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- **Government's Stubborn Refusal to Abandon Anti-Social Aims - Enver Villamizar**
- **Amendments Tabled**
- **Positions of Unions**

Negotiations in K-12 Education

- **Status of Negotiations**
- **Our Working Conditions Are Students' Learning Conditions! - Laura Chesnik**

For Your Information

- **How Class Size Is Regulated**
 - **Class Size - Elementary Teachers' Federation of Ontario**
-

Proposed Changes to School Boards Collective Bargaining Act

Government's Stubborn Refusal to Abandon Anti-Social Aims

- Enver Villamizar -

The Liberal government of Kathleen Wynne has proposed amendments to the *School Boards Collective Bargaining Act* that governs collective bargaining in K-12 education. Minister of Education Mitzie Hunter claims the changes will "strengthen its successful model for collective bargaining in the education sector" by making it more "flexible, transparent and consistent."



The claim that the model of negotiations is successful and just needs to be strengthened hides the problems that have emerged under the legislation as a result of its aims. The legislation was supposed to overcome the crisis the government had created when it resorted to using Bill 115, the *Putting Students First Act*, to impose contracts on teachers and education workers without their consent. However, the push to formalize two-tiered bargaining with both a provincial and local component has as one of its main aims to undermine the role of local decision-making, especially by school boards, in education. This aim was reflected in recommendations from former TD banker Don Drummond and his Commission on the Reform of Public Services that was established by the McGuinty Liberal government. The Commission made sweeping proposals for how the government could restructure all public services in a manner that would facilitate freeing up billions in public funds for handing over to the banks in the form of interest on the debt and deficit and direct handouts to companies. In particular, one of Drummond's main preoccupations was that school boards had the authority to enter into agreements with teacher and education unions while it was the province that was required to fund K-12 education as school boards had lost the authority to raise taxes. As a result, school boards could agree to terms with local teacher and education unions which would require more funds to be invested in education, something the province saw as a problem for their determination to "restrain" spending on public services in order to pay the rich. Establishing two tiers of negotiations in K-12 education was a mechanism to give the government more say over the direction of education and labour relations with those who provide it in order to achieve anti-social aims.

Teachers and education workers and their unions are not opposed to two-tiered bargaining so long as it is used to raise standards of education across the country to the highest level. However, in practice the mechanism is being used by the government to try and eliminate higher standards at the local level as the government pursues its self-serving aims. As a result of the government sticking to its aim of removing public funds from public education to pay the rich, provincial bargaining legislation has not resolved any problems and, in fact, has created new ones.

The 2014 round of negotiations, the first ever under the legislation, saw the province once again use its legislative majority to criminalize workers' strike action at the local level. The government passed back-to-work legislation against striking teachers in Durham, Rainbow District (Sudbury) and Peel.

This was done just in case the Labour Relations Board -- which was hearing a complaint from the local school boards at the time -- would not rule the strike to be in violation of the new legislation. The Labour Relations Board let the government off the hook by ordering the teachers back to work on the basis that the local strike was "contaminated" by provincial issues based on spurious evidence that included slogans written on strikers' signs that raised issues being negotiated at the provincial level -- a clear violation of their right to conscience. The Labour Relations Board however allowed the strike to resume after it was "cleansed" of provincial issues, thus forcing the government to use its back-to-work legislation. Under the new two-tiered bargaining legislation, the use of dictate became more egregious and irrational as the provincial government used it to criminalize local strike actions.



The amendments now being tabled are coming as the government wants to extend provincial collective agreements in the K-12 sector to 2019, well past the date of the next provincial election, eliminating local collective bargaining. The government hopes to achieve "labour peace" on the basis of suppressing workers' rights to negotiate at the local level.[1] Part of the amendments relate to allowing the extension; however, the government is also using the opportunity to bring in other changes that deal with how negotiations are to be conducted in the future, concentrating more control over public education and those who deliver and administer it in the hands of the executive of the Ontario government.

