

A photograph of a classroom scene. A female teacher with dark hair, wearing a denim jacket over a dark top, stands in the center, smiling. Several students in the foreground have their hands raised. In the background, a chalkboard has some writing, and a whiteboard on the left lists a spelling list. The entire image has a yellowish-green tint.

GUIDE TO School Legislation in British Columbia

PART III **THE TEACHER**

BCSTA

British Columbia
School Trustees
Association

GUIDE TO SCHOOL LEGISLATION IN BRITISH COLUMBIA

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PART III

THE TEACHER

Part III reviews the *School Act's* provisions regarding teacher hiring and assignment and duties, as well as disciplinary action against teachers. Also included here is a section on the Teacher Regulation Branch, which is responsible for teacher certification. Not included in Part III is collective bargaining with teacher unions (see Guide Part IX), nor the hiring, assignment and duties of principals, vice-principals and school district educational officials (see Guide Part IV).

30.0 TEACHER APPOINTMENT

30.1 Who is a “Teacher”?

The *School Act* defines a “teacher” as a person who holds a certificate of qualification (including a letter of permission) and is employed by a board of education to provide educational programs to students in a school, but who is not employed as a superintendent, assistant superintendent, principal, vice-principal, or director of instruction. The board can only employ a non-certified person to teach if that person is either teaching a general interest course not leading to graduation (e.g., in a continuing education program) or is employed for 20 consecutive days or fewer and is teaching a particular class or classes where no certificated teacher is available (*School Act* section 19).

However, principals, vice-principals, directors of instruction, superintendents and assistant superintendents are required to hold certificates of qualification. So, for these purposes they may be considered teachers, though they are not covered by the teacher collective agreement.

There are many types of teaching positions besides those of classroom teacher. Non-enrolling teachers include learning assistance teachers, teacher-librarians and school psychologists. Teachers-on-call (substitute teachers) may work for a number of different school districts but they are covered by teacher collective agreements, subject to the terms of those agreements, if certified. School districts can only employ

uncertified teachers-on-call for short-term contracts where no certified teacher is available.

The teacher collective agreement in some school districts also covers “associated professionals” such as speech language pathologists and school psychologists, who may not have teacher certification but have comparable qualifications and training.

Instructors in continuing education programs who teach in courses leading to high school graduation (“adult basic education”) are “teachers” and required to hold certificates of qualification. In some districts they are included in the K-12 teacher bargaining unit; in others they may have a separate bargaining unit; and in others they may not be included in a bargaining unit.

The *School Act* has a separate definition for a “francophone teacher,” but it parallels the definition of teacher, except that a francophone teacher may have a service contract rather than a contract of employment with a francophone education authority.

Under the Independent *School Act*, “teacher” includes those employed to administer and supervise the provision of an educational program to students, as well as those hired to provide the educational program.

30.2 Terms and Conditions of a Teacher's Employment

The terms and conditions of a contract of employment between a board of education and a teacher consist of:

- relevant provisions in the *School Act* and Regulations;
- terms of the collective agreement covering the teacher, provided that they are not inconsistent with the provisions in the Act and Regulations; and
- any terms and conditions agreed between the board and the individual teacher that are not inconsistent with the Act, Regulations or the collective agreement.

(Section 27(1) *School Act*.)

This part of the Guide reviews the relevant provisions in the *School Act* and Regulations as they relate to “teachers.” It should always be remembered, however, that a collective agreement can specify the manner in which the board will exercise its legislated powers, and their consequences, unless the legislation provides otherwise (section 28(2) *School Act*). To ascertain all information on a specific situation, therefore, the reader would need to be aware of any such modifying clauses in the applicable collective agreement, in addition to considering the relevant legislative provisions.

Despite the advent of provincial bargaining in 1994, terms and conditions of employment for teachers vary considerably from district to district even on provincial matters, because provincial agreements and legislation have continued the previously existing locally negotiated agreements except as specifically amended. There is legally now only one collective agreement for the province. The agreement is a compilation of all of the collective agreements in force in the districts in 1994, overlaid with provincial language from legislation and provincial negotiations since then and supplemented with local agreements on local issues. (See Guide 90.0 on the history of teacher collective agreements.) Most districts have a “working document” that attempts to bring together the parts of the teacher collective agreement that are applicable in that school district.

30.3 Offer and Acceptance of Employment

In each school district, the board of education hires persons necessary for its operations, including teachers, and is responsible for their general management, including assignment to teaching positions (section 15(1) *School Act*). The board may perform these functions on the basis of recommendations from the superintendent of schools for the school district, or may delegate hiring functions to the superintendent, since the superintendent has general supervision and direction over the educational staff, under the general direction of the board (section 22(1) *School Act*).

It is forbidden for the teacher collective agreement to include any provision that regulates the selection and appointment of teachers by the board of education, other than an agreement on hiring preferences for teachers previously employed by the board (sections 27(3)(a), (4) *School Act*). As a result of this exception, a great deal of district hiring takes place from teacher-on-call lists. Similar prohibitions are placed on any agreement provisions that attempt to regulate the board's assignment of teaching duties to directors of instruction, principals and vice-principals (section 27(3)(b) *School Act*), or the board's power to hire teachers' assistants who work under the general supervision of a teacher, principal or vice-principal (sections 18, 27(3)(c) *School Act*).

To accept an offer of employment from a board of education, a teacher is usually required to respond in writing within a specified time of receiving the board's written offer or the confirmation of its verbal offer.

30.4 Continuing versus Temporary Appointments

Generally, teachers are employed full-time or part-time on a continuing basis; the exceptions are appointments specified as temporary at the outset and meant to fill positions that are either temporarily vacant or not expected to continue. A temporary appointment will usually be for a specified period up to one year, at which time the teacher's employment terminates. Many districts require a continuing contract to be given to a teacher who has served a specified amount of time under temporary or term contracts.

30.6 Positions of Special Responsibility

Districts have a wide variety of positions within the teacher bargaining unit that are described as positions of special responsibility and carry an extra allowance. These may include head teacher, teacher in charge, area counsellor, consultant, helping teacher, learning resource teacher, subject or area department heads, district coordinators, community school coordinators.

A head teacher may be appointed instead of a principal to be in charge of a small school.

A teacher in charge assumes some of the responsibilities of the principal when the principal and vice-principals are absent from the school.

30.7 Transfers and Reassignments

Teacher assignments (e.g., subject, grade, school) may be changed subject to restrictions contained in the collective agreement. When a vacancy occurs, it may be filled through a competition governed by a “posting and filling” procedure set out in the collective agreement. In some districts, the vacancy may be filled by a transfer instead of being posted. Collective agreements frequently limit the powers of the board to initiate transfers between schools. Seniority can be an important element in filling vacant positions. A new provision in the 2006 teacher collective agreement allows teachers moving between districts to carry with them up to 10 years of seniority.

