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Date: May 17, 2021

To: Beaverton School Board

From: Susan Rodriguez

RE: Conestoga Schedule Level III Appeal Grievance Summary

On Wednesday, October 7, 2020, the Beaverton Education Association (BEA) submitted a Level I grievance demanding training for administrators on the BEA/BSD contract, adjustments to the Conestoga school schedule and compensation for “extra work” for staff.

After an interactive process of communication, collaboration and action undertaken with BEA and Conestoga teacher by Principal Zan Hess, the schedule was adjusted. An adjusted schedule was implemented on November 16, 2020. The date was chosen by staff and Principal Hess to reduce negative impacts on staff and students.

The District’s Level I response to the grievance denied the claim due to BEA having failed to meet contractual timelines. BSD’s denial also addressed the content of the grievance and found that it was without merit. All contractual provisions for plan time and scheduled work hours had been met and there was no contractual violation. Licensed educators are salaried employees who are not subject to overtime or hourly pay for work completed outside the scheduled work day.

BEA subsequently appealed the grievance to Level II and had an audience with Don Grotting to seek a review of the Level I decision. Don Grotting responded by upholding the Level I grievance response and denying the claims made in the grievance.

On May 7, 2021, BEA submitted a Level III appeal to the School Board.

The enclosed documents provide a timeline of the grievance documents and responses, copies of the initial written grievance, followed by a corrected grievance at Level I, contextual information on the schedule issue provided by Principal Zan Hess, the District’s Level I response and Don Grotting’s Level II response.

District Goal: WE empower all students to achieve post-high school success.

The District prohibits discrimination and harassment based on any basis protected by law, including but not limited to, an individual’s actual or perceived race, color, religion, sex, sexual orientation, gender identity, gender expression, national or ethnic origin, marital status, age, mental or physical disability, pregnancy, familial status, economic status, veteran status, or because of a perceived or actual association with any other persons within these protected classes.

Timeline – Conestoga Grievance
October 2020

10.7.20 - Grievance sent to Zan Hess, Principal, from Lesly Muñoz, OEA Uniserv

10.10.20. –Contractual language states that any written grievance must be submitted within 5 days of the informal conference.

10.12.20 – Lesly Muñoz responded. “Our grievance language is confusing. My intention when filing the grievance is simply to give administration something in writing to refer to before our meeting so that they can troubleshoot ideas prior to our informal meeting. I should probably just send an email next time? I am considering the meeting with Zan the first sit down or informal meeting. I don’t think he heard from BEA reps about remedies they might have and would like to give him the opportunity to resolve the issue before escalating to the next level.”

10.12.20 Zan met with Lesly Muñoz and Conestoga teachers for an “informal conference.” Zan continued to work with all Conestoga teachers to adjust the schedule. Collaborative decision made to implement the adjusted schedule on November 16 due to instructional timeline and impact on students and staff.

10.21.20 – Lesly Muñoz sent a written grievance to Ken Struckmeier. (Deadline to submit 5 days from the informal conference missed.)

11.4.20 – Susan Rodriguez met with Conestoga teachers Ashley Wilson, Elizabeth McCullough and Doug Milternberger and Lesly Muñoz to respond to the process for the Level I grievance.

Lesly Muñoz started the meeting by noting that due to the successful implementation of a new schedule, she wished to “pause” the grievance process to give the new schedule time and see if it addressed concerns. Lesly Muñoz stated that she would follow up with a written request to pause the process.

No written request to pause the grievance was ever received from Lesly Muñoz.

1.27.21 – At the weekly Communications Meeting with HR and BEA, Lesly Muñoz requested a meeting with Conestoga teachers, admin, BEA and HR to address the part of the grievance where they had requested back pay for teachers.

The grievance was never formally paused or dismissed. While a pause had been verbally requested, it was never requested formally or in written form.

3.12.21 – Level I Grievance response sent to BEA denying grievance on the grounds that the timelines were not compliant with the contract and that the content of the grievance was not supported by the contract.

