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2013: B12

**MEMORANDUM TO:** Directors of Education  
Secretary/Treasurers of School Authorities

**FROM:** Gabriel F. Sékaly  
Assistant Deputy Minister  
Elementary/Secondary Business and Finance Division

Tim Hadwen  
Assistant Deputy Minister (Acting)  
Education Labour Relations

**DATE:** May 27, 2013

**SUBJECT:** Implications of the Updated MOU with OECTA

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On July 5, 2012, the Government signed a memorandum of understanding (MOU) with the Ontario English Catholic Teachers Association (OECTA) as a framework to guide local bargaining for 2012-2014. On May 17, 2013, OECTA and the Government agreed to an update of the MOU. For the updated OECTA MOU, as well as the MOU from July, 2012, please refer to: <http://www.edu.gov.on.ca/eng/studentFirst.html>.

As noted in previous correspondence, the provisions of the collective agreements established under the *Putting Students First Act, 2012 (PSFA)* and the *Education Act* continue in force over the two-year term of the labour framework.

We are writing today to advise you of the steps, both regulatory and otherwise, that the Government is taking to facilitate the implementation of OECTA's updated MOU, including the modification of current collective agreements at the board level.

## **A. OECTA LOCAL DISCUSSIONS**

Provisions in the updated OECTA MOU are to be appended to, and form part of, the existing local collective agreement without amendment, through agreement of the local unions and their respective school boards.

Where changes in the updated MOU are noted as needing local discussion, such discussions should begin immediately for conclusion by June 28, 2013. There should be a minimum of two, and no more than six, full days of discussion for each bargaining unit, with this timing subject to adjustment with the mutual consent of both parties.

The inclusion of provincial items in local agreements should be done as soon as possible and need not wait for local discussion, which should occur separately.

**Some of the actions described herein must be implemented by the making of regulations.**

It should be noted that regulations to effect the agreement have not yet been made. The information in this memorandum is provided in the absence of such regulations.

The Minister will recommend such regulations.

As mentioned in previous correspondence, we expect that boards will largely be able to implement the MOU within their existing funding envelopes. At the same time, the Ministry does intend to support the boards through that process and will be monitoring the MOU's implementation closely. Moving expeditiously to incorporate the updated OECTA MOU into local agreements will allow us to move forward and begin the important discussions on the vision for the next bargaining framework.

## **B. REGULATORY AND OTHER CHANGES BASED ON OECTA'S UPDATED MOU**

### **1. Maternity Leave**

Effective May 1, 2013, a teacher who was previously entitled to maternity benefits under the 2008-2012 collective agreement will continue to be entitled to those benefits. In addition, these benefits are also available to employees hired in a term position or filling a long-term assignment, with the length of the benefit limited by the term of the assignment. Teachers on daily casual assignments are not entitled to maternity benefits.

Also effective on May 1, 2013, maternity benefits for eligible teachers will be guaranteed at 100% of salary for a total of not less than 8 weeks. Where part of the 8 weeks falls during a period of time that is not paid (for example, summer, March break the balance of the eight-weeks entitlement resumes after that period.

The local bargaining unit can choose to replace the eight weeks of maternity benefits with 6 weeks of maternity benefits at 100% of salary to permit the meshing of benefits with any superior entitlements to maternity benefits contained in the 2008-2012 collective agreement.

## **2. Voluntary Unpaid Leave Of Absence Program (VLAP)**

**(LOCAL DISCUSSION REQUIRED)**

A voluntary unpaid leave of absence program (VLAP) is to be in place by May 1, 2013, for all OECTA bargaining units. Teachers may apply for up to five unpaid days for personal reasons in each year of the current collective agreement. These requests should not be denied, provided that the request follows the conditions as laid out in the 2013 MOU. For pension contribution purposes, voluntary unpaid leaves are to be reported as approved leaves. Boards are to provide OECTA bargaining units with details of VLAP applications and approvals on a monthly basis, with all net savings being applied as offsetting measures for unpaid days (see below). The voluntary unpaid leave option should be made available immediately, as delays will result in a reduced ability to generate the necessary offsets.

## **3. Unpaid Days**

**(LOCAL DISCUSSION REQUIRED)**

All permanent day school teachers are required to take a minimum of one unpaid professional development (PD) day on Friday, December 20, 2013. Offsetting measures will be permitted to reduce the number of additional unpaid days that permanent teachers are required to take in 2013-14. In cases where the savings from these measures exceed the amount needed to offset unpaid days, such savings will be retained by school boards.

