-out resource support for a class of 28 students of whom ten were designated special needs students.

[724] There was a surplus of \$1.8 million at June 30, 2006 which could increase to \$2 million by June 30, 2007. The proposed budget used \$700,000 of the surplus leaving \$1.3 million for the 2008-09 school year. The budget proposal states: "It is important that a significant surplus be available for that year given that it is an election year and the status of the Funding Protection Grant is not known at this time." In addition, there was concern the Declining Enrolment Grant, which was \$506,059 for the 2007-08 school year compared to \$753,985 in 2006-07, might not continue after 2007-08.

[725] At fiscal year end, the total funding grant for 2007-08 was \$24,031,062 which was a decrease from \$25,626,622 in 2006-07. The Transportation Grant remained the same (\$756,786). The Unique Geographic Factors grant increased to \$2,178,346 from

\$2,068,214. Unique student needs grants for ESL and Aboriginal education increased. The total Special Education grant increased \$149,653. The Funding Protection Grant was reduced in 2007-08 to \$279,282 from \$1,030,181 in 2006-07.

[726] For staffing allocations, Mr. Robbie used a spreadsheet that predates his employment as Superintendent in 2005. The embedded ratios are: Library – 1:491; Counselling – 1:693; Learning Assistance – 1:329; and Special Education – 1:241. The minimum for school administration is 0.65 FTE. The class divisors or district enrolling teacher staffing ratios are: 1:20 for K-3; 1:27 for Grades 4-7; and 1:24 for Grades 8-12. The spreadsheet calculates a pupil-teacher ratio including all enrolling and non-enrolling teachers. In the April 2007 projections, the district pupil-teacher ratio was one FTE teacher to 15.48 FTE students.

[727] School principals were allocated discretionary funds for the first time in the 2007-08 school year to help work toward achieving literacy, numeracy and social responsibility goals. Because Ms Fukushima's allocation and the allocation to the principal of Diamond Vale included teacher preparation time, their allocations were \$34,000. All other principals were allocated \$28,000. Ms Fukushima reserved \$4,000 to accumulate a larger amount to have phased replacement of desks and other furnishings; spent \$10,000 for reading books and teacher supplies; spent \$6,000 for curriculum development by funding teachers to attend literacy seminars by Faye Brownlie; and used \$14,000 to purchase additional Special Education Assistant time.

4. Merritt Central Elementary School Organization

[728] On April 15, 2007, Ms Fukushima received a class organization and staffing allocation from Mr. Robbie. It projected 232 students in eleven classes with a teaching and administration staff allocation, including preparation time, of 14.1 FTE. It had classes with combined Grades 1/2, 2/3, 4/5 and 5/6. There were only three Grade 6 students in the Grades 5/6 class.

[729] Prior to June 15th, Ms Fukushima prepared a revised class organization, without the combined Grades 5/6 class and with teachers assigned to each of the eleven classes. The teaching and administration staff allocation was 14.20 FTE, with the flex factor allocation of 0.1 FTE. There would have to be a vacant position posting for a 0.2 FTE preparation relief teacher for Kindergarten and Grade 1.

[730] Stephen Carroll, the Union Staff Representative in 2007-08, was assigned Teacher Librarian providing preparation relief. Ms Clark was 1.0 FTE Special Education and Learning Assistance. Another teacher was assigned half-time Kindergarten and 0.5 FTE Learning Assistance. Ms Fukushima took a Learning Assistance assignment to complement her administrative assignment and be 1.0 FTE.

[731] This school organization was distributed to the teachers. Special needs children with similar needs were grouped for placement in classes by Ms Clark to most effectively assign and use the services of Special Education Assistants. As at September 30, 2007, the school had the following designated special needs students:

| Category | A | C | D | G | H | K | Q | R | Total |
|-----------------|----------|----------|----------|----------|----------|----------|----------|----------|--------------|
| Number | 1 | 4 | 6 | 2 | 14 | 6 | 7 | 1 | 41 |

[732] Lynn Dixon had taught Learning Assistance for nine years at Merritt Central. She taught a combined Grades 4/5 class in the 2004-05 school year. In the 2006-07 school year, she taught a Grade 4 class that consisted of a strong group of students and a group who struggled with everything. She suggested that a Grades 4/5 class be formed for the 2007-08 school year with low level Grade 5 students and struggling Grade 4 students. She would teach the class. Her vision was a class of students who would learn with adaptations for Grade 5 that would also benefit the Grade 4 students and with her experience she was comfortable adapting the curriculum.

[733] She thought that if a group of students not meeting or minimally meeting expectations for Grade 4 was mixed with a similar group of Grade 5 students, the class would be more homogeneous and the range of abilities and achievement would be narrower. In this situation, some of the students would have a chance to be stars in their class. She hoped that at the end of the year the graph of achievement would be more like a backwards "L" than a Bell curve. It would also allow the higher achieving group to receive more attention in Grade 5.

[734] The suggestion was accepted by Ms Fukushima after consulting Ms Clark and giving Ms Dixon time to reconsider. Ms Dixon selected nine of her Grade 4 students for the class. She, the other Grade 4 teacher and Ms Clark selected others. Later, two new students were added. The Grade 3 teachers and Ms Clark selected the struggling Grade 4 students who were placed in the class. Ms Dixon had not taught these

students.

[735] At the end of June, the teachers met and placed unassigned children into classes with the receiving teacher in mind, groupings for shared services and grouping or separating certain children. They sought, when there were choices, to create gender balanced classes with a range of students. Ms Fukushima does not usually accede to parent request for student placement. Children are placed according to the educational needs and services of the school.

[736] A tentative schedule for 38.0 hours of Special Education Assistant time per day was prepared by Ms Clark and reviewed by Ms Fukushima. It included 5.0 hours per day for intensive behaviour assistance. This increased to 44.0 hours per day after a Grade 1 student enrolled and was assigned 4.0 hours and Ms Fukushima purchased 2.0 hours with her discretionary funds.

[737] The teachers left for the summer with their assignments for the next school year, a tentative class list and tentative Special Education Assistant assignments.

[738] Over the summer, 21 more students than projected enrolled across the grades. Ms Fukushima created a new Grade 2, which was a twelfth division. A new teaching position was added and the staffing allocation increased to 15.20. The affected students were reassigned to classes effective Monday, September 17th.

[739] Two fewer students than projected enrolled for Grade 6. One Grade 6 class had 26 students and Ms Fukushima kept the other one at 24 students to have a class to place new students. There were 128 intermediate students of whom 27 were entitled to an IEP.

[740] Ms Fukushima did not think the number of students justified another teacher despite there being more than three students entitled to an IEP in each of the five classes. An additional class would not achieve classes with three or fewer students entitled to an IEP. It would require reassigning all the students, creating all, rather than one, combined classes and finding space for another classroom. To achieve classes with no more than three students entitled to an IEP in each, there would have to be nine intermediate classes with a class size average of 14.2.

5. Consultation with Preparation Relief Teacher on Five Classes

[741] Ms Fukushima had to conduct a consultation meeting on each of the five intermediate classes with more than three students entitled to an IEP.

[742] Members of the local union executive met with the teachers one morning early in September of 2006 or 2007, Mr. Carroll was uncertain which year. It was recommended the teachers be accompanied by the Staff Representative at each consultation meeting. The teachers did not choose to be accompanied by Mr. Carroll, who testified the meetings in September 2006 appeared to have been a futile formality – the school had the resources it had and the meetings were not a means to get more resources, particularly additional staffing. The approach in both 2006 and 2007 was to discuss how we can work best with what we have.

[743] He had received the BCTF *Issue Alert* of September 4, 2007 on class size and composition entitled “Improve Conditions: Enforce the limits”, which he posted on the teacher’s bulletin board in the staff room. He did not accompany the teachers, whose meetings he coordinated, and he did not request that a representative accompany him.

[744] Ms Fukushima met with Mr. Carroll at 11:30 a.m. on September 24, 2007 in the library when there were no students in attendance to discuss the five intermediate classes with more than three students entitled to an IEP. As Teacher Librarian, he taught the children library skills and provided preparation relief for the enrolling teacher during periods in which he taught Computer Skills. He had class lists, access to all students’ files and IEPs and knew many of the students.

[745] He and Ms Fukushima reviewed the class numbers and discussed what could be done with the resources allocated to the school. There did not seem to be any point in asking for more staff or reorganization of the classes. An additional teacher had been allocated for primary. Similarly, Special Education Assistant time was allocated to academic periods and he did not think it appropriate to ask to have scarce time taken from where there was a greater need.

[746] The meeting lasted ten to fifteen minutes and Mr. Carroll testified it felt like a formality. There was no discussion during the meeting about what he or Ms Fukushima considered constituted a class appropriate for student learning, which Mr. Carroll

testified, in his opinion, is an environment in which children can achieve their individual potential. At times, this can be almost achieved. The fewer the students in the class, perhaps twenty or fewer, the more opportunity there is for the teacher to do his or her best and for each child to do his or her best. He has been more successful in his career with classes with fewer students. When children are not successful, especially if they are trying, but their marks do not show progress, then their self-esteem is adversely affected and they often lose the incentive to continue with their efforts. He was not asked and did not say if he agreed or disagreed with the organization of the class.

[747] Mr. Carroll knew the rationale for the composition of the Grades 4/5 class as determined by Ms Dixon and Ms Fukushima. He had taught many of the students the previous year as Teacher Librarian and knew he would have to make adaptations and modifications of the programs for several of them. Some adaptations and modifications could be used for more than one student. He could use adaptations he made in previous years for similar students. He believed there was a high likelihood a number of other students would receive special needs designations throughout the school year.

[748] Ms Fukushima completed a reporting form for the meeting. She reported that the points and alternatives discussed were: "Classes have been organized as best as possible with the staffing available." The alternatives discussed were: "Will need to adapt his library skills and computer programs to meet the needs of identified students." Her rationale for organization of the class was: "The organization of the class is appropriate for student learning."

[749] Mr. Carroll did not complete a local reporting form about his or other principal-teacher consultation meetings. The local union completed the BCTF reporting form on November 20, 2007 submitting each class for consideration for inclusion in the provincial class size and composition grievance. The report was that, without regular assistance for each of the classes, each was not an "appropriate learning situation for all students." Mr. Carroll did not see either the BCTF reporting forms or Ms Fukushima's reporting forms until this arbitration. He does not know why three of the five intermediate classes were referred to the BCTF.

6. Grades 4/5 Class – 25 Students with 6 IEP Students (L. Dixon / S. Carroll)

[750] This is the class taught by Ms Dixon, who testified a consultation meeting was a

legal necessity and she did not know what input a Staff Representative could give to a discussion about her Grades 4/5 class. She and Ms Fukushima met for less than thirty minutes. It was a continuation of an extensive ongoing discussion they had been having about the class.

[751] Ms Fukushima asked if there were any concerns or further ways she could support Ms Dixon, who asked for assistance to do a reading inventory or assessment of each student. She had not used testing in selecting the students for the class. She wanted to start the year with a profile of students' deficits and identify learning problems for each. Ms Fukushima willingly taught the class Social Responsibility to allow her time to do the assessments. Ms Fukushima was "perfectly willing to spend as much time" as Ms Dixon needed or wanted. Ms Dixon had no other challenges at the time of the consultation meeting.

[752] Ms Fukushima completed a consultation meeting report and the local union completed a BCTF reporting form, neither of which Ms Dixon saw before this arbitration.

[753] Ms Dixon was not asked if she agreed with the organization of the class and she and Ms Fukushima did not discuss their views of a class appropriate for student learning. Ms Dixon had been instrumental in structuring the class and accepted the challenge. She did not ask to have any IEP or other students placed in other classes where there would be more challenges for colleagues, who had challenging classes.

[754] Ms Dixon testified, in her opinion, a class appropriate for student learning is a setting that allows students to learn and progress at their level to the best of their ability with as much guidance as possible from a qualified teacher. She testified that, at the time of the consultation meeting, there were signs this might not be a class that met this standard, but it was too early to make this conclusion – "The kids had to prove themselves."

[755] As things unfolded, this class did not meet her standard of "appropriate for student learning" at either the beginning or the end of the school year. It had a wider range of abilities than she anticipated. Some struggled with adapted materials and were identified as having lower abilities than anticipated. Ms Dixon had to work an average of three or four hours a night to prepare adaptations for every subject.

[756] During the year, additional Special Education Assistance time was allocated to the class to work on Mathematics assignments with a group of boys. Ms Fukushima and Ms Clark acted as readers for unit tests. A practicum student from Nicola Valley Institute of Technology assisted in the class with Mathematics for part of the year. Six students used SuccessMaker® four times a week for twenty-five minutes each session. Four students were in a pull-out for Life Skills. Seven students had sensory integration each day for fifteen minutes. Two students in the class designated G and D used laptop devices. In May a new student arrived with five hours of Special Education Assistance time.

[757] In January, a consultation meeting was held with Ms Dixon, but not Mr. Carroll, after three of the students in the class were assessed and designated K. In April and May, two other students were assessed and designated as special needs students. No consultation meetings were held. Ms Dixon testified some students likely did better in this class than in a class with higher ability students. This class configuration was not repeated in the next school year and Ms Fukushima did not encourage any teacher to adopt this approach again.

[758] Mr. Carroll testified his opinion was this class was not appropriate for student learning for either Library or Computer Skills. They were unable to select appropriate books in Library and their spelling skills were so poor some could not use their own name as a password.

7. Grade 5 Class – 28 Students with 5 IEP Students (S. Mclvor / S. Carroll)

[759] Shelly-ann Mclvor, who has been at Merritt Central Elementary since 1978 and taught Grade 5 in recent years, was assigned a Grade 5 class for the 2007-08 school year. She received a preliminary class list on the last day of school in June 2007 that had four students entitled to an IEP. She testified: "I take whatever they give me." The IEP students are sorted and "you get what you get." She testified it is common to have five or more students entitled to an IEP, but "That doesn't make it right."

[760] She learns more about the group of students when she goes to the school in August to prepare for the coming school year. She receives an updated class list; reads student files, including report cards and IEPs; speaks to Ms Clark about learning incidents not in the files; and speaks to the students' previous teachers.

[761] Ms Fukushima told her there was a legal requirement to meet, so they set a time. It was an information meeting in her view and she did not need a Staff Representative to attend. She had no expectations attending the meeting in the principal's office, which was for about ten minutes.

[762] Ms Mclvor was very concerned about the absenteeism of two students and its impact on their achievement. She identified two chronic health students who may need more support for literacy. Ms Fukushima would obtain more Special Education Assistant time to work on literacy skills with a small identified group; the Intensive Behaviour Special Education Assistant would work with the two students; and SuccessMaker® and Kurtzweil programs were available.

[763] Ms Mclvor has never seen a change in class composition after September and she did not ask that any student be removed from her class. She did not ask for the school to have another intermediate teacher – “it is not my place to.” And “nothing was going to change.” “You just kind of deal with what you are given.” She was not asked and did not say if she agreed with the organization of the class.

[764] There was no discussion about a class appropriate for student learning, which Ms Mclvor testified is a class in which students have the opportunity to be exposed to appropriate levels of material and direct and indirect learning to enable them to reach their potential. Ms Mclvor testified the class was not appropriate for student learning – it was too large with 28 students with a wide range of abilities, including three with very low abilities, and five students entitled to an IEP.

[765] There were three students designated D who had Special Education Assistance. One had guided reading support for 45 minutes each day; aquatics twice a week; homework club; Friends program; Sensory Integration; Life Skills twice a week; First Nations Support Worker support; and coffee club. One had SuccessMaker® in class, guided reading and pull-out for Mathematics. The third had an attendance issue.

[766] There were students with challenging behaviour in the class. One had a full-time Special Education Assistant who gave some assistance with other students. One student's behaviour was so difficult to manage that whenever there was a TOC, Ms Fukushima called the parents to keep him at home.

[767] Mr. Carroll testified this class was appropriate for student learning for Library, but not for Computer Skills.

8. Grade 6 Class – 26 Students with 6 IEP Students (P. Zalukisi / S. Carroll)

[768] Paul Zaluski did not testify. Mr. Carroll testified this class was more similar to the Ms McIvor's Grade 5 class than Ms Dixon's Grades 4/5 class. The class had a core group of bright students and some lower ability students. It had pre-teen issues and, especially with three girls, there were relationship issues, as there are in all Grade 6 classes. This is when the "mean girls" phenomenon can appear as some girls express hostility and anger through meanness and use rudeness and ostracize to negotiate and maintain their place in the social hierarchy.

[769] In Mr. Carroll's opinion, it was not appropriate for student learning for Computer Skills because the potential for learning was not met by all students, but it was appropriate for student learning for Library because most were reasonably good readers and could use the Online Public Access Catalogue.

[770] Ms Fukushima testified this meeting was held with Mr. Zaluski, at his request, when she approached him to schedule a time and place to meet. They spoke about a need for the education system to teach a work ethic and other skills for life, not just post-secondary academic education. They discussed the supports in place for the students in the class and he did not request anything further then or during the school year.

[771] During the school year, several students in this class were suspended for behaviour in the school yard.

9. Principal and Superintendent Opinions Classes are Appropriate

[772] After her consultation meetings with the teachers, Ms Fukushima gave copies of her consultation reports to Mr. Robbie and talked to him about Ms McIvor's Grade 5 class and used some of her discretionary funds to purchase additional Special Education Assistance time, some of which was allocated to this class.

[773] She did not request additional resources to reorganize the classes to be closer to the district class size average, which was 21.2 for Grades 4-7 and 25.6 for Grades 4-7 at Merritt Central. Mr. Robbie testified the district had a low class size average in the

aggregate for Grades 4-7 because of the low class sizes at Coquihalla Middle School, where the average was 19.6 because the district maintained staffing allocations in the anticipation enrolment would be increasing in 2008-09, and low class sizes at Collettsville Elementary where there was a French Immersion program..

[774] Ms Fukushima was surprised to hear the teachers testify they considered their classes not to be appropriate for student learning when they did not communicate this to her in their consultation meetings. Her view of a class appropriate for student learning is the product of her years and experience as an educator. It includes many elements in common with teacher evaluation in Charlotte Danielson's framework, as well as being a class with supporting resources and an experienced teacher. It is a class in which students are grouped according to abilities and needs for instruction and students respect a teacher who cares for them and provides a positive learning environment.

[775] Mr. Robbie relied on the principals to have serious conversations with teachers about the classes during consultation meetings and to form professional judgments about their appropriateness for student learning. The process was discussed often, but no direction was given about what constituted a class appropriate for student learning.

[776] For Mr. Robbie, appropriate for student learning meant "fitting or suitable" – classes with an environment where students could learn and teachers could teach with access to suitable support resources. These are classes in which teachers can teach and students can learn and progress. Merritt Central and its teachers have classes with this environment. All available resources were allocated where most needed and the principal was of the opinion the classes were suitable. He believed there was a shared understanding between the teachers and principal at Merritt Central about what was a class appropriate for student learning.

[777] Mr. Robbie had received and reviewed the principal's reports for each consultation. He did not have any information whether teachers disagreed with the organization of any classes. He made his written declaration and submitted his report to the Board of Education where the class at Diamond Vale with ten students with an IEP was discussed. He does not recall any classes at Merritt Central were discussed.

4.3 Thornhill Elementary School (SD No. 82 – Coast Mountains)

Witnesses:

| | |
|-----------------|--|
| Philip Barron | Principal, Thornhill Elementary School |
| Kerry Fraser | Teacher |
| Fran Gosse | Teacher |
| Cathy Lambright | Teacher and Staff Representative |
| Lisa MacBean | Teacher |
| Donna Rivet | Teacher |

Hearing: Terrace, February 9 – 11; June 16 – 20, 2009

Disputed Classes at September 30, 2007:

| | Class | Teacher | Size | IEPs |
|-----|------------|--------------------------------------|------|--------------------|
| 1. | Grade 4 | J. Billey / A. Hill (Music) | 26 | 5 (2D, 1G, 2Q) |
| 2. | Grade 4 | L. Yeats / A. Hill (Music) | 28 | 6 (2D, 4Q) |
| 3. | Grades 4/5 | C. Sneddon / A. Hill (Music) | 23 | 5 (2D, 1G, 2Q) |
| 4. | Grade 5 | L. MacBean / A. Hill (Music) | 25 | 4 (1C, 1D, 1K, 1Q) |
| 5. | Grades 5/6 | P. Kolterman / A. Hill (Music) | 25 | 5 (1D, 4Q) |
| 6. | Grade 6 | D. Rivet / C. Lambright (Library) | 24 | 4 (4Q) |
| 7. | Grade 6 | S. Rusch / C. Lambright (Library) | 27 | 4 (1D, 3Q) |
| 8. | Grade 6 | S. Dhaliwal / C. Lambright (Library) | 27 | 4 (4Q) |
| 9. | Grade 7 | K. Fraser / C. Lambright (Library) | 26 | 4 (2D, 2Q) |
| 10. | Grade 7 | C. Killoran / C. Lambright (Library) | 28 | 5 (1C, 4Q) |

1. School District No. 82 (Coast Mountains) – 2007-08 Classes Grieved

[778] School District No. 82 (Coast Mountains), an amalgamation of the Kitimat and Terrace school districts in 1996, serves a student population of approximately 5,200 students in twenty-two schools with approximately 860 employees. The aboriginal population of 36% is increasing while total enrolment has declined from approximately 9,000 in 1999.

[779] School District No. 82 (Coast Mountains) reported 557 classes in 19 schools at September 30, 2007. There were 76 classes for Grades K-3 of which one (1.3%) had four or more students with an IEP. There were 491 classes for Grades 4-12 of which 188 (38.23%) had four or more students with an IEP. There were 43 classes with more than thirty students (Ministry of Education's published report *Overview of Class Size and Composition in British Columbia Public Schools 2007/08 (School District 082 Coast Mountains)*)

[780] In the fall of 2007, the maximum potential number of classes in the school district

that could be subject to a grievance challenging the class organization because of either its size or composition was 232 or 41.65% of the classes. These are the 43 classes with more than 30 students plus the 189 classes with more than 3 students entitled to an IEP. The actual number might be slightly lower if some of the classes with more than 30 students also had more than 3 students entitled to an IEP.

[781] The union's particulars of its 2007-08 school year grievance list 46 classes in the first semester at seven schools. Eleven of the 46 classes are at Thornhill Elementary. The school district reported eleven divisions at the school with more than three students with an IEP in each. This hearing proceeded with ten of the divisions or classes because of some unique circumstances involving the eleventh.

[782] Preparation relief teacher Cathy Lambright taught Social Studies and Language Arts as preparation relief for Grade 6 classes and Social Studies for Grade 7 classes in the library. She taught the same unit to each class at the grade level. For these six classes, she taught approximately 150 students. She was also the school's Teacher Librarian for the first time.

2. Thornhill Elementary School

[783] Thornhill Elementary School in Terrace draws students from a wide area with a majority of the students bussing to school. It has had a declining enrolment in recent years. From a headcount of 293 in the 2002/03 school year, it increased to 335 in the 2005/06 school year and declined to 288 in 2007/08. Aboriginal students are over 37% of the student population.

[784] At September 30, 2007, the school district reported there were 51 (17.7%) students entitled to an IEP. This was an average of 4.6 students with an individual education plan in the eleven divisions or classes. This did not include the seven students designated as gifted. Limiting each class to three students entitled to an IEP would require seventeen divisions.

[785] The distribution of the category designations of the 51 students was: C – Moderate to Severe/Profound Intellectual Disability (2); D – Physical Disability/ Chronic Health Impairment (12); G – Autism Spectrum Disorder (2); K – Mild Intellectual Disability (1); and Q – Learning Disability (34). Over 10% of the student population is

designated learning disabled. There were nine students with English as a Second Language or Dialect.

[786] In 2007-08, its Grades 4-7 class size average of 26.2 was above the provincial average of 25.8 and the district average of 25.3.

3. District Budget, Staffing Allocations and School Organization

[787] The school district was on a four day instructional week first adopted in 2003 to reduce costs in the face of a deficit (see *Pursell v. Coast Mountains School District No. 82*, [2004] B.C.J. No. 543 (QL); 2004 BCSC 269). **The shorter week with longer instructional days means Friday is an additional time for planning, preparation and marking, but the teachers continue to work hours in the evenings and on weekends.**

[788] On March 1, 2007, the teaching staff allocation to Thornhill Elementary was 14.35666 FTE, including 1.62 FTE non-enrolling and 1.0 FTE for administration. The 11.737 FTE enrolling allocation for eleven classes included preparation time during which the students attend Music and Library classes.

[789] The school district was facing a budget deficit and engaged in a public consultation about priorities. It was decided to “focus on building the capacity of regular classroom teachers to offer differentiated instruction that would meet the ever increasing diversity of student abilities in their classrooms” in order to address the needs of students with learning disabilities. It was decided to have two district Differential Instruction teachers provide professional support to teachers in the schools. This was not a decision that found favour with the local teachers’ union. The view was teachers were already doing differentiated instruction and there was no time for more meetings. Resources should be added to classes.

[790] While budget consultations were taking place, Principal Phillip Barron was planning and organizing for the 2007-08 school year with a projection of 305 students. There were 61 Grade 4 students. He did not want to ask for teacher consent to exceed thirty in a class so he created a Grades 4/5 class. With 85 Grade 6 students he had to created a Grades 5/6 combined class. Mr. Barron testified he recognizes there is an additional teacher workload teaching a combined grades class. He attempts to have

lower class size numbers for classes with combined grades, a balance between the numbers of students in each grade and is more careful with student placement.

[791] Through conversation with the teachers, two agreed to take the combined class assignments. The other assignments were made at the grade levels teachers preferred.

[792] Mr. Barron with the Integration Support and Resource Teachers placed the designated special needs students in classes for the 2007/08 school year in a manner that will distribute them equitably and allow for best use of support services. There is considerable dialogue and movement of students during the spring teacher placement meetings using pink and blue forms and Proxima portable screen. Everyone tries to look at the overall picture.

[793] One goal is heterogeneous classes with an equal number of students with an IEP; students not yet meeting expectations; students minimally meeting expectations; students meeting expectations; and students meeting or exceeding expectations. The school does not stream students into classes according to ability, although some of this is done in some classes for Mathematics and Language Arts.

[794] The one known and accepted imbalance is to place more difficult behaviour students in Vice-Principal Cory Killoran's Grade 7 class that Mr. Barron shares with him. They are conscious that it cannot be too heavily loaded because Cathy Lambright will have the class for Library.

[795] In June when class lists have been made, year-end meetings are held with primary school teachers to update individual education plans with release time arranged for receiving teachers to attend.

[796] At the end of August the projection was still 305 students. The total teaching staff allocation was 14.658 FTE. As of September 17th, it had increased to 15.458 FTE. In addition, district Itinerant Elementary Counsellor Pam Striker was scheduled to be at the school two mornings and part of an afternoon in the four day week and Integrations Support Teacher Catherine McRae was scheduled to be at the school each afternoon.

[797] Updated class lists reflecting student withdrawals and new registrants were in teachers' mailboxes on August 31st and posted at the school for parents. Changes

could be made in the early weeks of September. The 126 hours of special education assistant time, less break time, were allocated to the classes. Special education assistant schedules are negotiated. It takes some time before a routine is established.

[798] Some classes receive slightly more or slightly fewer special education assistant hours from the school allocation than the number generated by the low incidence designated students in the class. Where possible the resource is stretched by sharing students and time or not using time in some blocks such as Physical Education. Some hours are scheduled outside instructional time for some students. In the case of Ms Sneddon's class, she had entitlement to 28 hours, but was able to work with 19 hours. The remaining nine hours provided break coverage and was otherwise distributed within the school. Mr. Barron successfully advocated for more hours for one student.

[799] The schedules for the First Nations Support Workers are arranged in early September and subject to continuous change. The priority is to assign time to classes with no or less special education assistant time.

[800] On September 6, 2007 there was a district teleconference with principals to review enrolment. An additional 0.8 FTE Resource Teacher was allocated to Thornhill Elementary. The principals were informed there would be a delay in staffing the Differentiated Instruction positions. Thornhill Elementary was allocated 0.25 FTE whenever it was available. Mr. Barron testified he was thrilled; considered it to be the equivalent of 1.0 FTE in the school; and thought he had hit the jackpot.

4. Teachers Protest Reduction in SSA Time – September 13th

[801] In School District No. 82 (Coast Mountains) special education assistants are called Special Service Assistants (SSA). In the 2007-08 school year there was a change in how SSA time was allocated to schools. The teachers at Thornhill Elementary were upset with a reduction in the district and the hiring of Differentiated Instruction teachers. On September 13th, they wrote to the Board of Education.

We are concerned about the elimination of Special Service Assistants (SSA) for high incidence children. As experienced teachers, we see the gradual erosion of support for special needs students.

We feel that the public is being misled when it is reported that this will only affect children with mild learning disabilities. Children in the high incidence category generally have severe learning disabilities. Parents need to understand that children whose achievement is a year or more behind their peers will have their

teaming significantly impacted with the loss of SSA time. These children have been assessed by a specialist who has determined that they require extra support to learn effectively. The delivery of these recommendations is often carried out by the SSAs. This includes providing both one-on-one support for individual students and the guiding of small groups.

This elimination of Special Services Assistants will affect every child and every teacher in this district. Parents of all students need to understand that the loss of the SSA time means that their children are losing out, as teachers' attention will often be directed to students who require more support. Parents should be aware that this year at Thornhill Elementary, all of our classrooms have three or more children with learning disabilities. Many children are also waiting to be tested.

The school board's proposal to hire three half-time itinerant support teachers is a band-aid solution that is not useful to us. Classroom teachers are already altering their programs on a daily basis, but often require the support of SSAs to implement these adaptations in the classroom setting.

Our special needs children are already at risk in a school district that operates on a four day week. This same district is now removing SSA time for these children. Is this truly the only area of the budget that could be cut? We fail to understand why the students, parents, and teachers of School District #82 are again paying a heavy price to meet a budget.

[802] Ms Lambright testified she edited this letter drafted by Joan Billey and Lois Yeast. Over time they had seen SSA support erode from a one hour per week formula for each high incidence special needs student to the decision for 2007-08 to allocate time only for low incidence special needs students.

[803] Donna Rivet testified the letter was written with a feeling of despair. Lisa MacBean testified about her anger with the decision to take resources from the classroom and hire teachers to teach her how to do what she had been doing for twenty-two years. She did not need instruction on how to tap dance faster, but a chance to dance slower and give individual instruction to needy children. When she did seek assistance, it was not helpful – “pick your analogy.”

[804] There was First Nations Support Workers at Thornhill Elementary who provided support for First Nations students. Teachers welcome the support, but some teachers are of the view that they receive more assistance in academics from trained Special Service Assistants.

[805] Mr. Barron was informed about the letter, but considered it was not his role to comment or follow-up.

5. Principal-Teacher Consultations – September 13th to 20th

[806] Mr. Barron had done consultations in September 2006. After speaking to Ms Lambright, he circulated a draft schedule on September 12th for before and after school consultation meetings. The first was on Thursday, September 13th and the others were the following week. Ms Lambright was attending each as both the Teacher-Librarian and Union Staff Representative. Each meeting was scheduled for twenty minutes. If additional time was required, it would be arranged. Some meetings lasted longer than twenty minutes.

[807] No meeting was scheduled with Anne Hill, the preparation relief teacher who taught Music to Grades 4 and 5 and had a partial assignment at another school. There was no meeting with her in 2006-07. Ms Hill asked if she should attend and Mr. Barron directed her to Ms Lambright, who testified she was not contacted by Ms Hill. He heard nothing further. Mr. Barron did not schedule a meeting with Mr. Killoran because he was part of administration. At Ms Lambright's request as Teacher-Librarian, he held a consultation meeting on this Grade 7 class.

[808] The district procedures required records of consultation to be submitted by September 25th, the deadline for the consultations. The Director of Instruction, Brent Speidel convened a conference call on September 14th to review the statutory requirements and to advise to approach the meetings with an open mind, to actively listen and to attempt to meet any concerns after the meetings. Principals were not to negotiate with teachers. There was no guarantee any additional resources would be available. The approach was to be collegial.

[809] The consultation schedule was in the *Monday Morning Memo* on September 17th, which also included the following:

- By now you will have heard that we (Thornhill Elementary), will be receiving some additional support in the near future
- A Teacher will be added to our staff and will have their assignment split between learning assistance and differentiated instruction
- We expect to see this posting as well as a few others for other schools, to be out this week, and anticipate the new teacher being hired near the end of September.

[810] As instructed, Mr. Barron kept the district report form guarded and conducted thorough consultations with each scheduled teacher. Ms Lambright and he did not

share or exchange the employer and union reporting forms. Mr. Barron did not see the BCTF forms, completed by local union President Debra Thame referring the classes to the provincial grievance, until this phase of the arbitration.

[811] For each meeting in his office, Mr. Barron had his laptop computer with the reporting template set up. He had copies of all class lists and a list of all designated special needs students. He listened and did not engage in debate about the appropriateness for student learning of the class. He and Ms Lambright followed a meeting format they had used the previous year.

[812] Mr. Barron's records of consultation are thorough, detailed and informative. The date, attendees and context of the class with student numbers, supports and notes about students discussed are included. The points discussed and the teachers' opinions are recorded. Whether the teacher considered the class to be educationally sound was recorded under additional comments. Similarly, Ms Lambright made separate lengthy and detailed notes of the discussion in each consultation meeting with her laptop computer. She did not use the local union form for consultation recording and reporting.

[813] Some of the tenor of the discussions for all participants was set by knowledge and discussions at a September staff meeting that there were no additional resources available to Mr. Barron to allocate additional support and the district had no holdback funds on which he could make any claims. The staff discussed ways to maximize the use of available resources such as reallocating SSA time during Physical Education classes.

[814] After the experience in 2006, some teachers considered the consultation meetings to be a futile exercise. This was another year with the same problems, just different students. Ms Lambright encouraged them to attend and participate fully. Mr. Barron was always available to the teachers, but they had his captured attention and used the time and opportunity to its fullest to discuss their classes in detail. The sense was that we are all in this difficult situation together. They knew Mr. Barron had been a strong advocate for the school and believed he would continue to be.

