Agenda

- Managing Synchronous Learning
- Voluntary Redeployment
- Returning to School

The New Normal: School Boards in a COVID-19 World
Managing Synchronous Learning

Expectations

- "The Ministry’s expectation is that synchronous learning be used as part of whole class instruction, in smaller groups of students and/or in a one-on-one context."
- Platforms include Virtual Learning Environment (VLE), Google Classroom, Edsby
- Can be delivered in a number of ways, including live email chats, telephone calls, small group engagement, audio and video lessons
- Collective agreements are likely silent, so delivery will be governed by:
  - Duties of Boards, principals and teachers under the Education Act
  - Management rights – are the Board’s requirements and expectations reasonable in the circumstances?
  - Teachers’ exercise of their professional judgment
  - Human Rights Code

Consistency with collective agreements

- Exercise of management rights in the context of Education Act requirements
- Teachers’ use of their own equipment
- Comfort with online technology
- Professional judgment
- Privacy: security and confidentiality
- Concerns about equity among students
- Human rights and accommodation (family obligations, disabilities)
- Potential liability for privacy breaches
Managing Synchronous Learning

**Best Practices**

- Clear communication
- Offer training and support
- Recognition of professional judgment
- Mitigation of privacy risks:
  - Select a tool that has minimal and/or manageable risks
  - Actively monitor risks
  - Communicate privacy-related risks and offer ways to mitigate the risks
- Flexibility in modes and times of delivery
- Use of additional resources (consider team teaching, deployment of non-traditional teachers)

Managing Synchronous Learning

**Supervision of Teachers**

- Concerns re: teacher availability, quality of instruction
- Online platforms provide a reduced ability for teachers to exercise control within their “classroom”
- Principals’ responsibility for and access to the online classroom.
  - Observation or intrusion?
Managing Synchronous Learning

Supervision of Teachers
- Parental complaints and investigations
  - Application of investigation procedures to online delivery (access to teachers’ assignments and chats)
- Recording online classroom sessions:
  - Recording is permissible if the school has a legitimate & demonstrable need to review recordings
  - Pros: Availability of recordings for auditing and investigatory purposes
  - Cons: Union concerns re surveillance, risk of privacy breaches, data security obligations and FOI requests

Managing student participation
- Consider and manage equity and access considerations
  - Access to technological resources, learning supports, etc.
- Explain privacy risks and best practices to students
- Establish student expectations and/or code of conduct
- Distribute materials to students in advance
- Establish a protocol for resolving teacher or student technical issues
Managing Synchronous Learning

Student Special Education Considerations

- Identification of exceptionalities, placement, supports/programming
- Intersectionality of Code grounds and practical realities
- Increased importance of procedural duty

Managing Synchronous Learning

- Best practices to enhance synchronous learning:
  - Train teachers
  - Implement a students’ digital code of conduct
  - Provide a privacy fact sheet
  - Offer student reasonable accommodations
Voluntary Redeployment

Experience to Date

- Very little uptake (400+ volunteers across the province, 100+ approved)
- Primarily occasional teachers, followed by EAs
- Few signed Appendix 1 agreements with unions
- No placements and no Appendix 2 agreements yet

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Voluntary Redeployment

Participation

• “It is understood that school board bargaining unit employee **may be offered the opportunity** to self-identify to volunteer for temporary redeployments … taking into account, and subject to, **operational requirements** of the School Board Employer.”

• Suitability
• Operational needs (e.g. social workers)
• Risk of exposure (e.g. active part-time custodians)
• Employee’s ability to refuse an assignment

Voluntary Redeployment

Employment Status

• Remain employees of the School Board
• Continue to be covered under the terms of the School Board’s collective agreement
• Retain rights to their position and the right to apply to posting under the collective agreement
• **But**, subject to the working conditions (i.e. shift assignments, breaks, discipline) of the receiving employer, as outlined in the receiving employer’s collective agreement if applicable
Voluntary Redeployment

Compensation

- Subject to the terms of the collective agreement
- Pandemic pay (eligible positions)
- Occasional teachers: long-term assignments, daily, partial day rates; no hourly wage
- Shift premiums and overtime

Voluntary Redeployment

Seniority and Teaching Experience

- Seniority accrual
- Qualified teaching experience?

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Voluntary Redeployment

Termination of Assignment and Discipline

Redeployment may be terminated at any time by the employee, the Board or the receiving employer.

For any reason, with as much written notice as possible.

Can receiving employers discipline?

Can School Boards discipline for off-duty conduct?

Duty to notify the Ontario College of Teachers.

