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EDUCATION: Achieving Student Success Together

Safety and Security in Schools:

Update on the Safe Schools Act – Beyond Zero Tolerance?

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Since its inception in 2000, Ontario's Safe Schools Act¹ has been a lightning rod for criticism and apparent confusion throughout the province, culminating in a 2005 Ontario Human Rights Commission complaint alleging that the Act and school board policies discriminated against students with disabilities and from racial minorities.

In response, the Province has struck a Safe Schools Action Team with a mandate to implement a comprehensive safe schools plan, including a complete review of the Safe Schools Act and anti-bullying initiatives.

All of this comes at a time when educators are facing a host of new challenges to maintaining safe schools. Cell phones, Internet chat rooms and text messaging have become new weapons in the hands of bullies, used to swarm and torment their victims. Facilitated by these new technologies, "fight clubs" have sprung up at schools in several well-publicized instances across North America, with video of the brawls immediately posted online for all to see. Of course, such "cyber bullying" only magnifies the face-to-face presence bullies in Ontario's schoolyards, where one in three students reports being victimized.

Within this context, a catch-phrase that accompanied the introduction of the Safe Schools Act – "zero tolerance" – now is being re-evaluated in Ontario. In its report on the Act delivered to the Minister of Education last June, the Safe Schools Action Team advocated a move away from that mindset, towards adoption of a progressive discipline approach. The Action Team concluded that the focus on zero tolerance (and emphasis on "mandatory" disciplinary measures in the Safe Schools Act) has obscured provisions of the Act that permit educators to consider mitigating factors, leading to widespread confusion and inconsistency throughout the province in applying the Act. To that end, the Action Team recommended specific amendments to provisions of the *Education Act* dealing with student discipline.

¹ *Safe Schools Act, 2000*, S.O. 2000, c. 12 (Bill 81) (reflected as Part XIII of the *Education Act*, R.S.O. 1990, c. E.2, as amended).

This paper will review the Action Team's findings and recommendations, both with respect to the Safe Schools Act and adoption of bullying prevention initiatives, as educators await the Minister's response on these proposed changes.

UPDATE ON THE SAFE SCHOOLS ACT

Why Review The Safe Schools Act?

Beginning in December 2004, the Safe Schools Action Team undertook a review of the Safe Schools Act and related policies and programs. The Team's efforts included a province-wide consultation with more than 700 educators, parents, students and other community members.

In a "Discussion Guide"² released in advance of its consultation tour, the Action Team identified five reasons why the Safe School Act was being reviewed:

1. Data indicated that the Safe Schools Act was not being consistently applied across Ontario;
2. Some groups were seen to be more likely to be suspended or expelled than others;
3. Expulsions were seen as making the entire community less safe in the long run;
4. There was a perception that judgment could be used more often to reduce the number of suspensions and expulsions; and
5. There was a perception that the Safe Schools Act focuses more on discipline than on preventing behaviours leading to suspensions and expulsions.

In advance of the Action Team's report, the Ministry of Education had – for the first time since the Safe Schools Act was introduced – released suspension and expulsion data gathered from Boards province-wide for the 2003-2004 school year. These statistics disclosed:

Suspensions:

- In 2000-2001, the year before the Safe Schools Act was implemented, 113,778 students were suspended; by 2003-2004, the number of students suspended rose to 152,626³ or 7.2 per cent of all Ontario students;
- Of suspensions in 2003-2004, 65 per cent of students were suspended once, 17 per cent twice, and 18 per cent were suspended three or more times;
- 77 per cent of suspended students were male and 23 per cent were female;
- 18 per cent of suspended students were students with exceptionalities⁴ (representing 8.8 per cent of all students with exceptionalities);

² Ontario Safe Schools Action Team, *Safe Schools... Safer Communities* (Toronto: Queen's Printer for Ontario, 2005) at pp. 13-14.

³ A drop of 8 per cent from the prior year.



- there was an extremely broad range of suspension rates among Ontario Boards: from 0.5 per cent of students to 36.1 per cent of students;

Expulsions:

- In 2000-2001, 106 students were expelled; by 2003-2004, the number of reported expelled students rose to 1,909 (or 0.08 per cent of all students);
- Of the 1,909 expulsions, almost 90 per cent were limited expulsions of anywhere from 20 days to one year, meaning about 10 per cent were full expulsions;
- Of those expulsions, 87 per cent of expelled students were male and 13 per cent were female;
- 379, or about 20 per cent, of expelled students were students with exceptionalities; and
- Nine Boards did not expel any students in 2003-2004 while, among Boards that did expel students, expulsion rates ranged from 0.0048 per cent to 2.3 per cent.