Teachers and education workers should continue to demand that the government back down on its attempts to limit and eliminate local say over

education. Having a say over one's working conditions is a fundamental right that belongs to workers by virtue of the work they do. In education this say brings forward the objective problems in education including those facing the students who also have a right to a say over their learning conditions. Locally elected trustees as well as local school board administrators who often come from teaching are a link between the electorate in a community and the education system. The further concentration of decision-making power away from the local to the provincial level that is taking place today does not favour public education, but instead the private interests who want to restructure education to free up public funds and to make it a source of increased profits.

Note

1. See "Local and Provincial Negotiations Are Two Parts of One Whole," *Ontario Political Forum*, February 14, 2017.



Amendments Tabled

On February 21, Education Minister Mitzie Hunter tabled Bill 92, the *School Boards Collective Bargaining Amendment Act* in the Legislature. The proposed bill would amend the *School Boards Collective Bargaining Act*, the legislation that governs collective bargaining in the K-12 education

sector. This Act was passed by the Liberals with the support of the NDP in 2014 and requires two tiers of negotiations -- provincial and local -- between provincial unions, the government, school board and trustee associations at the provincial level; and between local unions and school boards at the local level for teachers. Prior to the passage of the Act provincial-level negotiations had been voluntary for all staff, with local bargaining the norm. Under the new legislation provincial bargaining remained voluntary for support staff only.

The government indicates amendments to the Act will include the following provisions (notes in italics are from *Ontario Political Forum*):

"Allowing collective agreements to be extended to support improved flexibility for all parties."

This refers to permitting contract extensions.

"Ensuring parents and students are well-informed in advance of labour disruption by requiring an additional five days' notice for strikes and lock outs in certain circumstances. This is in addition to five days of notice already included in the Act."

This provision would require a union to give five days' notice every time it seeks to escalate or to change its strike actions. Extending the notice period for such changes would give the government more time to pass legislation imposing contracts.

"Requiring that the trustees' associations clearly report on the public funds they receive, including salaries for labour relations employees exceeding \$100,000, as a means to improve transparency."

Talk about transparency for the trustees' associations is an attempt to present the government as a neutral body between school board associations and unions. In fact more and more the government and the school board associations act as one in attacking public education and those who provide it.

"Requiring participation for all education-sector unions in central bargaining to ensure consistency across the province."

This relates to support staff bargaining units within the different education unions who were not forced under the Act to negotiate at central tables, but could do so voluntarily.

"Ensuring that any new bargaining unit formed during the term of a collective agreement is subject to the central terms negotiated by its applicable teachers' federations or education workers' unions. This supports improved consistency and equity."

This would appear to eliminate local negotiations for a first contract for a new bargaining unit until 2019 at least, given that any such first agreement must be subject to central terms contained in the applicable extended agreement which, if the current extensions are ratified, will exclude local bargaining over the life of the agreement.

"Allowing the government or the applicable trustees' association to get status updates on local bargaining and, if asked, to assist with local negotiations."

This indicates that the provincial government and provincial trustees' associations want mechanisms to give themselves an explicit role in local negotiations between unions and school boards, albeit only if asked. This suggests that school boards will come under increasing pressure to submit to provincial dictate first voluntarily, and later as a requirement, if they refuse.

"Granting all parties the ability to file a complaint with the Ontario Labour Relations Board to resolve conflicts between central and local agreements."

This relates to how contradictions in language between central and local agreements are resolved. How such contradictions are resolved, and according to what parameters, is a matter of great importance as the government moves to eliminate any local arrangements which are of a higher standard than central agreements.

"Changing language from 'consent' to 'mutually agreed' in certain areas where the trustees and the Crown engage in joint decision-making."

This appears to be a change in language for how the Minister of Education and trustees' associations work together in preparation for and in the midst of bargaining.

