MEMORANDUM TO: The Honourable Laurel Broten
Minister of Education

THROUGH: George Zegarac
Deputy Minister

FROM: Gabriel F. Sékaly
Assistant Deputy Minister
Elementary-Secondary Business & Finance Division

DATE: August 27, 2012

SUBJECT: Changes to the proposed Putting Students First Act, 2012

The following are the changes that have been made to the proposed Putting Students First Act, 2012 that was shared publicly and distributed on August 16, 2012.

1. Public Reporting of decisions by the Minister of Education

Section 8 of the proposed legislation lays out the process by which the Minister of Education will determine if a local collective agreement that is not subject to an MOU is substantially similar (agreement reached on or before August 31, 2012) or substantively identical (agreement reached after August 31, 2012) and how that collective agreement would come into operation.

In order to increase the transparency of the Minister’s decisions and enhance accountability to the public, the proposed change would require that the Minister of Education file a report with the Speaker of the Legislative Assembly and publish a report on the Ministry website with her decision within 14 days of that decision being taken.

Section 8

When collective agreement to come into operation

(9) Subject to subsections (10) and (11), a collective agreement given to the Minister under subsection (2) shall come into operation,

(a) on the day identified by the Minister in writing, provided that the identification is made within three months after the day he or she is deemed by the regulations to have received the collective agreement; or

(b) if the Minister does not identify a day under clause (a), on the later of,
(i) the commencement date specified in the collective agreement, and

(ii) the day that is three months after the day the Minister is deemed by the regulations to have received the collective agreement.

**Report**

(9.1) If a collective agreement comes into operation under subsection (9), the Minister shall publish a report in accordance with the following:

1. If the collective agreement comes into operation under clause (9) (a), the report shall set out the day the collective agreement comes into operation and the report shall be published within fourteen days after the Minister identified that day in writing under clause (9) (a).

2. If the collective agreement comes into operation under clause (9) (b), the report shall set out the day the collective agreement comes into operation and the report shall be published within fourteen days after that day.

3. The report shall be published on the Ministry’s website or by another method determined by the Minister.

**Tabling in Assembly**

(9.2) If the Minister is required to publish a report under subsection (9.1), the Minister shall, within the time period referred to in paragraph 1 or 2 of subsection (9.1), deliver a copy of the report to the Speaker of the Assembly, who shall lay it before the Assembly at the earliest reasonable opportunity.

2. **Fair and transparent hiring and balanced diagnostic assessments.**

The original proposed legislation allowed the LGIC to make regulations prescribing terms and conditions of employment that would be embedded in local collective agreements relating to the hiring of teachers and diagnostic assessments of students which reflect sections K and L of the MOUs with OECTA and AEFO. This would have given the LGIC the regulation making ability to embed these provisions in all local teacher collective agreements, including those who do not have an MOU.

The proposed change would provide the LGIC the regulation making ability to embed these provisions in the local teacher collective agreements for those employee bargaining units for which there is an MOU on or before August 31, 2012.

This provision in no way negates the Minister of Education’s regulation making authority under the Education Act to enact regulations on the hiring of teachers or the Minister’s ability to issue policy memorandum for diagnostic testing. As well, a regulation made under the Education Act overrides any provision in a collective agreement.

Should the proposed legislation be adopted this change would mean that the Minister could not embed the hiring process or the diagnostic assessment in the local collective agreement via a
regulation under this Act for those teacher bargaining units not subject to an MOU. Those with an MOU would have these provisions in their local collective agreement.

**Section 19**

**Regulations**

19. (1) The Lieutenant Governor in Council may make regulations,

   (e) prescribing terms and conditions that may be imposed in an employment contract or a collective agreement, including terms and conditions respecting,

   (i) criteria and processes to be used in the hiring of teachers by boards and any other matters related to the hiring of teachers, and

   (ii) the use of diagnostic assessments of students;

**Same**

(2.1) A regulation under clause (1) (e) prescribing terms and conditions respecting the matters described in subclause (1) (e) (i) or (ii) shall not apply with respect to board employees represented by an employee bargaining agent unless the employee bargaining agent has, on or before August 31, 2012, entered into the Memorandum of Understanding referred to in paragraph 1 of subsection 4 (1) or a Memorandum of Understanding described in subparagraph 2 i of subsection 4 (1).

3. **To reflect the Language in the MOUs – Section N: Opportunity to Bargain Locally and Avoid Disruption to Student Learning**

The MOUs contains language in section N that specify how possible changes to local collective agreements, apart from those specified in the MOU are to be achieved (mutual consent) and that there be no strikes, lock-outs or application for conciliation during the period for local bargaining.

The inclusion of this part of the MOU is accomplished by inserting 2 additional clauses under section 4 of the legislation, as follows:

**Subsections 4(5) and (6)**

**Terms re collective bargaining**

(5) The collective bargaining process for a collective agreement that would apply during the restraint period shall be subject to the terms respecting the process, if any, that are contained in the applicable Memorandum of Understanding.

**Unlawful strike or lock-out**

(6) If a Memorandum of Understanding includes terms prohibiting strikes or lock-outs, any strike or lock-out in contravention of those terms is deemed to be an unlawful strike or lock-out for the purposes of the *Labour Relations Act, 1995*. 
4. **Defining the restraint period – 2 or 3 years**

The original proposed Act allowed the LGIC to make a regulation extending the two year restraint period by one year to ensure that if agreements were not in place by September 1, 2012 and that some of the overpayments made in that period could not be clawed back (e.g.: retirement gratuities) that there was latitude to extend the timeline so that the government could still achieve its fiscal savings target.

With the signing of MOUs with three unions, this regulation making ability is not required for those unions. The change to the proposed legislation reflects this and therefore, the LGIC would only be able to make a regulation extending the restraint period by one year for those employee bargaining groups that have not reached an MOU on or before August 31, 2012.

**Section 19**

**Regulations**

19. (1) The Lieutenant Governor in Council may make regulations,

(a) prescribing a restraint period of no longer than three years for the purposes of the definition of “restraint period” in subsection 1 (1) for board employees represented by an employee bargaining agent that has not, on or before August 31, 2012, entered into the Memorandum of Understanding referred to in paragraph 1 of subsection 4 (1) or a Memorandum of Understanding described in subparagraph 2 i of subsection 4 (1);

Sincerely,

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Gabriel F. Sékaly