Overall, the rate of suspensions and expulsions across the province (and especially expulsions) rose dramatically following implementation of the Safe Schools Act. This was borne out by the following figures released by the Ministry:

Year	Suspensions		Expulsions	
	Number	Percentage of All Students	Number	Percentage of All Students
2000-2001	113,778	5.3%	106	0.005%
2001-2002	149,483	6.9%	1,308	0.061%
2002-2003	165,289	7.6%	1,786	0.083%
2003-2004	152,626	7.2%	1,909	0.09%

Within individual Boards, the jump in suspension and expulsion rates in some cases was even more dramatic. By way of example, the Grand Erie District School Board saw its suspension rate swell from 1.6 per cent of students in 2000-2001 to 10.6 per cent in 2003-2004. Likewise, the rate of expulsions in the Ottawa-Carleton District School Board jumped from zero in 2000-2001 to 308 (or 0.4 per cent of students) in 2003-2004.

The Old and New Statutory Regimes

⁴ An exceptional student was defined by the Ministry as “a student whose behavioural, communicational, intellectual, physical or multiple exceptionalities are such that he or she is considered to need placement in a special education program by a committee”.



One must remember that, prior to the Safe Schools Act, section 23 of the *Education Act* (which was repealed under the Safe Schools Act) governed the suspension and expulsion of students, with authority to suspend limited to principals and the power to expel in the hands of the Boards. Those powers were discretionary. There was no concept of “mandatory” suspensions and expulsions. There was a right to appeal suspensions to the Board. The grounds for suspension were limited to: persistent truancy; persistent opposition to authority; habitual neglect of duty; wilful destruction of school property; use of profane or improper language; and conduct injurious to the moral tone of the school or to the physical or mental well-being of others. Meanwhile, a Board could expel a student from its schools only where the student’s conduct was so “refractory”⁵ that his or her presence was injurious to other pupils. An expulsion could be indefinite but a Board had discretion to readmit the student at any time.

Now, under Part XIII of the *Education Act* (enacted by way of the Safe Schools Act), educators have the following range of disciplinary measures available to them:

- Exclusion⁶ (s. 305):
 - A principal may direct a person to leave the school premises if the principal believes that the person is prohibited by regulation or board policy from being there;
 - O. Reg. 474/00 (s. 3): A person is not permitted to remain on school premises if his or her presence is detrimental to the safety or well-being of a person on the premises, in the judgment of the principal, a vice-principal or another person authorized by the board to make such a determination;
 - A principal can properly exercise these powers only where the safety concerns are genuine, and the principal’s response to the concerns is a reasonable one in all of the circumstances⁷;
- Mandatory Suspension (s. 306):
 - Where a pupil commits a listed infraction (i.e. uttering a threat of serious bodily harm) while at school or engaged in a school-related activity;
 - Not mandatory where mitigating factors exist (see below);
 - Minimum duration of one day and maximum of 20 days;
 - Teacher (for one day) or principal has authority;
 - Suspension of more than one day is subject to review under Board policy and appeal to Board (or designated committee) (s. 308);
- Discretionary suspension (s. 307):

⁵ In *Peel Board of Education v. B. (W.)* (1987), 59 O.R. (2d) 654 (Ont. H.C.), Reid J. wrote at paragraph 27 that the meaning of “refractory” is plain: “resisting control or discipline, stubborn” or “stubborn, unmanageable, rebellious”.

⁶ At a recent dinner speech to the OBA Education Law Section, the Chair of the Safe Schools Action Team, MPP Liz Sandals, referred to exclusion as the “dirty little secret” of Ontario’s education system. From a practical perspective, she said, the power to exclude is being used by educators to discipline students without resulting in a formal record, and with no right of appeal.

⁷ *Bonnah v. Ottawa-Carleton District School Board* (2003), 64 O.R. (3d) 454 (C.A.) at para. 34.

- Applies to acts identified under Board policy;
- May be suspended from school and all school-related activities or from one or more classes or school-related activities;
- Minimum duration set under Board policy and maximum of 20 days;
- Teacher (for maximum of minimum duration) or principal has authority;
- Suspension of more than one day is subject to review under Board policy and appeal to Board (or designated committee) (s. 308);
- Mandatory Expulsion (s. 309):
 - Where a pupil commits a listed infraction (i.e. possessing a weapon or causing bodily harm) while at school or engaged in a school-related activity;
 - Not mandatory where mitigating factors exist (see below);
 - Principal has authority;
 - Pupil must be suspended (for 20 days maximum) pending inquiry;
 - Expulsion is decided by way of hearing before Board (or designated committee);
 - Board may order full expulsion (from any school in the province unless the student meets prescribed requirements) or limited expulsion (from the school the pupil was attending);
 - Minimum duration of mandatory expulsion is 21 days (including suspension period);
 - Subject to appeal (s. 311);
- Discretionary expulsion (s. 310):
 - Applies to acts identified under Board policy;
 - Principal has authority;
 - Subject to appeal (s. 311).