30.8 Resignations by Teachers

The teacher collective agreement in force as of 2017 contains a provincial term requiring 30 days’ notice of a resignation (or less if mutually agreed).

The Act requires that where a teacher resigns, the superintendent must report the circumstances of the resignation to the commissioner for Teacher Regulation “where it is in the public interest to do so,” and send a copy of the report to the person who resigned (section 16(8) *School Act*). Thus, a teacher who is being investigated by the employer for misconduct such as child abuse cannot evade an investigation by the Teacher Regulation Branch by resigning from his employment.

30.9 Teacher Salary Categories

Teachers in British Columbia are paid according to their length of service and their academic and professional training. British Columbia teachers have been trained in jurisdictions all over the world and credentials are difficult to compare. To ensure some consistency in the evaluation of credentials for pay purposes, the BC School Trustees Association and the BC Teachers’ Federation created a society, the Teacher Qualification Service (TQS). Boards may use the categories established by TQS as the basis for their teacher pay scales.

The highest pay category (category 6) applies to teachers with acceptable bachelor and master degrees and at least six years of postsecondary study in accredited universities. Most BC-trained teachers are assigned category 5, reflecting BC universities’ five-year teacher training programs. Those trained in jurisdictions where four-year training programs are the norm may have a category 4, but there are many ways for pay categories to be upgraded by taking additional education. Some boards had an extra category between category 5 and 6, termed “5 plus,” but credentials were evaluated locally for this purpose. In 2006, as a result of the harmonization provisions of the provincial collective agreement, all teachers became eligible for the “5 plus” category and TQS now evaluates credentials.

Each district has its own salary grid based on the years of service and the TQS salary category. Efforts were made as part of the 2005 and 2006 bargaining to reduce disparities between districts.

30.10 Class Size and Composition

Restrictions on class size and composition have been one of the most contentious issues in teacher collective bargaining because they are so important to both teachers and school boards. Class size is a key working condition, an important aspect of an educational program and an important (many would say essential) tool in managing education costs.

Class composition refers to the make-up of the class: the number of special needs students, or students with behavioural disorders, or language difficulties.

Before teachers had collective bargaining rights, class sizes were often regulated by board policy. When

teachers became authorized to collectively bargain working conditions in 1988, they sought the inclusion of enforceable class size limits in the collective agreements and were largely successful during the period of local bargaining, partly as a result of arbitrated settlements. With the advent of provincial bargaining in 1994, boards unsuccessfully sought more flexibility in class size language. In 1998, as part of a provincial arrangement between the government and BCTF, the *Public Education Collective Agreement Act* (1998) imported new, mostly lower, class size limits for K-3 classes into the teacher collective agreement and provided school boards with funding to cover the cost.

In 2002, the *Public Education Flexibility and Choice Act* changed the scope of bargaining by removing the ability to negotiate these provisions into teacher collective agreements. Teacher collective agreements could no longer deal with: class size, class composition, assignment of students to a class, course or program, staffing levels or ratios, establishing minimum numbers of teachers or other staff, number of students assigned to a teacher, case loads, staffing loads or teaching loads. After extensive litigation, BCTF was successful in restoring class size and composition language to the collective agreement.

31.0 College Of Teachers and Teacher Certification

31.1 Requirements to Teach

To teach in a public school, a person must:

- (a) hold a certificate of qualification; or
- (b) hold a letter of permission issued under the *Teachers Act*.

The same requirements apply to principals, vice-principals, directors of instruction, and to superintendents and assistant superintendents of schools (section 19(1) *School Act*).

Exceptions are permissible for persons teaching for 20 days or fewer where no certified teacher is available, or who are instructing a general interest course not leading to school graduation (section 19(2) *School Act*).

31.2

In 2012, the *Teaching Profession Act* was repealed, the College of Teachers eliminated, and a new regulatory regime for certification and discipline of teachers was established under the *Teachers Act*.

Teacher Regulation Branch

The Teacher Regulation Branch (TRB), a part of the Ministry of Education, supports the regulatory structure that ensures that educators in the K-12 school systems in British Columbia meet and maintain the standards of competence and conduct required of teachers. The TRB provides administrative support to the regulatory structure of BC's teaching profession: the Director of Certification, the Commissioner for Teacher Regulation, the BC Teachers' Council and the Disciplinary and Professional Conduct Board.

The TRB is the branch of the Ministry of Education that supports regulatory responsibility for:

- assessing applicants for certification
- evaluating teacher education programs
- issuing teaching certificates, and
- enforcing standards for certificate holders.

31.3 BC Teachers' Council

The BC Teachers' Council is responsible for establishing standards for the education of applicants for certificates of qualification; and establishing standards for the conduct and competence of applicants for certificates of qualification and certificate holders (*Teachers Act*, s. 10).

The council is comprised of 16 elected and appointed members, 15 of whom are voting members. Of the 15 voting members:

- five are elected from among the teachers of the province,
- three are appointed directly by the minister based on nominations from the BC Teachers' Federation,
- seven are appointed by the minister from other education partner groups' nominations.

One non-voting member is appointed to represent the minister on the council.

Nine members of the Teachers' Council, five of whom must be from partner groups other than BCTF, are also appointed to the Disciplinary and Professional Conduct Board from which disciplinary panels are formed. (*Teachers' Act*, s. 9).

Council members are required to exercise their powers and perform their duties in the public interest, and must act in good faith.

Council's powers and duties include:

- establishing teacher education program approval standards;
- determining if a teacher education program meets the teacher education program approval standards;
- cooperating with a faculty of teacher education or school of teacher education in the design and evaluation of teacher education programs;
- establishing standards with respect to training, competence and conduct required to obtain or maintain a certificate of qualification; and
- classifying certificates of qualification into one or more types.

Before officially taking office, members of the council must take an oath of office, prescribed by regulation, within 45 days of their appointment or election. The oath can be completed in front of a judge, a justice

of the peace, a school district secretary-treasurer, or the director of certification. Failure to complete the oath of office as set out in the Act results in the person's seat on the council being declared vacant (section 11(4) *Teachers Act*). The oath of office includes provisions requiring the member to abide by the *Teachers Act* and act in accordance with the law and the public trust placed in the member, act impartially and with integrity, avoid conflicts of interest, conduct themselves honestly and ethically, and safeguard confidential information.