"Clarifying the Minister of Education's delegation authority and the role of the Education Relations Commission."

The amendments would allow the Minister to delegate their substantial arbitrary powers under the Education Act, especially as it relates to oversight of school boards, to anyone in the Ministry who would also have the ability to sub-delegate those powers to someone else.

The Education Relations Commission was used by the government during the last provincial round of negotiations to provide anti-social justifications for the government to pass back-to-work legislation against striking teachers in the Durham, Rainbow and Peel district school boards. The government appointed body claimed that the right to strike must be limited "to uphold the public interest." The Commission's role is to "provide advice to the Lieutenant Governor in Council as to whether the continuation of a strike by school board employees or of a lock-out of school board employees will, in the opinion of the Commission, place in jeopardy the successful completion of courses of study by the affected pupils." That the government is now "clarifying its role" in the School Boards Collective Bargaining Act suggests it wants to use it in the future to justify limiting the right to strike. See [Ontario Political Forum, May 28, 2015](#).

For the full text of Bill 92, [click here](#).



Positions of Unions

Canadian Union of Public Employees

"CUPE Ontario strongly opposes an amendment to the *School Boards Collective Bargaining Act* (SBCBA)," a news release said.

"If passed, the new legislation would take away the rights of school board support workers to democratically determine their participation in central bargaining with the provincial government. Currently, education workers represented by CUPE and other support staff unions may request to participate in central bargaining but are not mandated into the process."

"We have repeatedly shared with the government that, in our view, this is not the part of the Act that needs an overhaul. Legislating all education workers into a central bargaining process with the provincial government, is wrong. And, as previous successful rounds of bargaining have proved, completely unnecessary. In our view, if it ain't broke, why fix it?" said Terri Preston, Chair of CUPE's Ontario School Board Coordinating Committee.

"Respect for workers' rights to determine their participation in the process, as currently provided by the Act, has been fundamental to CUPE's support for and participation in central bargaining with the provincial government."

"Mandatory central bargaining is anti-democratic," said Fred Hahn, President of CUPE Ontario. "We're not going to sit idly by while this government attempts to undermine our democratic right to free collective bargaining. We've fought this before, and we'll fight this again."

"CUPE has continuously made its concerns with this change known to the Ministry, through consultations and correspondence, and calls on the Minister to delete this change from the draft legislation before it proceeds any further through the legislative process."

Ontario Secondary School Teachers' Federation

"Although the Ontario Secondary School Teachers' Federation (OSSTF/FEESO) participated in the consultations regarding the proposed amendments, it is obvious that the consultations were not taken seriously by the government."

"There are a number of significant structural flaws in the current legislation and OSSTF/FEESO made 11 recommendations to streamline and strengthen the bargaining process. All were ignored, resulting in none of our issues being addressed and the process continuing to be lengthy and unwieldy," said OSSTF/FEESO President Paul Elliott.

"These changes announced by the Minister do not improve the legislation and do nothing to make the bargaining process more efficient," concluded Elliott.



Negotiations in K-12 Education

Status of Negotiations

A majority of members of the Ontario English Catholic Teachers Association, the Canadian Union of Public Employees and the Association des enseignantes et des enseignants franco-ontariens have now ratified extension agreements. The agreements cannot yet come into force as they are conditional upon the *School Boards Collective Bargaining Act* being amended to make extending the term of a collective agreement legal, something currently illegal under the *Act*. The Elementary Teachers' Federation of Ontario has been holding mass meetings, with ratification votes on their tentative extension agreements for both teachers/occasional teachers and support staff taking place from February 27-March 1.

On February 23 the Minister of Education boasted that the government had completed tentative labour agreements with "all teachers and education workers," in the province. This came as the government had reached a tentative agreement with provincial negotiators representing the provincial executive of the Ontario Secondary School Teachers' Federation (OSSTF) on an extension of their agreements. Showing the Minister's complete disrespect for the decision-making process of the unions and in particular the say of locally elected officials in decision-making, the tentative agreements had yet to be approved by the union's local presidents and chief negotiators, something that is required for it to be taken to the members for consideration and voting.