Even when dealing with “mandatory” suspension or expulsion, a principal or Board is afforded fairly broad discretion in terms of the duration of disciplinary measure, under subsections 306(9) and 309(19) of the *Education Act*.

In addition, the same provisions of the *Education Act* that deal with “mandatory” discipline also permit exceptions where there are mitigating factors. For example, subsection 309(3)⁸ of the Act provides:

...expulsion of a pupil is not mandatory in such circumstances as may be prescribed in regulation.

⁸ Similar language regarding suspensions is set out at subsection 306(5) of the Act.

In conjunction with subsections 306(5) and 309(3) of the Act, Ontario Regulations 37/01 and 106/01 each contain language that provides that the expulsion or suspension of a student is not mandatory if:

- (a) The pupil does not have the ability to control his or her behaviour;
- (b) The pupil does not have the ability to understand the foreseeable consequences of his or her behaviour; or
- (c) The pupil's continuing presence in the school does not create an unacceptable risk to the safety of any person.

Reconsidering "Zero Tolerance"

A central premise of the report of the Safe Schools Action Team is that the foregoing range of options presently available to educators is being overlooked, or at least there is that risk when one adopts a "zero tolerance" mindset.

Of course, for all the public debate during the past six-plus years regarding "zero tolerance" in Ontario's schools, that phrase appears nowhere in the *Education Act* itself or the Ontario Schools Code of Conduct⁹ (which actually preceded the Safe Schools Act by a month). A Ministry news release, at the time it was introduced, stated that the Code "sets out a zero tolerance policy for bad behaviour"¹⁰.

The same statement was made, and the term "zero tolerance" itself appears to have entered Ontario's political lexicon, in terms of education, in the lead-up to the 1999 provincial election, when the Progressive Conservative Party "Blueprint" promised a "zero tolerance policy for bad behaviour".¹¹

What does "zero tolerance" even mean? The Oxford Dictionary¹² defines the phrase as:

non-acceptance by the police or other authority of anti-social behaviour, esp. by strict and uncompromising enforcement of the law

While the Ontario Schools Code of Conduct makes no specific mention of "zero tolerance", the tone of the Code of Conduct certainly is consistent with the dictionary definition. The leadership role of principals, as described under the Code of Conduct, includes "holding everyone, under their authority, accountable for their behaviour and actions" and the Code specifies the "mandatory consequences" the flow from certain student actions.

The report of the Safe Schools Action Team, released last June, marks a clear move away from the notion of an "uncompromising" mindset. In its 28-page report, entitled *Safe Schools Policy*

⁹ *Ontario Schools Code of Conduct* (Toronto: Queen's Printer, 2001).

¹⁰ K. Bhattacharjee, *The Ontario Safe Schools Act: School Discipline and Discrimination* (Ontario Human Rights Commission; July 8, 2003) at p. 6.

¹¹ *Ibid.*

¹² *Shorter Oxford English Dictionary*, 5th ed., Vol. 2 (Oxford: Oxford University Press, 2003) at p. 3710.

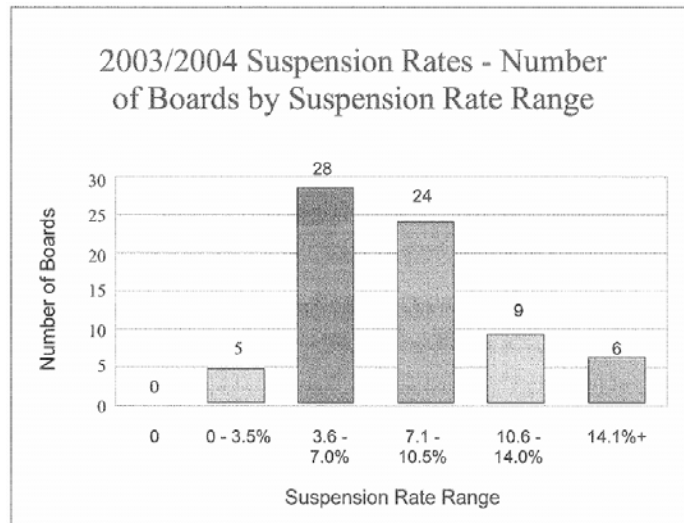
*and Practice: An Agenda for Action*¹³, the Team places emphasis on the use of progressive discipline and early intervention, with a focus that is corrective rather than punitive. As the report states at page 8:

When inappropriate behaviour occurs, schools should look at and employ a range of consequences that are developmentally appropriate, include opportunities to learn from mistakes, and focus on improving behaviour.