The council may, by vote of 2/3 of the council members, remove from council a member elected to council, if the council is satisfied that a person has contravened a term of the oath. The minister may remove an appointed member of council if the minister is satisfied that the person has contravened the oath. (*Teachers Act* s. 11)

The council has power to make rules governing its practices and procedures, including the conduct of its meetings (*Teachers Act*, s. 9(8)). The minister has a power to disallow any rule, standard or decision of the council within 60 days of its establishment (*Teachers Act*, s. 14).

The commissioner may require reports on the work of a teacher and the learning situation in the teacher's class from a superintendent, assistant superintendent, director of instruction, principal or vice-principal (section 5(2), 6(4) School Regulation).

31.4 Certification

The director of certification may issue a certificate of qualification or an independent school teaching certificate to an applicant who applies in writing and pays the prescribed fees (*Teachers Act*, sections 30 (1) (a) and (b)). Once the director of certification makes a decision, to deny, issue, or impose a limitation or condition on a certificate of qualification or independent school teaching certificate, she must give reasons for that decision (*Teachers Act*, section 30 (5)).

In order to be issued a teaching certificate, section 30 of the *Teachers Act* requires that a person meet certain standards in respect to a certificate of qualification or independent school teaching certificate. Applicants must also be of "good moral character and otherwise fit and proper" to be issued a certificate of qualification or an independent school teaching

certificate. For independent schools, the director of certification must consult with the inspector of independent schools prior to issuing an independent school teaching certificate to an applicant (*Teachers Act*, section 30 (2)).

Under the *Criminal Records Review Act* (CRRRA), all Ministry of Education certificate holders must undergo a criminal record check and vulnerable sector check, and every five (5) years thereafter. The director of certification is prohibited from issuing a certificate of qualification or an independent school teaching certificate to a person if he fails to authorize a criminal record check or criminal record check verification, as applicable (*Teachers Act*, section 30 (3) (a)(i)). Likewise, the director of certification must not issue a certificate of qualification or independent school teaching certificate to an applicant if the deputy registrar determines that the person presents a "risk of physical or sexual abuse to children" and this determination has not been overturned by the registrar under the *Teachers Act*.

The director of certification also has the power to impose limitations or conditions on a certificate of qualification or an independent school teaching certificate in accordance with the certification standards (*Teachers Act*, section 30 (4)(a)). Standards for the education, competence and professional conduct of educators in British Columbia can be accessed here: <https://www2.gov.bc.ca/gov/content/education-training/k-12/teach/standards-for-educators>.

The Teacher Regulation Branch website provides the following descriptions of the various types of teacher certificates available:

- Professional Certificate. This is a non-expiring certificate issued to applicants who have met all of the requirements for teacher certification specific to BC. The Professional Certificate is not restricted to any subject area or grade level, and is valid for BC's Kindergarten to Grade 12 education system.
- Basic Certificate. This is a non-expiring certificate issued in compliance with the Agreement on Internal Trade. This certificate signifies that a teacher has not met BC's requirements for a Professional Certificate, but does hold a current, valid, unrestricted teaching certificate from another Canadian province or territory. Teachers who qualify for a Basic

Certificate will have the option of upgrading to a Professional Certificate by completing specific requirements. This certificate is not restricted to any subject area or grade level.

- **Trades Certificate.** This is a non-expiring certificate that restricts the holder to teaching in a specific trade area. Teachers who qualify for a Trades Certificate will have the option of upgrading to a Professional Certificate by completing specific requirements.
- **Conditional Certificate.** This is an expiring certificate valid for up to 60 months. This certificate is issued to applicants who meet most of BC's requirements for certification and do not have a current, valid, unrestricted teaching certificate from another Canadian province or territory. Teachers must complete specific coursework requirements before the Conditional Certificate expires to upgrade to a Professional Certificate. This certificate is not restricted to any subject area or grade level.
- **Developmental Standard Term Certificate.** This is an expiring certificate valid for up to 60 months. It is restricted to a specific specialty area such as chef instruction, technology education, or First Nation language and culture studies. Specified coursework requirements must be completed before the certificate can be upgraded to a Professional Certificate.
- **First Nations Language Teacher Certificate.** This certificate may be issued to proficient First Nations language speakers, whose proficiency is determined by a language authority. The language authority must recommend or endorse the individual to the Teacher Regulation Branch for this type of certificate.

For independent school teaching certificates, the Teacher Regulation Branch website provides the following descriptions of certificates available:

- **System Restricted Certificate (SYR).** This is a non-expiring certificate that restricts the holder to teaching within the Montessori or Waldorf school system. This certificate can be further restricted to Kindergarten or elementary depending on the program completed.
- **Subject Restricted Certificate (SR).** This

certificate restricts the holder to teaching subject(s) within the independent school system that are directly related to her postsecondary subject concentrations. This certificate is initially valid for up to 60 months. The certificate holder must demonstrate successful teaching experience before the SR certificate expires to upgrade to a non-expiring certificate.

- **School and Subject Restricted Certificate (SSR).** This certificate restricts the holder to teaching specific subjects only at the sponsoring authority seeking to employ the applicant. SSR certificates are not issued for the teaching of English/language arts, social studies (including history, geography, etc.), mathematics, sciences, and special education. SSR certificates may also be grade-restricted, depending on the applicant's credentials, training and experience. This certificate is initially valid for up to 60 months. The certificate holder must demonstrate successful teaching experience before the SSR Certificate expires to upgrade to a non-expiring certificate.

31.5 Review of Certificate

If the director of certification receives information relating to the conduct of a certificate holder that was not disclosed before the director of certification prior to issuing the certificate of qualification or independent school teaching certificate, the director may review and rescind a holder's certificate if the director is satisfied that such information would have affected the director's decision to issue the certificate (*Teachers Act*, section 31 (1)). Before rescinding the certificate of qualification or independent school teaching certificate, the director of certification must notify the certificate holder of the director's intention in this regard. The certificate holder will then have the opportunity to provide written submissions to the director within 30 days of the director's notification (*Teachers Act*, section 31 (2)). Upon consideration of the certificate holder's submissions, the director of certification may rescind the certificate of qualification or independent school teaching certificate.

If the director of certification exercises their discretion to rescind the certificate holder's certificate of qualification or independent school teaching

certificate, the director must provide written reasons to the certificate holder, notify the board of education and independent school authority of the rescission, and record the rescission in the register of certificate holders (*Teachers Act*, section 31 (4)).

31.6 Reconsideration and Appeal

If the director of certification denies, rescinds or places a limitation or condition on a certificate of qualification or an independent school teaching certificate, the applicant may request that the director of certification reconsider the director's initial decision (*Teachers Act*, section 32 (1) and (2)). Such requests are also available if the applicant was issued a type of certificate of qualification or independent school teaching certificate that was not the type for which the applicant applied.