By using offsetting measures, such as voluntary unpaid leave, permanent teachers will no longer be required to take October 11, 2013, as an unpaid day. This PD day will be reserved for the delivery of Ministry priorities. Recognizing the importance of professional development for Ministry priorities, the Government will work with boards to re-allocate existing provincial and board PD funds to cover the first 16% of the funding needed for boards to offset the cost of a PD day. Further information on this item will be shared with boards in the coming weeks.

If the projected savings from voluntary unpaid leave and PD-day efficiencies fall short of covering the cost of one of the unpaid days, an Early Retirement Incentive Plan (ERIP) should be introduced as a further offsetting measure. It should be noted that boards have the discretion of introducing ERIP even if their offsetting measures exceed the cost of one unpaid day. For further details on the structure of the ERIP, please see the relevant section of the updated OECTA MOU. It should also be noted that other cost savings measures can be introduced if agreed to by both parties.

In the event that these offsetting measures do not cover the remaining cost of the October 11<sup>th</sup> PD day, the Government agrees to make up the funding shortfall, with this support being limited to boards that have incorporated the updated OECTA MOU into their local collective agreements. In these cases, there will be no additional Government funding towards the cost of the March 7, 2014 PD day, and permanent teachers will be required to take that day as an unpaid day.

Where offsetting measures do cover the cost of the October 11<sup>th</sup> PD day, but do not cover the full cost of the March 7<sup>th</sup> PD day, the Government agrees to make up that funding shortfall, with this support again being limited to boards that have incorporated the updated OECTA MOU into their local collective agreements.

### **3. Reconciliation Committee**

#### **(LOCAL DISCUSSION REQUIRED)**

A committee is to be struck, with equal representation from the local board and the bargaining unit, to track the progress on each board's offsetting measures, with the costs of the committee being deducted from savings. The committee should be in place by June 2013.

If by November 30, 2013, it appears that the net savings from offsetting measures are not sufficient to cover the cost of one unpaid day, an ERIP program should be implemented by the board. However, if the board believes that further offsets are, in fact, not required, the board can choose to proceed without the benefit of an ERIP program. In the event that the offsetting measures do indeed fall short of the cost of the October 11<sup>th</sup> PD day, permanent teachers will not be required to take an unpaid day on March 7<sup>th</sup>, with the cost of that day fully borne by the board.

New reporting mechanisms are being developed by the Ministry for the committee to track the progress of the offsetting measures so that the Ministry can adjust its cash flow to boards accordingly. Details on these new reporting requirements will be provided by separate memorandum over the coming weeks.

### **4. Attendance Recognition**

Under this Shared Savings Initiative (SSI), permanent regular day-school teachers who use less than six full days of sick leave in 2013-14 will be reimbursed the equivalent of one day's pay at the end of the school year.

Teachers on long-term assignment are also eligible for attendance recognition remuneration in 2013-14, provided that they have taken a full day of voluntary unpaid leave.

### **5. Sick Leave/ Election of Short-term Leave and Disability Plan**

#### **(LOCAL DISCUSSION REQUIRED)**

OECTA bargaining units have the option of continuing to follow the enhanced 2012 MOU's sick-leave plan, which is the default plan, or electing to adopt the sick leave plan set out in detail in the updated OECTA MOU. There is to be consultation with the school board about timing, transition and implementation. The election must be made in writing prior to June 1, 2013, with the plan taking effect no later than September 1, 2013.

The sick-leave plan provisions in the 2012 OECTA MOU are being enhanced to reflect the following changes:

- For permanent day-school teachers, the 120 days of short-term sick leave beyond the 11 sick-leave days at 100%, are to be funded at 90% of salary, if so determined through third-party adjudication. Top-up is available for those days from the 2 days allocated in 2012-13 for that purpose. For the 2013-14 school year, unused days from 2012-13 can be used for top up purposes.
- 2 days of compassionate leave top-up is also available at the discretion of the board, provided that the employee has two unused leave days in the current year.

OECTA teachers on a full-year (10-month) long-term assignment will be also be allocated 11 sick-leave days to be funded at 100% of salary, and 60 days of short-term sick leave beyond the 11 sick-leave days to be funded at 90% of salary, if so determined through third-party adjudication. For teachers whose long-term assignments are less than a full year (10 months), these benefit entitlements are to be prorated to reflect the length of the assignment.

## **7. Calculation of Non-vested Sick Days**

As communicated in the memorandum of March 30, **2013: B7 – Changes to the Requirements for the Wind-up Payments for Non-vested Retirement Gratuities**, school boards are now required to pay up to 25 cents per dollar of the employee's salary as of August 31, 2012, prorated with accumulated sick days and years of service as of August 31, 2012, with respect to non-vested retirement gratuities.