6. Grade 4 Class – 26 Students with 5 IEP Students (J. Billey / A. Hill)

[815] Joan Billey did not testify. This class had 46 hours per week of SSA time, including twelve hours secured in September for a D designated student. Two students with modified and adapted programs received Learning Assistance from Fran Gosse. There was support from the Itinerate Support Teacher and 1.5 hours a week from the FNSW. Nicky Adam, who was appointed to a 0.8 FTE Resource Teacher on October 1st, assisted with the reading program.

7. Grade 4 Class – 28 Students with 6 IEP Students (L. Yeast / A. Hill)

[816] Lois Yeast did not testify. This class had 8.5 hours per week of SSA time and two hours per week support from the FNSW that was later increased to six hours. Six students received 6.5 hours Learning Assistance per week from Ms Gosse. One of the D designated students received English as a second dialect support. After October 1st, Ms Adam assisted with the reading program. Mr. Barron testified a few students in this class struggled and extra support was provided by the office.

8. Grades 4/5 Class – 23 Students with 5 IEP Students (C. Sneddon / A. Hill)

[817] Cheryl Sneddon did not testify about this combined grades class with fewer students than a single grade class. The D and G designated students had adapted and modified programs. There was 28 hours per week SSA time allocated to the school for the G designated student and four hours each for the D designated students. Ms Sneddon did not want more than one SSA in the room at a time and requested 19 hours, which gave her the equivalent of a full-time SSA. The two Q designated students had adapted and modified programs. They and several others in the class received Learning Assistance support from Ms Gosse. After October 1st, Ms Adam assisted with the reading program.

[818] Ms Lambright testified she taught this needy group of students for six weeks with an experienced SSA and they “ran non-stop.”

9. Grade 5 Class – 25 Students with 4 IEP Students (L. MacBean / A. Hill)

[819] Lisa MacBean testified. She taught Grade 5 in the 2006-07 school year and several other years. At the beginning of September, Ms MacBean determined the reading range of the students was from below Grade 1 to above Grade 8. She testified

this was the third worst group of children she taught. They made it their mission to thwart authority and manipulate to their advantage.

[820] There were eight hours of SSA time for the C designated student and four for the D designated students. The total was increased to fourteen hours through reallocation within the school. The most difficult student in the class left September 12th and returned in January.

[821] Six students attended Learning Assistance with Ms Gosse for three thirty-minute blocks per week. The schedule was five students went at the same time and the sixth went at another time. The initial allocation of two hours per week FNSW time was increased to four hours. Eight to ten students received homework and Mathematics assistance and out of class enrichment activity in the computer room and in other activities. After October 1st, Ms Adam assisted with the reading program.

10. Grades 5/6 Class – 25 Students with 5 IEP Students (P. Kolterman / A. Hill)

[822] Pat Kolterman did not testify. Four of the designated students had been together the previous year and they were kept together for this class. Ms Kolterman had no behaviour concerns with this group of students. Three of the seven designated gifted students in the school were in this class. They and two others attended pull-out twice a week for the GATE (Gifted and Talented Education) program taught by Ms Lambright for four periods a week. Two periods a week she taught Grade 4 and 5 students and two periods she taught Grade 5 and 6 students.

[823] The D designated students had four hours SSA time per week. One of the Q designated students received English as a second dialect support. There was 1.5 hours of FNSW time allocated to the class and six of the students, including three designated Q, attended Learning Assistance for three blocks of thirty minutes each per week.

11. Grade 6 Class – 24 Students with 4 IEP Students (D. Rivet / C. Lambright)

[824] Both Ms Rivet and Ms Lambright testified. There was a broad spread in reading abilities among the students which, Ms Rivet testified, increases the challenge in teaching the group as a whole and accomplishing the prescribed learning outcomes in the curriculum. They are intended to be developmentally appropriate goals achievable with sufficient adult support. The large number of low students not meeting or minimally

meeting grade level reading expectations, approximately one-half, was unusual and challenging.

[825] Ms Rivet testified Grade 6 often has students not meeting expectations – “the learning gap gets bigger and bigger each year.” Learning affects how children act socially and emotionally and the size of the gap increases the risk of dropping out.

[826] One student was especially disruptive and always in attendance unless suspended. In various ways, Messrs. Barron and Killoran helped deal with and manage this child.

[827] No SSA time was allocated to this class. To compensate, seven hours FNSW time was allocated. Ms Rivet testified this was sufficient time for the manner in which she utilizes this support. Two groups of three students each, including the four Q designated students, received three blocks of thirty minutes of Learning Assistance per week. Ms Lambright found that, at times, their return disrupted the class.

[828] Ms Rivet did not participate in the grade level reading groups. She testified she likes to be in control of what is taught to her students in all components of Language Arts.

[829] Ms Lambright had this class for one thirty-minute and one ninety-minute period each week. She had some FNSW support during the thirty-minute period. She found that students who went to Learning Assistance for part of her time caused a disruption when they returned and she had to re-teach the lesson.

12. Grade 6 Class – 27 Students with 4 IEP Students (S. Rusch / C. Lambright)

[830] Susan Rusch did not testify. The class received 4.5 hours SSA time and 3.25 hours FNSW time. Seven students, including the three Q designated students, went to Learning Assistance for 90 minutes each week. One student had a laptop through SET-BC (Special Education Technology – British Columbia).

[831] Ms Lambright testified this class had a broad range of reading ability from primary to post-secondary. There were one D designated student with high needs and three very bright students who needed a lot of challenge. Ms Lambright received 30 minutes of FNSW support, usually in class.

13. Grade 6 Class – 27 Students with 4 IEP Students (S. Dhaliwal / C. Lambright)

[832] Surinder Dhaliwal did not testify. Reading levels in this class ranged from grades 1 to 11. One student had behaviour issues. Mr. Barron dealt with this student.

[833] The class received four hours SSA time in October when a fifth student in the class was designated. Five students, including the four Q designated students, received three thirty-minute blocks of Learning Assistance per week. FNSW time increased from four hours per week to six and one-half hours in November. One of the Q designated students received English as a second dialect support. After October 1st, Ms Adam assisted with the reading program.

[834] After the consultation meetings, Mr. Barron arranged for Ms Lambright to have a FNSW for part of one of her blocks with this class.

14. Grade 7 Class – 26 Students with 4 IEP Students (K. Fraser / C. Lambright)

[835] Both Ms Fraser and Ms Lambright testified. Each of the D designated special needs students received four hours of SSA time. Ms Fraser testified the 7.5 hours she received for the class was not sufficient. The class received two hours per week FNSW time and one and one-half hours Learning Assistance.

[836] Ms Fraser assessed the class in early September and determined the reading range was from Grade 2 to 12 and beyond. Nine students were two or more grades below grade level and unlikely to be able to read and comprehend grade level texts or complete the curriculum. Adaptations were required for them. Six were at Grade 11 or higher. Ability grouping was an option. She testified she worked her bright students very hard.

[837] One student had a laptop, scanner and printer from SET-BC. Often there were problems with this technology and troubleshooting of the laptop could not be done with school personnel. The students had this technology because of motor skills deficiency, but the same deficiency hampered manipulating paper in the scanner and printer. The student's mother did most of the scribing for him. Several other students needed scribes and meeting that need was a major issue for Ms Fraser throughout the year.

[838] This class and other Grade 7 classes had "Mean Girl" issues. Ms Fraser had an interest in this issue. She did workshops for some female students and helped other

teachers and the school deal with this issue. One difficult male student whose anger management issues and conflict outside the classroom spilled into the classroom was often dealt with by Mr. Barron, who had to suspend him a couple of times. During those times, Ms Fraser had to provide work for him to do at home.

[839] Because of her normal sized room was cluttered with back packs and band instruments, Ms Fraser felt limited to doing in-seat activities. After October 1st, Ms Adam provided resource room pull-out assistance two thirty-minute blocks per week for three students. Ms Fraser testified this helped the students, but did not help her complete the curriculum.

[840] Ms Lambright had no support for this class and did not want to ask for SSA time that would be taken from another teacher. Later she received FNSW support for thirty of the ninety minutes per week.

15. Grade 7 Class – 28 Students with 5 IEP Students (C. Killoran / C. Lambright)

[841] Vice-Principal Cory Killoran did not testify about this class organized with some behaviour students who needed an authority figure.

[842] The C designated student was on a modified program working at Grade 2 level with eight hours of SSA time per week. The class had two hours FNSW support per week. Two or three students received Learning Assistance for three thirty-minute blocks a week. One of the Q designated students received English as a second dialect support.

[843] Ms Lambright had thirty minutes per week of the SSA time when she taught this class as preparation relief. Ms Lambright testified this was the most academic and least challenging of the classes. It was a chatty. Social group that required a great deal of classroom management.

16. Principal and Superintendent Opinions

[844] After the last consultation on Thursday, September 20th, Mr. Barron had until September 25th to forward his report to Mr. Speidel. He spent the weekend reflecting on what he had heard and discussing it with Mr. Killoran. The recurring theme was about the loss of SSA time and the consistent message from the teachers was that they needed more resources. He concluded there was work to be done. They reviewed all

the support schedules, class lists and student attendance records. They resolved they had to earnestly advocate for more resources for the school.

[845] Mr. Barron was troubled that the teachers believed their classes were not educationally sound. Time was short and a plan had to be devised. On Monday, September 24th, Mr. Barron spoke to Mr. Speidel at least three times and perhaps had emailed him on Sunday. He detailed the class organization, resource allocation and specific teacher concerns. He had his own concerns in addition to those voiced by the teachers about the trend and what would happen in the future. His message was something had to be done immediately. He called other district personnel in search of additional resources and “talked to anyone who would listen.” He sent his consultation report and notes of each meeting to Mr. Speidel.

[846] On September 30th, Mr. Barron sent Mr. Speidel a class organization and class size school profile together with his notes of each consultation meeting.

[847] After the deadline to file his report and much reflection and struggling with himself, Mr. Barron modified the template and wrote as follows. He sent this document to Mr. Speidel on October 2nd.

Declaration: As the principal I have reviewed class size and composition with staff and consulted where appropriate to discuss issues identified under Bill 33 legislation within the context of the learning needs throughout the entire school. The available resources allocated to my school have been distributed to best meet the needs of all learners under our care. ~~At this time I acknowledge that the learning situation in the school is acceptable and appropriate.~~ *Last sentence crossed out as per my conversation with Brent Speidel on Tues., Oct 2.

**I am only comfortable signing this document with the last sentence either removed or re-written. The learning situation is neither acceptable nor appropriate, considering that all 11 divisions are in violation of Bill 33. We have had an increase in Spec. Needs students, referrals, etc., and at the same time have lost SSA time – a significant amount of time! Counselling requests / referrals, referrals for school-based testing (L.A.) are increasing, as is the caseload for the integration support teacher. This past year we faced cuts in Learning Assistance time, Library time, SSA time for low and high incidence students, admin time – this despite the fact the evidence / data shows that our needs are increasing.*

→ We are very pleased with the additional L.A. that was recently added to our school. Our tech issues are compounding these problems as SOLO is not working school-wide – we do not have the hardware (a long standing request), the software or the tech support needed to run these programs. We presently have 6 SOLO licenses, which cost thousands of dollars, not being used because of a hardware issue. The bottom line is that we need help – a lot more help, if we

are going to state that the learning situation at Thornhill Elementary is "acceptable" and "appropriate." Sincerely,

SOLO is software used to build learning skills in reading, writing, planning, organizing, revising and editing.

[848] Mr. Barron, who did not speak to Superintendent Rob Greenwood about or during the process, testified that as of October 2nd the class organization at Thornhill Elementary was neither acceptable nor appropriate. The classes were equitably balanced. The allocated resources were equitably distributed. There was a competent and capable teaching staff. There were not sufficient resources to meet the students' needs. And the situation differed from class to class. He was not judging against the ideal, but what was needed to meet the educational needs of the students.

[849] On October 3rd, a summary report was submitted by Mr. Greenwood to the Board of Education in which it was reported that Senior Management "believe that the current learning conditions present in our district are acceptable within the given parameters of resources available to us." At the same meeting attended by Mr. Speidel, Mr. Greenwood filed a declaration with the Board that includes the following:

This declaration is to confirm that I have reviewed the Principal's reports for all schools and classes for the 2007/08 school year and I confirm as of this date, the organization of classes is in compliance with the provisions of the School Act and is appropriate for student learning.

The Board accepted and approved Mr. Greenwood's report.

[850] Mr. Greenwood did not testify. A "will say" statement filed as an exhibit states:

16. Rob Greenwood was advised by Mr. Speidel that there were a couple of Principals who were concerned about the classes at their schools and the Bill 33 requirements. By the end of September, the understanding of Rob Greenwood was that all the Principals had signed the necessary "Declarations" for the purposes of Bill 33.
17. Specifically, Mr. Greenwood understood that Phillip Barron signed the Declaration as he was satisfied with the additional resources allocated to Thornhill Elementary in September 2007.
18. Mr. Greenwood was not provided with a copy of the first Declaration signed by Phillip Barron (Exhibit 2, Tab 6).
19. Rob Greenwood sent his Bill 33 report to the Minister of Education on October 5, 2007 (Exhibit 2, Tab 5).

[851] By letter dated October 23, 2007, Mr. Greenwood replied to the teachers' letter of September 13th. He wrote:

This will serve to acknowledge receipt of your letter and address your concerns. In light of the fact that this letter came so early in the school year it may have been somewhat precipitous to assume an erosion of support for special needs students since we were still staffing in this area. While we have eliminated some unspecified SSA time we have also added new positions as the needs dictate. We are, however, attempting to target SSA time to more accountable intervention practices.

The majority of children who are diagnosed with a learning disability are of average ability and assumed to be able to cope with the demands of the regular curriculum through adaptations, teaching strategies and other accommodations. These children are normally accommodated in the regular classroom with an IEP that indicates strategies and adaptations to their program that are to be implemented by the teacher through differentiated instruction. The second order of service they would receive is the services of the Learning Assistance Teacher in addition to what is happening in the classroom. A third source of support would be the utilization of itinerant support staff; still another would be the utilization of SSA time to help implement certain IEP goals or objectives if the time is available, and the school decides that this is a valid use. The majority of recommendations in the psychoeducational report for LD students are designed to be carried out in the classroom, or with LA/resource help, not in a one to one situation or in small groups with an SSA. The overriding philosophy in special education is inclusion and integration.

We do recognize that there are class size/composition situations in some schools and the hiring of 2.0 FTE itinerant staff and 2.0 FTE Learning Assistance distributed through a number of schools is an attempt to address this situation and are the priorities for re-establishing special education services based on our consultations with all of our partner groups including the teachers' unions.

As a Board of Education under Ministry mandate, we do have an obligation to be responsible in budget decision making, we are also obliged to satisfy the needs and requirements of the various budget allocations. Changes made to the budget in early spring were made in response to the need for a balanced budget process, and the need to anticipate costs and expenditures at a point in time when only limited information was available. While it was necessary to look at some efficiencies to the special education budget, the overall budget for special education will actually be greater than last year. Part of this will be due to putting money back where it is needed, and part of it is due to increases in salaries and costs for teachers and SSA's.

Thank you for your continuing dedication to teaching and advocacy for the special needs students in our School District.

[852] Mr. Barron testified he did not form the opinion the organization of classes in Thornhill Elementary School was appropriate for student learning until the end of October. By that time, the efforts by him and Mr. Killoran had secured the following assistance or commitments from the district: (1) immediate technical support for the SOLO hardware and software; (2) commitment from the Director of Instruction (Student Support Services) to more expeditiously process referrals for psycho-educational assessments; (3) an allocation of 0.5 FTE First Nations Support Worker (FNSW) from

targeted funding; (4) an allocation three mornings a week for a three-month period of the Literacy Coordinator's time; and (5) a share of literacy grant money.

[853] He and Mr. Killoran had sat and reviewed all that had happened and the additional resources the school had received. They felt very strongly that they had been listened to and were "very grateful to members of district staff." Mr. Barron testified: "That type of support was unprecedented. I had never ever received that much additional support in my seventeen years." Mr. Speidel visited the school to ask if he felt differently than he did at the start of October and he confirmed that he did.

[854] Mr. Barron formed this opinion without further consultation with the teachers. He continues to hold his opinion that the classes were appropriate for student learning by November despite the testimony he heard from the teachers. Their concerns were not expressed to him during the school year and he testified: "We need to have some more conversations."

4.4 Hastings Community Elementary School (SD No. 39 – Vancouver)

Witnesses:

| | |
|-------------------|---|
| Sheelagh Brothers | Teacher |
| Lorinda Coulter | Teacher |
| Thomas Grant | Assistant Superintendent |
| Chris Kelly | Superintendent |
| Adrian Low | Teacher |
| Myrne Ross | Teacher and Staff Representative |
| Paul Wlodarczak | Associate Superintendent, Human Resources |
| Ruth Wrinch | Principal, Hastings Elementary Community School |

Hearing: Vancouver, June 10 – 12; July 2 – 4, 2009

Disputed Classes at September 30, 2007:

| | Class | Teacher | Size | IEPs |
|----|------------|--------------------|------|--------------------|
| 1. | Grades 4/5 | L. Coulter | 25 | 4 (1C, 1F, 1H, 1R) |
| 2. | Grade 5 | S. Patrick | 24 | 4 (3Q, 1R) |
| 3. | Grades 5/6 | K. Appleton | 28 | 4 (1D, 2Q, 1R) |
| 4. | Grades 6/7 | G. Morrow / J. Chu | 27 | 4 (1H, 2Q, 1R) |
| 5. | Grades 6/7 | S. Brothers | 28 | 4 (1D, 1H, 1Q, 1R) |
| 6. | Grades 6/7 | A. Low | 28 | 4 (1Q, 3R) |
| 7. | Grades 6/7 | T. Hampel | 28 | 4 (2Q, 2R) |

1. School District No. 39 (Vancouver) – 2007-08 Classes Grieved

[855] School District No. 39 (Vancouver) reported 8,226 classes in 109 schools at September 30, 2007. There were 778 classes for Grades K-3 of which 7 (1%) had four or more students with an IEP. There were 7,448 classes for Grades 4-12 of which 1,264 (16.97%) had four or more students with an IEP. There were 436 classes with more than thirty students. (Ministry of Education's published report *Overview of Class Size and Composition in British Columbia Public Schools 2007/08 (School District 039 Vancouver)*)

[856] In the fall of 2007, the maximum potential number of classes in the school district that could be subject to a grievance challenging the class organization because of either its size or composition was 1,707 or 20.75% of the classes. These are the 436 classes with more than 30 students plus the 1,271 classes with more than 3 students entitled to an IEP. The actual number might be slightly lower if some of the classes with more than 30 students also had more than 3 students entitled to an IEP.

[857] The union's particulars of its 2007-08 school year grievance list 149 classes of the potential 1,271 classes at 29 schools.

2. Hastings Elementary Community School

[858] Hastings Elementary Community School is a large inner city community school with an eighty person staff. It has full-day Kindergarten, hot lunch and programs at the school before and after instructional hours in a renovated 100-year old building. It has Kindergarten to Grade 7 classes for a fairly stable, but needy student population with many from difficult social economic circumstances. It is a school at which Lorinda Coulter testified a teacher feels inadequate at the end of the day because some child in their class did not get the attention they could or should have received.

[859] The school is dual track with both English and French Immersion streams and an annex (Tillicum) with Grades K-4 four blocks away. Students who come to the school from the annex in Grade 5, with or without special needs designations, are new to the teachers. In part, this explains the number of special needs students in the intermediate grades.

[860] In the 2007-08 school year, Hastings Elementary was one of twelve schools designated as an inner city school by the district based on student vulnerability. Designations are reviewed every five years. The last was in March 2009. Inner city schools receive extra support and funding from the Ministry of Children and Family Development CommunityLINK Program. They are allocated an extra teacher, a Youth and Family Worker and a Neighbourhood Worker. The school has several programs to engage the children in school and interaction with adults and to socially and emotionally connect the children and their families with the school.

[861] In 2007-08, its Grades 4-7 class size average of 26.7 was above the provincial average of 25.8, but below the district average of 27.2.

[862] In 2007-08, the English stream had 366 students in fifteen classes. Approximately 10% were identified aboriginal students. There were thirty-four students entitled to an IEP, of whom twenty students were designated in behaviour categories, a percentage higher than the provincial average.

| Grade | KF | 1 | 2 | 3 | 4/5 | 5/6 | 6/7 | 6/7 |
|--------------|----|----|----|----|-------|-------|------|-------|
| Students | 19 | 23 | 21 | 22 | 11/14 | 17/11 | 9/19 | 12/16 |
| IEP students | 0 | 0 | 0 | 2 | 4 | 4 | 4 | 4 |

| Grade | KF | 1/2 | 2/3 | 4 | 5 | 6/7 | 6/7 | |
|---------------------|-----------|------------|------------|----------|----------|------------|------------|--|
| Students | 19 | 15/8 | 8/16 | 27 | 24 | 15/12 | 11/17 | |
| IEP students | 0 | 1 | 1 | 1 | 4 | 4 | 4 | |

[863] Of the thirty-eight Kindergarten children, twenty had English as a second language. The total ESL population in the English stream was 159 or over 40%. This does not include students who still struggle with English, but have had five years designation as ESL and are no longer counted. The teachers who testified underscored that the non-targeted funding allotment for each ESL student, which was set in 1999 at a maximum of five years per student, expires at Grade 5 when the curriculum becomes more intensive in reading and writing. Their opinion is that the research says it takes eight years to learn academic language skills. After five years (Grades K-4), the children have social language skills, but not the skills to ensure academic, social and cultural success at school.

[864] The French Immersion stream reported twelve classes, including two half-day Kindergarten classes. The French Immersion student headcount was 284 of whom nine were students entitled to an IEP.

3. District Budget and Staffing Allocations

[865] The Vancouver school district uses the following divisors to allocate enrolling teachers to schools: K (19.0), Grades 1-3 (21.0), Grades 4-7 (28.0) and Grades 8-12 (26.8). The difference between Grades 4-7 and 8-12 is that the latter includes preparation time, which is added in the allocation formula for Grades 4-7. The result is that the Grades 8-12 divisor is also effectively 28.

[866] The elementary school non-enrolling teacher entitlement formula in 2007-08 was the number of students in the school divided by three plus the number of ESL students and the number of aboriginal students plus three times the number of designated special needs students, including those in the "R" category, all divided by ninety. It is expressed as: $(N/3 + \text{ESL} + \text{Aboriginal} + 3 \text{ MD}) \div 90$. In 2006-07, it was divided by eighty. The divisor is determined by the amount of money available. There are weighting factors for Ministry of Education designation categories (MD) that result in an average of three.

[867] This formula allocates more resources to the English stream at Hastings Elementary because of the higher number of ESL and designated special needs students.

[868] The R category was added on the recommendation of the Class Size and Composition Committee in May 2007 after the provincial enactment in 2006 of the class size and composition standard. To properly identify all children and maximize resource allocation to the school, the teachers and School Based Team have been vigilant in documenting and referring children for designation as special needs category R – moderate behaviour. Ms Wrinch testified this was to inform district staff of the demands on teachers and the school and, hopefully, to have more staff allocated to the school.

[869] The total number of R designated students in both streams in the school increased from nine of thirty-three designated special needs students in the 2005-06 school year to sixteen of forty-five in the 2007-08 school year. There was no comparable increase in the district with the number of R designated special needs students in the same period increasing from 404 to 416.

[870] Because the school district allocates more resources to non-enrolling teaching positions supporting classroom teachers, its class size averages are higher than the provincial class size averages for each grade group. The district has 500 non-enrolling Resource Teachers assigned to schools and 250 district teachers for district classes that are not included in aggregate class size averages.

[871] Mr. Wlodarczak testified that currently there are 600 special education assistants employed by the district, which is double the number in 2000. The cost is \$24 million. In addition, approximately 200 FTE teachers are assigned to services for special needs students. The provincial funding for Level 1 to 3 designated special needs students is \$28 million.

[872] The special education assistant time is allocated to schools based on formulas that translate the number and category of A to G designated special education students into FTE entitlement. There is no time allocation for behaviour designated special needs students in categories H and R.

4. Hastings Community Elementary School Organization

[873] Principal Ruth Wrinch began planning in January 2007 for the 2007-08 school year organization by making projections of enrolment and the number of special needs, aboriginal and ESL students, which she submits to district Human Resources. In February, she asks the teachers their preferred teaching assignments for the next school year. She tries to give them their first of three choices.

[874] The district budget is set in late April and a meeting is held with principals on the first Monday in May. Associate Superintendent Paul Wlodarczak presented staffing projections and opened the web based programs for school submissions to the district and school organization. The district holds back about 1% for later allocation to avoid declaring teachers surplus and forcing transfers.

[875] In the 2006-07 school year, the school district had received an unanticipated \$700,000 from Indian and Northern Affairs which the Board of Education allocated 24 FTE temporary teaching positions commencing after January 2007. Hastings Elementary received a portion of a 1.0 FTE teaching position in March. The teacher's schedule was set by the teacher, the Resource Team and enrolling teachers. This money and staffing allocation was not renewed in the 2007-08 school year when the district employed over 3,100 FTE teachers. There was a decline in district enrolment and a structural deficit of \$450 million.

[876] In May, Ms Wrinch learned the staff entitlement allocated by the district to the school and received a suggested school organization within district averages without placement of special needs students in classes. The enrolling teacher allocation was 15.0 FTE. She reorganizes classes to balance special needs students placement in intermediate classes, which is always an issue, and to balance any combined grades classes. The discussion with the teachers centered on a reduction in non-enrolling staffing and how the school could keep the teacher who had started in March.

[877] The high number of combined grades classes for the higher grades was a result of seeking an equitable distribution of the designated special needs students. Students were placed so there would be a relative balance when the combined grades teachers platoon students by grade and ability for Mathematics or Science. The resulting straight grade class have larger numbers in some cases and more designated students in

others.

[878] As in previous years, Sheelagh Brothers took the proposed organization away for review. She did not find an alternate configuration.

[879] After discussion with the teaching staff, Ms Wrinch allocated non-enrolling staff within and between the English and French Immersion streams. Some teachers work in both.

[880] There were only ten fewer students than in 2006-07, but one less division or class. This translated in a lower “incremental” or non-enrolling teacher allocation. The school non-enrolling allocation for the English stream was 4.68 FTE, which was a reduction from 5.33 FTE the previous year. With administration, district and inner city allocations, the total was 24.35 FTE to service the school’s 366 students in fifteen classes.

[881] The allocation is at this level because the district uses a Resource Teacher model to allocate block non-enrolling teaching staff that does not restrict assignment at the school by separate targeted ratios and caseloads for ESL, Learning Assistance and Resource Teacher support for designated special needs students. The three roles are collapsed into one position, Resource Teacher, and the enrolling teacher can communicate with one, rather than three, non-enrolling teachers.

[882] Within Hastings Elementary, the Resource Teachers decide the age group they wish to work with and are allocated among the classes with consultation with the principal, but not the enrolling teachers.

[883] Student placement in classes happens in the spring through meetings between the principal and Resource Teachers and grade group enrolling teachers. Ms Wrinch seeks to group and place designated special needs students with special education assistants so a teacher will have full-time assistance. Otherwise, she stays in the background – “These people know what is best for the kids.” She testified the teachers are very considerate of their colleagues and ensure no teacher has a heavier load than others. This is not a time when either the teachers or Ms Wrinch can realistically reorganize the number of classes in the school. The number is set by the district staffing allocation. The possibility of converting a non-enrolling teaching position to an

enrolling teaching position is more theoretical than real.

[884] Supervision Aides and employees-on-call were used to provide release time for teachers to attend the forty-five minute student placement meetings. The school had four Supervision Aides four days a week and five the other two days and alternate Wednesdays.

[885] A system with cards for each student and coloured dots indicating students needing extra attention and students demonstrating leadership is used. The considerations are gender balance, grouping learning partners, awareness of student social circles, distribution of designated and leadership and extra attention students. Parental requests for a specific teacher are considered, but the decision is made on the best educational setting for the child. Receiving grade teachers are generally not in attendance. In September, new designated students are generally placed by the principal.

[886] The outcome was balanced classes with an even distribution of designated special needs students. Ms Wrinch testified she has no authority over the number of divisions. There were a high number of combined grades classes because with an organization of single grade classes there would have been an unequal distribution of designated special needs students. Organizing combined grades classes kept the number of students with an IEP closer to the *School Act* standard of three per class.

[887] Ms Wrinch testified there are challenges with combined grades classes but, as in single grade classes, there is a range of abilities and students with diverse needs. The curriculum is effectively delivered through adaptations and strategies like collaborative teaching of subjects, use of alternate year A and B curricula and sequential teaching of subjects.

[888] Ms Wrinch prepared for September believing the teachers had accepted the class organization not as the ideal but as acceptable.

5. Group Principal-Teacher Consultation – September 18, 2007

[889] In September, each teacher takes the class it had the previous year for up to a week to help the students make the transition back to school. There was concern among the teachers about managing the combined grades and completing the required

curriculum, especially the Mathematics curriculum for Grade 7.

[890] On September 6th, Ms Wrinch attended a meeting of district principals and vice-principals at which she learned there were no held back resources for allocation. She interpreted this to mean there was no funding available for Hastings Elementary.

[891] At September 7th, the English enrolment was 367 students of whom 33 were designated special needs students with several classes with four or more students with an IEP. The school had 4.6 FTE special education assistants for both streams. There were no requests for additional support time during the school year.

[892] The Resource Teachers and enrolling teachers negotiate and resolve the Resource Teacher's schedule that places a second certified teacher in the classroom for eight or nine assigned blocks during the week and provides pull-out support as they decide.

[893] In the 2007-08 school year, Resource Teacher Myrne Ross was working with the two full-day Kindergarten classes, a Grade 3 class and Ms Coulter's combined Grades 4/5 class. Ms Ross is local union co-chair and the senior Union Staff Representative at Hastings Elementary. She was responsible to co-ordinate the consultation process with the principal and to ensure the consultations were documented for the local union by signing each teacher's form, as she had done in September 2006 when the principal met with each teacher and the Resource Teacher. Ms Wrinch used Supervision Aides to give teachers release time to attend the meetings. Ms Ross attended each meeting. Her testimony was that in that school year, the school received additional resources with the teacher assignments in March.

[894] In reporting the consultations in September 2006, Ms Ross completed forms for each meeting for the local union and Ms Wrinch completed reporting forms for each consultation for the school district. There were similar union and school district forms for 2007.

[895] On September 10th, Ms Wrinch received a reminder of the school district's guidelines and administrative requirements to fulfill the consultation and reporting requirements for classes with more than three students with an IEP. The individual teacher consultation forms were to be retained at the school in order to be able to

“produce proof of consultation.” Submitting the class organization to the Superintendent was affirming the principal’s opinion the organization was appropriate for student learning.

[896] Ms Wrinch testified she knew she had to consult with each of the seven teachers in seven of the eight intermediate classes with more than three students with an IEP and inform district Human Resources by September 20th.

[897] After September 10th, Ms Wrinch spoke to Ms Ross about the upcoming consultations. She told Ms Ross she had been informed by Human Resources that no additional resources were available. There was no hold back. They discussed giving the seven teachers more support by reassigning Resource Teachers, which did not happen, or having more intentional involvement of the Counselling Team to support designated students with behaviour problems.

[898] They discussed and decided it would be more efficacious and ensure delivery of a common message if they dispensed with individual consultation meetings with each teacher and convene a collective meeting. It would be more expeditious and less disruptive in a busy time of the year.

[899] Ms Ross convened and chaired a local union meeting to discuss the consultation process and Ms Ross told the teachers in attendance that she believed a group meeting of the affected teachers with the principal would be appropriate and they could do the union reporting paperwork at that time. She knew the reporting forms would be reviewed as part of the provincial class size and composition grievance process. She testified the teachers were satisfied with a group meeting, but she is not sure they thought it was brilliant. There is no evidence that all affected teachers attended this meeting.

[900] Notice was given of a meeting after school on Tuesday, September 18th. The meeting was held at 3:10 p.m. Ms Brothers, Ms Coulter and Mr. Low testified they attended as did Ms Ross and Ms Wrinch. No formal notes were taken. They recall Ms Appleton, Ms Patrick, Ms Morrow and Ms Hempel attended. No one recalled Ms Chu attending. Ms Ross and two other Resource Teachers attended.

[901] The meeting began at 3:10 p.m. and lasted ten to fifteen minutes. Ms Wrinch

and Ms Ross were at the head of the group and each spoke introducing the meeting as a consultation meeting on class size and composition. Ms Brothers asked if the teacher who had come in March was returning. He was not and there were no additional resources available. Ms Wrinch said Resource Teacher schedules might be adjusted. Resource Teacher Kary Taylor expressed the opinion that was not possible because all the classes were over-designated. Ms Wrinch said the Counselling team might be able to provide more intentional intervention and focused assistance with some students. Ms Wrinch left to print out a list of the designated students. Mr. Low left. While Ms Wrinch was gone, the teachers completed the union forms. Ms Wrinch returned and the meeting was concluded.

[902] Ms Brothers, Ms Coulter and other teachers completed their local union reporting forms, which Ms Ross signed. The forms do not require the teacher to state whether she agrees or disagrees with the organization of the class. Adrian Low left before completing his form to get to the gymnasium to coach a student volleyball team. He left the form to be completed by Ms Ross. He testified he did not know whether he had a choice to agree or not agree with the organization of the class.

[903] The union reporting form has no place for a teacher to sign or indicate agreement or disagreement with the organization of the class. Ms Ross faxed the reporting forms to the local union office at the end of October after returning from bereavement leave.

[904] Ms Wrinch was unaware of the prior local union meeting until this arbitration and was proceeding on the basis the group consultation had been decided by her and Ms Ross. She did not know classes in her school had been included in the grievance until this phase of the arbitration. There are none in the union's particulars for the 2006-07 school year.

[905] On September 19th, Ms Wrinch completed individual reporting forms for the school district dated that day. They are not identical and do not disclose that there was no individual meeting with each teacher. They list the attendees as the Resource Teacher, the union representative and the individual teacher. The description of the class and some of the comments are specific to each class, although some of the comments are similar.

[906] Ms Wrinch testified the first time she realized she had not held individual consultation meetings with the teachers was during the first day of testimony by Ms Ross.