In addition, the government announced that it had reached a tentative agreement "on remedy in respect of the Court's ruling on the *Putting Students First Act, 2012*" with OSSTF. This is the

remedy which was made a matter of negotiation between the unions and the government for the violation of workers' rights by the government during K-12 negotiations in 2012-13 which culminated in the imposition of contracts using Bill 115, the *Putting Students First Act*. The terms of the remedy have not been made public, however it is likely now that whatever OSSTF's provincial negotiators agreed to will be made the template for other provincial unions by the government. It would be laughable were it not so serious that using one union to establish a template to impose on others is precisely what Bill 115 was used to do! This shows the necessity for teachers and education workers to find ways to not permit their ranks to be split by the government whose aim is to weaken and suppress their unity in defence of their rights and the rights of all.

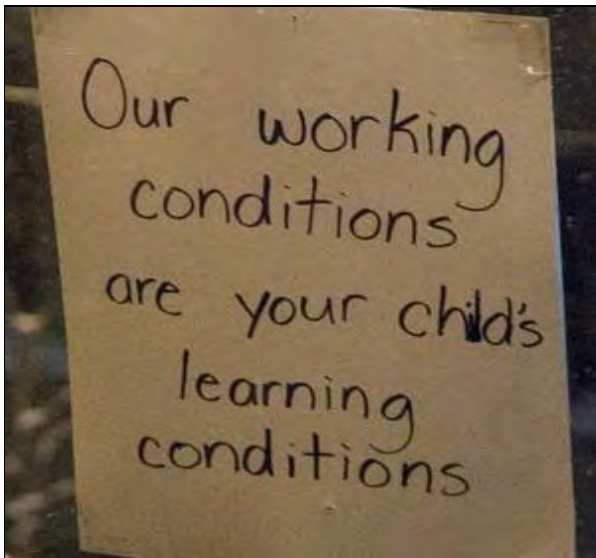


Our Working Conditions Are Students' Learning Conditions!

- Laura Chesnik -

In mass meetings and in online fora teachers and education workers in Ontario are arguing out how to affirm the right to education in the context of agreements between provincial education unions and the Liberal government. One of the main issues being discussed is the issue of the class size and composition. This goes to the heart of the demand that governments affirm education as a right and provide the working conditions and learning conditions which both educators and students require to do their duty to society.

Significance of Class Size and How It Is Regulated



For some time the government of Ontario, like other provincial governments across the country, has refused to address the demand for real caps on the size of classes in elementary schools. In a few grades, "hard caps" that set out the maximum number of students permitted in an individual class do exist. In others, such as junior and senior kindergarten, there are only limits placed on the class size average across an entire school board which can encompass hundreds of schools.

The introduction of full day kindergarten (FDK) in Ontario, for example, was a positive development that was pushed for by the people as a measure to expand public education. The Liberals have used FDK to try to present

themselves as being for the expansion of public education, yet they have refused to establish the working and learning conditions in this area in particular that are required to ensure the health and well-being of the students and the staff. Stories abound of unacceptably high noise levels, high student-to-staff ratios, non-identified special needs for students without adequate supports and various other health and safety issues that come with classes of over 30 children between the ages of three and six. These problems and the need for real solutions are what is coming to the fore as teachers and education workers argue out what to make of the tentative agreement negotiated between their provincial union and the Ontario government.

Education Is a Right, Not a Policy Objective!