Requests for reconsideration must be done in writing and in the form required by the direction of certification and include the prescribed fee. (*Teachers Act*, section 32 (3)(c)).

Upon reconsideration, the director of certification may confirm, vary or reverse his original decision and must provide the person requesting the reconsideration written reasons for the reconsideration (*Teachers Act*, sections 32 (6)-(7)). In making this assessment, the director may consider information that hadn't been available at the time of making the original decision (*Teachers Act*, section 32 (5)).

Should an applicant request a reconsideration or appeal of the above, it must be delivered to the director of certification within 30 days from:

- in the case of a denial to issue the applicant a certificate of qualification or independent school teaching certificate under section 30 of the *Teachers Act*, the date of the decision;
- in the case of the issuance of a certificate of qualification or independent school teaching certificate other than the type for which the applicant applied, or if there was a limitation or condition imposed on the a certificate of qualification or independent school teaching certificate, the date the certificate of qualification or independent school teaching certificate is issued; or

- in the case of a rescission of a certificate of qualification or independent school teaching certificate, the date of the decision.

(*Teachers Act*, sections 32 (3)(c)(i)-(iii).)

Late requests may be considered by the director of certification if the director is satisfied special circumstances exist (*Teachers Act*, section 32 (4)).

An applicant or certificate holder whose certificate of qualification or independent school teaching certificate is rescinded may appeal a reconsideration decision by the director of certification to the commissioner in writing within 30 days of the date of the reconsideration decision (*Teachers Act*, section 32 (8)). The commissioner must notify the director of certification of a certification appeal received by the commissioner (*Teachers Act*, section 69).

Summary Dismissal

On receipt of a certification appeal, the commissioner will then conduct a preliminary review of the matter (*Teachers Act*, section 70) and may dismiss the certification appeal if the commissioner determines that any of the following apply:

- the appellant did not pay the prescribed certification appeal fee;
- the appellant did not file the appeal within the prescribed timeline (see *Teachers Act*, section 32(8));
- the matters raised in the certification appeal are not within the jurisdiction of the commissioner or a panel;
- the certification appeal is frivolous, vexatious or trivial or gives rise to an abuse of process; or
- there is no reasonable prospect the certification appeal will be successful.

(*Teachers Act*, section 71.)

The applicant may provide written submissions within 30 days of the commissioner's notification that she intends to summarily dismiss the certification appeal (*Teachers Act*, section 71 (2)). If the commissioner dismisses the certification appeal, the commissioner must provide written reasons to the applicant and director of certification (*Teachers Act*, section 71 (3)).

Hearing

If the commissioner does not dismiss a certification appeal after a preliminary review, the matter is then referred to a panel for a hearing. The appeal may be done by way of oral hearing or written submissions at the discretion of the commissioner (*Teachers Act*, section 72).

The certification appeal is heard by a three-member panel selected by the commissioner (*Teachers Act*, section 73). If the appellant has applied for a certificate of qualification, the commissioner must select a board member appointed under section 26 (2) of the *Teachers Act*. If the appellant applied for an independent school teaching certificate, the commissioner must select at least one board member with substantial knowledge and experience in the independent school system.

The certification appeal is run in accordance with the Commissioner's Rules of Practice and Procedure and any orders made by the commissioner. Nonetheless, if the panel considers it necessary and appropriate to facilitate the just and timely resolution of one or more matters at issue, the panel may vary the rules and schedule an oral hearing (*Teachers Act*, section 75).

At the certification appeal hearing, the panel may determine whether the appellant meets the requirements necessary to be issued a certificate of qualification or an independent school teaching certificate, and what type of certificate the director of certification must issue to the appellant (*Teachers Act*, section 76). The panel will generally not consider evidence that was not before the director of certification, unless the following situations occur:

- the evidence was not before the director of certification even though the appellant exercised due diligence to provide the director of certification all relevant evidence for the reconsideration; and
- the panel considers the evidence to be relevant and credible and, when taken together with the other evidence before the panel, the evidence is likely to affect the panel's determination.

(*Teachers Act*, section 76.)

If the panel considers new evidence in the above manner, the director of certification also has an opportunity to provide additional evidence to the panel.

Once the hearing is concluded, the panel will decide whether the appellant meets the requirements of section 30 of the *Teachers Act*. If the appellant is successful, the panel may make an order requiring the director of certification to issue the appellant the type of certificate for which the appellant meets the requirements.

Written Reasons and Publication of Decisions

The panel is required to give the appellant and the director of certification written reasons for its decisions (*Teachers Act*, section 77). These written reasons are made public by the director of certification on the Teacher Regulation Branch website, unless the panel determines that making the written reasons public would cause undue hardship to any person.

31.7 Letters of Permission

The director of certification may also issue letters of permission to "suitable person[s]" who are not a certificate holders and whose services the director of certification considers are required for a specified period of time only (*Teachers Act*, section 35 (1)). The maximum validity period for a letter of permission is one school year. The director of certification may also place limitations or conditions on the letter of permission that the director deems appropriate.

The issuance of letters of permission requires the same criminal record check and vulnerable sector check requirements as certificate of qualification or independent school teaching certificate holders (see Guide, 31.4; and *Teachers Act*, section 35 (3)(a)-(b)).

The director of certification is required to suspend a letter of permission in the following circumstances:

- if the commissioner orders the director to suspend the letter of permission before a disciplinary hearing (see *Teachers Act*, section 50) or notifies the director pursuant to a consent resolution agreement (see *Teachers Act*, section 53);
- as a consequence of a disciplinary and professional conduct hearing (see *Teachers Act*, section 64), if the panel orders the director to do so; or
- if the person holding the letter of permission does not pay costs associated with a disciplinary and professional conduct hearing by the specified date of the costs order (see *Teachers Act*, section 65 (1)).

(*Teachers Act*, sections 36 (1)(a)-(d))

The director of certification is required to cancel a letter of permission in the following circumstances:

- if the person notifies the director pursuant to a consent resolution agreement (see *Teachers Act*, section 53);
- as a consequence of a disciplinary and professional conduct hearing (see *Teachers Act*, section 64), if the panel orders the director to do so; or
- six (6) months after the date specified in a cost order, if the person holding the letter of permission does not pay the costs ordered under that section (see *Teachers Act*, section 65).

The director of certification must notify the certificate holder and each board of education and independent school authority of the suspension or cancellation, even if such suspension or cancellation is pursuant to a consent resolution agreement (*Teachers Act*, sections 34, 55). Superintendents of schools are required to notify the British Columbia Teachers' Council when a person holding a letter of permission is dismissed, suspended, disciplined for certain types of misconduct, or resigns (in the same way as for teachers; *School Act*, section 16).