3.16.21 – BEA notified Don Grotting of a request to appeal to a Level III. This notice met the timeline within 5 days of receipt of the Level I Grievance response.

4.18.21 – Susan notified Lesly Muñoz that the correct level of appeal is Level II submitted to Don Grotting.

4.19.21 – Lesly Muñoz sent a Level II appeal request to Don Grotting.

4.28.21 – Don Grotting met with Lesly Muñoz and Conestoga teachers.

5.4.21 - Don Grotting sent a Level II Grievance Response to Lesly Muñoz, denying the appeal and upholding the Level I response.

5.7.21 - Lesly Muñoz submitted an intent to appeal to Level III School Board.

BEAVERTON SCHOOL DISTRICT
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GRIEVANCE RECORD - GRIEVANCE NO.
For use at Level I

Name of Grievant:	<u>Conestoga Staff</u>	Date Filed:	<u>October 7, 2020</u>
Building:	<u>Conestoga Middle School</u>	Assignment:	<u>All Licensed Staff</u>
Name of Administrator:	<u>Zan Hess</u>	School Phone No:	<u>503 356-2580</u>

Date of alleged violation or misinterpretation: Ongoing

Article(s) of the Agreement allegedly violated: *Article 10-A-2*

Statement of the Grievance: *Our Collective Bargaining Agreement states: "The normal work day for employees shall average eight (8) hours, thirty (30) minutes of which shall be a continuous, duty free lunch period."* Members are averaging 11+ hours on a daily basis and working at least 6 additional hours on weekends. This is a violation of our work day agreement.

Nature and extent of the injury or loss involved: Educators are being assigned work that they are not able to complete in the time outlined in our contractual agreement. This workload is unsustainable and unreasonable.

Results of previous discussions of the grievance and dissatisfaction with the decisions previously rendered:

- Educators communicated to administration during pre-service week that the schedule that included 7 periods with no breaks was not going to work. There are six courses plus advisory. The result of this meeting was a 30 minute break between 4th and 5th periods. This did not resolve the issue of educators working 11+ hours Monday through Friday plus 6 hours on weekends.
- Educators met with administration for a climate meeting on September 28. They discussed the issues with the 7 period schedule and how this had resulted in staff/educators working an average of 11+ hours Monday through Friday plus 6 hours on the weekend. This resulted in no changes to their current schedule.

Remedy Sought:

- *Training on the BEA/BSD contract for administration about our working conditions agreements.*
- *An adjustment to the schedule to ensure that the required work for educators can be accomplished in a normal workday, as defined in the contract*
- *An adjustment to the schedule to ensure that educators are not forced to work on the weekend in order to complete assigned work.*
- *Compensation to make workers whole for the "extra work" they have been doing since the beginning of the school year.*

- *The guarantee that this grievance will not result in laying off staff.*

Level I - Immediate Supervisor

Disposition by Administrator: _____

(Signature - Administrator)

(Date Answered)

BEAVERTON SCHOOL DISTRICT
APPENDIX B pg. 1

GRIEVANCE RECORD - GRIEVANCE NO.
For use at Level I

Name of Grievant:	<u>Conestoga Staff</u>	Date Filed:	<u>October 21, 2020</u>
Building:	<u>Conestoga Middle School</u>	Assignment:	<u>All Licensed Staff</u>
Name of Administrator:	<u>Zan Hess</u>	School Phone No:	<u>503 356-2580</u>

Date of alleged violation or misinterpretation: Ongoing

Article(s) of the Agreement allegedly violated: *Article 10-A-2*

Statement of the Grievance: *Our Collective Bargaining Agreement states: "The normal work day for employees shall average eight (8) hours, thirty (30) minutes of which shall be a continuous, duty free lunch period."* Members are averaging 11+ hours on a daily basis and working at least 6 additional hours on weekends. This is a violation of our work day agreement.