[907] On September 21st, Ms Wrinch completed a report indicating she had held the required consultations with the teachers of the seven classes, including Ms Chu. She testified she was of the view each of the teachers considered the organization of their classes to be appropriate for student learning.

[908] Ms Wrinch did not follow-up on Resource Team realignment. She did not direct any reallocation between primary and intermediate grades. She left any change to be pursued by the Resource and enrolling teachers. No realignment occurred. The following week, she spoke to the Counselling team that she met with weekly and asked the case managers to connect directly with the seven class teachers and inquire about their needs.

[909] Ms Wrinch testified she did not think more resources were needed. She thought the level of academic and other support was richer than any she had experienced at other schools. She knew the Resource Teachers were very experienced; knew the children, families and community well; and gave a high quality of support.

6. Grades 4/5 Class – 25 Students with 4 IEP Students (L. Coulter)

[910] Ms Coulter had taught a combined Grades 4/5 class in the 2006-07 school year. Her choices for 2007-08 were three single grade level classes. Her assigned class in the 2007-08 school year was another Grades 4/5 combined class.

[911] Her class had three low incidence special needs students designated C, F and H and one student designated R. Both Ms Coulter and Ms Ross testified about this class. A full-time special education assistant was assigned to this class in September. The assistant was temporarily reassigned to Mr. Low's class for three blocks on three days from October to December.

[912] The student designated H was re-designated D in February when foetal alcohol syndrome was confirmed. The C designated student had a toddler mentality with many physical challenges and required toileting. The F designated student did not require any hearing or amplification device, as she did the previous year. The adaptation for

her was her seating and placement in the room.

[913] Ms Coulter taught these three students the previous year and after discussion with Ms Ross decided to keep the three in her class this year. They would have the same classroom teacher, the same Resource Teacher for seven to nine blocks, Monday to Thursday, and the same special education assistant, who was emergency back-up for another special education assistant across the hall with a diabetic child.

[914] The R designated student, a selective mute, who was later diagnosed with diabetes and had the designation changed to D in January, was new to Ms Coulter.

[915] Ms Coulter taught this class all subjects except music. She taught eight of the children the previous year. Eleven were ESL students. There were a variety of supports for students in this class throughout the year. Eight were on the counsellor's caseload. Several had Learning Assistance.

[916] Ms Coulter considered this very complicated class with emotional, social and learning difficulties should have been smaller and had more Resource Teacher time. The profound needs of the few were too great to give sufficient time to all the children. She wonders how children are expected to develop so fast when the class is limited to 24 students in Grade 3 and can increase to 30 students in Grade 4. Building relationships with the larger number of children while they build relationships with one another and a new school is more difficult. Striving for the ideal, the class should be 24 students or fewer and there should be a 0.5 FTE Resource Teacher for the class.

7. Grade 5 Class – 24 Students with 4 IEP Students (S. Patrick)

[917] Sandra Patrick did not testify. Two of the designated students came from Tillicum Annex. Resource Teacher Kari Taylor was with the class eight or nine blocks a week and designated students had Counselling Team, Youth and Family Worker and Neighbourhood Worker support. One student in the class was among the group that ignored the class start times and was suspended a number of times.

8. Grades 5/6 Class – 28 Students with 4 IEP Students (K. Appleton)

[918] Karen Appleton who was new to the school and replacing Melissa McCleary on sick leave did not testify. Ms McCleary, who returned to her teaching assignment after the Spring break, did not testify.

[919] After the R designated student left October 2, 2007, the class was twenty-seven students of whom three were designated special needs until May when another student was designated R. There was 0.5 FTE special education assistance support for the D designated student, who transferred from French Immersion and was behind in English academics. There were seven blocks of support from Resource Teacher Lynne Kennedy for the two students with a learning disability designation in this class taught by a new teacher to the school.

9. Grades 6/7 Class – 27 Students with 4 IEP Students (G. Morrow / J. Chu)

[920] Neither Gabbi Morrow nor Jennifer Chu testified. The four designated students remained throughout the year. The class increased to 28 students in November and had decreased to 26 in June. The class had eight or nine blocks of support from Resource Teacher Trudi Richter.

[921] Resource Teacher Lynne Kennedy supported the two special needs students with learning disability in four blocks of pull-out. The H designated student received Mathematics support from Ms Kennedy and Counselling, First Nations Support Worker and Neighbourhood Worker support services. The R designated student, one of the late bell students, received nine blocks of pull-out support from two Resource Teachers.

10. Grades 6/7 Class – 28 Students with 4 IEP Students (S. Brothers)

[922] Ms Brothers testified this class of 28 students with four designated special needs students became a class of 27 with three special needs students on October 14th. A behaviourally difficult student designated H, who had had some suspensions in this school year and who she had volunteered to take in the June class placement, left the school. The D designated student had 0.5 FTE special education assistance and the class had nine blocks of Resource Teacher assistance.

[923] Ms Brothers taught a number of the students in the class the previous year in a Grades 6/7 combined class. She testified a combined Grades 6/7 class presents unique challenges with the Grade 7 students, particularly in the spring when preparing for the transition to secondary school.

[924] Ms Brothers described this as a typical class at Hastings Elementary. In her ten years at the school she has never achieved her expectations, regardless how small or

large the class was or how many designated special needs students were in the class. She wants a class in which all students will learn something and she can pay attention to each student whether bright, average, grey area or designated special needs. If only there were enough resources to have classes appropriate for student learning, the reason she became a teacher. But the school “can never meet the needs of my students” at Hastings Elementary.

[925] In December, Ms Brothers volunteered to take a newly designated R student from Mr. Low’s class to assist him and separate that child from the bad influence of another child. The student was one of the late bell pack and a student with whom Ms Brothers developed a good relationship. A later diagnosis of foetal alcohol syndrome changed the designation to D in May.

[926] Ms Brothers taught the class until her maternity leave at the end of February. In April, one of the designated students left.

[927] In the re-arranged grouping of students by grade and ability with the Grades 6/7 class taught by Ms Morrow and Ms Chu, Ms Brothers taught Mathematics to a group of 32 to 33 higher ability students. Science was a combination of the Grades 6 and 7 curricula taught over two years. Some subjects were taught with no regard to the fact the students were in two grades.

11. Grades 6/7 Class – 28 Students with 4 IEP Students (A. Low)

[928] Mr. Low taught at Hastings Elementary in the 2006-07 and 2007-08 school years. In June 2007, he did not request to have any of the students he taught in his Grades 6/7 class. He believed it was a good adjustment and preparation for secondary for the Grade 6 students to be with a different teacher in Grade 7.

[929] His Grades 6/7 class in the 2007-08 school year had 28 students of whom four were designated special needs. The Q designated student was administratively transferred on October 2nd and a new R designated student in Grade 7 was added to the class shortly afterwards. This student had been home schooled in the 2006-07 school year and had no self-imposed boundaries in life or any set by an adult. It took the school a couple of weeks to obtain the student’s file and learn there was a special needs designation.

[930] This new Grade 7 student, about whom there was extensive testimony, was an extremely disruptive twelve year old member of the class and school until December 11th when placed on suspension and then moved to an alternate program outside the school. The delay was caused by a lack of parental cooperation. The student had a pattern of “defiant behaviour, work refusal, hitting peers and staff, fighting, vulgar language and threats to steal.”

[931] There was a referral to a Behaviour Consultant because of an escalating pattern of “leaving class without permission and ‘recruiting’ peers from other classes” to join in hanging out, writing graffiti, intimidating younger children or leaving school. The Consultant described the behaviour as typical foetal alcohol spectrum disorder – impulsive, distractible and difficulty with understanding time, cause and effect, organization and memory – exacerbated by hormonal demands of early puberty and requiring a much higher level of supervision that was able to be given at the school. The student was defiant with the special education assistant when the assistant was in the class. The presence of this student was the reason Ms Brothers volunteered in December to take another R designated student from Mr. Low’s class.

[932] Mr. Low had great difficulty dealing with interruptions and disruptions in his class and maintaining an instructional flow. It was draining and caused him to take three days of absence in November. A fifth student was designated a category R special needs student in December. Four of the designated students were in Grade 6. Several of the children were ESL students. Even after the most disruptive student left in January, Mr. Low found the class challenging.

[933] The class had eight or nine blocks of Resource Teacher Lynne Kennedy’s assistance. Mr. Low had worked with her the previous year. With Ms Wrinch’s agreement, his mother, a retired Resource Teacher, volunteered support for two students for one hour a day, three days a week.

[934] Mr. Low’s Mathematics group organized by the Grades 6/7 teachers had nine or ten students with an IEP. He had assistance from Resource Teacher Kari Taylor. He taught Physical Education and Art at times the students were platooned for English. He platooned with a Grades 6/7 French Immersion class for French. This reduced the number of subjects he taught. For Science and Social Studies, he taught each six

blocks a week for six week periods. These were the only blocks during which he taught two curricula.

[935] Mr. Low was unsure if a class would be appropriate until he had spent some time with the class because there is no clear formula for predetermining.

12. Grades 6/7 Class – 28 Students with 4 IEP Students (T. Hampel)

[936] Teresa Hampel did not testify. There were two Q and two R designated special needs students in this class of 28.

[937] One student of the R designated students, who was a member of the bell pack, received four blocks of Resource Teacher time and support from the Neighbourhood Worker and the school Counsellor. The other R designated student received support from the Youth and Family Worker and Principal.

[938] One of the Q designated students received Counsellor support and in class and pull-out support from two Resource Teachers. The other Q designated student received four blocks of in class Resource Teacher support.

13. Principal and Superintendent Opinions

[939] Ms Wrinch testified her opinion was that each of the seven classes was appropriate for student learning. The class organization had been accepted by the staff in May; the student placement was thoughtful and balanced; there were supports within the school that provided appropriate learning situations for each of the classes in a safe and caring school environment; there were solid curriculum delivery plans such as platoons for Mathematics and A and B Science curriculum on alternate years for combined grades classes; the teachers were maintaining learning communities within their classes and the school; and there were additional social and emotional and before and after school supports. A class is not inappropriate because one student struggles or does not achieve potential.

[940] Ms Wrinch testified that, after being at Hastings Elementary since January 2006, she knew the teachers and that they or Ms Ross would quickly tell her if a class was not appropriate for student learning. They capably use their experience and ability to address problems and willingly come to her with concerns. "They are staff that asks."

[941] In September 2007, Tom Grant was one of three Associate Superintendents

responsible for a geographic area. His area included Hastings Elementary which he knew well. He thought the school's resources were appropriate, but not ideal. However, they were more appropriate than in the other schools with which he worked.

[942] Mr. Grant knew there were classes requiring principal-teacher consultations and that Ms Wrinch was following through. He testified he had some indication she had met groups not individuals. He assumed the principal-teacher consultations had occurred as intended, but had no specific information about the meetings. He did not know the number, who attended or how long the meetings lasted.

[943] Mr. Grant received the report from Ms Wrinch declaring the class organization appropriate. He did not inquire if the teachers agreed, but was not naïve enough to think everyone would be happy. He advised Superintendent Chris Kelly that the class organization at Hastings Elementary was appropriate for student learning and knew Mr. Kelly was relying on his opinion. In his opinion a class is appropriate for student learning if it meets the development needs of students as much as possible with available resources. This is a contextual judgment based on the situation in each class.

[944] Mr. Kelly has been Superintendent for six years in this school district with the responsibility to successfully deliver the mandate on behalf of the Board of Education and effectively lead the school district as its chief executive officer with six Assistant Superintendents delivering programs to over 56,000 students and adults. His overall role is made explicit by the allocation of responsibility to him as Superintendent to oversee that programs are appropriate for learning and to approve class organization.

[945] By September he is aware of the general state of projections and enrolment that are driving the approved budget with as much as possible being put in place before the beginning of the school year. He is aware of the general state of organization for learning and the general state of readiness to receive students and respond to what transpires. He expects to be made aware of anomalies.

[946] In September fulfilling the class size and composition standard and the consultation and reporting process becomes the first priority. He was aware of Hastings Elementary as one of the most intensively diverse and complex schools in the district because of its size, programs, variety of learners and connection to the community.

[947] Toward the end of September, he receives a chart form report on classes that exceed the class size and composition standard. He attends a meeting with principals on staffing and meets with the three area Assistant Superintendents and others if necessary. Nothing about Hastings Elementary was flagged for his attention in September 2007.

[948] At the end of September, Mr. Kelly reviews school summaries and incidents of classes exceeding the standard and the rationales for classes with more than thirty students. If there are situations that attract his attention or which he does not think he can explain, he asks the area Assistant Superintendent of the Associate Superintendent Human Resources. For example, in 2007 at another school there was a Grades 6/7 class of 24 students with 12 students with an IEP.

[949] The classes at Hastings Elementary were unexceptional and consistent with the profile in the previous school year. Mr. Kelly assumed there had been consultations at which the issue of the appropriateness for student learning of the class under consultation was central to the discussion. Although not necessarily explicitly stated, he expects there will be a tacit shared understanding of what makes a class appropriate for student learning. He had no cause to inquire about consultations at Hastings Elementary. There was history of consultation in the school district that predates 2006 and it was not necessary to issue consultation guidelines.

[950] Mr. Kelly relies on the professionalism and expertise of his management. They are all experienced educators. They have a responsibility and mandate to enable learners. Collectively and individually they are committed to the school district's core purpose statement and act to the best of their collective responsibility to ensure students meet their curriculum and IEP responsibilities. That core statement is: "It is our collective responsibility as a school district to ensure the highest quality of learning experiences for all students, with a focus on student engagement, learning and development in a safe, inclusive environment." Mr. Kelly relies on and expects all combinations of management to continuously, collectively and interconnectedly provide appropriate learning situations.

[951] Mr. Kelly understands "appropriate for student learning" to be the outcome of this collective having allocated professional and other resources in a manner optimally

suited to meet the needs and values of learners to enable them to meet the curriculum and their IEPs. This does not mean optimal achievement because of the constraints of limited resources. Schools and educators must be deeply rooted in the prevailing realities and commit to striking the best possible balance. This process is sophisticated and continuous.

[952] To achieve this, the critical activities are timely annual notice in the chain of accountability of class size and composition standard responsibilities; an interactive process that challenges principals, assistant superintendents and Human Resources; high activity to resolve problems or refer them to him; and reporting.

[953] After receiving a comprehensive report for the school district that he has reviewed for completeness and anomalies, he makes his report on October 1st to the Board of Education and District Parents' Advisory Council. At that date, the data was current to September 21st and subject to being updated.

[954] At a public meeting on October 15, 2007, Mr. Kelly made an updated report to the Board of Education with data as at September 30th. A Board motion to approve the report was voted four in favour, four against and one abstention. The Chair ruled the motion had passed. This was disputed. A motion to sustain the Chair carried with no abstention.

4.5 Qualicum Beach Middle School (SD No. 69 – Qualicum)

Witnesses:

| | |
|----------------------|--|
| Don Boyd | Principal |
| Eileen Butts | Teacher |
| Catherine Dempster | Teacher and Staff Representative |
| Darren Freeman | Principal, Qualicum Beach Middle School |
| Pat Hoy | Vice-Principal, Qualicum Beach Middle School |
| Harry Indricksons | Teacher |
| Bonnie Kemble | Teacher |
| Candice Morgan | Superintendent |
| Lynne Murray | Teacher |
| Gerald (Jerry) Smith | Teacher |
| Lynn Sprague | Teacher |

Hearing: Nanaimo, November 24 – 28, 2008; February 27 – 28; March 2; April 14 – 15, 2009

Disputed Classes at September 30, 2007:

| | Class | Teacher | Size | IEPs |
|----|--------------------------------|----------------------------|------|-----------------------|
| 1. | Homeroom 6-3 | C. Frampton | 24 | 3 (1D, 1Q, 1R) |
| 2. | French 6-3 | L. Murray | 24 | 3 (1D, 1Q, 1R) |
| 3. | Science 6-3 | M. Morgan | 24 | 3 (1D, 1Q, 1R) |
| 4. | Homeroom 6-4 | H. Indricksons | 27 | 5 (1F, 4Q) |
| 5. | French 6-4 | S. Verheyen | 27 | 5 (1F, 4Q) |
| 6. | Physical Education 6 (Boys) | H. Indricksons | 29 | 6 (1D, 1F, 3Q, 1R) |
| 7. | Visual Arts 6 | C. Dempster | 21 | 5 (1H, 4Q) |
| 8. | Sewing 6 | J. Savage | 19 | 4 (1G, 2Q, 1R) |
| 9. | Home Economics 6 (Foods) | E. Hansen | 23 | 4 (3Q, 1R) |
| 10 | Homeroom 7-2 | C. Dempster | 30 | 4 (1G, 2Q, 1R) |
| 11 | French 7-2 | L. Murray | 30 | 4 (1G, 2Q, 1R) |
| 12 | Science 7-2 | M. Morgan | 30 | 4 (1G, 2Q, 1R) |
| 13 | Homeroom 7-3 | L. Murray | 30 | 5 (1G, 1H, 2Q, 1R) |
| 14 | Science 7-3 | J. Smith | 30 | 5 (1G, 1H, 2Q, 1R) |
| 15 | Mathematics 7-3 | J. Smith | 30 | 5 (1G, 1H, 2Q, 1R) |
| 16 | Social Studies 7-3 | C. Johnsen / B. Worthen | 30 | 5 (1G, 1H, 2Q, 1R) |
| 17 | Physical Education 7 (Boys) | H. Indricksons | 29 | 5 (1G, 1H, 2Q, 1R) |
| 18 | Visual Arts 7 | C. Dempster | 27 | 5 (1G, 1H, 1R, 1Q) |
| 19 | Home Economics 7 | E. Hansen | 26 | 4 (1C, 1H, 1Q, |

| | | | | |
|----|---------------------------------|-------------|----|----------------|
| . | (Foods) | | | 1R) |
| 20 | Sewing 7 | J. Savage | 26 | 4 (1C, 1G, 2Q) |
| 21 | Computers 7 | B. Davidson | 23 | 5 (1G, 2Q, 2R) |
| 22 | Drama 7 | J. Smith | 28 | 4 (1G, 2Q, 1R) |
| 23 | Homeroom 8-1 | C. Johnsen | 27 | 5 (1E, 2H, 2Q) |
| 24 | French 8-1 | G. Dodd | 27 | 5 (1E, 2H, 2Q) |
| 25 | Science 8-1 | E. Butts | 27 | 5 (1E, 2H, 2Q) |
| 26 | Physical Education 8 | C. Johnsen | 25 | 4 (1D, 1G, 2Q) |
| 27 | Physical Education 8 (Girls) | L. Sprague | 27 | 6 (3E, 2H, 1Q) |
| 28 | Computers 8 | B. Davidson | 24 | 5 (2D, 2G, 1R) |
| 29 | Design Craft 8 | D. Haynes | 19 | 5 (1E, 1G, 3Q) |

1. School District No. 69 (Qualicum) – 2007-08 Classes Grieved

[1] Enrolment peaked in School District No. 69 (Qualicum) in 1999 at approximately 6,000 students. Today, it is approximately 4,600 students. In the 2007-08 school year, there were fifteen schools - nine elementary, three middle and two secondary schools and a distributed learning program (CEAP – Collaborative Education Alternative Program).

[2] School District No. 69 (Qualicum) reported the class size and composition data for 780 classes at September 30, 2007 in the fourteen schools. There were 56 classes for Grades K-3 of which 2 (3.6%) had four or more students entitled to an individual education plan. There were 724 classes for Grades 4-12 of which 192 (26.5%) had four or more students entitled to an IEP. There were 24 classes with more than thirty students. (*Overview of Class Size and Composition in British Columbia Public Schools 2007/08 (School District 069 Qualicum)*)

[3] In the fall of 2007, the maximum potential number of reported classes in the Qualicum School District that could be subject to a grievance challenging class organization because of either class size or composition was 218 classes - the 24 reported classes with more than thirty students plus the 194 reported classes with more

than three students entitled to an IEP. The actual number may be slightly lower because some of the classes with more than thirty students may also have more than three students entitled to an IEP.

[4] The union's particulars of its 2007-08 school year grievance list 64 of the potential 218 classes in the school district at six schools: Springwood Middle (2); Bowser Elementary (3); Oceanside Middle (6); Ballenas Secondary (6); Kwalicum Secondary (8); and Qualicum Beach Middle (39).

[5] The school district reported 111 classes at Qualicum Beach Middle School (QBMS). The Music 8 class with 32 students, which is not among the classes grieved, was the only class with more than thirty students. As at September 30, 2007, 41 classes (36.9%) were reported as having more than three students entitled to an IEP.

[6] The union advanced to arbitration its grievance with respect to 28 of the reported classes at Qualicum Beach Middle School. It also advanced to arbitration its grievance with respect to the composition of nine other classes. Five of the nine are Grade 6 classes that had one student in the class designated special needs and entitled to an IEP after September 30th. The sixth and seventh classes, Sewing 6 and Sewing 7, had four, but were reported as having three, students entitled to an IEP. The eighth class, Design Craft 8, had five but was reported as having three students entitled to an IEP.

[7] In 2007-08, all of the classes were organized as single grade classes. Principal Darren Freeman testified classes could have been organized so fewer classes had more than three students entitled to an individual education plan if some Grades 6/7 and Grades 7/8 combined classes had been organized. Ms Dempster testified the teachers did not want classes with combined grades and were very supportive of retaining all non-enrolling services at the school.

[8] The choice of increasing enrolling assignments and decreasing non-enrolling assignment was raised by administration. Ms Dempster testified the teachers were reluctant to discuss job loss and which roles were more valuable.

[9] The distribution of the grieved classes advanced to arbitration by grade level is as follows:

| Grade | Reported Classes | Classes with >3 IEP Students | Classes Grieved | | |
|---------------|------------------|------------------------------|-----------------|----------|-----------|
| | | | Reported | Other | Total |
| 6 | 34 | 13 | 7 | 6 | 13 |
| 7 | 34 | 18 | 15 | 1 | 16 |
| 8 | 43 | 10 | 6 | 2 | 8 |
| Totals | 111 | 41 | 28 | 9 | 37 |

[10] The Ministry of Education requires middle schools to report classes by course subject not by homeroom divisions as in elementary schools. The following are the reported Grade 6 classes that have been grieved. In the five with an asterisk, a student was designated entitled to an IEP after September 30, 2007.

| | Grade 6 Class | Students | | Teacher |
|----|-------------------------------------|-----------|-----------|-----------------------|
| | | No. | IEP | |
| 1 | COMPUTERS 6 (01) | 16 | 2 | |
| 2 | COMPUTERS 6 (02) | 18 | 2 | |
| 3 | DRAMA 6 (01) | 21 | 3 | |
| 4 | ENGLISH LANGUAGE ARTS 6 (01) | 25 | 3 | |
| 5 | ENGLISH LANGUAGE ARTS 6 (02) | 26 | 3 | |
| 6 | ENGLISH LANGUAGE ARTS 6 (03) | 24 | 3* | C. Frampton |
| 7 | ENGLISH LANGUAGE ARTS 6 (04) | 26 | 5 | H. Indricksons |
| 8 | FRENCH 6 (01) | 25 | 3 | |
| 9 | FRENCH 6 (02) | 25 | 4 | |
| 10 | FRENCH 6 (03) | 24 | 3* | L. Murray |
| 11 | FRENCH 6 (04) | 26 | 5 | S. Verheyen |
| 12 | HOME EC 6 (01) | 22 | 4 | E. Hansen |
| 13 | MATHEMATICS 6 (01) | 25 | 3 | |
| 14 | MATHEMATICS 6 (02) | 25 | 4 | |
| 15 | MATHEMATICS 6 (03) | 24 | 3* | C. Frampton |
| 16 | MATHEMATICS 6 (04) | 26 | 5 | H. Indricksons |
| 17 | MUSIC 6 (01) | 21 | - | |
| 18 | MUSIC 6 (02) | 17 | - | |
| 19 | PHYSICAL EDUCATION 6 (01) | 20 | 4 | |
| 20 | PHYSICAL EDUCATION 6 (02) | 30 | 3 | |
| 21 | PHYSICAL EDUCATION 6 (03) | 21 | 2 | |
| 22 | PHYSICAL EDUCATION 6 (04) | 29 | 6 | H. Indricksons |
| 23 | SCIENCE 6 (01) | 25 | 3 | |
| 24 | SCIENCE 6 (02) | 25 | 4 | |
| 25 | SCIENCE 6 (03) | 24 | 3* | M. Morgan |
| 26 | SCIENCE 6 (04) | 26 | 5 | H. Indricksons |
| 27 | SEWING 6 (01) | 19 | 4 | J. Savage |
| 28 | SOCIAL STUDIES 6 (01) | 25 | 3 | |
| 29 | SOCIAL STUDIES 6 (02) | 25 | 4 | |
| 30 | SOCIAL STUDIES 6 (03) | 24 | 3* | C. Frampton |

| | | | | |
|----|------------------------------|-----------|----------|-----------------------|
| 31 | SOCIAL STUDIES 6 (04) | 26 | 4 | H. Indricksons |
| 32 | TECHNOLOGY 6 (01) | 24 | 2 | |
| 33 | VISUAL ARTS 6 (01) | 22 | 5 | C. Dempster |
| 34 | WOODWORK 6 (01) | 21 | 4 | |

[11] The following are the reported Grade 7 classes that have been grieved.

| | Grade 7 Class | Students | | Teacher |
|----|-------------------------------------|-----------|----------|-----------------------|
| | | No. | IEP | |
| 35 | COMPUTERS 7 (01) | 25 | 5 | B. Davidson |
| 36 | COMPUTERS 7 (02) | 25 | 4 | |
| 37 | DESIGN CRAFT 7 (01) | 25 | 2 | |
| 38 | DRAMA 7 (01) | 28 | 4 | J. Smith |
| 39 | ENGLISH LANGUAGE ARTS 7 (01) | 30 | 3 | |
| 40 | ENGLISH LANGUAGE ARTS 7 (02) | 30 | 4 | C. Dempster |
| 41 | ENGLISH LANGUAGE ARTS 7 (03) | 30 | 5 | L. Murray |
| 42 | ENGLISH LANGUAGE ARTS 7 (04) | 30 | 3 | |
| 43 | FRENCH 7 (01) | 30 | 3 | |
| 44 | FRENCH 7 (02) | 30 | 4 | L. Murray |
| 45 | FRENCH 7 (03) | 30 | 5 | L. Murray |
| 46 | FRENCH 7 (04) | 29 | 3 | |
| 47 | HOME EC 7 (01) | 25 | 4 | E. Hansen |
| 48 | MATHEMATICS 7 (01) | 30 | 3 | |
| 49 | MATHEMATICS 7 (02) | 30 | 4 | C. Dempster |
| 50 | MATHEMATICS 7 (03) | 30 | 5 | J. Smith |
| 51 | MATHEMATICS 7 (04) | 29 | 3 | |
| 52 | MUSIC 7 (01) | 18 | - | |
| 53 | MUSIC 7 (02) | 16 | - | |
| 54 | PHYSICAL EDUCATION 7 (01) | 30 | 2 | |
| 55 | PHYSICAL EDUCATION 7 (02) | 27 | 5 | H. Indricksons |
| 56 | PHYSICAL EDUCATION 7 (03) | 30 | 4 | |
| 57 | PHYSICAL EDUCATION 7 (04) | 29 | 4 | |
| 58 | SCIENCE 7 (01) | 30 | 3 | |
| 59 | SCIENCE 7 (02) | 30 | 4 | M. Morgan |
| 60 | SCIENCE 7 (03) | 30 | 5 | J. Smith |
| 61 | SCIENCE 7 (04) | 29 | 3 | |
| 62 | SEWING 7 (01) | 25 | 4 | J. Savage |
| 63 | SOCIAL STUDIES 7 (01) | 30 | 3 | |
| 64 | SOCIAL STUDIES 7 (02) | 30 | 4 | C. Dempster |
| 65 | SOCIAL STUDIES 7 (03) | 30 | 5 | |
| 66 | SOCIAL STUDIES 7 (04) | 29 | 3 | |
| 67 | TECHNOLOGY 7 (01) | 23 | 1 | |
| 68 | VISUAL ARTS 7 (01) | 28 | 5 | C. Dempster |

[12] The following are the reported Grade 8 classes that have been grieved.

| | Grade 8 Class | Students | | Teacher |
|------------|--|-----------|----------|--------------------|
| | | No. | IEP | |
| 69 | 3D ANIMATION/SCULPTURE 8 (01) | 20 | 3 | |
| 70 | COMPUTERS 8 (01) | 23 | - | |
| 71 | DESIGN CRAFT 8 (01) | 18 | 5 | D. Haynes |
| 72 | DRAMA 8 (01) | 17 | 3 | |
| 73 | ENGLISH LANGUAGE ARTS 8 (01) | 26 | 5 | C. Johnsen |
| 74 | ENGLISH LANGUAGE ARTS 8 (02) | 26 | 3 | |
| 75 | ENGLISH LANGUAGE ARTS 8 (03) | 25 | 3 | |
| 76 | ENGLISH LANGUAGE ARTS 8 (04) | 26 | 3 | |
| 77 | ENGLISH LANGUAGE ARTS 8 (05) | 26 | 3 | |
| 78 | FRENCH 8 (01) | 26 | 5 | G. Dodd |
| 79 | FRENCH 8 (02) | 27 | 3 | |
| 80 | FRENCH 8 (03) | 25 | 3 | |
| 81 | FRENCH 8 (04) | 26 | 3 | |
| 82 | FRENCH 8 (05) | 25 | 3 | |
| 83 | HOME ECONOMICS 8 (01) | 21 | 4 | |
| 84 | INFORMATION AND TECHNOLOGY 8 (01) | 23 | 5 | B. Davidson |
| 85 | MATHEMATICS 8 (01) | 26 | 5 | |
| 86 | MATHEMATICS 8 (02) | 27 | 3 | |
| 87 | MATHEMATICS 8 (03) | 25 | 3 | |
| 88 | MATHEMATICS 8 (04) | 26 | 3 | |
| 89 | MATHEMATICS 8 (05) | 25 | 3 | |
| 90 | MUSIC 8 (01) | 32 | 2 | |
| 91 | PHYSICAL EDUCATION 8 (01) | 26 | 6 | L. Sprague |
| 92 | PHYSICAL EDUCATION 8 (02) | 24 | 2 | |
| 93 | PHYSICAL EDUCATION 8 (03) | 27 | 1 | |
| 94 | PHYSICAL EDUCATION 8 (04) | 23 | 5 | |
| 95 | PHYSICAL EDUCATION 8 (05) | 25 | 4 | C. Johnsen |
| 96 | RECREATION AND LEISURE 8 (01) | 24 | - | |
| 97 | ROBOTICS/COMPUTERS 8 (01) | 21 | 4 | |
| 98 | SCIENCE 8 (01) | 26 | 5 | E. Butts |
| 99 | SCIENCE 8 (02) | 27 | 3 | |
| 100 | SCIENCE 8 (03) | 25 | 3 | |
| 101 | SCIENCE 8 (04) | 26 | 3 | |
| 102 | SCIENCE 8 (05) | 25 | 3 | |
| 103 | SEWING 8 (01) | 23 | 3 | |
| 104 | SOCIAL STUDIES 8 (01) | 26 | 5 | C. Johnsen |
| 105 | SOCIAL STUDIES 8 (02) | 27 | 3 | |
| 106 | SOCIAL STUDIES 8 (03) | 25 | 3 | |
| 107 | SOCIAL STUDIES 8 (04) | 26 | 3 | |
| 108 | SOCIAL STUDIES 8 (05) | 25 | 3 | |
| 109 | STAINED GLASS 8 (01) | 21 | - | |
| 110 | TECHNOLOGY EDUCATION 8 (01) | 15 | 2 | |
| 111 | VISUAL ARTS 8 (01) | 17 | 2 | |

[13] Qualicum Beach Middle School has homeroom classes to which the homeroom teacher will teach one or more of English Language Arts, Social Studies and Mathematics. The same class will receive instruction in French, Science, Physical Education and, perhaps, one of the three from another teacher. The students in differently constituted classes will receive instruction in an elective or exploratory class from another teacher. See the annexed table.

2. Middle School Philosophy

[14] Superintendent Candice Morgan, who spent most of her career as an educator in middle schools, testified the organization in middle schools is to enable students to make the transition from dependence to independence; from the relationship with one teacher in elementary school to many teachers in secondary schools. In preparation for secondary school, students move away from a home class base in Grade 6 to more independence in Grade 8. At the same time, teacher focus is on the whole child, not the single course that may be taught.

[15] The programming is deliberately designed to help students make the transition with Grade 6 more like Grades 4 and 5 and Grade 7 more like Grade 8. The school staff works to create an environment of inclusion and to help each child achieve his or her potential and become self-regulated learners. The middle school offers exploratory options for students that are age appropriate and capitalize on student interest by offering engaging relevant curriculum. A significant exploratory class is Band, a year long linear program that offers many students the only opportunity they have for formal music study. All exploratory courses are offered without gender stereotyping whether they are home economics, drama, computers or construction technology.

[16] Middle schools offer one more exploratory classes per trimester than there are grade divisions. Each student takes two exploratories per trimester. Distributing the number of students in four grade divisions across five exploratories will usually result in smaller exploratory classes. An exception may be Band, which may be designed to accommodate and attract a larger number of students. Seven of the twenty-four classes reported across the school district in 2007-08 as having more than thirty students were Music classes. Music classes may also have a smaller number of students entitled to an IEP. In 2007-08, none of the four Grades 6 and 7 Music classes

at Qualicum Beach Middle School had a student entitled to an IEP. The one Grade 8 Music class had one student entitled to an IEP. Fewer students entitled to an IEP in Music exploratories may result in more students entitled to an IEP in other classes.

[17] Superintendent Morgan testified there was never a collective agreement provision limiting the number of students entitled to an IEP in any class in School District No. 69 (Qualicum). Middle schools strongly value inclusion of learning differences and support of students with special needs to achieve success.

3. District Budget, Staffing Allocations and School Organization

[18] In the 2006-07 school year, Qualicum Beach Middle School had 407 local students and nineteen international students in sixteen divisions. In the 2007-08 school year, there were thirteen divisions and spare classrooms.