31.8 Disciplinary and Professional Conduct Inquiries

Preliminary Review

The commissioner is appointed under the *Teachers Act* to ensure concerns about certificate holders' competence and conduct are addressed fairly and in the public interest. Where the commissioner receives a report or complaint regarding a certificate holder's misconduct or incompetence, the commissioner is required to conduct a preliminary review of the matters raised in the report or complaint (*Teachers Act*, section 44).

The commissioner can be notified of concerns regarding authorized members in the following ways:

- a report regarding disciplinary action taken or a resignation under the *School Act* or *Independent School Act* (see *School Act* sections 16 and 16.1; *Independent School Act*, sections 7 and 7.2);

- a written complaint from any person; or
- a written report from another teacher about serious misconduct required under the *Teachers Act* (see *Teachers Act*, section 38).

The commissioner may also initiate a review of a certificate holders' competence or misconduct at his own initiative, if the commissioner becomes aware of information related to the competence or conduct of a teacher. For example, through notification from the Ministry of Justice regarding a criminal proceeding against a certificate holder.

The Commissioner's Rules for Disciplinary and Professional Conduct Inquiries require the following forms be used for submitting various reports and complaints:

- all reports made under the *School Act* must be submitted using the *School Act* form, accessible here: http://www.bcteacherregulation.ca/documents/FormsandPublications/ProfConduct/mc_form_web.pdf;
- all reports made under the *Independent School Act* must be submitted using the *Independent School Act* report form, accessible here: https://www2.gov.bc.ca/assets/gov/education/kindergarten-to-grade-12/teach/teacher-regulation/standards-for-educators/report_commissioner_form_ind_school_act.pdf;
- all reports made under section 38 of the *Teachers Act* must be submitted using the Section 38 report form, accessible here: https://www2.gov.bc.ca/assets/gov/education/kindergarten-to-grade-12/teach/teacher-regulation/standards-for-educators/report_commissioner_form_teachers_act.pdf; and
- all complaints must be submitted using the complaint form, accessible here: https://www2.gov.bc.ca/assets/gov/education/kindergarten-to-grade-12/teach/teacher-regulation/standards-for-educators/complaint_form.pdf.

Once a report or complaint is received, the commissioner will conduct a preliminary review of the report or complaint and determine whether:

- to take no action, if certain considerations apply; for example, if the matter has not been pursued in a timely manner (see *Teachers Act*, sections 45 (1)(a)-(f)). According to the 2015-2016 Commissioner's Report, approximately 27% of

reports and complaints were dismissed at this stage during the 2015-2016 school year;

- to defer acting on one or more of the matters raised in the complaint or report if it is being addressed by another process, for example, an investigation by a school district or independent school authority (see *Teachers Act*, section 46);
- to make or accept a proposal for consent resolution (see *Teachers Act*, section 53);
- to issue a citation (see *Teachers Act*, section 56); or
- to initiate an investigation (see *Teachers Act*, section 47).

The commissioner will advise the certificate holder and the person who made a report or complaint as to the outcome of the preliminary review. If the commissioner determines that an investigation into the matter should be initiated, then any employer school district or independent school authority will be notified.

Investigation

Where the commissioner believes more information is required in order to make a proper determination of a complaint or report, she may order that an investigation be conducted (*Teachers Act*, section 47). The commissioner must provide written notification of the investigation to the certificate holder subject to the investigation, the person who sent the report or complaint, and the board of education or independent school authority that employs the certificate holder (*Teachers Act*, section 47 (2)). The commissioner will also provide the person under investigation with a copy or summary of the complaint report within 30 days, or as soon thereafter as practicable (Commission's Rules for Disciplinary and Professional Conduct Inquiries, section 27).

The investigation itself is an objective, non-adversarial, information-collecting process. During the investigation, the commissioner may consider any previous decisions not to take further actions, previous investigations, and any consent resolution agreements concerning the certificate holder under investigation. This includes any findings or disciplinary action(s) taken under the since-repealed *Teacher Profession Act* (*Teachers Act*, section 47 (3)(e)).

During an investigation, the commissioner may require a person to give evidence on oath or affirmation and/or produce documentation or other items in the person's possession or control if it is relevant to the investigation (*Teachers Act*, section 48). The commissioner may also apply to the court for an order directing a person to comply with the commissioner's direction in this regard.

In addition to the above, the commissioner is given the following investigation powers under section 49 of the *Teachers Act*:

- to enter the building of a public school or of an independent school or any other building used in conjunction with the school or offices of the board of education or independent school authority, or any part of them;
- to inspect any record of a board of education or of an independent school authority;
- to interview any employee of a board of education or of an independent school authority; the authorized person who is the subject of the investigation; the person who sent the report or complaint to the commissioner; and any other person the commissioner considers may have relevant information.

Following an investigation, the commissioner must then take one or more of the following actions:

- take no further action, providing reasons to the person who made the report or complaint, the certificate holder, and the school district or independent school authority employer (*Teachers Act*, sections 51-52);
- make or accept a proposal for consent resolution agreement (*Teachers Act*, section 51 (b));
- issue a citation for a hearing (*Teachers Act*, section 51(c)); or
- order further investigation.

According to the 2015-2016 Commissioner's Report, 56% of the investigations concluded were ended at this stage by a decision to take no further action.

If the commissioner believes that there is a serious risk to the physical or emotional health or safety of students, he may order that the teacher's certificate be suspended until the final outcome is determined by hearing or a consent resolution (*Teachers Act*, section 50).

Consent Resolution

As an alternative to a hearing before the discipline and professional conduct panel, the *Teachers Act* provides a process of consent resolution. Most cases in which disciplinary action proceeds after a review, either before or after an investigation, are resolved by consent resolution.

At any point after a preliminary review and before a hearing, the commissioner may offer or accept a consent resolution agreement (*Teachers Act*, section 53). It is still possible, however, to conclude a matter by consent resolution during the time the matter is proceeding to hearing.

The proposed resolution agreement must be drafted in accordance with the *Teachers Act*, section 53 (3), which requires the following:

- the terms set out in the proposal made by the commissioner, or the terms set out in the proposal made by the authorized person if they are accepted by the commissioner;
- one or more admissions by the authorized person in relation to one or more of the matters raised in the report or complaint or related to the investigation; and
- one or more of the consequences with respect to which a panel may make an order under (see *Teachers Act*, section 64).