Nature and extent of the injury or loss involved: Educators are being assigned work that they are not able to complete in the time outlined in our contractual agreement. This workload is unsustainable and unreasonable.

Results of previous discussions of the grievance and dissatisfaction with the decisions previously rendered:

- Educators communicated to administration during pre-service week that the schedule that included 7 periods with no breaks was not going to work. There are six courses plus advisory. The result of this meeting was a 30 minute break between 4th and 5th periods. This did not resolve the issue of educators working 11+ hours Monday through Friday plus 6 hours on weekends.
- Educators met with administration for a climate meeting on September 28. They discussed the issues with the 7 period schedule and how this had resulted in staff/educators working an average of 11+ hours Monday through Friday plus 6 hours on the weekend. This resulted in no changes to their current schedule.
- BEA met with Zan (with Nicole and Ken present) and discussed concerns with the current schedule on Monday, October 12th. Zan was going to work on a schedule with a committee and present this to the entire staff on Wednesday, October 21st. The new plan or schedule does not reduce the work of staff to ensure that all folks work on average 8 hours a day and don't work weekends.

Remedy Sought:

- *Training on the BEA/BSD contract for administration about our working conditions agreements.*

- *An adjustment to the schedule to ensure that the required work for educators can be accomplished in a normal workday, as defined in the contract*
- *An adjustment to the schedule to ensure that educators are not forced to work on the weekend in order to complete assigned work.*
- *Compensation to make workers whole for the “extra work” they have been doing since the beginning of the school year.*
- *The guarantee that this grievance will not result in laying off staff.*

Level I - Immediate Supervisor

Disposition by Administrator: _____

(Signature - Administrator)

(Date Answered)

Conestoga Grievance Information

Conestoga began the COVID impacted school year (2020-21) school year with a schedule that served students in a 6 period school day where each period was 40 minutes long.

Conestoga's instructional day and work schedule was designed to meet each of the following:

- The structure of each instructional day complied with all expectations provided by the Department of Education through the RSSL Guidance documents.
- Met with and complied with all agreed upon MOU standards that were established through collaborative conversations between the Beaverton School District and the Beaverton Education Association.

RSSL provided the opportunity and responsibility for schools to develop schedules and cohorting structures that took advantage of each individual school and the unique physical characteristics of instructional spaces and classroom configurations. Conestoga's schedule was built to be able to ensure consistent cohorting practices, student and staff safety, and ease in transition between hybrid and CDL.

Soon after starting the school year, feedback from students, staff, and parents indicated that the schedule, while ambitious and robust, was very challenging both from an instructional perspective but also from a learning perspective. In response, Conestoga leadership undertook an in-depth analysis of viable options to address the challenges that were identified.

Administrators met with individual teachers, teams of teachers, BEA representatives, and staff to discuss challenges, realities, and structures that were causing issues. Among those challenges identified were:

- The schedule itself
- New instructional requirements as a result of Comprehensive Distance Learning
- Time needed to prepare excellent learning opportunities, lesson planning, development and posting of videos, Canvas course design and upkeep, assessment development and implementation through new technologies, and student engagement activities to name a few.



Conestoga CDL Schedule



Follow this schedule on Monday, Tuesday, Thursday and Friday
Wednesday lessons will be provided for independent work

Class and Time	Teacher Name
Advisory 9:30 – 9:50	
First Period 9:55 – 10:35	
Lunch 10:35 – 11:45	
Second Period 11:45 – 12:25	
Third Period 12:30 – 1:10	
Fourth Period 1:15 – 1:55	
1:55 – 2:25 Afternoon "Break"	
Fifth Period 2:25 – 3:05	
Sixth Period 3:10 – 3:50	

Many ideas were explored to address and respond to the struggles that students and staff were experiencing. Multiple schedules were analyzed to determine feasibility of change with the support of Teaching and Learning staff and the IT department. Many readily apparent solutions and ideas were subsequently deemed not possible for many different reasons. Some of them included:

- Technological issues within Synergy where changes were not possible and/or were inadvisable
- Staffing resources that were committed and not adjustable after the school year had begun
- Constantly changing RSSL guidance and expectations

After conversation, exploration, and investigation, a new schedule inspired from Benson High School was considered. This schedule was scrutinized and evaluated by staff and a plan to transition to a modified schedule was established, communicated and implemented.