## **C. CLARIFICATION OF PROVISIONS IN THE 2012 OECTA MOU**

### **1. Use of Sick-Leave (11 plus up to 5 sick leave days)**

Illness is defined as per the 2008-2012 school board collective agreements for the use of these sick-leave days. Board practices and policies from 2008-12 also apply to the definition of illness, for example, the practice or policy on medical procedures not covered by OHIP. For clarity, definitions and practices in place in accordance with the 2008-2012 period cannot be changed.

### **2. Adjudication**

Boards are required to top-up a teacher's salary from 66.67% to 90% retroactively, where the absence is supported through adjudication. The adjudication process should be applied as soon as possible once it is determined that the illness will require an absence of 5 consecutive work days, or more, or that the illness is chronic in nature.

The process for teachers should be well documented and communicated and service standards must be in place.

### **3. Partial Days**

The 11 plus 120 sick-leave days are divisible and boards should deduct a partial day for a partial day's absence. Top-up of sick-leave days for graduated return-to-work days are as per the current practice under OECTA's collective agreements.

### **4. Workplace Safety Insurance Board (WSIB)**

A teacher awaiting WSIB claim adjudication is to be paid 100% of regular salary for the first 11 sick leave days (assuming that the teacher had not previously taken sick-days), and 66.67% of regular salary, for the remaining (up to 120) sick-leave days during the waiting period. If the board has not done this, it shall be adjusted retroactively.

### **5. WSIB/Long-Term Disability (LTD)**

WSIB and LTD are separate and distinct from Short-Term Leave and Disability Plan (STLDP). If a teacher's claim is not successful under WSIB, or LTD, it does not preclude the teacher from receiving STLDP. Should the WSIB or LTD claim not be successful, the teacher could request adjudication through the board's third-party adjudication process; if this claim is successful, then the teacher could qualify for 90% of regular salary applied retroactively. If the adjudication process does not support 90% of regular salary, the teacher would receive 66.67% of regular salary.

### **6. Maternity Leave**

Boards were to provide a minimum of 6 full weeks of maternity benefits including over "non-paid" periods, for benefit periods that began prior to May 1, 2013. When a teacher is eligible to receive Employment Insurance (EI) benefits under the maternity plan, the maternity benefits will be administered as a Supplementary Employment Benefits (SEB) plan. When a teacher is not eligible to receive EI benefits, the maternity benefits will be paid at 100% of regular salary for the benefit period.

### **7. Maternity Benefits**

Boards shall provide short-term sick leave before, or after, the maternity leave, when medical evidence is provided in accordance with the practices in place during the 2008-2012 collective agreement.

### **8. Benefits**

Benefit levels and practices are to be status quo in accordance with Section E of the OECTA MOU. Benefit surpluses are subject to Section E of the OECTA MOU.

### **9. Grid – Qualifications**

Boards that have provisions in their collective agreement that apply grid movements retroactively, for example, to January 1st, would apply the change on the 97th day (the delay in this instance is calculated from the start of the school year).

## 10. Local Bargaining

MOUs were imbedded into the collective agreement through the imposition of the PSFA. The 2012-2014 OECTA collective agreements consist of:

- MOU between the Ministry and OECTA dated July 5, 2012, including enhancements;
- 2008-2012 collective agreement, modified, as applicable, by Minister-approved amendments, with the exception of those 2008-2012 provisions that do not agree with the OECTA MOU, or supporting legislation and regulations.

## 11. Top-up Days

Irrespective of adjudication, the top-up days may be accessed to top-up from 90% to 100% of regular salary.

## 12. Documents Pertaining to the 2008-2012 Collective Agreement

All letters of intent, understanding, minutes of settlement, or any other memoranda, contained in, or pertaining to, the 2008-2012 collective agreements, dealing with any term or condition of a collective agreement, or any other term or condition negotiated between the parties, shall continue in force and effect until negotiated by the parties.

## C. CONCLUSION

If you require further information, please contact:

Issue	Name	Contact
Financial accountability and reporting requirements	Andrew Davis	(416) 327-9356 <a href="mailto:andrew.davis@ontario.ca">andrew.davis@ontario.ca</a>
Operating funding	Joshua Paul	(416) 327-9060 <a href="mailto:joshua.paul@ontario.ca">joshua.paul@ontario.ca</a>
Collective agreements	Rita Waller	(416) 325-2836 <a href="mailto:rita.waller@ontario.ca">rita.waller@ontario.ca</a>

We continue to look to school boards to work collaboratively with their local unions to implement the provisions of OECTA's updated MOU, and we are as committed as ever to do as much as we can to help school boards through this process.

*Originally signed by:*

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Gabriel F. Sékaly  
Assistant Deputy Minister

Tim Hadwen  
Assistant Deputy Minister  
(Acting)

cc: Superintendents of Business and Finance  
Howie Bender, Chief of Staff