Depending on the nature of the misconduct or incompetence of the certificate holder, the disciplinary consequence can range from a reprimand to cancellation of the teaching certificate. If a consent resolution is entered into, the district or independent school authority will be provided with a copy and the agreement will be made public unless doing so would cause significant hardship to the person who was harmed by the certificate holder (*Teachers Act*, sections 53-55).

Citation

After a preliminary review of a report or complaint, the commissioner may issue a citation to the certificate holder who is subject to the preliminary review; but must issue a citation at the conclusion of an investigation, unless it is determined that no further action is required or a consent resolution is entered into (*Teachers Act*, section 56 (1)). The citation must include a description of the matters to be

considered by the panel and a statement of material facts on which the citation is based (*Teachers Act*, section 56 (2)). The citation will be delivered to the certificate holder subject to the citation and the person who made the report or complaint, if applicable.

Pre-Hearing

The commissioner may hold a pre-hearing conference to ensure all procedural matters have been addressed and the matter is ready for hearing. The commissioner must determine whether the hearing should be conducted by way of oral hearing or written submissions, and set the hearing date and location if it is an oral hearing.

The commissioner must also appoint a panel for the hearing (*Teachers Act*, section 57). The panel consists of two members from a pool of nine disciplinary and professional conduct board members, and one member from a pool of non-members with legal experience or experience participating in administrative hearings.

Hearing

Hearings are conducted in accordance with the Commissioner's Rules of Practice and Procedure and any orders made by the commissioner (*Teachers Act*, section 59). All discipline and professional conduct hearings are open to the public unless a panel determines otherwise (*Teachers Act*, section 61). Specifically, the panel has the power to exclude the public from all or part of the hearing if it considers that the desirability of avoiding disclosure is in the interests of any person affected.

In making its decision, the panel may consider: any previous decisions not to take further action after a preliminary review; previous investigations; previous consent resolution agreements; previous findings or orders; and/or disciplinary action taken under the *Teaching Profession Act*.

After the panel considers the evidence and submissions at the hearing, it will determine if the citation should be dismissed or if the certificate holder:

- has been guilty of professional misconduct or conduct unbecoming a teacher;
- has been or is incompetent to carry out the duties and responsibilities of a teacher; or

- does not have the capacity to carry out the duties and responsibilities of a teacher because of physical or mental disabilities.

(*Teachers Act*, section 63.)

If the citation is not dismissed, the panel decides the consequences for the teacher, which range from a reprimand, suspension or cancellation of a teacher's certificate, or conditions or limitations placed on their certificate (see *Teachers Act*, section 64). According to the 2015-2016 Commissioner's Report, there have been 17 hearings concluded since the *Teachers Act* came into force.

Notification of all Boards of Education

If an order is made to suspend or cancel the certificate of qualification, an independent school teaching certificate or a letter of permission, the director of certification must notify each board of education and independent school authority and, if applicable, record the fact in the register of certificate holders (*Teachers Act*, section 67).

Publication of Discipline Decisions

The written reasons for the hearing panel provide guidance in other cases that permits most matters to be settled by consent.

Generally, if the citation is not dismissed at the conclusion of the hearing, the panel is required to give written reasons for its decisions, which are published on the Teachers Regulation Branch website unless the panel determines that doing so would cause significant hardship to the person who has been harmed by the teacher (*Teachers Act*, section 66).

The person who made the report or complaint and the director of certification will typically be notified of the decision to take action regarding the teacher's certification. However, if the panel gives a direction to the director of certification in the manner described above, the panel will not give reasons to the person who sent the report or complaint to the commissioner, for example, if the panel determines the reasons should not be published per section 66 of the *Teachers Act*.

Costs

In addition to any order under section 64 of the *Teachers Act*, the panel has the power to order the certificate holder to pay all or part of the costs of a hearing if the panel considers the conduct of the person to have been improper, vexatious, frivolous or abusive of the hearing (*Teachers Act*, section 65). A cost order of this nature has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it.

Online Registry of Members

The director of certification must establish and maintain an online registry for the purpose of providing the public the information about certificate holders and persons holding letters of permission (*Teachers Act*, section 78). The *Teachers Act*, section 79, requires that the online registry provide the following information about each authorized person:

- the authorized person's name;
- the current status of the authorized person's certificate of qualification, independent school teaching certificate or letter of permission;
- a record of any suspension or cancellation of the authorized person's certificate of qualification, independent school teaching certificate or letter of permission;
- a record of a term of a consent resolution agreement (see *Teachers Act*, section 53), including:
 - admissions of professional misconduct;
 - conduct unbecoming a teacher; and/or
 - an admission of incompetency to carry out professional duties and responsibilities;
- consequences from orders (see *Teachers Act*, section 64);
- a record of any findings and/or orders of the discipline and professional conduct panel and orders made (see *Teachers Act*, sections 63 and 64).

Discipline that occurred prior to 2007 will not be listed on the online registry.

31.9 Retiring or Relinquishing Teaching Certificates

According to the Teacher Regulation Branch website, certificate holders who no longer want to be certified by the Teacher Regulation Branch, are not teaching, and do not plan to return to teaching have two options:

- cease paying the annual fee, which will trigger the suspension and subsequent cancellation of the teaching certificate for non-payment of fees (see *Teachers Act*, section 37); or
- execute and submit a “Notice of Relinquishment” form, accessible here: https://www2.gov.bc.ca/assets/gov/education/kindergarten-to-grade-12/teach/teacher-regulation/notice_of_relinquishment_form.pdf.

If a certificate holder chooses the latter option and has paid his annual fee for the upcoming school year, a refund will be provided by the Teacher Regulation Branch once the Notice of Relinquishment form is received on or before June 30 of the current year.

In either of the above cases, a certificate holder would be required to reapply should she wish to return to teaching.

31.10 Employers' List

The *Teachers Act*, section 80, requires boards of education or independent school authorities to provide the director of certification, on or before October 15 of each year, a list of all certificate holders currently employed by the employer during the 12-month period from July 1 in the previous year to June 30. The director of certification must maintain this information for at least 10 years, and is responsible for creating and maintaining a list that identifies the employers of every certificate holder. Prospective employers wishing to hire a certificate holder are permitted to inspect the list, but must keep the information from the list confidential.

32.0 Teachers' Duties and Responsibilities

32.1 Overall Responsibilities

Section 175(2)(c) of the *School Act* empowers cabinet to set the duties of all teachers; cabinet has done so in section 4, School Regulation, and the Statement of Education Policy Order. The Legislature has also specified certain critical responsibilities of teachers in section 17(1) of the *School Act*:

A teacher's responsibilities include designing, supervising and assessing educational programs and instructing, assessing and evaluating individual students and groups of students.