At the beginning of the 2nd quarter (November 16, 2020), Conestoga students and staff adjusted to a new schedule that addressed most of the needs that had been identified by students and staff. The specific timing of when to implement a wholesale schedule change came as a result of a conversation with staff representatives. Changing at the end of the first quarter was the most reasonable course of action from an instructional perspective.

The new schedule created relief for teaching and learning in these ways:

- Teachers saw students longer periods of time affording a greater opportunity to create deeper relationships and respond to student learning needs more promptly
- Strategically placed plan time during the school day supported teacher planning and instructional needs
- Dedicated time for office hours supported student learning and academic needs

Plan Time Summary

Average Plan Time Summary			
September 14 - November 13	890 Minutes	November 16 - Current	1050 Minutes

CONESTOGA MIDDLE SCHOOL

2020-2021 CDL SCHEDULE beginning 11/16

Monday AND Thursday		Tuesday AND Friday		Wed
9:35-9:55 Teacher:	Advisory	9:35-9:55 Teacher:	Advisory	9:35-10:05 Advisory
10:00-11:00 Course: Teacher:	Period 1	10:00-11:00 Course: Teacher:	Period 2	10:05-11:00
11:00-12:00 LUNCH				LUNCH
12:00-1:00 Independent Learning		12:00-1:00 Independent Learning		
1:05-2:05 Course: Teacher:	Period 3	1:05-2:05 Course: Teacher:	Period 4	
2:10-3:10 Course: Teacher:	Period 5	2:10-3:10 Course: Teacher:	Period 6	10:05-3:50 Independent Learning
3:15-3:50 Zoom Office Hours for all Classes		3:15-3:50 Zoom Office Hours for all Classes		



WE EXPECT EXCELLENCE



WE INNOVATE



WE EMBRACE EQUITY



WE COLLABORATE

MEMORANDUM

Date: February 3, 2021

To: Beaverton Education Association

From: Susan Rodriguez

RE: Conestoga Schedule Level I Grievance Response

On Wednesday, October 7, 2020, the Beaverton Education Association (BEA) submitted a Level I grievance (Appendix A) demanding training for administrators on the BEA/BSD contract, adjustments to the Conestoga school schedule and compensation for “extra work” for staff. Please consider this memo to be the District’s response to the areas specifically identified in the grievance.

1. **Article 10.A.2 of the collective bargaining agreement has not been violated. “The normal work day for employees” referenced in this language applies to the stated on-site or on-duty work hours for licensed staff members.** The District takes the position that this language refers to start and end times for on-site work for licensed staff, their mandated work day. Staff may not be required to remain at work longer than what is in the agreement.

This language has never been interpreted as limiting the number of hours staff work to complete their job professionally. If that were the case, BEA has failed to timely grieve this provision for countless other members who, by their own choice and professionalism, have worked beyond the confines of this article.

The school schedule does not violate contractual language in that the Conestoga schedule adheres to proper start and end times within the mandated work day. The schedule also meets contractual limits for plan time for licensed staff.

As exempt salaried employees, rather than hourly employees, licensed staff members are not paid for overtime.

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The District prohibits discrimination and harassment based on any basis protected by law, including but not limited to, an individual's actual or perceived race, color, religion, sex, sexual orientation, gender identity, gender expression, national or ethnic origin, marital status, age, mental or physical disability, pregnancy, familial status, economic status, veteran status, or because of a perceived or actual association with any other persons within these protected classes.