[19] In January 2007, Principal Don Boyd informed the teachers that he projected there would be a decline in enrolment in September from the current enrolment to 355 students. He anticipated there would be fewer divisions and exploratories and consequent layoffs. Using the 23.5:1 ratio, the enrolling teacher FTE would decline from 18.18 FTE to 15.11 FTE without counting international student enrolment, which had been a pilot program in 2006-07. The enrolment of international students would not be known until the summer or late June at the earliest. Having international students was appealing to the school because of declining enrolment.

[20] Thirteen divisions at 36 blocks each required 468 teaching blocks plus two additional exploratories per grade level resulted in a total of 486 blocks. Teaching time is calculated at 32 blocks per 1.0 FTE. Changes had to be made and some current practices were in jeopardy. There was no factor in the ratios and formulas with allowances or to make adjustments for the number of students with an IEP. Mr. Boyd testified the principal had to ask for more resources if it was considered necessary. Restricting classes to three students entitled to an IEP would create a need for more classes. He would not ask for more FTE teacher allocation only for this reason.

[21] By the end of May, students have selected exploratories for the next year and the placement in classes was done by non-enrolling staff in accordance with guidelines prepared by Mr. Boyd. Classes were to be balanced by size and gender and some

were to be limited to twenty-four unless placement of more students was discussed with the teacher. There was to be discussion with a teacher if more than three students with an IEP were placed in a class. Mr. Boyd testified that often a student's IEP is not relevant to an exploratory class.

[22] At the end of June, teachers place students in classes that are intended to be balanced and heterogeneous with respect to the distribution of students by assessment. They separate or group students known not to work well together or to be friends. The placements are made on assumptions about who will be teaching the class but discussion of teaching style is avoided. Non-enrolling teachers have unique knowledge about grey area and special needs students that is part of the collective decision-making. The tentative class lists were available to the teachers in June.

[23] Mr. Boyd was not involved in the placement of students in classes but built the timetable for the coming school year, which was completed by mid-June. He left the school at the end of the 2006-07 school year for an appointment as principal at Springwood Middle School. This left a senior teacher staff with many years at the school to deal with a new principal in the September consultations at a time when there was a declining enrolment and fewer resources.

[24] The enrolling teacher staffing allocation ratio used for 2007-08 was 23.5 FTE students for 1.0 FTE teacher. The library ratio as 702:1. The ration for the Learning Resource Centre, including gifted students, was 40:1. Three middle schools share 3.0 FTE Counselling based on their caseloads. The allocation to Qualicum Beach Middle School was 0.8 FTE and 0.6 FTE Student Support Coordinator. There was an allocation of 0.6 FTE for First Nations; 0.4 FTE for special education caseload; 1.1 FTE for Severe Learning Disability/Severe Behaviour; and 376 to 475 students generated 1.35 FTE Administration.

[25] The enrolling and non-enrolling staffing and resources allocated and purchased was as follows:

| <u>FTE Teacher Complement</u> | |
|-------------------------------|-------|
| Classroom Base | 15.11 |
| Learning Assistance / Gifted | 1.14 |
| Library | 0.65 |
| Counselling | 0.80 |

| | |
|--|--------------|
| Support Services Coordinators | 0.60 |
| Severe Learning Disability (SLD) / Severe Behaviour (SB) | 1.10 |
| Administration | 1.35 |
| | Total 20.75 |
| Purchase from International Student Funds | <u>0.325</u> |
| | Total 21.075 |
| <u>Special Education Support Staff & Miscellaneous</u> | |
| Education Assistants (EA) / Youth and Child Workers | 11 |
| Classes with Assigned Education Assistants | 74 |
| EA and Youth and Child Worker Hours / Week | 292.50 |
| First Nations Students Sharing 0.5 FTE FNSW | 25 |

The 0.5 FTE First Nations Support Worker was paid from funds separate from the school allocation.

[26] In June 2007, Vice-Principal Pat Hoy, who came to the school in August 2006, did an assessment of required special needs resources and arranged for the special education assistant allocation for the coming year, which was adjusted in September. Throughout the year, the hours are constantly reassigned and redeployed. Sometimes, it is done on a daily basis if a student or a special education assistant is absent. Ms Hoy testified she is always on the telephone looking for replacements and asking for more special education assistant time.

[27] The weekly hours for the support staff positions were Custodian (70.0), Library Clerk (15.0), Secretary (70.0), Child and Youth Care Worker (27.5) and Special Education Assistant (265.0).

[28] Ms Morgan testified that in 2004, the Board of Education undertook a plan to reduce class sizes in the district. In the 2004-05 additional money was allocated to elementary schools. In 2005-06 and 2006-07, the focus was on middle schools. The subsequent year it was secondary schools. To this end, the staffing ratio for enrolling teacher FTE allocation to schools was reduced from 24:1 to 23.5:1, the ratio used in 2007-08. With this ratio, there are no concerns about meeting the requisite aggregate class size averages.

[29] Ms Morgan testified there were also increases in special education allocations and other areas because of concern over increasing caseloads. At Qualicum Beach Middle School, despite a student FTE enrolment decline from 451.0 FTE in September

2000 to 355.0 FTE in 2007, the total non-enrolling FTE increased from 3.14 FTE to 3.49 FTE.

[30] In August 2007, Brian Worthen, the Grade 6-1 homeroom teacher, came to the school, as he traditionally has, to place students in the exploratory classes with input by Ms Hoy and using a loading chart prepared by Mr. Boyd. Mr. Freeman observed and was learning the practices and traditions at the school. Mr. Worthen did not testify. Mr. Freeman testified the effort was to give each student their first choice in the first term and to balance the exploratory classes by size, gender and number of students entitled to an individual education plan across the three terms. Because he did not know the students, Mr. Freeman had to trust that the process and tradition was working effectively.

4. Principal-Teacher Consultations – September 17 – 18, 2007

[31] Class information reports for each division based on design by teacher Jerry Smith that the school purchased from his company Sparetime Solutions. Student information is input by teachers on line and reports were printed and distributed to homeroom teachers in their information packages at the beginning of the school year.

[32] Current year individual education plans were not prepared until October or November. Previous year IEPs were in student files accessible to the teachers. Some teachers, like Ms Dempster prefer to meet, observe and assess the students in their classes before reviewing prior year IEPs. Some students change over the summer. Student files, IEPs and class information reports were not taken to the meetings by teachers.

[33] Mr. Freeman was appointed principal in May effective August 1, 2007. He had no role in class or timetable building for the 2007-08 school year and this was his first appointment to a middle school. There were no funds available in the international student program to purchase any additional resources in September and the program did not seem to “pan out.”

[34] In September, Mr. Freeman moved one student from one class to another at the request of the Child and Youth Care Worker. He made no changes in response to parent requests.

[35] Notice of the upcoming consultation meetings on September 17th was given at a staff meeting on September 12th. Mr. Worthen was the union Staff Representative at the school. He had other demands in September and Catherine Dempster took his place for the consultation meetings. Ms Dempster and Mr. Freeman confirmed the teachers with whom a consultation meeting had to be scheduled.

[36] The teachers discussed the upcoming consultation meetings at a school staff meeting. Ms Dempster testified some teachers wanted non-enrolling teachers to attend. This was not done because the advice from the BCTF was that the meetings were to be with the class teacher and a staff representative present. Prior to the meetings, Ms Dempster distributed and reviewed information from the local union and BCTF about the process with the teachers. They knew they would be asked to indicate whether they agreed or disagreed with the organization of each class.

[37] Mr. Freeman arranged for a TOC to release Ms Dempster to attend and to cover classes for him and Ms Hoy. Mr. Freeman met with teachers individually, rather than small groups teaching the same division. This suggestion was discussed but rejected because there was concern some teachers would be reticent about speaking about their concerns in the presence of fellow teachers.

[38] Despite reading student files and with some exception for notorious students, it was a challenge for Mr. Freeman to know the students. He relied heavily on Ms Hoy.

[39] There were no limits on the time for each meeting if the discussion extended beyond the scheduled time. As Ms Dempster testified, the constraint was teachers wanting to get to class, not wanting to delay colleagues and the heavy demands on teachers' time in September.

5. Grade 6-3 – 24 Students with 3 IEP Students at September 30, 2007

6. French 6-3 – 24 Students with 3 IEP Students at September 30, 2007

7. Science 6-3 – 24 Students with 3 IEP Students at September 30, 2007

[40] Neither the Homeroom teacher Carrie Frampton nor the Science teacher Michelle Morgan testified. A student designated gifted was mistakenly counted as a student entitled to an IEP for the purposes of the consultation requirement and consultations were held with each of the three teachers. Ms Dempster testified she

clearly recalls Ms Morgan disagreed with the organization of the class.

[41] A fourth student was assessed in January and designated as learning disabled (Q) in February. No consultation meetings were held. Mr. Freeman testified this was an oversight. The IEP was prepared in June 2008. The union identified that the issue is whether consultation meetings were required under the *School Act* in February 2008.

8. Grade 6-4 – 27 Students with 5 IEP Students at September 30, 2007

9. French 6-4 – 27 Students with 5 IEP Students at September 30, 2007

[42] Homeroom teacher Harry Indricksons testified. As part of the articulation from Grade 5 to Grade 6, in addition to visits and meetings with the Grade 5 teachers at the four feeder schools, the Grade 6 teachers receive individual student information sheets completed by the Grade 5 teachers. These forms were developed at Qualicum Beach Middle School to provide the information the Grade 6 teachers wanted to receive.

[43] Mr. Indricksons taught this class Language Arts, Mathematics, Social Studies and Science. In June, Ms Hoy spoke to Mr. Indricksons, who runs a very structured class, about the composition of this class and using an amplifier for the benefit of the F designated student. Mr. Indricksons did until he forgot it one day and learned the student could hear without him using it.

[44] In the consultation meeting with Mr Indricksons, there was general discussion about the students in the class and Mr. Freeman offered to cover his class to provide him with more time to meet with Learning Resource Teacher Miriam Snell to discuss the four Q designated students. Mr. Indricksons was not confident he could meet the needs of all the students and disagreed with the organization of the class.

[45] The French teacher, Sandra Verheyen, did not testify. Mr. Freeman testified he did not know if she used an amplifier for the F designated student, who he understood had no other issue with French. One Q designated student became French exempt in the second term. Ms Vermeer's concern was teaching four learning disabled students. Mr. Freeman offered her release time to meet with Ms Snell.

[46] Bonnie Kemble, a SLD case manager at Qualicum Beach Middle School, testified every effort is made to avoid declaring a student exempt from French to ensure each child has the cultural experience. Most of the students who are exempted have an

IEP but some do not. Most of the exempted students with IEPs have severe learning disabilities. The exempt students need to be attached to an adult and a space during the French block. Most often this is the Learning Resource Centre or with volunteer adult tutors who come to the school.

[47] In the 2006-07 school year, there were five Grade 6, eight Grade 7 and eleven Grade 8 students who were French exempt. The data for the 2007-08 school year is not in the exhibits.

10. Phys. Ed. 6 – 29 Students with 6 IEP Students at September 30, 2007

[48] There were four reported Grade 6 Physical Education classes. The class sizes and numbers of students entitled to an IEP were 24 and 4; 30 and 3; 21 and 2; and 29 and 6. The imbalance is because the classes are organized by gender and, in 2007-08, there were 59 boys and 42 girls in Grade 6. The larger classes were boys. The number of students entitled to an IEP was not balanced because in the timetable the 6-1 and 6-2 homeroom classes and the 6-3 and 6-4 homeroom classes are organized separately by gender for Physical Education.

[49] It is the Physical Education teachers who decide each year whether to re-organize the homeroom classes with Physical Education in the same block as co-ed or single gender classes. The preference at this school is to teach by gender rather than homeroom.

[50] This class of twenty-nine students with six entitled to an IEP was the boys' class for the 6-3 and 6-4 homeroom classes. Mr. Indricksons taught this Physical Education class. The Physical Education class for girls from homerooms 6-3 and 6-4 had twenty-one students of whom two were entitled to an IEP. This reorganization accounts for the disparity in the numbers recorded during consultation meetings, reported to the Ministry of Education and listed above.

[51] To address the imbalance, Mr. Indricksons and Ms Frampton decided to have five boys rotate through the girls' class each term to balance the numbers, effectively reducing his class size to twenty-four students. Two designated students stayed with Mr. Indricksons and did not rotate through the girls' class. At any time, he had three or four students entitled to an IEP. He did not agree with the organization of the class at

the consultation meeting because it was too early in the year to know how things would work out.

11. Visual Arts 6 – 21 Students with 5 IEP Students at September 30, 2007

[52] One intensive behaviour designated student in this class had a special education assistant until the student withdrew from the school in November. Ms Hoy testified this student was a little person “who took up a lot of room” and time.

[53] Ms Dempster did not have the individual education plans at the time of the consultation meeting and was unsure how they related to this first term class rather than a core subject area. She did not agree with the organization of the class.

12. Sewing 6 – 19 Students with 4 IEP Students at September 30, 2007

[54] The teacher, Jeanette Savage, did not testify. Ms Hoy testified that nineteen is a nice class size and one of the designated students had a special education assistant who could help when in the classroom, which was a large space. Two other designated students could be sent to the BOOST room if there were behavioural problems.

13. Foods 6 – 23 Students with 4 IEP Students at September 30, 2007

[55] The teacher, Eva Hansen, who did not testify, said she did not agree with the organization of the class at the consultation meeting. She expressed a wish to have a special education assistant to assist in the class. None was assigned. Mr. Freeman thought the class appropriate for a single term and if there were behaviour problems, both his office and the BOOST room were available to the teacher.

14. Grade 7-2 – 30 Students with 4 IEP Students at September 30, 2007

15. French 7-2 – 30 Students with 4 IEP Students at September 30, 2007

16. Science 7-2 – 30 Students with 4 IEP Students at September 30, 2007

[56] Ms Dempster was concerned about the size of this class to which she taught English Language Arts, Mathematics and Social Studies. It was in the smallest room in the school with a special education assistant assigned to one G designated student for 12.5 hours per week. Two designated students had access to the BOOST room. There were thirty-one students enrolled in the class at the time of the consultation. Mr. Freeman believed the class would be fewer by mid-October.

[57] Ms Dempster regularly sent eight grey area students for learning assistance and nine or ten for Mathematics support. She requested and received an additional ten hours special education assistance time for this class.

[58] Mr. Freeman does not recall if Ms Dempster said she agreed or disagreed with the organization of this class. He felt this class was appropriate for student learning but it was a class that was to be carefully monitored.

[59] One of the Q designated students was French exempt. Lynne Murray had had this student associated with Grade 6 French class as a French exempt student. It is intended that a French exempt student be somewhere other than the classroom during the French block. The previous year, this student's comings and goings or remaining in the class had been disruptive. This was her main concern in the consultation meeting. French is scheduled in block 4 and the SLD room was not always available during this block.

[60] The French exempt student often attended the learning assistance or BOOST rooms during French class, but did remain in the class for one-sixth of the blocks throughout the year during which he was to work on his "writer." Mr. Freeman testified this student spent the time in the French block in various places around the school – Boost, SLD, Ms Murray's class.

[61] Mr. Freeman testified that French exempt was a "curious animal" new to him when he went to Qualicum Beach Middle School. He was unsure during the consultation meetings what the protocol was for taking attendance and supervising a student during a French block from which the student was exempt.

[62] Michelle Morgan did not testify about this class in Science 7. Mr. Freeman does not recall if she agreed or disagreed with the organization of the class. He recalls she was concerned with having thirty-one students and did not want any more than thirty.

17. **Grade 7-3 – 30 Students with 5 IEP Students at September 30, 2007**
18. **Science 7-3 – 30 Students with 5 IEP Students at September 30, 2007**
19. **Mathematics 7-3 – 30 Students with 5 IEP Students at September 30, 2007**
20. **Social Studies 7-3 – 30 Students with 5 IEP Students at September 30, 2007**

[63] This was Ms Murray's homeroom to which she taught English Language Arts and French. In the consultation meeting, she raised concerns about French exempt students; asked for special education assistant hours for Language Arts; and said she did not agree with the organization of the class.

[64] One G designated student had a full-time special education assistant and spent only an hour or so a month in the class. Another designated student had five special education assistant hours per week. Only two designated students took French. Designated students in this class had access and utilized all the schools various supports and resources.

[65] Gerald (Jerry) Smith, who did not have a homeroom in the 2007-08 school year, taught this Science class three days in the six day cycle and Mathematics each day in the cycle. He testified this class was a challenge to get started, focused and calm for learning each day from early in the year. He acknowledged it was a year for belt tightening at the school and felt a consultation meeting was pointless. He used the consultation meeting to clarify who was responsible for preparing adaptations for designated students. He "definitely disagreed" with the organization of this class which he found to be unbalanced. It did not become a functioning social group despite efforts by him and Ms Murray to create a cohesive group throughout the year.

[66] The Social Studies teacher, Corby Johnsen, did not testify. This was his second year teaching and, in the consultation meeting, he discussed strategies for working with the special education assistant in the classroom. Another teacher, Mr. Worthen, taught this class Social Studies one in six days. He was not consulted. Mr. Freeman intended to but it was overlooked and not raised by Ms Dempster who replaced Mr. Worthen as Staff Representative at the meetings.

21. **Phys. Ed. 7 – 29 Students with 5 IEP Students at September 30, 2007**

[67] Mr. Indricksons taught this class of boys from the 7-1 and 7-2 homerooms,

several of whom he had taught the previous year. Again he was paired with Ms Frampton. The boys and girls classes were more evenly balanced but there were seven boys and two girls entitled to an IEP. He did not discuss with Ms Frampton balancing the students entitled to an IEP.

[68] Mr. Indricksons testified he had extensive knowledge of the five designated boys going to the consultation meeting and his concern was the three behavioural designated students. He disagreed with the organization of the class because he did not know if all of the students' needs would be adequately met. Mr. Freeman considered Mr. Indricksons' disagreement but decided the gender split classes were appropriate for student learning. He was not surprised to hear the disagreement because it was the second day of the consultation meetings and many teachers were disagreeing with the organization of their classes.

[69] One difficult designated student spent a great amount of time in the BOOST room. While the other supports in the school were less supportive of Physical Education classes, the other four designated students did well and Mr. Indricksons developed good relationships with each. He testified it turned out to be a good class.

22. Visual Arts 7 – 27 Students with 5 IEP Students at September 30, 2007

[70] Behavioural issues appeared early in the year in this class taught by Ms Dempster with a grouping that was disruptive. At this last consultation meeting on September 17th, there was confusion about the number and identity of the students in the class. Ms Dempster mistakenly thought she had thirty students of whom seven were entitled to an IEP. One of the designated students she had expressly agreed to accept in the class in September.

[71] Two of the five designated special needs students were on the regular Art program.

23. Foods 7 – 26 Students with 4 IEP Students at September 30, 2007

[72] Ms Hansen, the teacher of this class, did not testify. At the consultation meeting, Ms Hansen was concerned about having twenty-six students and wished to have two removed. One of the designated students had a full-time special education assistant.

[73] The class was in a room Ms Hoy described and testified will accommodate more

than twenty-four students. Mr. Freeman knew the norm was twenty-four but he felt obliged to give students their selection and they could be accommodated in this room that had stations to accommodate twenty-eight students. Although the teacher disagreed with the organization of the class, he did not think removing students was in the best interests of the school.

24. Sewing 7 – 26 Students with 4 IEP Students at September 30, 2007

[74] Ms Savage, the teacher of this class, did not testify. Ms Hoy knew that the special education assistant that accompanied one of the designated students was good at sewing and gave valuable assistance in this course, although Ms Savage did not share this viewpoint. Mr. Freeman believed twenty-six students could work well in this large room and did not appreciably increase the health and safety risks and no concerns, near misses or incidents were reported during the year.

25. Computers 7 – 23 Students with 5 IEP Students at September 30, 2007

[75] Brad Davidson, the first year teacher of this class, did not testify. His expressed concern at the consultation meeting was the additional workload having four, rather than three, designated special needs students. At the time, the class composition was thought to be twenty-four students of whom three were entitled to an IEP. Mr. Freeman was not told if Mr. Davidson agreed or disagreed with the organization of the class.

26. Drama 7 – 28 Students with 4 IEP Students at September 30, 2007

[76] Mr. Smith did not recall the events of the consultation meeting about this thirteen-week course for which there were no modifications for any student. For one student, he was directive and selective about the groupings in which the student was placed to ensure there was peer support for the student. His concern was the range within the class and that it was not balanced. Mr. Freeman and Ms Hoy had no concerns about this being a class appropriate for student learning.

27. Grade 8-1 – 27 Students with 5 IEP Students at September 30, 2007

28. French 8-1 – 27 Students with 5 IEP Students at September 30, 2007

29. Science 8-1 – 27 Students with 5 IEP Students at September 30, 2007

[77] Mr. Johnsen, the homeroom teacher, taught this class English Language Arts and Social Studies. Mr. Freeman recalls at the consultation meeting Mr. Johnsen said

this was a great group of kids and did not raise any concerns or make any requests concerning this class. Mr. Johnsen said the class was fine and he would deal with it. Mr. Freeman was surprised to learn in the fall of 2008 that Mr. Johnsen disagreed with the organization of the class and it is among the classes grieved.

[78] Gordon Dodd, who did not testify, taught the class French. In the consultation meeting, he asked how he was to make adaptations for the designated special needs students for French. Mr. Freeman testified Mr. Dodd knew the students in this class.

[79] Eileen Butts has taught Science for thirty-two years. She has taught at Qualicum Beach Middle School since the day it opened at another location with Grades 6 to 9 before moving to its current location five or so years ago. In 2007-08, she taught Science 8 to this class and three other classes. She was 0.65 FTE Librarian for the school.

[80] Ms Butts knew many of the students in this class from teaching them in lower grades and as Librarian. She recalls discussing the nature of the visual impairment of one student, who she had not previously taught, and the requirement to enlarge printed materials for the student. There were ten hours per week of special education assistant time assigned to the class and, throughout the year, Ms Butts received help enlarging and assembling materials for this student. At the parents request, this adaptation discontinued in February when the student's special needs designation was discontinued.

[81] Mr. Freeman asked what would help her with this class and she responded additional special education assistant time. Mr. Freeman did not think this was necessary for Ms Butts and that any available time could be better used elsewhere in the school.

[82] Ms Butts did not agree with the organization of this class. She did not think it was in "the best interests of all the students that this configuration goes forward." She had a "small amount of concern" about the number of students in her science room. She knew and used the supports and resources available to her and the designated special needs students in the school. In December a designated special needs student left the school. The special education assistant time assigned to that student was

redistributed within the school and some was assigned to Ms Butts' class.

30. Phys Ed. 8 – 25 Students with 4 IEP Students at September 30, 2007

[83] Mr. Johnsen, who taught this co-ed class, did not testify. There were five Grade 8 divisions and this class was not paired with another one to enable gender based reorganization.

[84] One G designated student was accompanied by a full-time special education assistant who did parallel activities with the student during the class if the student could not participate in group activities. Mr. Freeman recalls Mr. Johnsen had the same approach with this class during the consultation meeting as he had with his homeroom class and did not state whether he agreed or disagreed with the organization of this class.

31. Phys Ed. 8 – 27 Students with 6 IEP Students at September 30, 2007

[85] Lynn Sprague's homeroom was Grade 8-4 to which she taught English Language Arts and Social Studies. She testified she taught Physical Education to classes of girls in each of the three grades at Qualicum Beach Middle School.

[86] Ms Sprague testified a designated special needs student's IEP may not be directly related to a Physical Education course and she must determine each student's needs in the gymnasium. Often there are issues of self-esteem and image that are manifest in the gym. Some students with an IEP are exceptional athletes but can exhibit other attitudes and behaviour such as over confidence or an unwillingness to participate in activities that they consider demeaning or not age appropriate for them. Students with behavioural problems will be taken to the large area of the gym with its many exits and engage in gamesmanship to avoid or control situations.

[87] This class was constructed from divisions 8-1 and 8-2. Four of the five designated special needs students in division 8-1 were girls and two of the three in division 8-2 were girls. Ms Sprague's other Grade 8 Physical Education girls' class, constructed from divisions 8-3 and 8-4, had twenty-seven students of whom one was entitled to an IEP.

[88] Ms Sprague learned in the consultation meeting the class had three girls who were designated visually impaired. She had thought there was only one student, who

she had taught before. Before the consultation meeting, she had played soccer in the class and had not noticed there were three visually impaired girls. She knew about a report the previous year on gymnasium lighting and that bulb changes were being made to accommodate a visually impaired student. As a new principal, this was the first Mr. Freeman learned about this outstanding facility issue, which he followed-up.

[89] A Q and a H designated student she knew from the previous year's basketball team. All six designated students participated in the regular program. Five of the six were described by Ms Sprague as exceptional athletes.

[90] She was most concerned about a student with a behavioural H designation who she knew from previous years. She was not confident referral to the BOOST room was adequate. When she sent a student she had to follow-up to ensure the student actually went, the room was open and there was space available. She knew she could refer the student to the office if problems arose.

[91] Ms Sprague testified there had been informal staff room discussion among the teachers about whether to agree or disagree with the organization of classes for which there were to be consultation meetings. There was no consensus. She had decided before the meeting but testified she did not consider the meetings meant much. There are never enough resources in the school and you cannot get blood from a stone. You have to work with what you have. She said she disagreed and ran to meet the bell.

32. Computers 8 – 24 Students with 5 IEP Students at September 30, 2007

[92] Mr. Davidson, the teacher of this internet research based and Power Point oriented computer course, did not testify. One of the G designated students had a full-time special education assistant. The other G designated student had 12.5 hours per week. Each participated in the regular program in this class. The other three designated students also participated in the regular program. Two of them had special education assistant time but it was assigned to academic core classes, not exploratory classes.

[93] At the consultation meeting, Mr. Davidson did not say whether he agreed or disagreed with the organization of this class.

33. Design Craft 8 – 19 Students with 5 IEP Students at September 30, 2007

[94] David Hayes, the teacher of this class, did not testify and there was little evidence about this class of nineteen held in the wood shop. Mr. Davidson's concern at the consultation meeting was for the safety of the visually impaired student. Ms Hoy testified this student had very good coping skills and did not let her impairment separate her from doing what the other students did. The student was not an impulsive child who was likely to be a self-risk.

[95] Mr. Freeman is a woodworking enthusiast and had a keen interest in the skateboard and other projects in this class. He visited the class to observe the visually impaired student and follow the projects as they progressed. Mr Davidson was proud of the skateboard the visually impaired student did and took it to Mr. Freeman's office to show it to him. Mr. Freeman also often visited the Foods classes.

34. Principal and Superintendent Opinions Classes are Appropriate

[96] In September 2007, Ms Hoy was not asked her idea of a class appropriate for student learning and she did not discuss this concept with Mr. Freeman, who did not discuss his with Ms Dempster or the other teachers. Ms Hoy testified she was surprised in the consultation meetings when teachers said they did not agree with the organization of a class. With the resources that were in place and a commitment she would seek more, she did not know what more could be done within the parameters of the school.

[97] On September 20, 2007, there was a meeting of the three middle school administrators with district administrators. Mr. Freeman attended with as many data driven reports as he could generate. He hoped he would learn there were some additional resources available for the school. There was none. He did not lose any teaching allocation although the enrolment at 347 was below the projected 355. There was room for further enrolment in Grades 6 and 8, but the situation was tight in Grade 7. He did not ask for more teacher allocation.

[98] Mr. Freeman made no changes to the size or composition of a class as a consequence of a consultation meeting.

[99] On September 27, 2008, Mr. Freeman, with a high level of comfort, signed a

district form confirming the consultations had been held and that in his opinion the “learning conditions in all classes are acceptable.” The classes were appropriate for student learning. They were classes in which students could learn. The classes had been organized in a well thought out, collaborative process with much discussion and he trusted the results of the open dialogue he found at the school, which had lots of supports for the students.

[100] Superintendent Morgan testified the phrase “learning conditions are acceptable” was intended to reflect that the classes are appropriate for student learning. She considers acceptable and appropriate to be interchangeable in this context.

[101] Based on a review of reports from the principals and senior administrators and discussions with some of them, including Mr. Freeman, she reported to the Board of Education on October 1, 2007 that the class organization in the district was in compliance with the *School Act* and appropriate for student learning.

[102] Ms Morgan did not review the individual consultation reports and was not aware a number of teachers told Mr. Freeman they did not agree with the organization of their classes. She wondered whether it would be useful to know because her experience is that when teachers have strongly held concerns, they make them well known. That was the case with two classes at another school. She wonders about the cognitive dissonance when teacher disagree with classes they collaborated to build with their knowledge of the students and seek to make the optimal groupings among them.

Table: Class Organization and Designated Special Needs Students

| Home Class Grade Divisions | | 6-1 | 6-2 | 6-3 | 6-4 | 7-1 | 7-2 | 7-3 | 7-4 | 8-1 | 8-2 | 8-3 |
|---|--|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Boys | | 14 | 16 | 14 | 15 | 13 | 14 | 13 | 15 | 14 | 12 | 12 |
| Girls | | 11 | 10 | 10 | 11 | 16 | 16 | 17 | 15 | 12 | 16 | 13 |
| Totals | | 25 | 26 | 24 | 26 | 29 | 30 | 30 | 30 | 26 | 28 | 25 |
| Designated Special Needs Students by Category | | 15 of 101 | | | | 15 of 119 | | | | 17 of 129 | | |
| A - Physically Dependent | | | | | | | | | | | | |
| B - Deaf / Blind | | | | | | | | | | | | |
| C - Moderate to Severe Profound Intellectual Disability | | | | | | | | | 1 | | | |
| D - Physical Disabilities or Chronic Health Impairments | | | | 1 | | | | | | | | |
| E - Visual Impairment | | | | | | | | | | 1 | 2 | |
| F - Deaf or Hard of Hearing | | | | | 1 | | | | | | | |

| | | | | | | | | | | | |
|--|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| G - Autism | 1 | 1 | | | 1 | 1 | 1 | | | | 2 |
| H - Intensive Behavioural Interventions / Serious Mental Illness | 1 | 1 | | | 1 | | 1 | 1 | 2 | | |
| K - Mild Intellectual Disability | | | | | | | | | | | |
| P - Gifted [7 designated - not included] | | | | | | | | | | | |
| Q - Learning Disabilities | 1 | 2 | 1 | 4 | 1 | 2 | 2 | 1 | 2 | 1 | |
| R - Moderate Behaviour Support / Mental Illness | | | 1 | | | 1 | 1 | | | | 1 |
| Totals | 3 | 4 | 3 | 5 | 3 | 4 | 5 | 3 | 5 | 3 | 3 |

Designated after September 30th

1

Miscellaneous

| | | | | | | | | | | | |
|--|---|---|---|---|---|---|---|---|---|---|---|
| French Exempt IEP Students | | | | 1 | | 1 | | | | | |
| Supported First Nations IEP Students | | | 2 | 1 | 1 | | 1 | | 1 | | |
| IEP Students ("G" and "Q") with Adapted or Modified Programs | 2 | 2 | 1 | 4 | 2 | 2 | 2 | 1 | 2 | 1 | 2 |

Disputed Classes

| | | | | | |
|--|-----------|-----|-----------|-----|-----------|
| Home Classes and Subjects Taught by Home Class Teacher | 6-3 | 6-4 | 7-2 | 7-3 | 8-1 |
| - Language Arts | • | • | • | • | • |
| - Social Studies | • | • | • | | • |
| - Mathematics | • | • | • | | |
| - Science | | • | | | |
| - French | | | | • | |
| French | 6-3 | 6-4 | 7-2 | | 8-1 |
| Science | 6-3 | | 7-2 | 7-3 | 8-1 |
| Mathematics | | | | 7-3 | |
| Social Studies | | | | 7-3 | |
| Physical Education | 6-3 / 6-4 | | | | |
| Physical Education - Boys | | | 7-1 / 7-2 | | |
| Physical Education - Girls | | | | | 8-1 / 8-2 |
| Home Economics * | 6A | | 7A | | |
| Sewing * | | 6B | | 7B | |
| Art * | | 6B | | 7B | |
| Computers * | | | 7A | | 8A |
| Drama * | | | 7A | | |
| Design Craft * | | | | | 8B |
| Total | | | | | |

* denotes exploratory / elective classes

4.6 Claremont Secondary School (SD No. 63 – Saanich)

Witnesses:

| | |
|---------------|---------------------------------------|
| Keven Elder | Superintendent |
| Mike Ewan | Teacher and Staff Representative |
| Mark Fraser | Principal, Claremont Secondary School |
| Sean Hayes | Teacher and Staff Representative |
| Stacey Hooper | Teacher |
| Anne Light | Integration Support Teacher |
| Tara Orme | Teacher |
| Mark Skanks | Teacher |
| Lucky Walia | Teacher |

Hearing: Victoria, December 5 – 19, 2008; March 5 – 6; 9 – 10, 2009

Disputed Classes at September 30, 2007:

| | Class | Teacher | Size | IEPs |
|-----|------------------------------|-------------|------|---------------------|
| 1. | English 12 | K. Andiel | 24 | 4 (3Q, 1R) |
| 2. | Social Studies 9 | G. Aujla | 28 | 5 (1D, 1H, 1R, 2Q) |
| 3. | Woodwork 10/11/12 | D. Beeston | 24 | 9 (1D, 1H, 3R, 4Q) |
| 4. | Intro to Business | R. Bussoli | 31 | 0 |
| 5. | French 10 | S. Card | 31 | 0 |
| 6. | Chemistry 12E | M. Ewan | 36 | 0 |
| 7. | Community Recreation 11 | K. Harris | 31 | 1 (Q) |
| 8. | Biology 12E | S. Hayes | 32 | 0 |
| 9. | Social Studies 9 | S. Hooper | 29 | 8 (2G, 1K, 4Q, 1R) |
| 10. | Art 9 | C. Jardey | 26 | 5 (2D, 1G, 2Q) |
| 11. | Art 10/11/12 | C. Jardey | 31 | 4 (1G, 3Q) |
| 12. | Social Studies 10 | G. Mitchell | 31 | 1 (1Q) |
| 13. | History 12 | G. Mitchell | 31 | 2 (2Q) |
| 14. | Principles of Mathematics 12 | K. Nelson | 31 | 0 |
| 15. | Communications 11 | T. Orme | 27 | 15 (2D, 1K, 9Q, 3R) |
| 16. | Community Recreation 11 | D. Reisig | 31 | 3 (3Q) |
| 17. | Community Recreation 11 | S. Ryan | 28 | 6 (1G, 3Q, 2R) |
| 18. | Mathematics 11 Applications | M. Skanks | 24 | 4 (1H, 2Q, 1R) |
| 19. | Mathematics 12 Applications | M. Skanks | 26 | 5 (3Q, 2R) |
| 20. | Science 9 | Lucky Walia | 29 | 6 (1D, 1G, 3Q, 2R) |

1. School District No. 63 (Saanich) – School Year 2007-08 Classes Grieved

[103] In 2007-08, the Saanich School District had approximately 7,650 students attending nine elementary, three middle and three secondary schools, two Individual Learning Centres and Distributed Learning. As at September 30, 2007, the school district reported class size and composition data for 795 classes at the fifteen neighbourhood schools. (*Overview of Class Size and Composition in British Columbia Public Schools 2007/08 (School District 063 Saanich)*)

[104] There are differences between this and other numbers in the published reports and the Superintendent's report at the public meeting of the Board of Education on October 10, 2007. For example, the Superintendent reported there were 176 "divisions" in the first semester at Claremont Secondary School, while the Ministry report is that there were 159 "classes." It was not necessary to explore the nature, extent, governing definitions, requirements and reasons for the differences in this proceeding. The numbers cited in this decision are from the Ministry's published reports.