In addition, section 4 of the *School Act* requires teachers to be available for consultation with students on their educational programs, while section 7(2) provides the same right to consultation for students' parents.

32.2 Specific Duties

The teacher's duties specified by cabinet in section 4 of the School Regulation include:

- providing teaching and other educational services, including advice and instructional assistance, to the students assigned to the teacher;
- regularly providing the parents or guardians of a student with reports in respect of the student's school progress;
- providing such assistance as the board or principal considers necessary for the supervision of students on school premises and at school functions, whenever and wherever held;
- ensuring that students understand and comply with the codes of conduct governing their behaviour and with the rules and policies governing the operation of the school;
- assisting to provide programs to promote students' intellectual development, human and social development and career development;
- maintaining the records required by the minister, the board and the school principal;
- encouraging the regular attendance of students assigned to the teacher; and

- evaluating students' intellectual development, human and social development and career development, including, as required by the minister, administering and grading the Required Graduation Program Examinations.

In addition, each teacher is required to attend all meetings or conferences called by the principal or superintendent, though a teacher may be excused by the principal or superintendent, and to provide information on students as required by the minister of education, the board of education or, where authorized by the board, the parent. A teacher is also required under section 4 of the School Regulation to admit to the classroom and to assist student teachers.

32.3. Reporting Child Abuse

In addition to the requirements of the *School Act* and Regulation, a teacher should be familiar with the legal responsibilities under the *Child, Family and Community Service Act* to report child abuse or neglect (see Guide 11.8).

32.4 Reporting Professional Misconduct

Section 38 of the *Teachers Act* imposes an obligation on an "authorized person" (i.e., a certificate holder or person holding a letter of permission) to provide a written report to the commissioner if that person believes that another authorized person has engaged in conduct that involves physical harm to a student, sexual abuse or exploitation of a student, or significant emotional harm to a student. That obligation exists even if the information was obtained in a privileged relationship (except a solicitor-client relationship) and even if its disclosure is prohibited under another Act. It is an offence to fail to make a report.

Under section 16 of the *School Act*, a superintendent has an obligation to report to the commissioner any circumstance where the superintendent suspends or dismisses a person, or disciplines a person for misconduct involving physical harm to a student, sexual abuse or exploitation of a student, or significant emotional harm to a student. As well, a superintendent must make a report to the commissioner if an authorized person resigns, if it is in the public interest to do so, and if the superintendent considers that any conduct by or

competence of an authorized person is in breach of the certification standards. It is an offence to fail to report a suspension, discipline for misconduct involving physical harm to a student, sexual abuse or exploitation of a student, or significant emotional harm to a student, or resignations where it is in the public interest to make a report.

32.5 Teacher Responsibility for Student Safety

Teachers have a duty of care to students under their supervision. The courts have described the standard that teachers must live up to as being the same as that of a “careful parent.” This standard recognizes that it is not desirable to try to protect students from every foreseeable risk. For example, all sports activities have inherent risks, but sports are an important part of one’s education. In deciding whether a student activity is too risky, the teacher should consider whether a reasonable and careful parent, with particular knowledge of the nature and extent of risk as possessed by the teacher, would allow that particular student to participate in the activity.

For example, the BC Court of Appeal in *Thornton v. Prince George School District* set out as appropriate criteria for gymnasium activities the following questions:

- (a) Is the activity suitable to the pupil’s age and condition, mental and physical?
- (b) Is the pupil progressively trained and coached to do it properly and avoid the danger?
- (c) Is the equipment adequate and suitably arranged?
- (d) Is their performance, having regard to the inherently dangerous nature of the activity, properly supervised?

The “careful parent” standard (see Guide 11.3) also recognizes that teachers are not likely to be perfectly successful in guarding against known risk, but they have to give the safety of their students no less attention than they would give the safety of their own children.

32.6 Corporal Punishment and Restraint

Corporal punishment can be viewed as an assault by a teacher on a student. Section 43 of the *Criminal Code of Canada* provides a defence for teachers to an assault charge as long as reasonable force is used for purposes of correction, and thus de-criminalizes this type of assault. In 2004, the Supreme Court of Canada considered whether this section contravened the Charter, in the case *Canadian Foundation for Children, Youth and the Law vs. Attorney-General of Canada*. The court upheld the validity of the section but limited its scope.

Though a teacher in Canada who administers reasonable corporal punishment to a student for the purpose of correction is exempt from a charge for assault under section 43 of the *Criminal Code*, in British Columbia such punishment would be a violation of *School Act* section 76(3), which reads, “discipline ...shall be similar to that of a kind, firm and judicious parent, but shall not include corporal punishment.” A teacher who does inflict corporal punishment would be subject to disciplinary action by the employer. The application of section 76(3) *School Act* extends also to principals and vice-principals.

What constitutes corporal punishment may be difficult to decide in a particular case. For example, does it include a push to hurry a slow-walking student, or a blow in self-defence if the teacher is threatened? The facts of each case must be considered, and arbitrators have based decisions mainly on the intent of the teacher’s action: did the teacher intend to cause bodily suffering as a penalty? Teachers would be well-advised to avoid any physical contact with students that might be construed as having the infliction of pain as its intent.

On the other hand, at certain times a teacher’s responsibility for the safety of students may require that the teacher physically restrain a student – for example, to stop potential or actual violence between students, to remove from a student a suspicious or dangerous weapon, or to prevent injury to persons or property by a hyperactive student.

32.7 Emergency Medical Treatment

Part of the duty of care toward students is to promptly provide or obtain medical emergency treatment for them when required. When a need for medical intervention can be foreseen, such as a known life-threatening allergy, the school needs to plan for such an emergency and have a system in place so that teachers or others supervising the child know what to do.

Liability claims for failure to obtain medical treatment for a student most frequently involve physical education teachers and coaches.

32.8 Protection from Liability

When a student is injured at school or during a school-sponsored activity, a civil lawsuit may result. The parents on behalf of the student may sue the principal and supervising teacher, as well as the board of education and any other person (such as another student) directly responsible for the injury.

In this situation, the supervising teacher, and any other school staff or volunteer whose alleged liability arose out of conduct or omission in the course of their duties for the board, are covered by the same government self-insurance program as covers the board of education – the Schools Protection Program. The major exception to such coverage is when the teacher or other staff member or volunteer is alleged to have committed a criminal act (e.g., assault) that caused the injury. In such a case the Schools Protection Program does not provide coverage to that individual, though others not implicated in the alleged criminal act, such as the employing board of education, will be covered.

The Schools Protection Program may deny coverage if it has been prejudiced in its investigations because the accident was not reported to them in a timely way. All staff and volunteers need to be aware of the need to complete and file incident reports when an accident happens or some other incident occurs that might give rise to a legal claim.