2. **The grievance violates Article 4.C.1.a of the collective bargaining agreement, Informal Conference.** The collective bargaining agreement provides contractually required timelines. The grievance was submitted on October 7, 2020 prior to the informal conference having taken place as required by the language in Article 4.1.a. which states "Informal Conference - A thorough discussion of the claim shall be conducted by the grievant and the principal or immediate supervisor to seek grounds for the resolution of the problem." The October 7, 2020 grievance was filed prior to the required Informal Conference which was held on October 14, 2020.
3. **The grievance violates Article 4.C.1.b of the collective bargaining agreement.** Per Article 4.C.1.b, to be considered and processed beyond the Informal Conference, the grievant shall within five days after the informal conference prepare a written statement of such fact on the form contained in Appendix B.

While BEA filed a statement on the Level I form after the October 14, 2020 informal conference, it was submitted on October 21, 2020, and failed to meet the required timeline of October 19, 2020 in order to meet the five day requirement. Additionally, this written statement was incorrectly identified as Level II, despite being the first level of written grievance, and being submitted on the Level I form.

4. **BEA verbally requested a pause to the grievance process on November 4, 2020, but never submitted this request formally in writing.** While contractual timelines may be waived on all potential grievances raised by either side in regular communication meetings, there is no provision in the grievance process for pausing the timeline once a written grievance has been filed. Per Article 2.J, "Once a grievance is submitted in writing, either as outlined above or by a member, then the contractual timelines Article 4 section B-2 will be observed".

Due to the evidence outlined above, it is the District's position that this grievance is not eligible for the remedies sought. The school schedule at issue was contractually compliant in that it took place within the scheduled work day and provided for all contractual provisions for plan time and duty-free lunch. Any extra work licensed staff may have undertaken beyond the contractual work day is ineligible for extended contract pay due to licensed staff's status as exempt salaried employees ineligible for overtime in the carrying out of normal work activities.



To: Lesly Muñoz, BEA Uniserv
From: Don Grotting, Superintendent
Date: Tuesday, May, 4, 2021
Re: Level II Grievance Response

Thank you for taking the time to meet with me on Wednesday, April 28, 2021 to discuss your appeal of the grievance regarding the Conestoga Middle School schedule. This should be considered the formal response to the Level II appeal.

I find no compelling evidence to overturn the findings of the Chief Human Resources Officer (CHRO) as outlined in the Level I Grievance Response, dated March 12, 2021. We hold ourselves to a standard of operations as defined by the collective bargaining agreement, including timelines for action. The CHRO detailed the grievance's failure to meet the timelines and process requirements of Articles 4.C.1.a and 4.C.1.b and no evidence was provided to overturn this finding.

I appreciate the issues and concerns raised regarding the initial schedule that Conestoga started the 2020-2021 school year. While this year has been a challenge for all of us to navigate in our professional lives, and this has often led to a blurring of the lines between professional and personal

Even if the timelines were met, I agree with the Level I conclusion and **I find the schedule implemented at Conestoga to be in compliance with Article 10.A.2 of the collective bargaining agreement and the October 9, 2020 Memorandum of Understanding.** The schedule did not violate the required hours of the "normal work day" and provided for plan time that was in excess of the required 780 plan time minutes required by the October 2020 MOU.

I am upholding all findings as outlined in the March 12, 2021 reply from the CHRO. As stated in the reply,

"The school schedule at issue was contractually compliant in that it took place within the scheduled work day and provided for all contractual provisions for plan time and duty-free lunch. Any extra work licensed staff may have undertaken beyond the contractual work day is ineligible for extended contract pay due to licensed staff's status as exempt salaried employees ineligible for overtime in carrying out of normal work activities."

Beyond this grievance, I am heartened to hear that the modified schedule, as implemented mid-way through the fall, provides additional flexibility and plan time and I thank all for working their hardest to get us through this challenging year to best serve our students. I am optimistic that next year we will return to some greater regularity in our buildings as we welcome more and more students back to the traditional classroom setting.

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