[105] There were 84 classes for Grades K–3 and 711 classes for Grades 4-12. The school district reported there were 78 classes in excess of thirty students. The teacher consented to the organization of one class of 31 students, which included Grade 7 students. The remaining 77 classes in Grades 8 and higher did not require the teacher's consent. The school district reported 132 (18.6%) of the 711 classes for Grades 4-12 had four or more students entitled to an individual education plan (IEP).

[106] In the fall of 2007, the maximum potential number of classes in the school district that could be subject to a grievance challenging the class organization because of either its size or composition was 209 classes - 77 classes with more than thirty students plus 132 classes with more than three students entitled to an IEP. The actual number is slightly lower because some of the classes with more than thirty students also had more than three students entitled to an IEP.

[107] The number is still lower if classes reported with more than thirty students, but having more than one teacher, such as Physical Education Lacrosse with 46 students and two teachers, are removed. These quirks in the school information system have negligible impact on class averages for the school and district.

[108] The union's particulars of its 2007-08 school year grievance list 61 of the potential 209 classes. They are at the three secondary schools: Claremont Secondary with 1,000 to 1,100 students (25 classes); Parkland Secondary with 700 to 750 students (26 classes); and Stelly's Secondary with 1,000 to 1,100 students (10 classes).

[109] The union selected Claremont as a representative school for this phase of the arbitration and proceeded with its grievance for twenty classes. The Ministry report is that 32 classes had more than thirty students and 23 classes had more than three

students with an IEP. Three classes had more than thirty students and more than three students with an IEP.

2. Data Gathering and Reporting

[110] The data gathering and reporting process from school districts to the Ministry of Education is crucial to the calculation of district entitlement to enrolment based funding and supplementary funding for declining enrolment, unique student needs (ESL, Aboriginal education, special needs levels 1 to 3 and adult education), salary differential, unique geographic factors, transportation and housing, funding protection, labour settlement and funding formula transition. There is also federal government funding from Indian and Northern Affairs Canada.

[111] After September 30, 2007, the formula for counting student enrolment changed. Formerly a student was allocated 0.5 FTE for being enrolled and 0.125 FTE for each course up to four courses. For most students, the school district did not have to be as precise about the number of enrolled courses for each student to equate to one FTE. The new formula, with exceptions, allocated 0.125 FTE for each course and a student had to be enrolled in eight courses to equate to one FTE. This compelled the school district to have all students register their course selection for both semesters and have the course enrolment information for both semesters entered in the data system by November. The resubmitted data increased the enrolled student FTE and enrolment based funding, but Superintendent Dr. Keven Elder testified the increase was offset by a decrease in the enrolment decline supplements.

3. District Services Supporting Schools

[112] The school district has centralized services that support its schools, designated special needs students with an IEP and other students. There are a Superintendent and two Assistant Superintendents; instructional support teachers for literacy, numeracy, student services, elementary, First Nations, health and student advocacy and technology; a district principal; specialists – speech pathologists, psychologists and teachers of the hearing and language impaired; and elementary counsellors and youth and family counsellors. Some of these resources primarily support elementary and middle schools and their students and some support secondary schools and their students.

[113] The school district provides Education Assistant (EA) support. The original budget for Claremont for the 2007-08 school year was 255.96 hours per week in June. At September 30th, it was 293.63 hours.

| Special Needs Categories | Students | EA Hours / Week |
|---------------------------------|-----------------|------------------------|
| Low Incidence (A, D, C, F, G) | 19 | 128.25 |
| Dependent (A/B) | 1 | 30.00 |
| High Incidence (K and Q) | 46 | 24.22 |
| Special Circumstances | | |
| Grade 9 (G) | 5 | 76.25 |
| Grade 11 (C) | 2 | 31.50 |
| Grade 11 (D) | 1 | 7.50 |
| SIDES (G) | <u>1</u> | <u>5.00</u> |
| Totals | 75 | 302.72 |
| 3% reduction | | <u>-9.08</u> |
| Actual | | 293.63 |

The 3% reduction is a hold-back. Dr. Elder testified it and “quite a bit more” are released as needed throughout the year.

4. Claremont Secondary School

[114] Claremont Secondary School on Wesley Road near Cordova Bay in Victoria provides over 1,000 students a comprehensive Grades 9 to 12 course selection detailed in the school’s course selection book each year. Claremont has a sports institute for excellence (Claremont Sports Institute – CSI) and participates in the Saanich School District International School Program.

[115] Claremont’s reputation is as an academic school with strong athletic and fine arts programs. Its principal feeder school is Royal Oak Middle School. Students who have graduated from high school and wish to return to upgrade courses will be accommodated in September if there is space available. Otherwise, they can attend a local college, school district Individual Learning Centre (ILC) or take courses through distributed education at SIDES (South Island Distant Education School).

[116] Principal Mark Fraser testified the demographic profile of the Claremont community has changed in the past decade. While the perception is an affluent Anglo-Saxon community expecting an academic program to prepare students for post-secondary education, it is more diverse in every sense. The ethnicity and affluence of the community spans a broad range. While the size of the student population has been

relatively stable, the number of designated special needs students has increased. This is due, in part, to earlier and better testing. As a result, the school receives an increased amount of district support. In the face of these changes, the school has maintained its programs and sought to maintain its world reputation in academics, athletics and fine arts.

[117] Each graduating class has its own profile. The 2007-08 graduating class was assessed by the school staff not to be as strong as the 2006-07 class.

4.1 School Student Support Services

[118] Claremont offers services and programs for students who require additional support to be successful. Students, teachers and parents deal with school counsellors to access the programs. The Student Services Department provides Integration Support, Behaviour Support, Learning Support and Counselling. The support includes learning strategies and studying skills, assistance with literacy skills, communication between home and school, adapting and modifying curricula and academic, vocational and emotional counselling.

[119] The school offers Life Skills development courses for designated students in a dedicated room to help them develop abilities to function as independently as possible after leaving school. The school offers Peer Tutoring, Peer Helping and Work Experience.

[120] Learning Assistance (LA) is available on a referral basis for short or long terms for students who are not designated special needs and are having difficulty passing courses, writing essays or preparing for exams. Some students have a full-time LA block. For the first semester of 2007-08, the school district reported four LA classes with 4, 5, 8 and 9 students. Other students are pulled out of regular classes for short periods at LA. This has to be planned if it is to be productive and not disruptive for other LA students. If the reason for the referral is behaviour, then often the student is unprepared, without materials or resources or does not showup, which triggers a reporting or search and rescue process.

[121] Behaviour Support, provided by a case manager in a separate room, is given to designated students who have social, emotional or behavioural challenges. For some

students it is planned to reduce their time in the regular 80 minute blocks.

[122] The Student Learning Centre (SLC) is a non-credit course designed to meet the needs of students with designated learning disabilities. The SLC and resource room offer several levels of support.

[123] The SLC course is usually scheduled in a student's timetable. Teachers are assigned to SLC in each of the four blocks. It is a multi-grade program offering additional support with any course a student is taking or any need a student has in a setting outside the course classroom. The support can be additional instruction; repetitive review; use of computer software to assist; slower self-paced progress; help improving study skills, organization or time management; respite time from the school pace set for students without disabilities; and time to complete homework so there is time for home activities. Teachers with students with a SLC block can arrange, between teachers, perhaps by email, or through an EA, for the student to do assignment or course work during that block.

[124] These programs and places offer a safe place with supportive adults who understand the students' challenges and disabilities, their history and their family situations.

[125] Designated special needs students are assigned to a single teacher case manager for their time at Claremont. In the student designation process, a teacher identifies an issue with a student and fills a referral form that goes to a Vice-Principal. It will go to the Student Services weekly meeting for discussion and the LA teacher will do a review of the student's background from files in the school and past schools; speak to teachers and family; observe the student; and arrive at an informed assessment. An academic achievement assessment will be requested. There may be discussion with a school district psychologist and a psycho-educational assessment. This may lead to a psychiatric assessment and referral to a district screening committee, which meets every second week, to determine if the student meets the criteria for designation. If so, there is assignment to a case manager and development of an IEP. The entire process can take a year. There is funding for students designated as of September 30th. If a student arrives with an IEP, or a student with an IEP leaves and later returns to the district, there is a referral to the district screening committee.

[126] The case managers develop and update IEPs, assist with their implementation and coordinate communication among parents, students and teachers. IEPs for the current school year must be completed at the district office by the end of October. Case managers assist students in their course selection and balance of courses for each semester. In June they review student timetables and arrange changes if students have courses at times when they are likely to be too tired to achieve success. Class composition and noise level may be a consideration. If there is an opportunity for further fine tuning, the identity of other students in the class and past relationships may be considered. In some cases, the timetable outcome can be the best of bad options for a student who is in the right course, but with a wrong group.

[127] Case managers ensure students' assessments are current and the students are properly placed. They ensure there are required readers and scribes to assist with school and provincial examinations. For a student to have a scribe for a provincial examination, the need must be stated in the student's IEP and there must be demonstrated daily use of a scribe throughout the school year. Because scribes are recruited among all members of the school staff, the students must be familiar with using various persons as a scribe and accepting this very visible sign of a disability.

[128] The case managers work with their counterparts and others at the Royal Oak Middle School in the spring to facilitate a smooth transition for students to secondary school and to learn the profiles of the students. They work with Camosun College and others to assist graduating students develop as contributing adults in society.

[129] Anne Light is department chair. As an Integration Support Teacher, she taught a Life Skills block and two SLC blocks in the first semester of 2007-08. She had one block assigned for case management.

[130] As Student Support Services departmental chair, Ms Light develops the department's budget and the EA assignments. The priorities in making EA assignments are student safety; support in provincially examinable courses to enable students to achieve a Certificate of Graduation; support junior grade students with their transition to secondary school, time management and study strategies; and support Grade 10 students in priority over Grade 11 and 12 students.

[131] If an EA is absent, most often there will not be a replacement, which often happens in flu season. The situation is always fluid and reassignments for student safety can be frequent and unexpected with the result that a student is supported by and a teacher is working with a new EA. Some EAs supporting students who have out of school activities, such as swimming in Life Skills, will not be in the class for those mornings or afternoons. Ms Light assigns EAs for lunch supervision and schedules their rest breaks, which may mean absences from a class for a portion of a block. Many EAs choose to remain with the student to whom they are assigned and not take rest breaks.

[132] If there are problems with EAs or between EAs and teachers or between EAs, Ms Light refers them to the Principal or Vice-Principal.

[133] Ms Light testified that for low incidence students, the village raising the child includes the natural or foster family, community support services, district therapists and psychologists, school case managers, teachers and EAs. There are periodic provincial adjudication meetings and regular school and district meetings to plan to address needs and respond to impasses the students encounter.

[134] Ms Light testified she drafts IEPs during the last week of August for students she can and sends drafts to teachers when the school year begins. Teachers are seldom able to attend formal meetings with parents and the “cast of thousands” for lower incidence students, when formal IEPs, which have to be prepared outside school hours, are settled and signed in October. Teachers may give input through email.

[135] Ms Light testified that, because of the hectic pace, she “never remembers Septembers” and sometimes Octobers and Novembers. Balancing timetables, meeting with teachers, assigning EAs, preparing documentation for adjudication, looking after new students and their families, crisis management and other responsibilities have equal urgency and priority. Rarely is there time for formal meetings with teachers about individual students. Email, hallway exchanges and lunch, flexible blocks and before and after school conversations become a blur.

[136] The fall of 2007 was a particularly difficult time. In the first semester of 2007-08, there were four case managers at Claremont for approximately 100 designated special

needs students. Ms Light's caseload was 22 students - six students with Learning Disabilities (Q); five with Autism Spectrum Disorder (G); two with Moderate Behaviour (R); and three with Chronic Health Impairments (D) – one with heart and facial problems and two with brain injuries.

[137] That fall there were two new EAs. One came with a new student in October, but left after a week and had to be replaced. There was a new Integration Support Teacher who required mentoring.

[138] The goal of the Student Services Support Department is for case managers to have *Alerts* or brief synopsis of IEPs to each teacher by the end of the second week of September. Case managers are responsible to ensure teachers understand the nature of the adapted and modified programs. Some case managers will assume some of the work and some EAs will assist, as was the case with three students in Ms Light's caseload who required modified programs in Communications 11.

4.2 Class Organization for the 2007-08 School Year

[139] The principal's organization for a school year is an interactive, ongoing process that must respond to, account for and integrate numerous inputs and constraints. The base or starting point is the core courses required for graduation, previously offered elective courses, new provincial courses for which there are Integrated Resource Packages (IRP), existing provincial courses not previously offered at the school and new courses authorized by the board of the school district. The manner in which the organization process proceeds is influenced by the orientation and culture of the school and, perhaps, the principal's approach to his or her role.

4.3 Student Course Selection (November – March)

[140] For each grade there are required courses. There are credit and course requirements to obtain a Graduation Certificate. There are mandatory and optional provincial examinations for some courses. The school district wants to maintain successful programs and services from year to year. Claremont offers several enriched courses that provide opportunities for more in-depth learning than regular classroom situations.

[141] Mathematics and Language Arts are required subjects and have provincial

examinations. There are different pathways in each to allow students to choose courses that match their strengths, interests and goals and the requirements of post-secondary institutes, if post-secondary education is their goal.

[142] The pathways in Mathematics are Principles, Applications and Essentials. The Principles pathway is preparation for university. The Applications pathway focuses on the application of mathematics for trades and is often the route chosen by students with strengths in other subject areas, but less strength in mathematics. They may take Principles later to improve their chances of access to university. The Essentials pathway teaches basic life skills and meets the graduation requirements, but will not gain access to post-secondary institutions.

[143] Students with limited interest or aptitude in science may choose Earth Science 11 to fulfill the science requirement for graduation. Students can fulfill the four credit Fine Arts or Applied Skills requirement for graduation by choosing from a selection of workshop courses.

[144] Claremont offers a university challenge program that enables selected students to take first year college/university courses in Biology, Chemistry, Physics and Mathematics, referred to as Advance Placement (AP) courses. The laboratory component is taught at Camosun College.

[145] Some courses, particularly performing arts courses, are offered before and after school hours. Some courses, such as Community Recreation, have high appeal to international students. Claremont had 52 FTE international students in 2007-08. This could be as many as 65 individual students providing an income of \$110,000 to \$120,000. There is an effort, not always successful, to screen out students who have little or no English language skills. There is a 0.5 FTE Counsellor dedicated to help with the needs of international students. Four teachers are assigned House Advisor blocks to supervise lunch and assist these students with relationships and embracing the school spirit.

[146] Departments review their current offerings and make preliminary determinations about the next school year in November and December. The proposed courses and changes are referred to the school's professional staff meeting in December. The

selection is finalized and the course selection handbook and selection forms are printed in February. Counsellor information visits to Royal Oak Middle School, parent information nights, course selection assemblies for each Claremont grade, and distribution and collection of individual student forms with first and alternates selections are done in the first weeks of March before Spring break. Applications for admission to the Claremont Sports Institute Program must be made by mid-March.

[147] The first and alternate selections are entered in the school's computer program, Schools Administrative Information System (SASI), during Spring break. There was no mention of this school using BCeSIS (British Columbia enterprise Student Information System). Some students will request courses primarily intended for a grade level ahead or behind their grade level. Some will apply for CSI. Some will apply for enriched and advanced placement courses. With guidance and sometimes against the advice of the school, parents and students choose a pathway for which the student does not have the aptitude or is unwilling to make the commitment and is less likely to succeed. At times, this may lead to teachers having difficult conversations with students and their parents about switching pathways.

4.4 Preliminary Enrolment, Budget and Staffing (January – April)

[148] Early in the calendar year the Secretary Treasurer identifies the projected school enrolment for the coming school year, which does not include any students in the international program. Barager Demographics software models and local information about housing, development permits, etc. are used.

[149] The school district receives preliminary budget information from the Ministry of Education and projects the preliminary teacher complement for the upcoming school year. The projection must account for any new initiatives mandated by the Ministry of Education or district board. Following budget consultations, a total teacher complement is determined to be allocated to each school for enrolling and non-enrolling assignments and to district leadership and support roles.

[150] At the school, teachers are asked to state their anticipated FTE for the coming year – part-time, full-time, leave, etc.; their preferred teaching assignments; and if they have any preferences for teaching block assignments. For example, a teacher may request to teach or not teach certain blocks because of family circumstances or their

sponsorship of student clubs or teams. In 2007 at Claremont, the deadline for submitting the completed form was April 13th.

[151] The formula for calculating the enrolling teacher allocation to Claremont and other secondary schools was the number of FTE student courses divided by 28, an evolved historical number that Dr. Elder testified has approximated the average class size and produces staffing that is affordable.

[152] The FTE student course selection is derived from the projected student headcount on the basis that not all students will take a full course load and some will take extra courses, perhaps courses outside the block timetable. The projected FTE student number is multiplied by eight to determine the projected number of student courses.

[153] The number of projected FTE students is divided by 28 to determine the number of course sections, which is divided by seven to calculate the total teacher FTE required. The denominator is seven because one of the eight blocks in a school year is an assigned teacher preparation block. It may be in either the first or second semester. The semester with four teaching blocks and no preparation block is regarded as a semester with a heavier workload.

[154] For Claremont for the 2007-08 school year, the projected student headcount was 1,020 and the student FTE was 995.2. The calculated enrolling or instructional teacher FTE was 40.620 for 284 course sections.

[155] Assistant Superintendents generate non-enrolling teacher allocations for the schools. The preliminary teacher FTE allocations in March and April were as follows:

| | |
|-----------------------|----------------------------------|
| Administration | 2.950 (Board determined) |
| Learning Assistance | 2.321 (Needs based) |
| Library | 1.000 (Board determined) |
| Behaviour Support | 0.600 (Needs based) |
| Literacy | 0.250 (Board determined) |
| Counselling | 1.720 (Needs based) |
| Integration Support | 2.000 (Needs based) |
| International Support | <u>1.430</u> (Funded by program) |
| Total | 12.271 FTE |

The total projected teacher FTE was 52.891.

[156] The extent to which there is detailed analysis of needs and resource allocation is reflected in the FTE point allocation. For example, the Learning Assistance allocation for Claremont was changed before September to 2.288 FTE. Need, Board of Education priorities, district accountability contracts, funding formula and any number of factors may influence each allocation.

[157] At September 30, 2007, the number of classes and enrolling or instructional teacher FTE had not changed from 284 and 40.620 FTE. The non-enrolling teacher FTE allocation increased so the total FTE was 53.558, rather than 52.891. The district changes were a reduction in Learning Assistance; an increase to 2.100 FTE for Integration Support; and an addition 0.600 FTE adjustment. The balance was purchased by Claremont using discretionary school funds generated by the international program.

[158] Had the enrolling teacher FTE been based on the method for the student FTE count after September 30th, the student FTE would have been 1038, not 995.2, and this would produce 296 course sections and 42.367 FTE teachers. Dr. Elder testified this was a more accurate method of deciding the required number of course sections and teachers.

4.5 Preliminary Master Timetable (April – August)

[159] After course selection data is entered in SASI, the principal with administrative staff will determine the number of sections required for each course in each curricula area and in which semester they will be offered. For example, in 2007-08 there were four Socials 9 and one Socials 9 Enriched courses in the first semester for which 140 students were enrolled as of September 30th. There were two Chemistry 12 Enriched courses for which 66 students were enrolled. Dr. Elder testified that at this preliminary stage in March and April: “The desire is to create sections that average in the mid-20s knowing that some will be higher and some lower due to the realities and complexities of scheduling.”

[160] Mr. Fraser is responsible to do the balancing of priorities and demands in fashioning a master timetable. Some classes have historically been limited to 24 students. With exceptions like some music classes, the historical number for organizing classes has been 30 students, which he tries not to exceed not unless there is a

“compelling, significant reason” to do so.

[161] Some classes, like Community Recreation, are predictably oversubscribed and some students who choose the course will not be enrolled. He gives priority in all classes to students from the applicable grade unless a student has failed the course and needs it to graduate or a junior student has a careful plan and needs the course for a more senior course. Because of the randomness of the initial assignments of students to courses, he uses reject-analysis reports to ensure students are not rejected from courses they need for graduation. He will exceed 30 students or three students with an IEP in a class to enable a student to acquire a course needed to graduate for post-secondary education. He will then work with the teacher and students to find the best way to support both. In other cases, he explores distant learning options with the student.

[162] The principal assigns the enrolling teachers to the approximately 150 first semester sections across four instructional blocks per day. There are more teachers than the enrolling FTE because some are part-time. Some enrolling teachers will have preparation blocks or blocks with non-enrolling assignments. “The principal works with department heads to match teacher requests, department needs and school needs with the sections that have been created due to student requests.”

[163] The teachers’ assignments to sections are pencilled in before the courses are placed in the timetable. One factor considered in placement is workload balance for individual teachers. Efforts are made to avoid having a teacher assigned to teach four different course preparations in a semester. Efforts are made to meet teacher requests for preferred teaching blocks. Each additional factor limits timetabling flexibility.

[164] Simultaneous with assignment of sections to teachers, SASI is programmed to attempt to schedule students in all their course selections. The class limit set for most courses is 30 students. The student limit is set at a historical limit of 24 students for Technology Education courses that have workshops and Home Economics Foods courses. This number is not used for lab courses where there is a mixture of lecture and lab days in the class and relatively few labs in a semester. The theory is that safety issues in lab classes can be addressed with support from a lab assistant, Teacher-on-Call or splitting classes and having simultaneous lab and library student group

assignments.

[165] Changes are made by changing parameters in SASI and manually manipulating the timetable “dozens of times.” An example of a parameter is a direction that a specific course is to be scheduled for a specific block in a specific semester. Once SASI achieves 80% to 85% of student satisfaction of selected courses, the master timetable is locked in with sections and blocks set. Subsequent changes to individual student schedules are made to accommodate selection requests. The goal is 100% satisfaction of student primary selections.

[166] There are some factors that are outside the master timetable. For example, some courses are offered before or after the timetable blocks – Concert Band, Jazz, Choir, Musical Theatre, Stage Craft, Peer Tutoring and Planning 10 on-line, distance learning. There are some parameters and factors that limit the extent to which the preliminary master timetable can be manipulated because they make immutable timetabling demands. For example, some courses are offered as year-long courses inside the timetable and students in these courses cannot have conflicts with their other selections in either semester.

[167] Some programs make pre-emptive demands on timetabling. For example, university challenge or AP courses are in the second semester so Grade 12 students can complete the prerequisites in the first semester. However, the Mathematics 100 course which earns a university credit by passing an examination in January can only be offered in the first block in the first semester because that is the only time the Camosun College instructor is available. The daily routine for the CSI program with Physical Education in the first block and scheduled linearly with English must be ensured. In SASI, this pushes other students into corresponding patterns.

[168] As the timetable evolves with manipulation of various parameters, including the maximum permissible number of students in a course section, and student course selections are changed, the number of sections may increase or decrease as students are moved within the timetable. Continuous discussion with department heads and teachers informs the process and tentative teacher assignments and student support needs are adjusted. By the end of May, there is a working timetable that will allow the school to inform the district so it can make layoff and posting decisions.

[169] In June, anticipated international student placements are in the timetable. It may be very different than the reality that appears in the last week of August and the first weeks of September. Department heads review room assignments, textbook availability and enriched course selections, about which they may speak to parents. Teachers are assigned to sections. Corrections, adjustments and changes to the timetable are made throughout June. The intent is to incorporate information from every source, provide enrolling teachers with their timetables and make non-enrolling teacher assignments by the end of June. The number of international and new students to arrive in September and the number of summer school and first semester failures that will require a placement in the first and second semester have to be anticipated.

[170] Individual student timetables are mailed in early July and students are invited to make changes by mid-August. Any necessary teacher assignment adjustments or changes are done in July and August. Final student timetables are set by the end of August and teacher timetables, seldom with significant changes, are emailed in August.

[171] Class numbers and composition are adjusted in September as student placement shifts. The goal is that each student is completely placed with a final timetable by the end of the first week of September. Education assistant staffing hours and assignments to students with IEPs and to classrooms are confirmed in September and adjusted as required throughout the school year.

4.6 Master Timetable for 2007-08

[172] In 2007, the projected enrolment remained unchanged from April to September at 995.2 student FTEs, less than the 1,026 FTEs in the 2006-07 school year. The number of classes in the first semester increased from 156 to 159 and the average class size increased from 26.2 to 27.0 students. In 2005-06, there were 174 classes with an average class size of 25.7 students.

[173] Mr. Fraser was responsible for organizing student classes and assigning teachers and education assistants for the 2007-08 school year. He was appointed Vice-Principal at the school in the 2000-01 school year and had been Principal since the 2005-06 school year.

[174] Mr. Fraser testified there is no method that he knows by which a parameter can

be placed in the SASI program to limit the number of students with an IEP in any or all classes. He can run queries to learn the number of designated students in each class. He testified he can, but has not tried, assigning students with an IEP to classes and building a timetable around that parameter.

[175] He can manipulate the class size in SASI and does as he proceeds through the several iterations of the master timetable. The normal maximum class size parameter is 30 students. To redistribute students among sections, he may increase the maximum in some sections and decrease it in others or move sections from the first to the second semester. A balance is the goal, but not always achievable while satisfying each student's selection. For example, 76 students selected Biology 12 Enriched (12E) taught by Sean Hayes. Twenty students also selected AP Biology 12, which was scheduled in the second semester. The master timetable scheduled two classes of Biology 12E in the first semester and one in the second. The student distribution was 32 and 25 in the first semester classes and 19 in the second semester class.

[176] Mr. Fraser testified that in the changes in early September, a 31st student is not to be placed in a class until he speaks to the teacher of the class.

4.7 Cohort of Grade 9 Boys Organized by Counsellors and Socials 9

[177] In Grade 9 for the 2007-08 school year, there were 22 designated special needs students, excluding any students designated as gifted. Seventeen of the 22 were boys. Case managers were assigned in the spring and SLC, LA, Behaviour Support and Life Skills blocks for Grade 9 students were entered in the timetable.

[178] One of the parameters that directed Grade 9 student assignment to sections for the 2007-08 school year was a decision by Counsellors at Royal Oak Middle School and Claremont to create a cohort of boys, a number of whom were Learning Assistance students, but were not designated special needs students with an IEP. They would be assigned to linear Physical Education 9B (boys) and English 9 sections taught by Mark Neufeld. As a consequence, his first semester PE 9B class had one designated student with an IEP.

[179] Mr. Fraser testified he does not recall with whom or when he discussed the construction of this cohort of boys, dubbed "the lost boys", but he incorporated it into the

parameters of the timetable and accepted the consequences it produced. One consequence was that some other Grade 9 classes in the first semester had a higher number of designated students with IEPs. He did not discuss this with the affected teachers before the consultation meetings on September 24th. He testified he believes the cohort construct was successful for those students and they benefited from it in Grade 10.

[180] There are inconsistencies between the reports entered into evidence that were generated within the school and those published by the Ministry of Education in its *Overview of Class Size and Composition in British Columbia Public Schools 2007/08 (06363021 Claremont Secondary School)* that make it difficult to be precise about the number of courses and sections in the first semester. For example, the school report lists three Foods 9 sections, while the Ministry report lists two.

[181] As reported by the Ministry of Education, there were thirty-five single grade sections in the first semester. This does not include multi-grade sections such as CSI Physical Education Rowing, Guitar and Jazz Band. There were no students with a designation, excluding gifted, in eleven of the thirty-five sections.

| Course | Number of Single Grade Sections | Section with no IEP students |
|-------------------|--|-------------------------------------|
| Art 9 | 2 | |
| Drama 9 | 2 | 1 |
| English 9 | 2 | |
| English 9E | 3 | 3 |
| Foods 9 | 2 | 1 |
| French 9 | 3 | |
| Math 9 | 1 | |
| Math 9 Principles | 3 | 1 |
| PE 9B | 2 | |
| PE 9G | 2 | 2 |
| Science 9 | 3 | |
| Science 9E | 2 | |
| Socials 9 | 4 | 1 |
| Socials 9E | 1 | |
| Spanish 9 | 2 | 1 |
| Tech Ed 9 | 1 | 1 |
| Totals | 35 | 11 |

[182] The distribution of the twenty-two designated Grade 9 students in the first

semester among the twenty-four single grade, single semester courses is as follows:

| Course | Teacher | IEP Students | Course | Teacher | IEP Students |
|-------------------|---------------|--------------|------------------|-----------------|--------------|
| Art 9 | Jardey | 5 | PE 9B | McLernon | 4 |
| Art 9 | Richardson | 1 | PE 9B | Neufeld | 1 |
| Drama 9 | Plant | 4 | Science 9 | Ostrovsky | 2 |
| English 9 | Loukes | 6 | Science 9 | Ostrovsky | 2 |
| English 9 | [??] | 1 | Science 9 | Walia | 6 |
| Foods 9 | Lundeen | 2 | Science 9E | Ostrovsky | 1 |
| Foods 9 | Parks | 2 | Science 9E | Vucko | 1 |
| French 9 | McLernon | 1 | Socials 9 | Hooper | 8 |
| Info. Tech 9 | Beeston | 3 | Socials 9 | Aujla | 4 |
| Math 9 | Walia | 3 | Socials 9 | Ross | 2 |
| Math 9 Principles | Pang | 2 | Socials 9E | Ross | 2 |
| Math 9 Principles | Spoor | 1 | Spanish 9 | Stover | 2 |

[183] Mr. Fraser testified he could not redistribute the designated special needs students with an IEP among the classes to ensure there were no more than three in each. He had nine Socials 9 classes with some scheduled in the second semester. In the first semester, the four Socials 9 classes had 0, 3, 8 and 4 students with an IEP. The one Socials 9E class had two students with an IEP.

[184] Mr. Fraser testified a class with eight IEP students may or may not be a challenge for a teacher. It depended on the nature of each and the mix. He did not know the incoming Grade 9 students and could not make any assessment of the mix of eight assigned to one class.

[185] Julie Ross was initially assigned to teach one class of Socials 9E and two classes of Socials 9, including the class with eight IEP students. In September 2007, she took a block in the timetable to be student Scholarship Advisor and relinquished her assignment for the Socials 9 class with eight IEP students.

[186] Stacey Hooper did her internship at Claremont in the 2006-07 school year. Her first semester assignment was with two sponsor teachers in English 9E and Socials 11 classes. In the second semester, her three sponsor teachers were teaching English 9E, Socials 10 and Leadership 9. Ms Hooper impressed Mr. Fraser. He assessed she was a natural, creative teacher with strong classroom management skills who related well to the students. She was well organized and devoted more time to planning than some other teachers. He cautioned her during her internship year that she may be spending

too much time planning and preparing her lessons and may suffer burnout. In June, he told her that he wanted to keep her on staff. There was no guarantee of work in the fall, but there may be assignment openings in September.

[187] Ms Hooper began the 2007-08 school year as a Teacher-on-Call (TOC). She expected she would spend the year without a teaching assignment. Her first call was to Claremont where she taught two blocks continuously from September 5th. The classes were an English 9 class with fifteen students and the Socials 9 class with eight IEP students, for which she planned lessons and taught in Ms Ross' windowless classroom. Because Ms Ross was also teaching Socials 9, they sometimes discussed the course and class. Ms Hooper recalls Ms Ross saying that she was glad she did not have the Socials 9 class Ms Hooper was teaching.

[188] Ms Hooper had no notice in advance of September where she might be dispatched as a TOC and did not have any planning or preparation for either class. She was familiar with the English 9 curriculum from her two semesters with it in 2006-07 and found the class of fifteen students to be nice kids.

[189] The Socials 9 curriculum was new for her. She had a class list from the first day, but did not know how many, or who among the students, were designated special needs students with an IEP. In mid-September, a 0.75 FTE temporary assignment was posted to teach the two classes for which she was substitute teaching and an English 10E class. She spoke to Mr. Fraser who told her it was possible a block teaching Planning might emerge. Ms Hooper was the successful applicant for the 0.75 FTE effective September 18th. With this temporary assignment, she had assured income and employment until February 3, 2008.

[190] For Ms Hooper, having either an open or assigned block in the first semester was the difference between having no assignment or an assured assignment in the second semester. Mr. Fraser moved another teacher's Planning block and enabled Ms Hooper to have a fourth block assignment for Planning 10 effective September 18th. This gave her a 1.0 FTE assignment. She testified she definitely wanted the income, security and professional path that flowed from a four block assignment in the first semester. In the second semester, she taught two classes of Socials 10 and one of Socials 10E and had a preparation block.

[191] Ms Hooper's first semester assignment was to teach four different course preparations, a situation Mr. Fraser seeks to avoid in establishing the master timetable because, as he testified, it is difficult regardless of the years of experience a teacher has. However, Ms Hooper was keen, interested, capable and qualified in both the English and Socials curricula areas.