If a claim is made against a board employee for something arising in the course of duty and the Schools Protection Program does not provide coverage, the employee may be entitled to some protection under the board's indemnification bylaw.

This protection may include requirements for early notice of claim to the board of education as a condition of the board paying for legal costs or damages.

Though teachers and principals are often named in claims arising out of student injury, few claims proceed against them because of section 94 of the *School Act*, which states: “No action for damages lies or may be instituted against a trustee, an officer or an employee of a board for anything said or done or omitted to be done by him or her in the performance or intended performance of his or her duty of the exercise of his or her power or for any alleged neglect or default in the performance of intended performance of the duty or the exercise of the power.” The Act was amended in 2001 to provide school volunteers the same protection. Using this section, defending lawyers can often get the claim against the teacher or principal struck out. If the court finds that the student was injured as a result of the negligence of the staff member or volunteer, the damages are ordered to be paid by the employing board of education. There are exceptions to this protection where the staff member is guilty of gross negligence, dishonesty or malicious or willful misconduct, or the suit is for libel or slander.

33.0 Discipline and Dismissal Of Teachers

Note: As throughout the Guide, what follows here is a summary and outline only. The specific statutory and relevant collective agreement requirements may be more detailed.

33.1 School Act Provisions

Unless the appointment is probationary or temporary, a teacher employed full-time or part-time by a BC board of education is usually on a continuing contract and may not be suspended, dismissed or otherwise disciplined by the board except for “just and reasonable cause” (section 15(3) *School Act*) – see Guide 33.2.

In addition, the *School Act* provides for:

- (a) suspension where a teacher is charged with an offence that the board considers renders the teacher unsuitable to perform teaching duties (section 15(4) *School Act*);
- (b) suspension where the superintendent believes the welfare of students is threatened by the teacher’s presence, subject to review by the board (sections 15(5), (6) and (7) *School Act*) – see Guide 33.5; and
- (c) suspension where a teacher’s presence is believed harmful to students for health reasons (section 92 *School Act*) – see Guide 10.8.

The above disciplinary actions are given effect through procedures set out in the teacher collective agreement.

33.2 Suspension or Dismissal “For Cause”

As stated above, a teacher may be suspended, dismissed or otherwise disciplined by the board where there is “just and reasonable cause”(section 15(3) *School Act*). This includes misconduct (positive acts, inconsistent with the expressed or implied duties of the teacher), neglect of duty, refusal or neglect to obey a lawful order of the board, conviction for an offence, depending on the individual circumstances in each case, and unsatisfactory performance. Teacher collective agreement provisions deal differently with dismissals and discipline for misconduct and dismissal for unsatisfactory performance.

33.3 Unsatisfactory Performance

A board of education may receive reports on a teacher’s work from the superintendent, assistant superintendent, director of instruction, principal or vice-principal (sections 5 and 6 School Regulation). These are formal reports based on evaluations carried out in accordance with procedures specified in the applicable collective agreement.

Where a board believes that a teacher’s performance in the classroom is such that the learning situation there is less than satisfactory, the board may order the teacher to take remedial action that it considers necessary or advisable, or it may dismiss the teacher, in accordance with any collective agreement with its teachers. The teacher through the local teachers’ association may appeal the board’s decision, in the same manner as described in Guide 33.4.

33.4 Appeals against Discipline or Dismissal

Where a teacher is covered by a collective agreement, any appeal by the teacher against discipline, suspension or dismissal must be in accordance with that collective agreement.

There is a provincial grievance and arbitration procedure contained in the teachers’ collective agreement (see Guide 90.0).

A special provincial procedure governs complaints of harassment and sexual harassment. Some school districts have special expedited processes applying to dismissal grievances. The *Labour Relations Code* also includes an expedited arbitration procedure (section 104 *Labour Relations Code*). This may be accessed by either party instead of progressing the grievance to arbitration as provided for in the collective agreement.

Arbitration is a quasi-judicial process. Though rules of evidence may be more relaxed than they would be in court and arbitrators have more control over their own procedures, the fundamental principles of fairness and natural justice apply. Written reasons for decisions are almost always provided.

Arbitration decisions are final and binding. There is no general right of appeal to a court. However, an appeal may be made to the Labour Relations Board on the ground that a party was denied a fair hearing,

or the arbitration decision is inconsistent with the principles of labour relations legislation. Alternatively, an appeal may be made to the BC Court of Appeal if the basis of the arbitrator's decision was a matter of general law (not law based on labour relations legislation) (sections 99-101 *Labour Relations Code*).

Employees who have been disciplined or dismissed for reasons that they feel relate to discrimination contrary to the *Human Rights Code* sometimes choose to make complaints under the *Human Rights Code* instead of, or in addition to, grieving the discipline or dismissal under the collective agreement (see Guide Appendix).

33.6 Temporary Suspension of a Teacher

The *School Act* gives the superintendent of schools the authority to suspend an employee, with pay, based on a threat to the welfare of students. However, such suspensions must be reviewed by the board, which can confirm, vary or revoke the suspension, with or without pay (section 15(5), (7) *School Act*).

The Act also provides that the board may suspend an employee charged with an offence “that the board considers renders the employee unsuitable to perform [his] duties” (section 15(4) *School Act*). An arbitration held that this allowed the board to suspend with or without pay.

Suspensions may also be carried out as part of the authority of the board to discipline employees. The board may delegate this authority (e.g., to the superintendent) but in some districts, the teacher collective agreement may require that this be done by the board after a meeting with the teacher concerned.

33.7 Layoff or Termination

The teacher collective agreement governs the layoff of teachers, viz., the termination of continuing contracts of employment, where it is necessary to reduce the number of teaching staff.

Such layoffs may arise due to:

- (a) discontinuance of or reduction in a program level, activity or service;
- (b) change in organizational structure of the school district;
- (c) the amount of available operating funds; or
- (d) a significant drop in enrollment levels.

The agreements generally include layoff procedures, recall rights, and severance pay arrangements. Layoffs are generally determined by some combination of seniority and qualifications.

Teachers may carry up to 10 years' seniority with them when they move between districts. Experienced teachers who wish to change employment will have some protection from being laid off in their new district.

More Information

Teacher Qualification Service

<http://www.tqs.bc.ca/>

BC Public School Employers' Association

<http://bcpssea.bc.ca/teachers/overview/>

BC Teachers' Council

<https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/boards-commissions-tribunals/bctc>

Ministry of Education – Teacher Regulation

<https://teacherregulation.gov.bc.ca/Index.aspx>

BC Teachers' Federation

<https://bctf.ca/>