

Ministry of Education

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2013: B3

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

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

DATE: January 21, 2013

SUBJECT: Implications of the MOU with CUPE and Further
Technical Clarifications

On December 31, 2012, the Canadian Union of Public Employees (CUPE) reached a memorandum of understanding (MOU) with the Ministry of Education. I am writing today to advise you that regulations and consequential amendments to existing regulations under the *Education Act* and the *Putting Students First Act* (PSFA) have been filed that recognize the provisions in the CUPE MOU, as they apply to CUPE members. These regulations also recognize where, in some cases, the provisions of the CUPE MOU represent an enhancement to the current collective agreements or contracts of employment of other school board employees. These provisions are to be incorporated in local collective agreements and contracts of employment, where applicable. As is the case with previous provisions related to other MOUs, these provisions are effective September 1, 2012.

Despite the repeal of the PSFA, it is important to note that the provisions prescribed by these regulations as terms of collective agreements and contracts continue to be in force by virtue of their incorporation into those agreements and contracts.

As noted in previous correspondence, unless negotiated otherwise in the future, the provisions of the collective agreements from 2008-12 continue in force for the next two years, with the exception of those provisions that are not consistent with the relevant MOU under the PSFA, or with supporting legislation or regulations. In such cases, the non-compliant provisions in the collective agreement and contracts of employment are superseded by those of the MOU, the provincial statutes, and/or the regulations. Also as

noted previously, the government will be setting aside funding and making the necessary provisions to support the financial implications of the enhancements.

I am also writing today, to provide further clarification on implementation issues that have been raised by our education partners.

A. REGULATORY CHANGES BASED ON THE MOU WITH CUPE

1. Sick Leave Credits

Based on the CUPE MOU, the number of sick days funded at 100 percent of an employee's annual salary has increased from 10 days to 11 days. This change affects all school board staff, both those who bargain collectively and those who do not. The eligibility requirements for this allocation of sick days remain unchanged.

2. Unpaid Days

To cover the cost of grid movement, voluntary unpaid days can be used by CUPE members in lieu of taking mandatory unpaid days. In the event that the savings generated by the voluntary unpaid days does not meet the cost of grid movement, CUPE members will be required to take up to one unpaid day in the 2013-14 school year.

3. Minimum Grid Increments

In keeping with the terms of the CUPE MOU, an employee with more than one grid movement during a fiscal year should not lose more than 50 percent of the dollar value of the movements over the term of the collective agreement. The regulation provides a formula for calculating any additional funding that would be payable to the employee to meet this salary threshold. This provision applies to all non-teachers who are permanent employees.

4. Maternity Leave

The regulation includes details on the entitlements for sick leave bridging to maternity leave benefits for seasonally laid-off employees who are not teachers and who bargain collectively. The regulation specifies that staff on long-term assignments of 10 months or less are not eligible for these bridging provisions. However, they are eligible for the regular maternity leave provisions for the duration of their assignment. Where boards already have plans that provide more generous benefits, those benefit provisions would prevail.

5. Waiting Period for Long-term Disability (LTD)

Where a CUPE employee had a collective agreement that provided a waiting period in excess of 130 days prior to eligibility for LTD benefits, and where the employee did not have the option of reducing that waiting period, the employee will be eligible for additional sick days funded at 66.67 percent or 90 percent of annual salary. The number

of additional days will be calculated based on the difference between the waiting period, as determined by the CUPE collective agreement, and 131 days.

6. Top-up for Graduated Return to Work

Unused sick day credits that are funded at 100 percent of annual salary can be used by non-teaching staff who bargain collectively to top up their salaries, in cases where they are working less than a full day while recovering from illness. Unused sick day credits that are funded at less than 100 percent of annual salary can be used to top up their salaries to 90 percent. Each of these unused days funded at less than 100 percent can be applied to one day only, with the balance of the sick day lost for future use. Top-ups for graduated return to work cannot be used where the employee is receiving Workplace Safety Insurance Board (WSIB) benefits or long-term disability benefits.

B. TECHNICAL CLARIFICATIONS

1. WSIB Top Up

The regulation clarifies that for employees who bargain collectively, top up for WSIB is based on a rate determined in the collective agreement as of August 31, 2012. In cases where the collective agreement is silent, the top-up rate is determined by board policy as it existed on August 31, 2012.

2. Calculation of One-Time Payout of Non-Vested Sick days

The regulation clarifies that the wind-up payment for non-vested retirement gratuities is to be the lesser of the payment provided under the collective agreement as of August 31, 2012, or board policy as of that date, or the payment that is calculated based on the formula in the regulation. It is important to note that all forms of gratuities are now ended (e.g., sick leave, service gratuities, RRSPs, etc.). As part of boards' Financial Statements, Directors and Senior Business Officials will be required to attest that all forms of gratuities have indeed ceased. As well, the wind-up payment applies to service gratuities, not just sick leave gratuities.

Where retirement gratuities to board employees were to be provided in the form of RRSP contributions, the board is to transfer the contributions made as of August 31, 2012 into an account designated by the employee. This transfer is to occur by December 31, 2013.

Waterloo Catholic District School Board has been added to the list of boards whose vesting period has been lowered to 10 years.

3. Grid Movement Clarification

Grid movement continues to be based on the provisions in local collective agreements. For boards that are governed by the OECTA MOU (including those listed as such under Schedule "A" of the recent Order in Council), grid movement for teachers is to be recognized on the 97th day of each school year (not the day following), with all grid movement after the 98th day recognized on the date that the movement would normally

occur under the 2008-12 local collective agreement. In general, for all other employees with grid movement, grid recognition is postponed for a period equivalent to half of their term of employment.

4. Update on Short-term Sick Leave and Pensionable Income

In keeping with its commitment in previous MOUs, the Ministry of Education has worked with the Ontario Teachers' Pension Plan (OTPP) and the Ontario Teachers' Federation to clarify that, for pension purposes, short-term sick leave benefits funded at 66.67 percent or 90 percent are to be reported as full service credits and at full salary. School boards were advised of this policy by bulletin on January 11, 2013. For implementation details please contact the OTPP.

C. TREATMENT OF RECENT LABOUR DISRUPTIONS

1. Recording Absences

In some instances, students did not attend school on January 11th because of the uncertainty as to whether regular classes would be held that day. Although it seems reasonable that students should not be marked as absent that day, the current Enrolment Register Instructions do not provide for such circumstances as a reason for a general absence. As a result, the Enrolment Register Instructions have been amended so that the "G" code can now be used in cases when a publicly announced withdrawal of services affecting the operation of the school is cancelled, but the cancellation announcement occurs too close to the beginning of the instructional day to allow the student to attend on that day. The amended Enrolment Register Instructions has been posted at <http://www.edu.gov.on.ca/eng/policyfunding/forms.html>.

If you require further information, please contact:

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Financial accountability and reporting requirements	Andrew Davis	(416) 327-9356 andrew.davis@ontario.ca
Operating funding	Joshua Paul	(416) 327-9060 joshua.paul@ontario.ca

The filing of these regulations marks an important milestone in the process of securing collective agreements and employment contracts across Ontario's education sector. As always, the Ministry will continue to make best efforts to offer guidance and support so that the implementation of these collective agreements and contracts proceeds as smoothly as possible.

Original Signed By

Gabriel F. Sekaly
Assistant Deputy Minister

cc: Superintendents of Business and Finance
Tim Hadwen, (A) Assistant Deputy Minister, Labour Relations
Patricia Sorbara, Chief of Staff
Michael McAllister, OTPP

Attachments