Teachers and education workers start from the premise that education is a right and that society is duty-bound to affirm this right as an investment in its own future. Instead of affirming the right to education, the government has made it a policy objective subject to funding parameters which they decide in the context of an overall program to use the public purse to pay the rich. In so doing, they deprive the youth, as well as those who provide education, of their rights based on claims that there are not enough resources available, while this is not the refrain when it comes to the demands of the monopolies. One of the ways the right to education gets violated is through the use of school board-wide averages and exceptions to those averages for regulating class size. Instead of what are called hard caps which set a firm standard for class size, the use of averages permits widespread variation in actual class sizes. In this way, governments have eliminated the human factor by reducing children and youth to numbers, averages and funding units to be manipulated province-wide, across school boards and even within a school so as to make do with dwindling public resources.



All this is presented to those who deliver education as something outside of their control, all to be determined by higher-ups. Instead of accepting this state of affairs, teachers and education workers are bringing forward the problems they are experiencing at the local level, especially as concerns class sizes and composition, to argue out what is needed in their classrooms and across their local school boards. This is a matter that concerns everyone in Ontario and as such everyone is encouraged to join in this important discussion.



For Your Information

How Class Size Is Regulated

There are 76 school boards in Ontario made up of 31 English public, 29 English Catholic, four French public and eight French Catholic boards. There are also 10 school authorities that include four geographically isolated boards and six hospital-based school authorities. Ontario also has one Provincial Schools Authority. All quotes below are taken from Ontario Government Regulation 132/12: Class Sizes under the *Education Act*.^[1]

The government differentiates four divisions of grades within the elementary and secondary grades to determine class sizes. They are: junior kindergarten and kindergarten; primary grades (grades 1-3); junior intermediate elementary grades (grades 4-8); and intermediate and senior secondary grades (grades 9-12).

The regulation defines "class" in relation to elementary schools as "a group of pupils who are

scheduled to spend more than 50 per cent of their instructional time together during the cycle that includes October 31, but does not include a self-contained class established for exceptional pupils."

Each board picks a date to determine its elementary class sizes between September 1 and September 30. School boards must then report these numbers to the Ministry of Education by October 31. There is no other date in a school year when boards report on elementary class sizes, although class sizes can change during the year. Any new students who move into a school past the reporting date would be absorbed by that school without any staffing increases or the creation of new classes.

Junior Kindergarten and Kindergarten

The average class size in each school year of a board's full day junior kindergarten and kindergarten classes is to be no larger than 26. It is important to note that this is a board-wide average calculated based on all classes in this division a board has in all its schools. It is arrived at by dividing the total number of pupils enrolled in full day junior kindergarten and full day kindergarten classes in that board by the total number of full day junior kindergarten and kindergarten classes in the board.

Primary

In primary classes (grade 1-3) there is a class size limit of 23 students. This is often called a "hard cap," meaning the number of students in each class is limited by a specific number rather than simply contributing to a board-wide class size average. The regulation governing these grades further states: "In each school year, at least 90 per cent of the classes described in section 4 shall have 20 or fewer pupils." The 20 or fewer pupils is known as a "soft cap" given that up to 10 per cent of classes can have more than that number, up to a maximum of 23 which is the "hard cap." Primary is the only division where a limit is placed on the number of pupils who can be in individual classrooms. Class size for all other divisions is expressed as a school board-wide class size average. School boards must comply with primary class size limits on the day of reporting chosen by each board in September. The regulation is silent about what is to happen after that point in the school year, should new enrolments result in some classes having more than 23 students, or a board having more than 10 per cent of its classes with over 20 students in them. This would appear to be way to condone, if not force some schools especially in urban areas, to violate the spirit, if not the letter of the regulation when it comes to class sizes.