[192] The teacher was new. The students were new to the school. The Socials curriculum was new to the teacher. The teaching assignment was made in September. Ms Hooper had four classes in three separate rooms on two floors and had to move between rooms for each class. She testified she had to be "incredibly organized." She worked at school weekdays until 5:30 p.m. to 7:00 p.m. and worked at home until 11:00 p.m. She did her email communications with parents and others after school at the school. She recalls that she and the parents of one of the designated students communicated by email almost every other day.

[193] She worked five to seven hours a day on weekend days at the school or home. She found the Socials 9 class to be "overwhelming." Throughout the semester, Mr. Fraser offered to have a TOC cover for her for any day she wished to allow her time to prepare and mark. She chose not to because she would have to prepare lessons for the TOC, including adaptations and modifications for the eight IEP students. She was a first year teacher and wanted to show that she could do it. She did not consider using a TOC in one of her other three blocks to free up time to prepare and mark for the Socials 9 class.

[194] From the *Alerts* distributed by the three case managers, conversations with each case manager and situations that arose in the class, Ms Hooper learned about the students in her Socials 9 class and which students had IEPs. She later received full IEPs for each student as they were completed and signed by parents, case managers and teachers.

[195] One of the case managers made it clear to Ms Hooper that it was her responsibility, as the classroom teacher, to prepare adapted and modified tests that meet the needs of each designated student. It was not, as the case manager said some more experienced teachers believed, the responsibility of the case manager.

[196] Ms Hooper believed doing group activities in social studies is more fun and interactive and helps develop students' social skills. She learned it was not possible to assign group projects in this Socials 9 class on which the students could work together either in or outside class. She tried once, but a student pulled a chair from under another student who fell and suffered a concussion. The result was more structured and less dynamic lessons in each one hour and twenty minute block.

[197] Each of the eight students had a category designation, case manager and IEP with goals summarized in the following table:

| Category | Adaptations | Goal |
|---------------------|---|--|
| G | Personalized program; structured and calm settings | Participate in curriculum with adaptations |
| G and R (Asbergers) | Several related to disability and behaviour | Graduation Certificate |
| K | Extra time, separate setting, word processor, reader, scribe - ESL | Dogwood Certificate |
| Q | Exams | Dogwood Certificate |
| Q ADHD features | Extra time, separate setting, word processor, possible reader, possible Scribe | Dogwood Certificate |
| Q ADHD/SLD | Extra time, separate setting, word processor with spell check, scribe or possible Voice or Print | Participate in curriculum with adaptations |
| Q | Extra time, separate setting, word processor | Participate in curriculum with adaptations |
| R | Several related to behaviour (removed from [school] for excessive behaviour problems in 2006 - social conflict; power struggles; anger outbursts) | Graduation Certificate |

[198] The following excerpt from one of the eight IEPs is an example of typical suggested alternate strategies and evaluation for a student with a "Q" designation:

Suggested Alternate Strategies:

- Integrate fully with adaptations as necessary
- Provide preferential seating - fewer distractions
- Reduce quantity of written work, allow additional time to complete work and tests as well as opportunities to complete work at home
- Break down assignments into manageable chunks
- Keep homework demands to a manageable level
- Photocopy information/scribe where necessary
- Encourage use of technology to support written out-put issues
- Accept assignments which have been scribed, allow use of word processor and spellcheck
- Give oral examinations/quizzes when necessary
- Use prewriting activities
- Develop and maintain regular home/school communication

Evaluation:

- Progress will be reported three times/year during the regular reporting periods
- Take an adapted test to minimize writing, multiple choice or oral, allow word processor or provide help scribing (if available)
- Use alternative ways to show learning as needed
- No penalty for spelling errors

[199] Ms Hooper testified she organized the seating in the class in accordance with suggestions in the IEPs. She met with case managers at lunch or before or after school at least three days a week and often more frequently to discuss lesson and test adaptations. She had one and one-half weeks for each unit and had to prepare three versions of each test – regular for most students; adapted for seven of the eight designated students; and modified for one designated student. An example of the three versions of one test was entered as an exhibit. She prepared the regular test and then met with case managers to discuss adaptations and modifications in light of the needs and strengths of each designated student.

[200] Each class has students who are not designated, but need extra time, attention and help from the teacher. These are often referred to as “grey area” students. Ms Hooper testified she had some of these students in the Socials 9 class.

[201] For behavioural problems, she tried to avoid sending the student to a resource room because the student would miss the lesson and she would have to send adapted material with the student. One student she sent for walks to help him regain composure and focus. At times, when there was disruptive conflict between students, particularly two of the designated students, she had to stop the lesson and deal with the students. As a situation escalated, it adversely impacted others with whom she would have to specifically refocus as she resumed the lesson with the class.

[202] Ms Hooper had one Education Assistant assigned to her class. This was the EA's first year as a full-time EA and her first year in Socials 9. Ms Hooper testified she did not know how EAs were assigned or why a full-time EA was assigned to this class. She recalls that early in the year, when she was there as a TOC, an autistic student was in the class with a full-time EA, but the next day both disappeared and a new EA appeared.

[203] The EA was very helpful, but was another person to meet with, plan for and

coordinate with. They met at lunch and after school to discuss lessons, assignments and the class. The EA assisted with photocopying Ms Hooper's typed notes for designated students and classroom management. She acted as a scribe, but several students required a scribe and Ms Hooper had to find volunteers to meet her needs for tests.

[204] Ms Hooper testified she was overwhelmed by the class and semester workload - a few days she went home in tears. She was unable to ensure each student succeeded by reaching his or her potential in a positive, safe and enjoyable classroom environment. She testified some of the designated students worked hard and had a nice disposition. Ms Hooper's report comments, chosen from a list all teachers had, accentuated the positive and identified what could improve student performance. They did not reflect the classroom atmosphere. No student failed and the range of grades was similar to those in other Socials 9 classes. Ms Hopper testified student grades do not reflect the amount of attention each student required during the semester.

5. Principal Consultation with Classroom Teachers – September 24, 2007

[205] Dr. Elder was appointed Superintendent in August 2005. The *Education (Learning Enhancement) Statutes Amendment Act, 2006* (Bill 33) was effective July 1, 2006 for the 2006-07 school year. Dr. Elder testified he frequently and extensively thought about and gave advice to school administrators about the nature and extent of consultation required under the class size provisions of the *School Act*. Reports and statements prepared by the British Columbia School Superintendents' Association, of which Dr. Elder is currently President, BC School Trustees Association, British Columbia Teachers' Federation and British Columbia Principals' & Vice-Principals' Association were distributed and discussed at a July management team meeting.

[206] After referencing the statute, documents circulated by BCPSEA and the British Columbia School Superintendents Association and other sources, Dr. Elder prepared a summary distributed and discussed at the August 29, 2007 start-up meeting with administrators. The nature of the forms prepared for the principals did not include a statement of the rationale for the class or a declaration that the organization of a class was appropriate for student learning. The submission of a later report was intended to record consent, consultation and the principal's opinion.

[207] Dr. Elder described the meaning of consultation as follows:

Consultation with a teacher, in simple terms, means:

- Providing the teacher with sufficient information and reason for the proposed class;
- Providing the teacher with a meaningful opportunity to be heard about the proposed class, and;
- Considering teacher comments with an open mind.

[208] On class organization and new students, he wrote: "When discussing and assigning students, please consider the possibility of new students enrolling during the school year. To the extent that it is possible, do not load up to the maximum any class which would unnecessarily prevent the arrival of new students during the year."

[209] The deadline for consultation was September 24, 2007. On September 21st, Saanich Teachers' Association President Ken Babcock alerted Dr. Elder that he had received reports the consultation processes in middle and secondary schools were "slipping" for various reasons and he had distributed a memorandum to Union Staff Representatives that he forwarded to Dr. Elder, who replied principals were committed "to the notion of meaningful consultation with appropriate process."

[210] Mr. Babcock prepared a memorandum dated September 5th on class size and composition meetings to all Staff Representatives and a President's newsletter. The BCTF position was no member shall participate in the consent or consult process unless a union representative is present. Individual teachers may choose to attend without a union representative.

[211] Mr. Fraser had conducted consultation meetings in September 2006 and intended to conduct them in the same manner in 2007. The upcoming consultation meetings were discussed at the Saanich Teachers' Association (STA) portion of the September school staff meeting. The teachers were reminded of the process and shown the STA reporting form the staff representatives would be using in the meetings. It includes a place for a teacher to sign and state agreement or disagreement with the class organization.

[212] Staff Representatives Sean Hayes and Mike Ewan testified teachers were advised to attend the meeting with an open mind; to make a professional judgment based on what they knew; to make any requests they considered appropriate of Mr.

Fraser; and to complete and sign the STA form that would be at the meeting. The teachers were not encouraged to refuse to agree.

[213] Mr. Fraser ran reports in SASI to identify classes and the teachers with whom he had to consult. He sent these to Mr. Hayes and they collaborated on how to schedule the meetings and attempt to ensure most were scheduled during lunch or a teacher's preparation block.

[214] Mr. Hayes had been the staff representative in the consultation meetings Mr. Fraser conducted in 2006 for the first semester classes and again in 2007 for the second semester classes in the 2006-07 school year. On September 24th, Mr. Ewan would substitute for Mr. Hayes at any meetings he could not attend.

[215] On the first day of school, enrolling teachers have student lists for each class. Before September 24th, some received *Alerts* about designated and learning assistance students. The number and time when they are received depended on individual case managers and their caseload. Some teachers had accessed information about their students in SASI, which may or may not have been up-to-date for each student in the class. Some teachers knew some students from previous years. Some had spoken to case managers about individual students. None of this time is scheduled and is done before and after school, during lunch and preparation blocks and in chance encounters in the school. No IEP information was provided by the school administration before or at the consultation meetings.

[216] On Tuesday, September 18th, Mr. Fraser emailed the affected teachers asking them to book a time for meetings on Friday or Monday that "in most cases won't last more than five minutes or so", but each teacher could book more time if he or she wished.

[217] In advance of the meetings, Mr. Fraser did not obtain, review or discuss student IEPs with Ms Light or other case managers. He did not have IEPs at the consultation meetings. Case managers were not asked and did not ask to attend the consultation meetings or be otherwise involved.

[218] Elements of a routine in how the meetings flowed had emerged from the first and second semester consultations in September and February in the 2006-07 school year.

The class size and composition would be confirmed with a reconciliation of any disparate information. Mr. Fraser had a list with IEP students identified by class and access to SASI. Often this was when the teacher learned the accurate number and identity of students in the class with IEPs.

[219] Mr. Fraser would ask how things were going with the class and discussion would follow. There were no time constraints and meetings lasted varying durations estimated to be from five to twenty minutes. Teacher comments and concerns were noted by the principal and staff representative on their respective reporting forms. Unless a teacher declared it, Mr. Fraser would not ask if the teacher agreed or disagreed with the class organization in the meeting. After the meetings, he and Mr. Hayes exchanged copies of their respective completed forms.

[220] On Thursday, September 20th, Mr. Fraser took ill, but was facing the immovable consultation deadline of September 24th. He sent an email from home at noon intended to commence email consultation, in which he generally identified the rationale for classes with more than thirty students or four or more students with an IEP.

1. there weren't enough students to create another section (splitting 36 students into two sections of 18 is difficult);
2. due to the placement of other courses, the only way a student could take your course was to be placed in this section;
3. although there were two sections or more of the same course in the same semester, it was not possible to move students into other sections to balance the loads due to point 2 above;
4. initially the number of students was fine, but new students were registered which then increased the numbers in classes; or
5. courses such as Communications 11, Essentials of Math, Earth Science are designed for students who are not as academically inclined. Therefore, these courses will end up with more identified students.

[221] On Friday, from home, he sent a follow-up email at 10:22 a.m. Later at 3:34 p.m. he sent a second email:

It appears that using email for starting this process isn't acceptable. So, we need to meet and Monday is the deadline. Attached is a little document in which you'll see a time to meet with me and Sean/Mike [Staff Representatives]. In order to be able to see everyone on Monday, the appointments need to be about 10 minutes long. Please be assured, that if in 10 minutes you feel you haven't had enough time to discuss your concerns, we will continue the consultation either later in the day or on Tuesday.

I'm sorry to have to do this on Monday. I was hoping we could avoid doing it on a pro-d day. If the time doesn't work for you, can you please try to change with someone else on the list and then just let me know about it.

Some teachers, like Tara Orme, did not access their email until later Friday night.

[222] BCTF literature speaks about a teacher determining whether the learning situation is “educationally sound” when determining whether to consent or approve the class size and composition. This is not the language of the *School Act*, but is a phrase used by the British Columbia School Superintendents’ Association in its June 20, 2007 Report to the Learning Roundtable. It is also a phrase used by the school district in the reported rationale for having thirty-one students in the organization of the Art 9 – 12 and Drama Linear 9 – 12 classes and 38 students in PE 9 – 12 Open School classes at Claremont in this semester: “Varying levels and group projects make this larger class educationally sound.”

[223] The STA form is designed to record the principal’s rationale why the organization of a class is appropriate for student learning and any proposed alternatives, objections or concerns of the teacher. The school district’s record of consultation discussions is designed to specify the organization of the class and record the discussion of the needs of the class.

[224] All consultation meetings for the required classes were held on Monday, September 24th in meetings scheduled for ten minutes each between 9:00 a.m. and 3:10 p.m. Neither individual teachers, nor Messrs Hayes or Ewan informed Mr. Fraser in the meeting whether a teacher stated on the STA form the teacher signed that he or she agreed or disagreed with the organization of the class.

[225] Mr. Fraser viewed the consultation meetings as an opportunity for the teachers to provide him with information about their classes. It was a forum for open and honest dialogue about the composition of the class and what was needed to make it a success. It was his responsibility, in light of that information, to decide if the organization of the class was appropriate for student learning. He did not ask individual teachers if they agreed or disagreed, but considered their agreement or disagreement if they volunteered this information. He considered a teacher’s agreement with the organization of the class an important, but not determinative, factor.

[226] Mr. Fraser’s criteria for forming his opinion was whether the students were given an opportunity to learn in an environment with quality instruction with appropriate

supports in place and necessary resources, such as textbooks. This is a different standard than the ideal goal embodied in the school's mission statement, which speaks of an environment in which "students pursue their highest possible levels of academic achievement and personal growth." For Mr. Fraser, the legislated standard of class organization "appropriate" for student learning does not require the ideal class organization. It is what can be done "within available resources", which includes consideration of technology, lab resources, capital improvements, staffing and all student supports. The time available to a teacher to devote to each student is a factor, depending on the course and the ability of the students. Teacher skill and experience, preparation time and timely feedback to students through marking and evaluation are important factors in the learning process.

[227] Mr. Fraser attended the meetings willing to listen to what teachers had to say and to offer support or offer willingness to hear requests later if the need arose. Offering to provide a teacher with TOC time was a common way to relieve periodic work overload. In some situations, such as exam supervision, there may be little planning required to have a TOC in the classroom.

[228] No students were moved from or between classes as a consequence of the consultation meetings. The appropriateness of the organization of the classes for student learning was not directly addressed. The reason a class organization ended up the way it was or the rationale for the organization of a class was most often stated to be "timetable constraints" or "the nature of timetabling" or "the nature of the course."

[229] It was Mr. Fraser's opinion that the organization of each class with more than thirty students or more than three students with an IEP or both was appropriate for student learning.

5.1 Social Studies 9 and 10

[230] Ms Hooper did not attend the September staff meeting. At the time, she was a TOC and did not have an assignment. She was not included as a recipient of the September 18th email because Ms Ross was still the teacher assigned to the Socials 9 class. She did speak to Mr. Hayes or Mr. Ewan, in passing, about the purpose of the meeting and that she would be asked to sign a form at the end of the meeting. Some teachers told her you meet, you talk and nothing happens. She was not given anything

and did not prepare anything for the meeting. She recalls she knew she had eight designated students with IEPs and who they were, but not their designations.

[231] At the meeting, which she recalls lasted approximately five minutes, she was asked how things were going and she said it was a difficult, quite overwhelming class. She was told the class was organized with eight students with IEPs because of “timetable constraints” – a “quirk” of the timetable. There was a full-time EA and she could pull students out of class and send them to their case managers if she needed to. Mr. Fraser recorded that Ms Hooper has “no other concerns at this time.” Ms Hooper decided at the meeting and signed the STA form stating she disagreed with the organization of this class. She testified she did so because she met, talked and she still had eight students with IEPs. She did not propose to Mr. Fraser that anything be done except reduce the number of students with IEPs. She did not know what else could be done or that she was expected to make suggestions.

[232] Mr. Fraser testified his door was open to Ms Hooper at any time, as is his style with all teachers, but she did not come for special help. He suspected, as a first year teacher, she wanted to prove herself and not bring problems to the principal. Had she come, he would have supported her. He concluded the organization of the class was appropriate for student learning based on his knowledge of Ms Hooper’s abilities; the fact she had applied to teach the class in which she had taught as a TOC; there was a full-time EA and other school supports; if she asked for more support he would try to give it; and she did not say she disagreed with the organization of the class. He had no knowledge of the students, but testified he considered the class appropriate because the teacher said it was O.K.

[233] Mr. Fraser and the school district did not give a published rationale for the organization of this class because the number of students did not exceed thirty.

[234] Similarly, there was no published rationale for the organization of another first semester Socials 9 class of 28 students taught by Gurmail Aujla in which there was one Grade 10 student and five Grade 9 students with designations – D (1), H (1), Q (2) and R (1). Mr. Aujla was teaching four blocks in the first semester – Socials 9, Socials 10E, and two classes of Socials 11. He had 114 students in the four classes.

[235] Mr. Aujla told Mr. Fraser in the consultation meeting that pulling out students for exams had not worked very well and generally pulling students out of class was not an ideal solution because they missed learning time. He asked for EA support and began to receive EA support on October 15th. Mr. Fraser testified additional support was called in when classes needed additional scribes.

[236] Mr. Fraser considered the organization of this class appropriate for student learning because the teacher was experienced and there was nothing unusual in the composition of the class, which was very similar to other Socials 9 classes.

5.2 Art 9 and Art 10 - 12

[237] Callayna Jardey had an Art 9 class of 27 students of whom 22 were boys and 5 were designated – D (2), G (1) and Q (2) – and had IEPs. She did not testify. There was a full-time EA for one student. Mr. Fraser testified designated students in this class do not require the same degree of support as in an academic class where there is more written work.

[238] Ms Jardey was not accompanied by a staff representative at the consultation meeting at which she asked Mr. Fraser for additional male support in the class. He spoke to a vice-principal and asked if a male EA could occasionally go to her class. He does not know if this happened. During the semester, she sent students to the office and spoke to him. He does not recall her saying the class was not working and she required help. If she had, he would have acted and perhaps removed a student or two from the class.

[239] Ms Jardey also had a combined Art 10 – 12 class with 32 students, of whom 4 were designated with IEPs - G (1) and Q (3). At September 4th, the class had 28 students, of whom 3 had IEPs. Mr. Fraser had combined these three sections because not enough students selected each section to make a viable class.

[240] One student was added to the class on September 6th. One designated student was added September 12th. Two others were added September 18th and 21st. The evidence did not disclose if any of the three without designations who were added were international students. One student dropped the class on September 27th after the consultation meeting. At the reporting date, September 30th, there were 31 students.

[241] At the consultation meeting, Ms Jardey was concerned about the limited space in a class where students work at tables, not desks, and limited storage space. Mr. Fraser described the room as “really tight.” She was advised and did use the adjacent art classroom in addition to the assigned art room for this class. She requested support from an EA with an art background. Mr. Fraser spoke to a vice-principal about this, but does not know if any support was arranged. Ms Jardey did not come back to him.

[242] Mr. Fraser knew there were a number of motivated art students in the class and concluded the organization was appropriate for student learning – “organization of the learning environment is fine.” The district reported: “Varying levels and group projects make this large class educationally sound.”

5.3 Senior Sciences with Labs – Biology 12E and Chemistry 12E

[243] Older school buildings were built with specifications that presumed a maximum number of desks in a classroom or students working in a science laboratory. Mr. Hayes’ classroom for Biology 12E (Room 200) and Mr. Ewan’s for Chemistry 12E (Room 206) each have 24 work stations. As Mr. Hayes’ testified, all teachers who taught in this generation of schools told him the classes were designed for 24 students.

[244] The local collective agreement that was in effect when Mr. Hayes began teaching at Claremont as an intern in 1999-00 provided that: “A lab oriented science class or workshop where student safety is a factor shall be limited to 24 students provided space and workstations are available” (Art. D.1.6). Through a process in which I was the mediator-arbitrator, the number was raised to 26 students for the 2000-01 school year.

[245] Both these enriched courses were offered in the first semester to enable a cohort of students to take Advanced Placement courses in the second semester. Both Messrs. Hayes and Ewan have pride in their department and like to teach enriched courses. One benefit for students in an Advanced Placement course is that they take a university credit course in a smaller class than would be available in university.

[246] In the first semester, Mr. Hayes taught two classes of Biology 11 and two of Biology 12E. He taught Biology 12, Biology 12E and AP Biology 12 in the second semester. Mr. Ewan taught two classes of Chemistry 12E and one of Chemistry 11 in the first semester and two of Chemistry 12 and AP Chemistry 12 in the second.

[247] On the first day of school, Mr. Hayes had one first semester Biology 12E class of 30 students and one of 25 students. Two students were added to the larger class on September 6th and 11th. None of the 32 dropped the course during the semester.

[248] Mr. Fraser said the class of 32 students had this number because of timetable constraints around offering the AP Chemistry 12 class in the second semester. Mr. Hayes voiced his common sentiment that all science classes should have no more than 24 students; space was limited in his classroom, which had 24 desks, and the last eight students to arrive had to sit on stools with no leg room; knapsacks were strewn about; there was a concern about having an inadequate number of textbooks, which had not been resolved by September 24th; and the marking workload. He had arranged for a student Teaching Assistant who was very helpful. There does not appear to have been a discussion about the possibility of decreasing one class to 30 and increasing the other to 27. Mr. Fraser testified he could not find a way to do this.

[249] Mr. Fraser, as he often did, likely offered to provide occasional TOC time for a block to assist with any marking overload. Mr. Hayes avoids this because of the time it takes to prepare a lesson for a TOC for this class. It is unclear whether Mr. Fraser offered additional Laboratory Assistant time to help with labs or whether the additional hours worked by the Assistant were in this Biology 12E class.

[250] Mr Hayes testified that with 32, rather than 24 or 26 students, there were significant differences in classroom management; the frequency and type of assessment; timely marking and return of work in classes where comments hopefully improve work and better inform students; fewer labs and group work; less communication with parents, case managers and colleagues; and poorer and delayed reporting to parents. Students in enriched classes are generally demanding. They want points clarified, expect the teacher to review drafts that are emailed before deadlines and will challenge the smallest of marking differences. Because of space constraints, available equipment and safety concerns, he organizes fewer or different labs. He agreed on cross-examination that in a semester in which he taught four blocks, there may be less frequent assignments, assessments and feedback for students.

[251] Mr. Hayes considers it to be absolutely inappropriate to deal with classes over 24 students by splitting the class into two sections and having one assigned to the library

while the other does a lab and take two days to do what should be done in one. This interferes with covering the curriculum necessary to prepare the students for provincial examinations. He has not done this for any of his classes.

[252] Mr. Hayes believes the standard “appropriate for student learning” is closer to “good” or “ideal” than the other end of the scale and relates to the ability of students to achieve their full potential. In his opinion, some classes with fewer than thirty students are not appropriate for student learning. Because there is no filter or screen on student selection of Biology 12E, thirty would never be appropriate. In some cases twenty-four would not be appropriate, depending on the composition of the class, but twenty-four would always be more appropriate than thirty.

[253] Mr. Hayes testified “without a doubt” the class size affected the ability of individual students to realize their potential. Two students failed the provincial exam, but not the course. This was the first year a provincial examination was optional for the students and he does not know if this affected student commitment and results. He could not say if it was a lower achieving group of students than in some other classes.

[254] While there were fifty-seven students enrolled in the Biology 12E classes in the first semester, only twenty students enrolled in AP Chemistry 12 in the second semester. One or more may have come from Chemistry 12.

[255] Mr. Fraser described Mr. Hayes as an “amazing” teacher and students can do as well as they choose in his classes. He agrees it is uncomfortable to sit on a stool in this class, but that does not necessarily affect the appropriateness of the class for student learning. His reported rationale to the school district was: “This is an academic class and the learning environment is fine.”

[256] Mr. Fraser testified that upon receipt of the school reports, district administration had discussions with principals about their rationale statements and they were refined. In the report to the Ministry, the rationale for the organization of Biology 12E became: “This class is made up of highly motivated academic students.”

[257] There was a similar rationale for organizing Chemistry 12E with thirty-five students, but because of the higher number the rationale also included: “Additional support is provided for lab work.” Originally, Mr. Fraser had reported: “Additional

support is available for lab work.” Neither the original nor the refined rationale state “The teacher has agreed to this organization”, as was the case for the PE 9-12 Open School class.

[258] In the spring, Mr. Fraser was timetabling for two Chemistry 12E classes in the first semester and AP Chemistry 12 in the second. There were fewer than fifty-five students requesting this course, but they were not loading in a balanced manner into the two classes in the timetable. One class had a high enrolment and the other had a low enrolment. This was the effect of limited options because a cohort of students had selected Biology 12E, Calculus 12 and Chemistry 12E – one of several situations captured by the generic phrase “timetable constraints.”

[259] Mr. Fraser recalls speaking to Mr. Ewan about this situation in June. They discussed the situation and “landed on” limiting the larger class to thirty-two students with the expectation one or more students would drop the course. Mr. Fraser organized one Chemistry 12E class with thirty-two students for the start of the school year. It was his expectation that two or more students would drop out.

[260] Mr. Ewan acknowledges students in Chemistry 12E are motivated, but they are also demanding. They want to explore new areas and many ask challenging questions and debate issues. They demand more from the teacher in and out of the classroom. As tests and review dates approach, there is a steady stream of questions and demands for teacher time. Having students sit on stools at lab benches on which chemicals have been spilled is not ideal. Avoiding tripping hazards from backpacks and other obstacles and safe handling of chemicals by forgetful teenagers in a room with twenty-eight desks pushed together to create traffic routes for thirty-five students was a constant concern. In 2008-09, the room was furnished with thirty new desks. He taught labs limited to eighteen students at the University of Victoria. His first year of teaching Chemistry to lower grades at Claremont in 1999-00 the class size limit under the collective agreement was twenty-four students. The next year it increased to twenty-six students. A fifty percent increase above twenty-four students in this class was “just too many.”

[261] Three of the thirty-five students who remained in the class for the semester failed the course. In comparison to the provincial distribution by letter grades, the failure rate

for students who chose Chemistry 12E in the first semester was higher than the provincial average. Mr. Ewan testified he reviews these reports annually and typically his results are better because Claremont is an academic school with a high scholarship rate that attracts students from other schools. Mr. Fraser did not agree this is an indicator of a less than successful class in a year when the provincial examination was optional. In contrast, a higher proportion of students achieved an "A" letter grade than the provincial average and the school average score was above the provincial average.

[262] Mr. Fraser uses a common technique with SASI of raising or lowering the maximum permissible enrolment of a class to redistribute students. In this case, a maximum of thirty-four for the one class and thirty-two for the other loaded thirty-two students into one class and fewer into the other. He forgot to change these maxima in the locked master timetable back down to thirty students for each.

[263] Counsellors and administrators dealing with course change requests and new student arrivals in August and September are instructed not to exceed the maximum number in the master timetable. On September 4th, the class had thirty-two students, with one Grade 12 international student and one Grade 11 student, but a maximum of thirty-four in the master timetable. A thirty-third student was added September 5th and thirty-fourth student was added September 6th. The thirty-fifth and thirty-sixth students were added September 10th.

[264] Mr. Fraser could not explain why this happened. He did not speak to Mr. Ewan. He thinks one of his vice-principals did and Mr. Ewan did not object. Mr. Fraser does not believe the students would have been added to the class in September unless Mr. Ewan agreed. Mr. Ewan does not recall having discussions about the addition of students to his class after September 4th. One student left the class October 2nd.

[265] Three of the four students added to the class also enrolled in AP Chemistry for the second term and brought its enrolment up to nineteen students. With nineteen students the enrolment was marginal, but below the twenty students the administration considers a viable class size for this course. Mr. Fraser was anxious to maintain the AP program, which he described as one of the academic drivers for the school. To sustain the program, he will run courses with as few as fifteen students. In the 2006-07 school year, twenty-six students had requested the course; eighteen started the course and six

completed it. Mr. Ewan is the only one who teaches the course and wants to have it continue.

[266] With fifty-eight students enrolled in two Chemistry 12E courses in the first semester, the goal was to have a healthy AP Chemistry class in the second semester. In 2008, eleven students completed the AP Chemistry course and eight dropped out.

[267] Mr. Fraser recognized that having thirty-five students in this class was “not ideal” and his focus in the consultation meeting was on how to make it work. His approach with Mr. Ewan was to ask what he needed and what options there were to make it work – perhaps additional adult supervision for labs; splitting the class for labs so that one-half the class goes to the library, perhaps with a TOC, and one-half does a lab on alternate days; extra TOC time to assist in the two Chemistry 12E classes in the second and third blocks. Nothing was put in place. Mr. Fraser left it to Mr. Ewan to manage the class and tell him if he needed anything. Mr. Ewan testified it is difficult to find a TOC qualified to teach Chemistry 12E and there is additional work in preparing lessons for a TOC.

[268] There was no discussion at the consultation about Mr. Ewan having agreed to the number of students in this class and Mr. Fraser was not surprised Mr. Ewan did not agree with the organization of the class in a science room designed for twenty-four students, which Mr. Fraser described as one of the larger science rooms. Nonetheless, he considered it was a class of motivated students keen to study Chemistry; Mr. Ewan is a very good Chemistry teacher; and there was additional lab support.

[269] Dr. Elder recognized that there can be a range of the number of students in the same course in the same semester because of the nature of timetabling and that some will be above and some below the average number. The principal has to organize the classes in the best way possible and the class size and composition outcomes are directed by some of the timetabling choices made.

[270] The number of students in this class caught Dr. Elder’s attention. He did not ask for or see the STA form Mr. Ewan signed. He did not ask for and did not see a list of teachers who agreed or disagreed until these proceedings. The preliminary decision reports:

The Saanich Teachers' Association filed a grievance with School District No. 63 by letter dated December 1, 2006, with copies to BCPSEA and BCTF, suggesting a Step Three meeting on December 15th. Consultation with grades K to 7 on class composition and grades 8 to 12 teachers on class composition and size were the subjects of the grievances. "Examples will be provided during the Step 3 meeting." (*British Columbia Public Sector Employers' Association* [2008] B.C.C.A.A.A. No. 131, ¶ 83)

Dr. Elder did not learn which teachers agreed or disagreed through the local grievance procedure.

[271] Dr. Elder testified teacher agreement is not a factor in class organization under the *School Act* for Grades 8 to 12. Whether there is agreement or not is not part of his consideration in forming an opinion whether the organization of a class is appropriate for student learning.

[272] He and an Assistant Superintendent spoke to Mr. Fraser. Dr. Elder came to believe the class size was necessary to give students access to a course in the second semester and that Mr. Ewan had agreed with the class organization. Both were factors in forming his opinion that this class was appropriate for student learning, as was the skill, ability and training of the teacher. Nonetheless, he was still concerned and members of the Board of Education asked about this class when he reported to them. He dropped into this class for brief observation when he was in the school later in the semester. He agrees it was crowded space, the marking load was likely heavy and the class was likely challenging as have been crowded, rigorous senior science classes he has taught.

5.4 Junior Science with Labs - Science 9

[273] The "lost boys" cohort created for Grade 9 that impacted the composition of Socials 9 classes also impacted the organization of an English 9 class taught by Jennifer Loukes that was organized with 25 students of whom six had IEPs. This class organization was not grieved.

[274] The cohort also impacted the organization of the Science 9 and 9E classes. The two Science 9E classes each had one student with an IEP. The numbers of students with an IEP in the three Science 9 classes were one, three and six.

[275] Lucky Walia, who was teaching four courses – Science 9 (for which there was a new curriculum in the 2007-08 school year), Mathematics 9 (for his first time) and two

classes of Chemistry 11 - in the first semester, was assigned the class with 29 students of whom 6 were designated special needs students and had IEPs – D (1), G (1), R (1) and Q (3). He also coached a school basketball team.

[276] There were thirty-one students in one of Mr. Walia's Chemistry 11 classes for which he attended a consultation meeting and did not agree with the class organization, but the organization of this class is not being grieved.

[277] For the Science 9 class, Mr. Walia was concerned about having twenty-nine students in a room with twenty-four desks and students at lab benches where they were not facing forward. He had to ensure distractible students did not sit at benches. The class presented the greatest workload of his four classes in the semester and required the most time to meet with case managers and maintain contact with parents.

[278] One student in this class required a modified program. The remaining five students had adapted programs. One other student had difficulty with English. Mr. Walia does not know if she was an international student. An EA was assigned to this class. Group activities, especially in the Biology unit, are part of what Mr. Walia normally does in Science 9. Because the students could not maintain a task orientation, he could not do group activities in this class.

[279] Mr. Fraser explained the "lost boys" cohort and the Technical Education 9 class with twenty-one students of whom none had an IEP had directed the organization of this Science 9 class. Mr. Walia suggested there should be earlier contact from case managers to enable him to better arrange his class, but he recognizes that there are constraints on case managers dealing with Grade 9 students who are new to the school.

[280] Mr. Walia disagreed with the organization of this Grade 9 class in which there is a daily challenge to keep all students focused, whether international, grey area, designated or other students, and to provide the best opportunity for each to achieve his or her best.

[281] Mr. Fraser and the school district did not give a published rationale for the organization of this class because the number of students did not exceed thirty. Mr. Fraser testified he concluded the organization of the class was appropriate for student

learning because there was adequate support in the class and more available if needed or requested, which it was not. Mr. Walia had a good rapport with the students and he said things were going fine.