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Voluntary Redeployment

Grievances, Complaints and Dispute Resolution

- Any form of discipline imposed during the period of the temporary voluntary redeployment or imposed by the Receiving Employer and relied up or intended to be relied upon by the School Board is subject to the grievance process under the School Board’s Collective Agreement.
- Redeployed employee can file a complaint against the Receiving Employer under Human Rights Code, ESA, and OHSA.
- Disputes under Appendix 1 Agreements: OECTA template provides for arbitration under Collective Agreement.

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Return to School - Temperature Screening

- Imperfect but effective way to screen for COVID-19

Requirements for implementing temperature screening:

- **Necessity**
  - Is temperature screening a necessary part of our health and safety measures to prevent/mitigate the spread of COVID-19?

- **Reasonableness**
  - Is temperature screening implemented in a reasonable manner?

- **Notice**
  - Have employees, students, and visitors been given notice of screening protocols?

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Return to School – Requesting COVID-19 Status

- A requirement for all entrants to self-report COVID-19 diagnosis is a reasonable health & safety measure.
- School boards may institute a policy requiring employees to report COVID-19 diagnosis at first reasonable opportunity.
- COVID-19 diagnosis may be disclosed without the individual’s consent.
- MFIPPA is not breached if a disclosure is necessary to prevent/mitigate the risk of others contracting the coronavirus.

Return to School – Health & Safety

Work Refusals
- The Occupational Health and Safety Act generally allows workers the right to refuse or to stop work where they believe their health or safety is put in danger.
- Workers are required to promptly report the circumstances of refusal to a supervisor, whereupon an investigation takes place.
- … but there is a distinction between Teachers and Educational Assistants.
  - the Regulations made under the Occupational Health and Safety Act state that teachers are not allowed to refuse work “where the circumstances are such that the life, health or safety of a pupil is in imminent jeopardy.”
Return to School – Sick Leave

Participating Nursing Homes and ONA Re: COVID-19 Sick Pay/Isolation Grievances, (19 May 2020, Stout)

- Well accepted that employees are not entitled to pay if they do not attend work.
- To date, the federal and provincial governments have not mandated that employees be paid for not coming to work when they are required to self-isolate
- Any such right must be found within the four corners of the collective agreement
- The collective agreements in issue provided income protection benefits to full-time employees, who are absent from work due to “legitimate personal illness or injury, which is not compensable under the Workplace Safety and Insurance Act”

Arbitrator Stout made the following findings based on the collective agreement:

- Full-time employees who are symptomatic or test positive are entitled to the income protection benefits
- Full-time employees who experienced symptoms or tested positive continue to be absent due to a legitimate illness after their symptoms subside and until they are legally permitted to return to work and are entitled to the income protection benefits
- Full-time employees who were asymptomatic and did not test positive or were not tested were not absent due to a legitimate illness, but rather they were absent because they could possibly be ill or might be unwell or unhealthy, and are not entitled to income protection benefits
Return to School – Sick Leave

**Teachers’ Central Terms**
- Personal illness, personal injury, personal medical appointments, personal dental appointments

**CUPE Central Terms**
- Protection against loss of income *when ill or injured* as defined below.
- Sick leave days may be used for reasons of personal illness, personal injury, personal medical appointments or personal dental emergencies only

Return to School - Accommodation Issues

**Family Status**
- The status of being in a parent/child relationship
- Duty to accommodate arises when there is a disadvantage to the parent/child responsibilities or legal obligations
  - Accommodation includes a consideration of the other supports available
- The test continues to be reasonable accommodation short of undue hardship
- As employees return to work, obligations to family members may require accommodation
Return to School – Accommodation Issues

Immunocompromised Individuals
- Individuals includes employees, students or family members
  - Section 12 of the Human Rights Code protects against discrimination based on one’s association with someone who is identified by a protected ground
  - Immune system disorders constitute a disability warranting protection by the Human Rights Code
  - Immune disorders, the impact of medication or other medical conditions that render a person immunocompromised, are “invisible”
  - Employees may nonetheless have legitimate concerns about their ability to work given the potential health risks

Psychological Disabilities
- Experts are predicting a rise in mental health-related disabilities
- Employees have a right to be free from discrimination and harassment based on mental health disability of addiction
- When is the duty to accommodate triggered?
  - Low-threshold – Whether the employer knew or ought to have known that the employee has disability
- What medical documentation can you request, and expect?
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Hicks Morley has the expertise to guide employers through the labour and employment issues involved in return to work.

To support you during these challenging times, we have created a dedicated COVID-19 Return to Work Resource Centre containing up-to-date articles, frequently asked Questions and Answers for employers and links to government resources.

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