Junior and Intermediate

For junior and intermediate elementary grades (grades 4-8) the regulation specifies that board-wide class size averages must no greater than 24.5. However, an exception is made for 36 of the 72 school boards in Ontario for whom the average has been set lower or higher than 24.5. In the 36 boards named in the exception the grade 4-8 class size averages range from 18.5 (Superior-Greenstone District School Board) to 26.4 (Avon Maitland District School Board).[2]

Making average class size a board-wide parameter permits some schools to have class sizes over 30 because that same board will have other schools where class sizes are smaller than the prescribed average. Despite large class numbers in some schools, a school board would still be in compliance with the average class size limit that applies to it since the average takes into account all classes in grades 4-8 of that school board. School boards can encompass vast geographical areas, including urban and rural areas, meaning that small classes in its rural schools can permit (or force) a board to increase class sizes well above the average in its urban schools since there are no hard caps in this division.

Students with Special Needs

An issue that contributes to increased numbers of students in an individual class, while maintaining an overall board-wide class average in grades 4-8, is the way the province has boards calculate students with special needs in class sizes. When a student spends 50 per cent or more of their time outside of their home room class the student can be counted as 0.5 of a pupil in their home room. This occurs primarily with students with special needs who can spend 50 per cent of their day in a contained classroom for students with special needs where there are dedicated teachers and education workers often qualified in Special Education. Classrooms housing programs for exceptional pupils are not counted as a class and don't contribute to the board-wide average. In practical terms this means that students with special needs who spend half their day in a home room and half in a dedicated Special Education room are counted as "half a student" for their home room according to government regulations. This is another way that class sizes are increased above limits and stipulated averages based on the way students are viewed as funding units rather than human beings.

Split Classes

Another issue that presents itself in elementary schools is what the regulation refers to as mixed grades. Schools are forced in some cases to use split classes in order to maximize the sizes of classes and teacher to student ratios because their staff allocations are based on outdated funding formulas rather than the actual human beings in the classes and their objective needs.

If a school would otherwise exceed its class size limit in a primary class, students above the limit can be moved into "mixed" or "split" classes which can combine two or even three smaller classes from different grade levels. Schools are required to do this to maximize the size of classes and it is part of the way in which students are turned into funding units and shuffled around, and teachers and education workers placed in untenable working conditions having to teach multiple grades and ages at the same time.

In the case of mixed grades the regulation stipulates: "If a class includes one or more pupils enrolled in the primary division and one or more pupils enrolled in grade 4, 5, 6, 7 or 8, the class shall have 23 or fewer pupils." There is no additional limiting of a class size should a split class occur within grades 4-8 or accommodate both kindergarten and primary students (eg. kindergarten/grade 1 split).

Secondary Intermediate and Senior

The definition of "class" in the secondary division, which is organized differently, is more complicated, involving pupils, courses, credits, course cycles and other variables. The full definition as well as the method for calculating average class size which involves generating "pupil credits" and "classroom credits" for all schools can be found in the regulation.

With respect to secondary school (grades 9-12), the regulation states: "The average size in each school year of a board's secondary school classes shall not exceed 22." Again this is an average, meaning that some classes would be larger and some smaller than the board-wide average. There are two dates for determining secondary class sizes: October 31 and March 31, with school boards required to report their numbers for both dates to the Ministry of Education by June 30.

Notes

1. [Ontario Government Regulation 132/12: Class Sizes](#).
2. A table indicating maximum average class sizes for grades 4-8 for the 36 school boards named in the exception can be seen in [Ontario Government Regulation 132/12](#).



Class Size

- Elementary Teachers' Federation of Ontario -

Introduction

For years, the Elementary Teachers' Federation of Ontario (ETFO) has lobbied for smaller class sizes.

The research supports the federation's position that, particularly in the primary grades, students in small classes perform significantly better than their peers on reading and mathematics tests. Students in small classes participate more in school and have fewer discipline problems. When in small classes, minority students and inner city students show an even greater academic improvement.

Further, evidence indicates that manageable class sizes and class composition in all grades contribute significantly to a teacher's ability to plan and program effectively for students, and to devote time to working with students on an individual basis.