5.5 Workshop – Woodworking 10 - 12

[282] Doug Beeston taught a multi-grade, multi-section Applied Skill, Technology Education class of twenty-four students, of whom eight had IEPs in Woodworking in the first semester. It was a combined Woodworking 10, The Art of Furniture Construction 11, Carpentry and Joinery 11, Carpentry and Joinery 12, Carpentry and Joinery Furniture 12A and Carpentry and Joinery Cabinets 12B. Each section has its curriculum learning objective. Some may be similar, but the techniques or outcomes are different. The multiple courses allow students to earn credits for each. Mr. Beeston did not testify.

[283] Mr. Fraser testified it would be difficult for the school to continuously offer as many sections if the classes were limited to three students with an IEP.

[284] These are courses students with IEPs are more likely to select and Mr. Fraser testified they particularly appeal to boys, some of whom intend to pursue an apprenticeship. Some students who struggle in academic classes can do amazing things in Applied Skills classes. In this class, there were a variety of wood based projects some of which are mandatory for the lower grades and design and drafting elements. Students have to make project plans that include supplies, costs and timelines and work at an individual pace. Supervision can be more challenging than in a class where all students are working on the same project at the same time.

[285] Mr. Fraser explained in the consultation meeting that the composition was the result of “timetable constraints.” He did not examine the IEPs of the students, which identify difficulties students have staying on task, being organized and behaving appropriately. He believed Mr. Beeston had taught some of the students in previous years.

[286] Mr. Beeston wanted assurance case managers and administrators were available to deal with students he sent out of the class if there were behavioural issues that compromised safety in the class. He did not agree with the organization of this

class because of the potential safety issues with the class composition in the workshop.

[287] There is no published rationale for the organization of this class with nine students with IEPs. Mr. Fraser testified there was EA support for the class and case managers and administrators were available. Mr. Fraser's opinion was that the organization of the class was appropriate for student learning because of the nature of the courses; the students selected the course; this is the way the class had been organized for many years; and the students had an opportunity to be successful.

5.6 French 10, Introduction to Business and Social Studies 10

[288] Each of these Grade 10 classes was organized with thirty-one students. One student was added to Social Studies 10 on September 10th. The other two classes had thirty-one students on September 24th. There were other sections for each with less than thirty students in the first semester.

[289] Sue Card, who taught French 10, did not testify. At September 30th, French 10 had thirty-one students, none of whom had an IEP. Two were in Grade 11 and one of the two dropped out on October 4th. Ms Card did not agree with the organization of this class. She wanted no more than thirty students, but with thirty-one she wanted relief from examination invigilating when she was doing final oral exams with this class. Mr. Fraser testified he was unable to move a student from this class into the other French 10 section in the first semester or a section in the second semester. The reported rationale for the class is: "This class is made up of highly motivated academic students."

[290] There were no designated special needs students in the Applied Skills Introduction to Business class of Grade 10 students with one Grade 9 and two Grade 11 students. Mr. Fraser understood the teacher, Remo Bussoli, who did not testify, was accepting of the class and simply might want occasional additional support in TOC relief for a block to do marking and planning. He had his preparation block in the first semester and was teaching Marketing 11 and Planning 10. The originally reported rationale for the organization of this class was: "The learning environment is fine." The published refined rationale for this class authored by Mr. Fraser is: "Project learning and available online resources can accommodate larger groups."

[291] Mr. Fraser testified he was unable to move a student from the regular Socials 10

class taught by Gord Mitchell, who did not testify, to one of the other two regular Socials 10 classes or the Socials 10E class. A thirty-first desk was fitted into his class. Mr. Mitchell told Mr. Fraser he disagreed with the organization of the class that included four ESL international students. The class size limit should be lower than thirty students, but it was thirty and he should stick to it. The published rationale for the class was: “The class is made up of highly motivated academic students. Course selection and student choices have resulted in this oversized class.”

5.7 Mathematics 11 Applications and 12 Applications and Principles

[292] Mark Skanks was teaching one hundred and five students in four classes of Mathematics in the first semester – Mathematics 10 Principles, two classes of Mathematics 11 Applications and Mathematics 12 Applications – and three classes in the second semester – two classes of Mathematics 10 Principles and Mathematics 11 Applications. He is an active supporter of and devotes time to the literary review.

[293] In the first semester, one of the Mathematics 11 Applications classes had twenty-four students, of whom four were designated – H (1), Q (2) and R (1) – and had IEPs. The Mathematics 12 Applications class had twenty-six students, of whom five were designated – Q (3) and R (2) – and had IEPs.

[294] Mr. Skanks had few expectations for the consultation meetings on his two classes. His experience was that there is limited EA support available for the senior courses. Many do not have mathematics training or familiarity with the functions of a TI-83 series of graphing calculators. He was not expecting there would be EA support for the Mathematics 12 Applications class. It was in the same block as Mathematics 10 Essentials and Mathematics 11 Essentials classes and two EAs were assigned to each. He had never had an EA in a Mathematics 12 Applications class.

[295] He attended the meeting believing seven of the twenty-four students in the Mathematics 11 Applications class had IEPs. After discussion, it was agreed there were four students with IEPs. One of the four was under suspension and did not return to the class. Another student not identified in the meeting was a designated student with an IEP, so the number remained at four students with IEPs. It was also agreed there were five students in the Mathematics 12 Applications class which was understood in the meeting to have twenty-eight students, but had twenty-six students by

September 30th. One student with an IEP dropped the course October 25th.

[296] Mr. Skanks discussed the general challenges of Mathematics Applications classes and the need for smaller classes limited to twenty-four students, although the Mathematics 11 Applications class, a requirement for graduation, was smaller than some in previous and subsequent years. As it turned out, this Mathematics 11 Applications class, which he described as a “very pleasant and cohesive class”, was one of the better classes he has taught. However, he testified but it could have been better and the students could have achieved more. Two of the students with IEPs failed. One should have been in the Essentials pathway and the other laid a foundation to repeat the course and pass the second semester. Other students could have achieved higher grades if they had had a full opportunity to achieve their potential.

[297] The Mathematics 12 Applications class was one of the larger ones he has taught. In some semesters the enrolment was as low as thirteen or fourteen. He had no assigned preparation time in the first semester and chose to streamline tests to minimize adaptations, reduce his workload and balance work and home.

[298] He requested EA and more case manager support for both classes. An EA was assigned to his Mathematics 11 Applications class. The second Mathematics Applications 11 class had twenty-eight students of whom one had an IEP. There was no discussion in the consultation meeting of reassigning students between the two classes.

[299] In the Mathematics 12 Applications class, Mr. Skanks found two of the students with IEPs were more capable and academically focussed. He described them as bright and motivated. Generally all the students with IEPs were fairly well behaved and moderately self-sufficient. All four passed the course. He testified, because of the student mix, there were times when there was no or little learning happening in an eighty-minute block and he was simply managing behaviour. With fewer students, he is confident some students would have achieved an “A” letter grade, which no student did. One student failed.

[300] Mr. Skanks believes he is responsible for the achievement of each student and with fewer students in this class, which was generally an immature group, several would

have had a better opportunity to have greater success in achieving their potential and this would have been reflected in higher marks. For him, the benchmark is not the group achievement, but the achievement of each individual student. This cannot be measured by pass and failure rates or group achievement rates, which do not reflect individual student needs and aspirations.

[301] Mr. Fraser testified the Applications pathway will generally have fewer students with IEPs than Essentials, but more than the Principles. Some students who are better placed in Essentials will select Applications.

[302] Mr. Fraser regards Mr. Skanks as great teacher who is in the best position to describe what happens in his classes. He appreciates Mr. Skanks' observations in all conversations they have. He arranged EA support for the Mathematics 11 Applications class and believed this class of twenty-four students was appropriate for student learning because of the number of students in the class. He mused perhaps a student could have been moved and neither class would have had four students with an IEP, but would it be better if one class had more students up to thirty and fewer than four with an IEP?

[303] Mr. Fraser was unable to have two Mathematics 12 Applications courses for twenty-eight students. He is not aware if the request for EA time in this class was met and, if not, why the students' services team could not or did not meet it. He considered the class as organized to be appropriate for student learning and would give any additional support he could, as he does with TOC time, to support Mr. Skanks' work with the literary review and website.

[304] Kelly Nelson, who did not testify, was assigned to teach a class of Mathematics 12 Principles with thirty-one students, none of whom had an IEP. The thirtieth and thirty-first students were added to the class September 10th. Uncommonly, four students withdrew after the first term report in November. Mr. Nelson was teaching two classes of Mathematics 10 Principles and Mathematics 11 Principles in the first semester.

[305] Mr. Fraser testified he always tries to allow room for the addition of students, international students and those who change their selection or want to renew their

Mathematics courses.

[306] In the consultation meeting, Mr. Nelson asked for occasional release time for marking and had no other issues with the class, whose organization he stated he did not agree with on the signed STA form. Mr. Fraser considered the organization of this class appropriate for student learning. The published rationale for the organization of both this class and another Mathematics 12 Principles class that was not grieved is: “This class is made up of highly motivated academic students.”

5.8 Communications 11

[307] Language Arts or English pathways include regular and enriched English and Communications. Claremont usually offers one Communications 11 and one Communications 12 course a year for students struggling with English. Often a majority of the students in the Communications 11 class are students with an IEP.

[308] Tara Orme did her internship at Claremont in 2001-02 when she gave birth to her first child. Her degree was with majors in English and History. She began as a TOC in September 2002 and obtained a full-time assignment that year. In 2003-04 she taught three of four blocks. She was on maternity leave for 2005-06.

[309] Ms Orme’s first semester Communications 11 class was organized with twenty-six students, one of whom was in Grade 10 and four of whom were in Grade 12. The class had fifteen designated special needs students – D (2), K (1), R (3), and Q (9) - with IEPs. In two other blocks she was teaching ESL classes of sixteen and eleven students each. In addition, she voluntarily started tutorial sessions for ESL students in the first semester.

[310] Before returning from maternity leave for her second child, Ms Orme had requested, and been granted, a 0.156 FTE, or one block, leave of absence for the 2006-07 school year. In February 2007, she requested, and was granted, a 0.84 FTE assignment for the 2007-08 school year, which was three teaching blocks in each semester plus preparation time.

[311] Ms Orme testified Communications 11 and 12 are generally selected by students who are unable to cope with the rigour of regular English courses. The courses are not accepted for entry to most colleges and universities. Communications 11 is concerned

with basic skill building to fill learning gaps – punctuation, grammar, composing business letters, etc. It has no literature studies and smaller segments of reading and writing.

[312] In 2006-07, the Communications 11 and 12 curricula were taught in a combined class of twenty-four students of whom fourteen had an IEP. It was not considered to have been successful. The English Department wanted to offer separate classes in the 2007-08 school year. To ensure there was sufficient enrolment in the Communications 11 course, potential students were identified and teachers and parents were spoken to about enrolling in Communications 11 rather than English 11. The goal was to set the students up for success.

[313] This was the first time Ms Orme taught Communications 11. She had taught Communications 12. There are prescribed learning outcomes, but no curriculum or text book. She prepared the materials for the course over the summer. She wanted to teach this class because she connects well with the more fragile students on the fringes of behaviour and wants to build support for students not always advocated for in the school. She did not want the class assigned to a new teacher.

[314] Ms Orme did not know the students on her first day of class. She was not prepared for the volume of documentation associated with a student with an IEP and the volume of contact with parents. She knew many of the students would have an IEP, but not how many or who they were. She was proactive and acquired copies of all IEPs within days of the first day of school.

[315] She testified it took her weeks to acquire a complete picture of the students from SASI, case managers, other teachers and her interactions with the students. There were behaviour issues that required her redirection every three or four minutes, including students who had a poor “mind-mouth filter.” There was the Queen Bee, the tournament Ultimate Fighter, the CSI Lacrosse player, the needy, compulsive lying crier, the Goof, the butt of jokes, the street smart hidden ruler of the class, the incorrigible energy drinker, the intelligent non-English speaker, the boy duo, the girl trio, the defiant one with learned helplessness, the “just a brat” and others who came late, left early, did not come or had other behaviours.

[316] She learned four of the students were ESL international students. It took her a couple of weeks to establish a seating plan that “somewhat worked.” She had to locate some students so they were physically and emotionally protected from others. Sustained silent reading was not possible in this class. It was at the other end of the spectrum from the Writing 12 classes she has taught.

[317] For a few days, Case Manager Anne Light came to the class, but she was unable to continue. She testified she intended to teach students how to use speech recognition software (Dragon Naturally Speaking), but had too many other demands on her time and was unable to find another teacher available to take her place.

[318] Ms Orme had an EA assigned to support the class. Ms Light testified that the EA was instructed and understood that her primary responsibility in the class was one student. Ms Orme testified that, after time in the class, some students sometimes picked on this EA. Another EA sometimes came to the class halfway through the block. Sometimes there were cooperation and communications problems between the two EAs. She dealt with these classroom management issues and did not speak to anyone in administration.

[319] Ms Orme had offers of help from Mr. Fraser. In the consultation meeting, she asked and Mr. Fraser acquired for her four computer stations with printers for the class. Despite these supports, because of its size and composition she did not think there was enough of her to go around with these students. She felt guilt each day that she had neglected some students who needed her time and attention.

[320] Ms Orme did the adaptations and modifications. Marking was excessively burdensome as she had to continuously reference IEPs. For ESL students, it took longer. She did not agree with the organization of the class, in which she expected to have several students with IEPs, because the class was too large.

[321] The ESL students in her other classes have host parents, counsellors and teachers to turn to for assistance. Many, especially girls, came to Ms Orme for help and to share their longing for home. She worked 8:00 p.m. to 11:00 p.m. on week nights, but not on weekends when Ms Hooper had her key to the school. She gained weight and her home life suffered.

[322] Mr. Fraser knew this would be a challenging class with many reluctant learners and challenging student behaviours. It required assignment of the right teacher with the right skills, attitude and personality for the situation. He did not consider he had the option of splitting the class into two classes. He did not have the teacher FTE allocation and he did not know what section to remove from the timetable. He set the maximum class size at twenty-seven students in SASI and at twenty-six for Communications 12 in the second semester, but would have enrolled more students if there had been student requests.

[323] It was Mr. Fraser's opinion, because of the nature of the curriculum, supports in place, including the number of students with SLC blocks during which they could do course work, and Ms Orme's experience, passion and rapport with the students, the organization of this class was appropriate for student learning. He anticipated there might be some difficult times, but he would be there if Ms Orme asked for support. All but one of the students passed the course.

5.9 Community Recreation 11 and 12

[324] Physical Education 9 and 10 are compulsory courses. The Physical Education 11 and 12 courses are elective. Community Recreation 11 and 12 are Physical Education 11 and 12 courses. In Community Recreation 11 the emphasis is on mini-units of lifetime recreational activities. Community Recreation 12 offers an "opportunity to participate in and to explore a variety of leisure activities."

[325] These courses are popular electives with international students and Mr. Fraser does not load the classes with thirty students in June anticipating international students will be added in September. Mr. Fraser agrees the limited English skills of some international students can make the out of school environment more challenging for the teacher.

[326] Shon Ryan, who did not testify, was assigned to teach a Community Recreation 11 class of twenty-nine students, of whom six were designated special needs students – G (1), Q (3) and R (2) – with IEPs. One student withdrew September 26th. Another class of the same course assigned to Kelly Harris had thirty-one students of whom one was a designated special needs student and had an IEP. Mr. Ryan thought Community Recreation classes should be limited to twenty-eight students because of the number of

out-of-school activities. One disabled student in his class was a concern.

[327] Mr Fraser testified Community Recreation courses are often selected by students whose IEP is not relevant because there is little reading, writing and mathematics in the course. He considered the organization of the class to be appropriate for student learning because of the nature of the course, the experience of the teacher, the school's willingness to respond to any requests for support and the absence of any other concerns being expressed by Mr. Ryan.

[328] Darren Reisig, who did not testify, was assigned to teach a Community Recreation 12 class of thirty-one students, of whom three were designated students with an IEP. One student who did not participate in all activities had an EA. One designated student withdrew October 10th. The published rationale for this class is: "Curriculum organization is flexible and allows for larger groupings."

[329] The same rationale is given for the Community Recreation 11 class of thirty-one students taught by Kelly Harris to which two students had been added September 10th and to which the thirty-first student was added on September 13th. Ms Harris, who did not testify, like Mr. Ryan, believed the classes for this frequently out of school course should be limited to twenty-eight students.

5.10 History 12

[330] Gord Mitchell, who did not testify, was assigned to teach History 12, a rigorous academic course with a provincial examination in the first semester. The class had thirty-one students, two of whom had been added to the class on September 14th. He was concerned about the space in his room and the marking load challenge. He had a student assistant who was helping with the class. Mr. Fraser ensured he had a thirty-first desk in his class.

[331] Mr. Mitchell was a house advisor for international students supervising lunch. In exchange, he had a block with no assignment and his preparation block. Both his Social Studies 10 and History 12 classes had thirty-one students.

[332] Mr. Fraser considered the class organization appropriate for student learning because of Mr. Mitchell's experience, the students' selection of the course and the absence of other concerns. The published rationale for the class organization is: "This

class is made up of highly motivated academic students.”

5.11 English 12

[333] Kim Andiel, who did not testify, expressed interest in and was assigned to teach a specially enrolled English 12 course. The students in the class were selected by the English Department. The students had abilities suitable for this class, rather than Communications 12, but needing help. This was the first time this class configuration was offered. The intention was to give more attention to reading and writing and none to Shakespeare.

[334] In September, it was a class of twenty-six students, of whom four were designated special needs students – Q (3) and R (1) – with an IEP. Ms Andiel was concerned there was no EA support for this class. Three students withdrew from the course in October and November and the grade results reflect low performance by the students.

[335] Mr. Fraser considered the organization of this class by the English Department to be appropriate for student learning. The students were carefully selected; support was available if needed; Ms Andiel was an experienced and skilled teacher who wanted to teach the course; and the number was reasonable. This pilot was not repeated.

6. Principal Consultation with School Planning Council

[336] There is no evidence there was any change to the organization of the size and composition of any class as a consequence of the consultation meetings with teachers. There were some changes in EA support, resources such as text books and physical organization of classroom space.

[337] Mr. Fraser presented the proposed school organization to the School Planning Council after September 24th. There was no change to the organization of any class as a result of his consultation with the School Planning Council.

7. Superintendent Opinion and Report to District Board of Education

[338] Dr. Elder had seen preliminary timetables and class size and composition reports as the process unfolded. Mr. Fraser forwarded the school organization to him as of September 30th with rationale statements for the organization of classes with more than thirty students.

[339] Dr. Elder reviewed the school report on class size and composition. He noticed senior enriched science classes with more than thirty students and some senior classes with fewer than thirty. This is to be expected because of student course selection. As a past senior physics teacher, he assumed the students were likely motivated, bright and self-directed. In his opinion, there is practically no difference between 29, 30, 31 or 32 students in these classes.

[340] In determining whether to affirm the opinion of a principal that the organization of a class is appropriate for student learning, Dr. Elder begins with an assumption extensive work has been done correctly and that there is a great likelihood the organization of each class will be appropriate by any standard. He expects to see a small number of sections in less academically oriented courses required for graduation – Mathematics Essentials 11, Communications 11, Earth Sciences 11 – with a large number of designated special needs students with IEPs who are at the lower end of the motivation or ability spectrum. His focus is not on the numbers, but on the levels of support.

[341] He expects and accepts that the principal has done the work and has the requisite knowledge to organize classes that are appropriate for student learning. He knows the teachers are competent, well trained and can access resources in the school. He places faith in the supports in the school for teachers and students. He regards the standard of three students with IEPs to be arbitrary and looks more to the support than the number of students with an IEP in a class. He also considers the availability of district-based supports.

[342] There was no change to the organization of any class as a result of Dr. Elder's review. There were subsequent changes to the rationale statements.

[343] The Board of Education accepted his report on October 10th pending his final report on October 24th. Dr. Elder submitted his declaration of compliance with legislated class organization by letter dated October 31, 2007.

[344] Dr. Elder testified he regards the legislated standard of "appropriate" as being "suitable" or "practically enough." It is a class organization that is able to create conditions for "student learning" – the acquisition of knowledge, skills and abilities in

relation to the curriculum as described in the IRP. The standard for class organization is a different and more practical standard than the Claremont mission statement. It moves the school toward the achievement of the mission statement.

4.7 Guildford Park Secondary School (SD No. 36 – Surrey)

Witnesses:

| | |
|-------------------|---|
| Brian Bastien | Associate Superintendent |
| Alexis Biggar | Teacher |
| Laurel Cooper | Teacher |
| Kirstin Farquhar | Teacher |
| Chris Foster | Teacher and Staff Representative |
| Robyn Mastroianni | Teacher |
| Michael McKay | Superintendent |
| Myra Morgan | Teacher |
| Carolyn Oram | Principal, Guildford Park Secondary School |
| Rick Ryan | Director of Instruction, Student Support Services |

Hearing: Surrey, May 11 – 15; 25 – 27, 2009; Vancouver, May 30; June 13, 2009

Disputed Classes at September 30, 2007:

| | Class | Teacher | Size | IEPs |
|-----|---------------------------|-------------------|------|------------------------|
| 1. | Humanities 8 | Alexis Biggar | 27 | 6 (1A, 3H, 2R) |
| 2. | Physical Education 12 | Alexis Biggar | 31 | 5 (2H, 2Q, 1R) |
| 3. | Home Economics – Foods 9 | Robyn Mastroianni | 24 | 4 (1Q, 3R) |
| 4. | Home Economics – Foods 10 | Robyn Mastroianni | 26 | 6 (2C, 1D, 1K, 1R) |
| 5. | Humanities 8 | Laurel Cooper | 26 | 7 (2Q, 5R) |
| 6. | Humanities 8 | Laurel Cooper | 24 | 5 (1K, 1Q, 3R) |
| 7. | Science 9 | Kirstin Farquhar | 32 | 4 (1H, 2R, 1Q) |
| 8. | Art 8 | Myra Morgan | 20 | 5 (1C, 2G, 1Q, 1R) |
| 9. | Visual Arts 9 | Myra Morgan | 34 | 0 |
| 10. | Art 11/12 | Myra Morgan | 31 | 6 (1A, 2C, 1K, 1Q, 1R) |

1. School District No. 36 (Surrey) – 2007-08 Classes Grieved

[345] School District No. 36 (Surrey) is the largest school district in British Columbia and the fifth largest in the public school system in Canada. It serves a student population of approximately 66,000 students in one hundred elementary schools, twenty-five secondary schools and five learning centres with approximately 8,000 employees.

[346] School District No. 36 (Surrey) reported 5,399 classes in 118 schools at September 30, 2007. There were 882 classes for Grades K-3 of which 15 (1.7%) had four or more students with an IEP. There were 4,517 classes for Grades 4-12 of which 640 (14.17%) had four or more students with an IEP. There were 430 classes with more than thirty students. (Ministry of Education's published report *Overview of Class Size and Composition in British Columbia Public Schools 2007/08 (School District 036 Surrey)*)

[347] In the fall of 2007, the maximum potential number of classes in the school district that could be subject to a grievance challenging the class organization because of either its size or composition was 1,085 or 20.096% of the classes. These are the 433 classes with more than thirty students plus the 655 classes with more than three students entitled to an IEP. The actual number might be slightly lower if some of the classes with more than thirty students also had more than three students entitled to an IEP.

[348] The union's particulars of its 2007-08 school year grievance list 167 classes at sixteen schools of the potential 1,085 classes in the first semester. The union's particulars list 73 of the 177 classes reported at Guildford Park. The school district reported 73 classes at the school with more than three students entitled to an IEP and the union grieves 57 of them. The school reported 38 classes with more than thirty students, some of which the union grieves. While all 73 grieved classes are in dispute, this hearing proceeded with ten classes taught by five teachers, each of whom testified.

2. Guildford Park Secondary School

[349] Guildford Park Secondary School is a level one inner city school with a full academic program for Grades 8 to 12. In the 2007-08 school year, its student headcount was 1,244. At September 30th, there were 187 (15%) designated special needs students, excluding 18 students who were designated gifted. The distribution by designation category was:

| | Category | Students |
|---|--|-----------------|
| A | Physically Dependent | 2 |
| C | Moderate to Severe/Profound Intellectual Disability | 6 |
| D | Physical Disability or Chronic Health Impairment | 4 |
| F | Deaf or Hard of Hearing | 3 |
| G | Autism | 10 |
| H | Intense Behaviour Intervention/ Serious Mental Illness | 51 |
| K | Mild Intellectual Disability | 10 |
| Q | Learning Disability | 44 |
| R | Moderate Behaviour Support/Mental Illness | 57 |
| | Total | 187 |

[350] The transient rate at the school in a neighbourhood with predominance of low-rent apartments and inexpensive housing is over 25%. Within a school year, many students will frequently change addresses and telephone numbers making

communication with their families a challenge for teachers. Parents often work long hours and have limited English language skills.

[351] One-half of the students come from homes where English is not the home language and 17% are designated ESL from beginner to the five-year cap in funding. There are 49 different languages and cultures represented among the student population, which has a continuous influx of refugees and other new residents to Canada.

[352] The school's successes were documented and celebrated in a 2009 study, "Guildford Park Secondary: Helping Students Learn to Be Successful", which recognized the passion to educating for life and the student centered culture at the school. It emphasized the successful culture at the school which it defined by drawing on the work of Ronald S. Barth: "A school's culture is a complex pattern of norms, attitudes, beliefs, behaviors, values, ceremonies, traditions, and myths that are deeply ingrained in the very core of the organization. It is the historically transmitted pattern of meaning that wields astonishing power in shaping what people think and how they act" ("The Culture Barrier", 59 *Educational Leadership*, No. 8 pp. 6-11 (May 2002)). The study report notes: "Many staff are passionate about helping students succeed. More experienced staff share successful practices with each other and with new staff readily. As several staff commented, new staff who join the school become part of this ethos, or else they choose to leave" (p. 7).

[353] Carolyn Oram is the Principal. There are three vice-principals who work with gifted students, counselling and career planning programs. Each vice-principal is teamed with a counsellor assigned to an alphabetic group of students. Beginning with meetings with six feeder schools principals in October, the course selection, projecting and timetabling process evolves throughout the school year.

[354] By deliberate choice and district policy, classes in "wood shop, metal shop and mechanics" are not to exceed twenty-four students without prior discussion with an assistant superintendent. For safety reasons some classes at Guildford have fewer students. Efforts are made to limit Home Economics classes to twenty-four because of the configuration of the kitchens at Guildford. Some academic classes, like English 12, are limited to twenty-five or fewer students. As a consequence other classes have more

than thirty students. Some classes, like Applied Calculus, have an initial enrolment greater than thirty in the expectation there will be withdrawals. Some courses, like History, have strong enrolment and some, like English Literature, struggle to attract enrolment.

[355] The timetable is built in increments starting with Grade 8 and moving to coop programs, Fine Arts, Home Economics, shops, Grades 12, 11, 10 and 9. The final stages are done by hand. Counsellors have a key role in reviewing student placement. There is a timetable with teacher assignments by June. Class lists are fluid until August when, if there are no computer or data entry errors, the number of students entitled to an IEP in a class can be reasonably accurately determined. In June and again in August/September, Ms Oram engaged a retired counsellor to review and fine tune the balancing of classes.

[356] Guildford has a Socials, English Science and Mathematics (SESM) program to introduce Grade 8 students to secondary school. Two teachers teach four academic subjects throughout the year building stronger relationships with the students. There are fewer teacher contacts for the students and more sharing of student information among teachers, similar to the middle school concept. It eases the transition into a large secondary school. English 8 and Social Studies 8 are combined as Humanities 8. Another teacher teaches Science 8 and Mathematics 8. These classes, like others in the school, are built to be heterogeneous and often have more than three students entitled to an IEP.

[357] Ms Oram testified she tries to keep the SESM classes well below thirty students so teachers have more time with students unknown to the school. The software will not limit the number of students entitled to an IEP in a class. Counsellors review each class after they have been loaded by the software program and make changes to achieve balance and pair or separate students for success.

[358] In 2007-08, there were ten sections of Humanities and Mathematics/Science. Four teachers had two Humanities sections. Two others had one each. Paired SESM teachers meet as required and group meetings are held twice a month. All Humanities and Mathematics/Science teacher meet separately once a month.

[359] The school provides direct instruction for reception and beginner ESL students. Some students are given social placements in elective courses where it is hoped they will learn language skills from peers. Sometimes this is a placement in what available class space there is.

[360] In 2007-08, the Building Academic, Social and Employment Skills (B.A.S.E.S.) program provided twenty-two students with an IQ less than 70 specially programmed timetables with placement in elective courses where there is an interest or fit. The focus is development of life and social skills. Integration is mostly in non-academic classes. Often the courses are Choir, Art, Physical Education, Home Economics, shop classes with a special education assistant and, occasionally, Computers.

[361] The school has the district Helping Others Provide Education (HOPE) program for Grades 9 to 12 struggling emotionally fragile students, perhaps with mental illness, and often designated H. There were nineteen students in the program in 2007-08. These students have scheduled blocks with counsellors or in resource rooms.

[362] Growing Together is a district teen mother program located at Guildford with an onsite daycare. Usually without psycho-educational assessments, each of the students are designated H because they have social workers. In 2007-08, the year started with thirty-three students. Most often, the issue with these students is attendance, rather than in-class behaviour.

[363] The Youth Education Support (Y.E.S.) breakfast, lunch and after school program is operated with inner city funding supplemented by the district. There is an After School Tutoring program run by a retired teacher and parent. The Homework Club is overseen by a vice-principal or the principal. The Peer Tutoring program operates in classes and some teachers request a peer tutor for their class. There were supports, including a resource room, for 111 aboriginal students in the 2007-08 school year.

3. District Staffing Allocations for 2007-08

[364] Rick Ryan, Director of Instruction, Student Support Services testified the district approach is that as academic rigour and social demands increase through the grades, programs have been developed to engage and support in a meaningful way those who are unable to navigate and progress with their age peers. The secondary school based

personnel in School District No. 36 (Surrey) are administrators, classroom teachers, Learner Support Teachers, Counsellors, School-Based Team, Special Education Assistants and Youth Care Workers. The schools are supported by several district and community based personnel and programs.

[365] The school district uses historical enrolment and Special Education and ESL integration factors to project enrolment and determine classroom staffing allocations. Before the 2002-03 school year, the district used a 23.2 divisor for classes. It was increased to 24.1 in 2003.

[366] Each school is allocated a librarian, administrator and counsellors. For the 2007-08 school year, the school staffing allocation at Guildford Park was:

| | |
|--------------------------------------|---------------|
| Classroom FTE | |
| Regular based on enrolment | 41.790 |
| Special Education Integration Factor | 5.250 |
| E.S.L. Integration Factor | 2.500 |
| Total | 49.540 |
| Non-enrolling | |
| Librarian | 1.000 |
| Counsellor | 3.000 |
| Career Development Facilitator | 2.375 |
| Teaching Chef | 0.400 |
| Gifted Facilitator | 0.125 |
| Grad Port Coordinator | 0.375 |
| Growing Together | 2.750 |
| Aboriginal Education | 0.750 |
| Learner Support Team | 8.125 |
| B.A.S.E.S. | 2.125 |
| Alternate Program | 1.000 |
| Total | 22.025 |
| Administration | |
| Principal | 1.000 |
| Vice-Principals | 2.625 |
| Total | 3.625 |
| Total FTE Staff | 75.190 |

[367] Guildford Park was allocated 309 Special Education Assistant hours per week (9.66 FTE); 112 Youth Care Worker hours per week (3.5 FTE); and 32 hours per week for the Y.E.S. Co-ordinator.

[368] In 2007-08, the timetable had 89 blocks of time dedicated to support of

subgroups of students through LST, Aboriginal Education, Counselling and the Alternate Program.

[369] Because Surrey is a growing urbanizing school district, there is a small staffing holdback that is allocated to meet unanticipated enrolment increases and avoid forced transfers in September.

4. Review of R (Moderate Behaviour Support/Mental Illness) Designations

[370] In December 2006, the school district was informed the Ministry of Education was going to audit the district's H and R category designations. Mr. Ryan testified the high numbers in the school district attracted Ministry attention. He testified district Student Support Services had been concerned about the rigour of the designation practice, especially with respect to the R category for which it had not been receiving supporting documentation from the schools. The district and school computer systems did not communicate with one another. The paper designation files were retained at the schools. In January 2007, the school district explained its concerns and action plans to the Ministry auditors. The audit was postponed one year.

[371] In February 2007, steps were taken to formalize the designation of students meeting the Ministry criteria for category R designation. In the future, Student Support Services was to review all referrals and issue designations with communication to school based clerks, as was happening with other categories. To have a fresh start, Student Support Services was removing all R category designations from its computer system. It was recommended all schools do the same in their computer information systems. After reviewing the existing documentation and the Ministry checklist for the R category, school referrals to Student Support Services for designation could begin immediately. The goal was to have a new and accurate count by September 2007. Students not on the new designation list were to be removed from the school information system no later than September. The district report to the Ministry at September 30th would be an accurate accounting.

[372] Between 2006-07 and 2007-08 school years, the number of R designated students declined from 1,490 to 880. There had been steep increases in the 2004-05 and 2005-06 school years. Between 2006-07 and 2007-08 school years, the number of H designated students declined from 987 to 869. The total district decrease in the

number of students designated in all categories was 539 – from 6,379 to 5,840. In the H and R categories, the combined decrease was 728.

[373] This decrease did not include Guildford Park. Although Ms Oram spoke to the school's Secondary Information Management clerk and arranged to have the record purging and updating done as a summer project, the names were not removed and no September reconciliation was done as planned. The oversight had a slight impact on the total allocation of Youth Care Worker hours to the school in the district's resource allocation model.

[374] This first came to Mr. Ryan's attention as the postponed audit was approaching in January 2008. The result of the subsequent vetting and auditing at Guildford Park significantly reduced the number of R designated students.

| | H | R |
|----------------|----|----|
| September 2007 | 51 | 57 |
| February 2008 | 49 | 18 |
| September 2008 | 69 | 23 |

Some of the students who had R designations removed in February were counted as students entitled to an IEP in the disputed classes.