Government Commitment

Primary Class Size Reduction

The current requirements on primary class size (Grades 1-3) are that each board must organize primary classes so that:

- At least 90 percent of a board's primary classes have 20 or fewer students;
- Up to 10 percent of a board's primary classes can have a higher cap of up to 23 students.

Each year school boards are required to submit their primary class sizes to the Ministry of Education. For the 2013-14 school year:

- All primary classes had 23 or fewer students;
- 90.0 percent had 20 or fewer students.

While this indicates the circumstances on the snapshot date, class sizes will often change as the school year progresses.

The government has exempted classes for students in the Full Day Early Learning Kindergarten Program (ELPK) from this class size cap expectation. There is no cap for full-day kindergarten classrooms. Instead, the government said that school boards are required to maintain an average ELPK class size of 26 across the board. The result is that some ELKP classes have 30 students while others have 15.

Junior and Intermediate Class Size Reductions

Junior and intermediate class sizes can vary widely from school to school and from board to board. The regulatory requirements are that boards must have a board average of 24.5 students for Grades 4 to 8.

ETFO Position

The federation welcomes the smaller class sizes for elementary students. However, ETFO's policy remains:

| Class Size in Single Grade Classes | |
|---|-------------|
| Junior Kindergarten | 15 Students |
| Senior Kindergarten | 16 Students |
| Grades 1, 2, 3 | 18 Students |
| Grades 4, 5, 6 (Junior) | 20 Students |
| Grades 7, 8 (Intermediate) | 22 Students |

| Class Size in Combined Grade Classes | |
|---|-------------|
| Kindergarten | 14 Students |
| Grades 1, 2, 3 | 16 Students |
| Grades 4, 5, 6 (Junior) | 18 Students |
| Grades 7, 8 (Intermediate) | 20 Students |

Studies have shown that the more time the student spends in small classes, the greater the improvement. To reap the long-term benefits, students must spend at least two years in a small class. Students who spent four years in a small class received the greatest benefit.

Smaller classes cost more. However, fewer students repeating grades make-up for that cost. More high school graduates with increased learning power adds more money to the economy and reduces the cost of social welfare benefits. (Pate-Bain et. Al. 1999)

In addition to the improvements that show up on achievement tests, teachers report that "They get to know their students better, spend less time on discipline, and are able to provide students with more individualized instruction. Generally, smaller classes go hand-in-hand with greater enthusiasm and achievement among both students and teachers." (Dupuis, 2000)

Individual attention includes more than one-on-one instruction. A focus on the needs of individual students occurs when teachers form small groups and during whole-class instruction. Smaller classes allow teachers to know and understand the needs of the individual students, allowing intervention earlier when problems arise. (Zahorik, 1999)

Molnar (1999) has summarized why small classes are so effective:

- Children misbehave less because of the family atmosphere and quick intervention by teachers.
- Teachers spend more time on direct instruction and less on classroom management.
- Classes include more "hands-on" activities, although most instruction remains teacher -- not student -- centred.
- Students become more actively engaged in learning than peers in large classes.
- Teachers of small classes "burn out" less often.

Recent research into the Ontario Primary Class Size confirms that "class size reduction can provide the environment in which teachers can interact with individual students more frequently and use a greater variety of instructional strategies, create more opportunities for higher-order co-construction

of meaning by students, and interact more frequently with other teachers and adults in support of classroom teaching. The evidence suggests that students learn more, are more engaged, and are less disruptive. Parents of children in smaller classes perceive improvements in their children's school experiences." (Bascia 2010)

Conclusion

Elementary teachers support the reduction of class size in the primary grades. However, the government must do more to support students throughout their elementary school years. In public school boards in Ontario, funding for elementary school students still lags behind that for secondary students. Secondary students are funded at \$5,763 per student. Elementary students are funded at \$5,424 per primary student and \$4,491 per junior /intermediate student -- a difference of \$1,272 for a student moving from Grade 8 to Grade 9. Equalizing this Foundation Grant would make an important difference for children in their formative years.

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