5. Principal-Teacher Consultations

[375] In School District No. 36 (Surrey), Associate Superintendent Brian Bastien distributed an information Update in 2006-07 and 2007-08 school years that described consultation in Grades 8-12 as follows:

Consultation with a teacher, in simple terms, means giving the teacher sufficient information and reason for the proposed class, providing the teacher with a meaningful opportunity to be heard about the proposed class, and considering teacher comments with an open mind.

There is no legal requirement that consultation only take place one-to-one with a teacher. Consultation can take place at a meeting involving a number of teachers. Each individual teacher, affected or potentially affected, must however, receive sufficient information and reasons for the proposed class organization. In addition, each individual teacher must be given an opportunity to be heard and such comments must be considered with an open mind by the principal.

This approach could be beneficial when a student or students might potentially be enrolled in different classes and you want to give advance consideration to the views of all classroom teachers who might potentially be affected before making a decision.

[376] Mr. Bastien spoke to the principals and vice-principals in August 2007 about

consultation. Among the things he said was the following:

At the extremes it is not difficult for professional educators to know and agree when a class is or is not suitable for learning. There are some classes, however, where there is room for possible disagreement. My observation is that most contentions about individual classes are based upon general beliefs or assumptions about what is appropriate for learning absent specific information about the class in question.

I am of the view that when a teacher has a view that the class is not suitable for learning you engage in a discussion of the specifics if that is possible. A meaningful consultation with a teacher who feels that a class is not suitable for learning requires the principal to understand what it was that led to the teacher's conclusion. If the teacher has a generalized view, but there have been many occasions in the school district in the past where such numbers and categories of students have existed, then how does that reconcile with the teacher's conclusion that his or her class would not be appropriate for learning? It is the teacher's obligation to explain his or her view with sufficient and specific support regarding his or her position. Almost all class sizes and compositions being considered this school year are not significantly different from that which has existed on many occasions so I ask, should not the general assumption be in favour of the class being appropriate for learning? I think so.

[377] Union Staff Representative Chris Foster testified that in September 2007 notice consultation meetings were to be held was given at the first school staff meeting.

[378] The local union held a meeting to explain the process and the recording and reporting forms to be used to the teachers and distribute a wallet size pamphlet prepared by the BCTF – "What Teachers Need to Know about Bill 33." The advice to teachers is that they not consent to classes with more than thirty students if there are more than three students entitled to an IEP and otherwise, not approve unless the teacher believes the class is educationally sound and additional resources or support have been provided as identified by the teacher. Teachers were also advised not to approve classes with more than three students entitled to an IEP unless the teacher believes the class is educationally sound and additional resources or support have been provided, such as reduced class size, additional preparation time, non-enrolling teacher support, collaboration time or other support identified by the teacher. The teachers are not advised or directed to agree or disagree with the organization of classes for which there is a consultation meeting.

[379] After discussion with Ms Oram, a consultation meeting schedule was published in the school's Friday September 15, 2007 bulletin. The fifteen minute meetings were scheduled after school, at lunch and during preparation blocks. The duration to be

scheduled was discussed between Mr. Foster and Ms Oram. Mr. Foster testified no meeting ended due to a lack of time. They continued as long as the teacher wished.

[380] The local union arranged for a union staff representative to be in the staff room and another staff representative to attend the principal-teacher meetings that were also attended by a vice-principal. In the ten classes in this phase of the arbitration, Mr. Foster and Trudy Burrill were the staff representatives.

[381] In preparation for the forty consultation meetings, Ms Oram gathered reports on the designated special needs students and prepared handwritten lists of classes with more than three students entitled to an IEP and more than thirty students.

[382] The meeting format was for the principal to welcome the teacher, identify the reason for the consultation and review the number and designations, but not the names, of special needs students in the class. Teachers who had class lists with them would try to identify the students. Because of the format of the class lists and other documents the principal had at the meeting, the identity of the students could be determined.

[383] The focus of the discussion was mostly on class size and designated special needs students, not other students, and resources. There was some discussion about ESL students. There was no discussion about the concept appropriate for student learning - what it meant and how it applied to the class. The teachers generally did not communicate agreement or disagreement to the principal.

[384] The principal completed and signed a form for the school district that reported the date of the meeting, grade, course, teacher, number of students and number of students entitled to an IEP with their designations. The staff representative completed a more detailed local union form that reported the same information, time and duration of the meeting, teacher's concerns, principal's rationale if given, "solutions" offered by the principal, if any, and teacher agreement or disagreement.

[385] The staff representative completed all portions of the form except the teacher's concerns and statement of agreement or disagreement. The teacher completed and signed these parts of the form in the staff room after the meeting. At times, the teacher identified concerns on the form in the staff room that were not communicated to the

principal in the meeting.

[386] The staff representative completed a separate BCTF form in the staff room that referred individual classes to the BCTF for inclusion in the provincial grievance. These were sent to the local union for processing. Mr. Foster testified some teachers did not agree with the organization of the class, but chose not to have their class included in the grievance.

[387] If asked, Mr. Foster testified that, when he was the staff representative in the staff room, he recommended teachers not agree. His view is the government set the class size and composition standards and should abide by them. Some teachers did agree.

[388] Mr. Foster testified Ms Oram always was open to looking for solutions and advocating for more resources for the school. She testified she asked teachers if they needed any supports and if they had any questions. She offered to listen and address any issue that might arise later.

[389] Ms Oram did not ask teachers if they agreed or disagreed with the organization of the classes or that, if they did not tell her they disagreed, she proceeded as if they were accepting of the organization. She received copies of the local union reporting forms in the fall of 2008 in this phase of the arbitration.

6. Humanities 8 – 27 Students with 6 IEP Students (A. Biggar)

[390] Alexis Biggar taught Physical Education 8 girls, Physical Education 9 girls, Physical Education 12 and Humanities 8 in the first term. Each of her classes had four or more students entitled to an IEP, as did several of the Humanities 8 classes. Two of Ms Biggar's Physical Education classes were not grieved for reasons Ms Biggar does not know.

[391] The class list for the Humanities 8 class identified the special needs designated students. There was a Special Education Assistant assigned to the class with the A designated student.

[392] Ms Biggar recalls this and her other three classes were discussed in the one consultation meeting on September 20, 2007 attended by Ms Burrill at which she recalls Ms Burrill and Ms Oram talking and ticking things off on forms. She did not have the

student IEPs with her and there was no discussion about individual students. Her experience with the class had been that it was a very bright group, but “out of control.” She did not discuss this with Ms Oram. She did not know and did not ask if she could have additional support or resources. She did not want to look like she could not do her job. Her recollection is Ms Burrill and Ms Oram did most of the talking.

[393] Ms Oram recalls that Ms Biggar was fairly passive during the meeting, but said it was a difficult class with behavioural students. There were three H designated students and had Ms Biggar asked, some Youth Care Worker time could have been assigned to support the class.

[394] After the meeting, she went to the staff room with the four forms. Although she thought it might be considered a judgment on the administration, which she did not wish to make, she hurriedly completed the local union reporting form stating she disagreed with the organization of the class. Her approach to the consultation was “get in there, get it done and get out.” Her view was that if the limits were thirty and three why should they be exceeded? She felt strongly about this before attending the consultation meeting.

[395] Later the same day, Ms Biggar retrieved and read the Grade 7 synopsis of each student in her class. In teaching the class, she had to create two groups for reading, one of which received less of her time and attention.

[396] Ms Biggar testified that both prior and since being assigned this class she asked not to be assigned a class of Humanities 8. Administration has agreed.

[397] Ms Oram testified that she did not know Ms Biggar had decided before the meeting that she did not agree with the organization of this class. Unless she receives some information from the teacher, she assumes the teacher is O.K. with the class.

7. Physical Education 12 – 31 Students with 5 IEP Students (A. Biggar)

[398] This Physical Education 12 was a big class with big kids, many of whom Ms Biggar had taught in previous Physical Education classes. The thirty-first student was added to the class in September when the Growing Together Counsellor Cynthia Adams asked her and she agreed to accept a new student.

[399] In October, Ms Biggar was asked and agreed to add a thirty-second student to

the class. She testified the Physical Education classes typically are larger classes with more designated special needs students.

[400] While Ms Biggar liked to work with a Special Education Assistant and Peer Tutor in the Humanities 8 class, she did not wish or request either for this Physical Education class.

[401] The two H designated students in the class were Growing Together mothers. Attendance was a problem with them, the third one who joined the class later and other students. There was little reading and writing in the curriculum and the two Q designated students, who Ms Biggar taught in Grade 8, did well in the class. There were eight field trips. The R designated student, who took up a lot of class time, was an excellent athlete who Ms Biggar was able to manage together with the student's friends in the class. He was expelled in the second semester.

[402] Ms Oram testified a number of students entitled to an IEP often elect this kinaesthetic program. The classes are large but often have students withdraw during the semester. Physical Education classes have a lower priority for supports than academic classes. During the consultation meeting, they discussed the R designated student who was on second chance after a suspension elsewhere, but Ms Biggar raised no concerns and asked for no assistance. She did not say she disagreed with the organization of the class.

8. Home Economics (Foods 9) – 24 Students with 4 IEP Students (R. Mastroianni)

[403] Robyn Mastroianni taught Home Economics-Foods 9 and 10 and Life Skills 8 in the first semester. On September 18, 2007, this class had 24 students with 6 who were entitled to IEPs.

[404] There were enough students for eleven classes, but only enough space for eight. To accommodate the number of students who elected this course, Ms. Mastroianni and Department Head Patrice White, whose class had twenty-two students with fewer students entitled to an IEP, were sharing one Home Economics room and an adjoining classroom in the same block in the timetable. They alternated theory and demonstration classes or combined classes for activities.

[405] It was a pilot in the school and they experimented with organizational

approaches. Ms Oram had spoken to Ms. Mastroianni about this arrangement in June and Ms. Mastroianni had agreed to try it. She testified it worked out well enough that it has been repeated. The intention is to do it again to increase the number of classes, offset a decline in classes in other courses and maintain enough courses to fill the full-time teaching assignments.

[406] She and Ms White planned classes but she was unable to do as much as Ms White because of the designated student, grey area students and ESL composition of her class. At the time of the consultation meeting, with the assistance of the learning support team and a vice-principal, the two classes were being reorganized.

[407] With the assistance of the retired counsellor Ms Oram engaged and others, by September 30th, the classes were balanced with four students entitled to an IEP in Ms. Mastroianni's class of twenty-four and three in Ms White's class of twenty-two. The union does not assert these changes required any further consultations.

[408] The student causing Ms. Mastroianni the most problems and who she had asked to be removed from her class was placed in Ms White's class. However, Ms. Mastroianni testified the students she received in the exchange caused as many problems. The new arrivals fed off a non-designated student who liked to sabotage the food being prepared by other students.

[409] She had two peer tutors. One helped with demonstration preparation. The other had not taken a Foods class and was there to translate for two ESL students.

[410] Ms. Mastroianni was anxious to talk to Ms Oram. She had had the class for two weeks and there were behaviour problems. She wanted some help with the class from Ms Oram and asked for a Special Education Assistant. A vice-principal followed up, but Ms Oram testified the school was unfortunately unable to provide a Special Education Assistant for this class.

[411] Concerns for safety and the number of ESL students in the class identified by Ms Mastroianni when she completed the local union form in the staff room were not raised with Ms Oram.

9. Home Economics (Foods 10) – 26 Students with 6 IEP Students (R. Mastroianni)

[412] This class had four B.A.S.E.S. students with a full-time Special Education

Assistant, who Ms. Mastroianni described as “phenomenal” and an “exceptional” Education Assistant. Growing Together students came and left during the semester. The class was reported at September 30th as having twenty-six students of whom eight were entitled to an IEP. By school district policy, the class is to be limited to twenty-four students, but no more than twenty-six.

[413] The most challenging students in the class were a group of three disinterested male ESL students, one of whom was in the class to translate for the other two who he did not befriend and was not willingly helpful. They were in the class because there were only two ESL classes in the same block. There were cultural and sanitation issues that Ms. Mastroianni dealt with through support services assistance, but did not report to the administration. Ms Oram testified had she known about the issues with the ESL students it might have been best to move them where more ESL learning was available for them.

[414] Ms. Mastroianni described this class as generally a nice group of mature kids. It was “by far” an easier group to work with than the Foods 9 class. Except for the disinterested ESL students, behaviour was not a problem in the class.

[415] Ms. Mastroianni testified the presence of a large number of students with an IEP militates against her desire to make the class more academic and not just about cooking skills.

[416] In the consultation meeting, Ms. Mastroianni told Ms Oram that the support for this class was adequate.

10. Humanities 8 – 26 Students with 7 IEP Students (L. Cooper)

[417] Laurel Cooper taught English 12 and two Humanities 8 classes in the first semester. She is Department Head and mentors new and younger teachers. She testified that in her experience there is frequent movement of students in and out of Humanities 8 and many of the designations students received in earlier grades may no longer be relevant. Students without designations may be needier.

[418] By the time of the consultation meeting she had been with the students but the relationship is artificial as they are still polite and all subject matters have not been covered in the academic units that have begun. She had reviewed the information from

the feeder schools but was unsure who the designated students were. She recalls asking for Special Education Assistant support but not for a Peer Tutor, for whom Grade 8 classes have priority. Mr. Foster recalls discussion about a Peer Tutor. Ms Cooper was assigned a Peer Tutor for each Humanities 8 class. She does not recall if she had a Special Education Assistant in the class.

[419] Ms Oram testified she asked the Youth Care Worker to look in on this class with five students with a special needs R, not H, designation. She does not recall any request for a Special Education Assistant by Ms Cooper and none is noted on her consultation report form. Three of the five R designations were removed in February after the district review.

11. Humanities 8 – 24 Students with 5 IEP Students (L. Cooper)

[420] This was a smaller class of twenty-four students that diminished during the year through attrition. There was a half-time Special Education Assistant to support the K designated special needs student. Ms Cooper preferred it be full-time. There was a Peer Tutor.

[421] Ms Cooper testified there was a wide range of abilities and academic levels in the class that required differentiated instruction. It was equal to a class double its size. Her view of a class appropriate for student learning is one that is much smaller than this class. The ideal would be one teacher for every five students so their individual needs could be attended to.

[422] Ms Cooper had decided to disagree with the organization of this class before the consultation meeting but did not tell Ms Oram before, during or after the meeting.

12. Science 9 – 32 Students with 4 IEP Students (K. Farquhar)

[423] Kirsten Farquhar was the Science Department Head and taught Biology 12, Chemistry 11 and Science 9 in the first semester of 2007-08. She had not taught Science 8 and all of the Science 9 students were new to her. She had not selected this class. It was assigned to her but she was fine with the assignment. She had no role in the placement of the students in this class.

[424] Ms Oram testified she attempts to keep classes at thirty students but it was not possible in this case because of the number of student requests for the course. There

were four Science 9 classes reported at September 30th with a total of 126 students. Ten of them were Grade 10 students. Seventeen of the students were entitled to an IEP. One class had thirty students of whom three were entitled to an IEP. The other two classes had thirty-one students of whom six were entitled to an IEP and thirty-three students of whom four were entitled to an IEP. As did happen in Ms Farquhar's class, there is often attrition during the semester and the number declines. In Ms Farquhar's class, there were twenty-nine students at the end of the semester.

[425] Three of the students were in the HOPE program and a teacher with HOPE occasionally dropped into the class from the beginning of the year. The three students received support from a Youth Care Worker through a pull-out, which Ms Farquhar found disruptive. She had a Peer Tutor student with this class. Sometimes, a Peer Tutor is not a calming influence in the class and can be more work than help. One student had LST support from a teacher who attended the class most days after September and also helped other students. The student designated R in September was designated H in November.

[426] Ms Farquhar's approach to the consultation meeting was that it was a formality to be done – just go, find out, sign papers and get back to work. She had a fifteen minute slot in the schedule but others were waiting and there were things to do. She estimates the meeting lasted five minutes. She thinks she mentioned one student had too many high needs and not enough support. She did not ask for any additional resources or supports.

[427] The first time Ms Farquhar saw the local union reporting form was in the staff room. She identified on the form that there were too many high needs students, a lack of support personnel, a lack of space and safety concerns. Although it is not ticked on the form, Ms Farquhar recalls she decided to disagree with the organization of the class – too many students with lots of needs in Grade 9. She signed the form and left.

[428] Her unspoken safety concerns were the number in the laboratory – 32 students and a peer tutor with their knapsacks and bags. The organization of the room was seventeen tables, accommodating two students at each, in two rows with counters and work stations with gas jets on three sides of the perimeter of the room. There were hazards and it was difficult to monitor so many. To work with Bunsen burners,

chemicals and glassware, the students need elbow room. She did fewer lab activities and more demonstrations. Ms Oram agreed the room was crowded with thirty-two students, a Peer Tutor and other adults at times.

[429] Ms Farquhar testified the class size and composition meant she had less time to do the “wow” things in science and with each student to sow the seed that inspires them to pursue science studies and interests. As is typical at this age and grade, a few students took a disproportionate amount of time and attention.

13. Art 8 – 20 Students with 5 IEP Students (M. Morgan)

[430] The first semester of the 2007-08 school year, Myra Morgan taught this class, a Grade 9 class with thirty-four students and two senior classes. Three of the classes are in dispute in this phase of the arbitration.

[431] The consultation meeting was scheduled for ten minutes at lunch on September 19th. Ms Morgan testified that she had decided to disagree with the organization of each class prior to attending the consultation because Guildford Park is a needy school and she had to do her part to make others aware of the school’s needs.

[432] The class was in a room that can accommodate over thirty students. The class had two G designated students in the B.A.S.E.S. program accompanied by a Special Education Assistant. A third student, who stopped attending part way through the semester, was accompanied by a full-time Special Education Assistant. In the consultation meeting, Ms Morgan did not ask for any additional resources or supports. She had a Peer Tutor for this class.

14. Visual Arts 9 – 34 Students with 0 IEP Students (M. Morgan)

[433] Ms Morgan had had this number of students in a class in the past. She did not have enough chairs for this class and had to have the custodian find stools to be able to have a seat for each student. The room is large and can accommodate thirty-six, but table space for projects was a problem. She was assisted by a Peer Tutor in the preparation of supplies for this class.

[434] Because this is a Grade 9 class, the lessons are structured with demonstrations, fixed expectations and rationed supplies. Ms Morgan described this as a strong class that worked out well. There were no behaviour issues but there were absenteeism and

learning concerns. Because she had the assistance of a Peer Tutor, she had time to spend with individual students. However, thirty-four students are too many and she would have liked to have more time for each.

15. Art 11/12 – 31 Students with 6 IEP Students (M. Morgan)

[435] It is common for senior Art classes to be combined courses with up to six courses in one block. There were three in this block. Both Ms Morgan and Ms Oram testified the course mix, size and composition of this class were not uncommon in their experience.

[436] The unstructured nature of Ms Morgan's senior classes facilitates communicating, creating relationships and working one-on-one with the students, many of whom she will have previously taught. Some are very serious about Art. For other students in senior classes, absenteeism is often more of a problem than classroom behaviour. Ms Morgan testified senior students at Guildford Park are often expected to work at income earning jobs to contribute to the household, although that was not the case with this group of students.

[437] Some special needs designated students excel in Art. Ms Morgan testified about one in this class whose art work she described as "incredible." One non-verbal student attended with a Special Education Assistant simply for social skill development and did not do the art program.

[438] This class was operated as an independent studio with students choosing projects and working independently, sometimes with unstructured hours. Some motivated students were working on personal portfolios for post-secondary pursuits. Ms Morgan testified some of the students were not motivated and were in the class simply to obtain Fine Arts credits for a Graduation Certificate with no real interest in Art. They require constant monitoring and prompting to achieve a passing mark in their courses. Because the room is large, they can drift to the side counters.

[439] Ms Oram acknowledged in her testimony that this was a "difficult and challenging" class with some ESL students who perhaps should have been placed elsewhere.

16. Principal and Superintendent Opinions

[440] On September 20, 2007, Ms Oram reported the classes on which she had consulted and that, in her opinion, each was appropriate for student learning. For each thirty-five classes with more than thirty students her rationale was “Instructional grouping of students.” This was one of six rationales developed in the school district to explain what led to the class size, not why it was appropriate for student learning. For Ms Oram, this meant there was no other block that students could attend. Sometimes a student’s first elective choice is denied and there are waitlists for some classes.

[441] The other five rationale were: “program integrity”, “program sustainability”, “effective allocation of resources”, “accommodate students program needs” and “accommodating a new student.” These were coded into forms on which the principals reported. Principals could provide another rationale if they wished. Mr. Bastien told principals and vice-principals in August 2007: “I have a problem knowing what was expected by legislating a need to report a rationale for every class. A rationale is the underlying reason or basis for the class, hence the six options.” Further, he said: “In my opinion a rationale explains what gave rise to the class. It is separate and apart from the assessment of whether or not the class is appropriate for learning.” There was no rationale stated for the sixty-four classes with more than three students entitled to an IEP.

[442] For Ms Oram, “appropriate for student learning” did not mean ideal. It meant the class would work using supports to make opportunities for students to learn and teachers to teach in the context of Guildford Park Secondary School and the school district’s ongoing responsiveness to requests for additional supports when needed. It is about striving to fulfill potentials, which is not achieved by all students or every day. There are barriers like inadequate English language skills and challenges like life experiences and family situations at Guildford Park but everyone works to provide students with opportunities to fulfill their potential.

[443] Ms Oram testified she had a positive relationship with teachers at the school and did not think she had to ask if they agreed with the organization of a class. She expected the teacher would tell her if the teacher disagreed. They are adults and she did not imagine they would not tell her they disagreed. She did not fully inform herself

of the teacher's opinion and she was not fully informed by the teachers. She operated on the assumption that classes were appropriately organized. If supports requested to make a class easier to teach were provided, then the teacher agreed the class organization was appropriate. She testified it would have been helpful to have known the teacher's opinions when she formulated her opinion.

[444] The Human Resources Update to principals advised that the number of classes exceeding thirty students and/or having more than three students entitled to an IEP "will be considerable."

It is not feasible for the Superintendent to personally examine the specific of each of those classes.

As a result, where a class size or composition is questionable in regard to the class being "appropriate for student learning", the principal should discuss the specifics of the class with the applicable Assistant Superintendent. The Assistant Superintendent will then advise the Superintendent about the class. The Superintendent will obtain such information as he feels necessary in order to form an opinion with regard to whether the class is "appropriate for student learning".

[445] Superintendent Michael McKay reported to the Board of Education on October 1, 2007 that the organization of classes in the school district was in compliance with the *School Act* and appropriate for student learning. His report was made available to the public the same date. He subsequently made the same report to the Minister.

[446] Mr. McKay testified the biggest challenge at secondary schools is to add teaching staff later rather than earlier. As a consequence, discretionary resources are allocated earlier – in May and June – rather than later. When the school year starts, there is advocacy by teachers, counsellors and principals for more resources. Through a collaborative process, available resources are allocated. Some is proactive and some is reactive.

[447] In September, Assistant Superintendents work closely with principals and they examine the details. He receives reports on class size and composition that might cause him to ask questions about specific classes. He testified there is significant due diligence built into the organization and its reporting structures.

[448] In 2007-08, the class size average at Guildford Park was 25.6 students. This was 1.0 less than the district aggregate class size average for Grades 8-12. This reflects the allocation of additional resources to this complex inner city school. Mr.

McKay testified the class organization and school education model is not an industrial one with one teacher per a set number of students. There were over twenty teachers in Guildford Park who were not enrolling classroom teachers. There were Special Education Assistants, Youth Care Workers and others supporting student needs.

[449] Mr. McKay assumes there is a highly skilled teacher in the classroom working with a complex group of students, whose diversity continues to grow. Through differentiated instruction and other strategies they can be instilled with self-motivation, self-management and cooperation. In addition, there are additional direct in-class supports, especially for identified students with high needs. Schools have dynamic and dedicated administrators, counsellors and learning support teams, all of whom have input into class organization and support teachers with the most complex situations. In addition, there are other in-school supports for students. There is another level of support outside the school with district resources and specialists.

[450] From his position in the organizational hierarchy, Mr. McKay oversees the architecture, structures, expectations, requirements and organizational norms. He ensures they are in place and actualized. He must and does rely on his Assistant Superintendents and his Deputy Superintendent. Through discussion and shared goals and values, resources are allocated and prioritized to maximize their use and benefit at the school and class levels using the art and science of teaching in the 21st century.

[451] Mr. McKay testified “appropriate for student learning” is to be distinguished from teacher working conditions or beliefs that legislated numbers are absolute maxima. There can be teacher disagreement based on an erroneous view that the enrolling teacher is the sole provider of services to the class or other beliefs unrelated to appropriateness for student learning. Nonetheless, knowing the teacher’s agreement or disagreement with the organization of a class is useful information to have in forming an opinion.

[452] In forming his opinion about the appropriateness of class organization in the district, Mr. McKay did not speak to each principal; review principal consultation reporting forms; learn which teachers disagreed with the organization of their classes; or examine the populations of student by name of special needs designations in classes. He relied on the skills of the principals and Assistant Superintendents.

[453] Mr. McKay assumed there had been authentic consultations with teachers having a chance to have input and principals were open to changing classes or supports upon receipt of new information. The reports he received were that there was a range of dynamics in the schools. In some schools, it was reported the consultations were “rich and authentic” and aimed at problem solving. In other schools, the report was there were statements by some or many teachers that anything in excess of the legislated standard of thirty and three was not appropriate – full stop.

Endnotes - Statute and Decision Citations and Other Source References

- ¹ R.S.B.C. 1996, c. 412
- ² S.B.C. 2002, c. 3, s. 12
- ³ S.B.C. 2006, c. 21
- ⁴ *British Columbia Public School Employers' Association* [2008] B.C.C.A.A.A. No. 131 (Dorsey) (QL)
- ⁵ Employer Written Argument, ¶ 1195 - 1201
- ⁶ *British Columbia Public School Employers' Association* [2008] B.C.C.A.A.A. No. 131 (Dorsey) (QL), ¶ 263
- ⁷ *School Act*, ss. 76.2 and 76.3
- ⁸ *School Regulation*, B.C. Reg. 265/89 as amended, s. 4(1)(e)
- ⁹ Employer Written Argument, ¶ 1194
- ¹⁰ *British Columbia Public School Employers' Association* [2008] B.C.C.A.A.A. No. 131 (Dorsey) (QL),
- ¹¹ Employer Written Argument, ¶ 1202 - 1204
- ¹² *British Columbia Public School Employers' Association* [2008] B.C.C.A.A.A. No. 131 (Dorsey) (QL), ¶ 68 - 73
- ¹³ Union's Outline of Argument, ¶ 25
- ¹⁴ Ministry of Education *Area Standards* (2003), ¶ 2.1
- ¹⁵ Ministry of Education *Area Standards* (2003), ¶ 2.2.1
- ¹⁶ Ministry of Education *Area Standards* (2003), ¶ 2.2.2
- ¹⁷ *Accessible School Facilities: A Resource for Planning*, p. 1
- ¹⁸ *Hansard*, 30th Parliament, Fourth Session, February 4, 1974, p. 59
- ¹⁹ *Hansard*, 30th Parliament, Fourth Session, February 5, 1974, p. 90
- ²⁰ *Hansard*, 30th Parliament, Fourth Session, February 5, 1974, pp. 91-2
- ²¹ *Hansard*, 30th Parliament, Fourth Session, February 11, 1974, p. 134
- ²² *Hansard*, 30th Parliament, Fourth Session, February 19, 1974, pp. 320
- ²³ *Hansard*, 30th Parliament, Fourth Session, February 20, 1974, p. 350
- ²⁴ *Hansard*, 30th Parliament, Fourth Session, February 20, 1974, p. 351
- ²⁵ Peter Thomson, "Surrey Teachers' strike 1974" *Teacher Magazine*, Vol. 12, No. 7, May/June 2000
- ²⁶ *Hansard*, 30th Parliament, Fourth Session, March 20, 1974, pp. 1434-5
- ²⁷ *Hansard*, 30th Parliament, Fifth Session, February 18, 1975, p. 3
- ²⁸ See *Burnaby School District No. 41* [2000] B.C.C.A.A.A. No. 502 (Kelleher) (QL), ¶ 8
- ²⁹ Ministry of Education, *Annual Report*, July 1, 1984 to June 30, 1985, p. 24
- ³⁰ Ministry of Education, *Annual Report, 1992-93 School Year*, p. 103; *Legacy for Learners: Report of the Royal Commission on Education*, pp. 119
- ³¹ *Legacy for Learners: Report of the Royal Commission on Education*, pp. 42 - 43
- ³² *Legacy for Learners: Report of the Royal Commission on Education*, pp. 68 - 70
- ³³ *Legacy for Learners: Report of the Royal Commission on Education*, p. 209 - 210
- ³⁴ *Legacy for Learners: Report of the Royal Commission on Education*, p. 138
- ³⁵ *Legacy for Learners: Report of the Royal Commission on Education*, p. 139
- ³⁶ *Legacy for Learners: Report of the Royal Commission on Education*, pp. 139 - 40
- ³⁷ *Legacy for Learners: Report of the Royal Commission on Education*, p. 138
- ³⁸ *Legacy for Learners: Report of the Royal Commission on Education*, pp. 42 - 43
- ³⁹ *Legacy for Learners: Report of the Royal Commission on Education*, pp. 211
- ⁴⁰ *Legacy for Learners: Report of the Royal Commission on Education*, pp. 211
- ⁴¹ *Legacy for Learners: Report of the Royal Commission on Education*, pp. 213
- ⁴² *School Act*, R.S.B.C. 1996, c. 421, s. 2
- ⁴³ *Special Needs Students Order*, Ministerial Order 150/89
- ⁴⁴ E.g., Crawford Kilian, *School Wars: The Assault on B.C. Education* (1983)
- ⁴⁵ Freedom of Association Committee Case No. 1350
- ⁴⁶ *School Act*, R.S.B.C. 1996, c. 421, s. 20
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- ²⁵² *School Act*, ss. 76.5 and 11
- ²⁵³ Employer Written Argument, ¶ 452; 468
- ²⁵⁴ Employer Written Argument, ¶ 473; *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190; *Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226; *Re Legal Professions Act, Re Martin*, [1949] B.C.J. No. 85 (S.C.) (QL); *Sali v. Insurance Corp. of British Columbia*, [2008] B.C.J. No. 2146 (S.C.) (QL); *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539; *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3
- ²⁵⁵ *Nordair Inc.* (1985), 22 L.A.C. (3d) 177 (Frumkin); *Winnipeg City* (1988), 4 L.A.C. (4th) 102 (Hamilton)
- ²⁵⁶ *Raybestos-Manhattan (Canada) Ltd* (1978), 17 L.A.C. (2d) 351 (Hinnegan); *CHCH, a Division of Canwest Mediaworkers Inc.*, [2006] C.L.A.D. No. 60 (Jolliffe) (QL)
- ²⁵⁷ *Air Canada* (1975), 8 L.A.C. (2d) 239 (Brandt); *Provincial Health Services Authority* (2003), 125 L.A.C. (4th) 163 (Christie)
- ²⁵⁸ Employer Written Argument, ¶ 469
- ²⁵⁹ Employer Written Argument, ¶ 481
- ²⁶⁰ Employer Written Argument, ¶ 497; 502
- ²⁶¹ Employer Written Argument, ¶ 1206 - 1242
- ²⁶² *School Regulation*, B.C. Reg 265/89, s. 5(7)
- ²⁶³ *Penetanguishene Mental Health Centre v. Ontario (Attorney General)*, [2003] S.C.J. No. 67 (QL), ¶ 48 - 51
- ²⁶⁴ *School Act*, s. 76.3(8)
- ²⁶⁵ *School Act*, s. 76.3(3)
- ²⁶⁶ Union's Outline of Argument, ¶ 40
- ²⁶⁷ *British Columbia Public School Employers' Association v. British Columbia Teachers' Federation* [2005] B.C.J. No. 1719 (C.A.) (QL), ¶ 19; 2005 BCCA 393 leave to appeal refused [2005] S.C.C.A. No. 455 (QL)
- ²⁶⁸ Richard F. Devlin and Ronald Murphy, "Contextualizing the Duty to Consult: Clarification or Transformation?" (2003), 14 N.J.C.L. 167 at 176
- ²⁶⁹ *Board of School Trustees of School District No. 68 (Nanaimo)* [1993] B.C.C.A.A.A. No. 214 (Bird) (QL), ¶ 93;
- ²⁷⁰ *Board of School Trustees of School District No. 68 (Nanaimo)* [1993] B.C.L.R.B.D. No. 292 (QL), p. 5; see also *North Vancouver Teachers' Association* [1994] B.C.C.A.A.A. No. 304 (Chertkow) (QL) review denied [1996] B.C.L.R.B.D. No. 7 (QL); *New Westminster School District No. 40* [1994] B.C.C.A.A.A. No. 152 (Hickling) (QL)
- ²⁷¹ *Deloro Satellite Inc.* [2001] O.L.A.A. No. 943 (Jackson) (QL), ¶ 7; *Cyanamid Ltd.* (1959), 9 L.A.C. 353 (Schwenger), p. 356; *Harbour Ferries Ltd.* [1996] B.C.C.A.A.A. No. 510 (Lanyon) (QL), ¶ 49; *BC Rail Ltd.* [1999] B.C.C.A.A.A. No. 411 (Hope) (QL), ¶ 31; *BC Rail Ltd.* (1985), 22 L.A.C. (3d) 417 (Munroe)
- ²⁷² *International Nickel* (1975), 9 L.A.C. (2d) 173 (Gorsky), p. 176; *S.E. Freight Systems v. Mayhew*, 2007 C.L.A.D. No. 464 (Snow) (QL)
- ²⁷³ Employer Written Argument, ¶ 90 - 91
- ²⁷⁴ See *Canadian Broadcasting Corporation* (1968), 19 L.A.C. 295 (Christie)
- ²⁷⁵ *School Act*, s. 76.1(2.2)(b)
- ²⁷⁶ Employer Written Argument, ¶ 417 - 427
- ²⁷⁷ Union's Outline of Reply Argument, ¶ 5
- ²⁷⁸ Employer Written Argument, ¶ 325
- ²⁷⁹ Employer Written Argument, ¶ 351
- ²⁸⁰ Union's Outline of Reply Argument, p. 37