The Action Team report further recommends that all mitigating factors should be taken into consideration by educators when determining the appropriate disciplinary approach and expulsion should be used “only as a last resort”. The report advocates adoption of early interventions to curb inappropriate student behaviour:

A wide range of established interventions and strategies should be attempted as a common practice within the context of a Progressive Discipline continuum. Teachers and administrators should be encouraged to consider all relevant factors when investigating an incident. These might include the age of the student, and/or the student’s family situation, and/or appropriate accommodation(s) for students with special needs as well as circumstances surrounding the incident itself (e.g. whether it is provoked by harassment or bullying).

Most educators in Ontario presumably follow such an approach, already, on a day-to-day basis. That said, statistics released by the Ministry of Education disclose a clear divergence among School Boards in terms of their overall approach to student discipline:



Source: Ministry of Education

¹³ Ontario Safe Schools Action Team, *Safe Schools Policy and Practice: An Agenda for Action* (Toronto: Queen’s Printer for Ontario, 2006).

The irony is that Boards that currently are in a position to offer strict discipline programs to expelled students are among those that have the highest expulsion rates: parents in some instances request expulsion over suspension, so that their child might have access to those programs.

In a recent speech,¹⁴ the Chair of the Safe Schools Action Team, MPP Liz Sandals, spoke candidly about the misconceptions that the Action Team found surrounding the Safe Schools Act. She said the previous government portrayed the Safe Schools Act to the public as a “zero tolerance” Act, but it’s not necessarily so when you read the actual wording of the legislation. And, in some cases, the people administering the Act, as well as parents, fail to understand that, she said, leading to “total confusion” about what the Act says.

The Action Team’s report addresses this point directly in its discussion regarding application of the Safe Schools Act:

Concern has been expressed that some groups are more likely to be suspended or expelled than others. Ontarians want the Safe Schools Act to be consistently applied by schools and school boards. The incorrect perception that the Act supports the concept of “zero tolerance” must be dispelled. The Code of Conduct and mitigating factors as outlined in the Act assist principals in selecting the appropriate consequence for inappropriate behaviour within the context of progressive discipline.

This passage seems to include a veiled reference to a report prepared for the Ontario Human Rights Commission and released in July 2003, entitled *The Ontario Safe Schools Act: School Discipline and Discrimination*, in which the author Ken Bhattacharjee concluded that:

There is a strong perception, which is supported by some independent evidence, that the *Act* and school board policies are having a disproportionate impact on racial minority students, particularly Black students, and students with disabilities.

Mr. Bhattacharjee’s report notes that, for all the talk of “mandatory” discipline and “zero tolerance”, the Safe Schools Act contemplated that educators would take the mitigating factors into consideration when deciding whether to suspend or expel a student. He suggested that this sends contradictory messages to principals and teachers, and questioned whether the Act really ought to be considered zero tolerance legislation. “The real issue,” he asks, “is whether there is a *practice* of ‘zero tolerance’”.

For example, Bhattacharjee notes, the Code of Conduct provides that “police will be involved” and a student “will be immediately suspended and proceed to an expulsion hearing” where in possession of a weapon, trafficking in drugs or weapons, robbery, assault causing bodily harm or

¹⁴ To a dinner meeting of the OBA Education Law Section on December 6, 2006.

sexual assault, among other things. There is no mention of a principal's opportunity to investigate or consider any mitigating factors, as contemplated under section 309 of the *Education Act*. There is a similar list of infractions leading to "immediate suspension" and the Code of Conduct specifies certain conduct for which immediate suspension "will be the minimum penalty".

By way of further example, the TDSB, in its own Code of Conduct, took the provincial Code's language regarding "mandatory consequences" to another level in establishing a "Grid of Consequences" that detailed specific punishments for certain behaviours, including minimum suspension periods. The TDSB Grid became a focal point of critics of the Safe Schools Act.



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The OHRC Complaint

The Bhattacharjee report was followed, in July 2005, with a complaint launched by the Ontario Human Rights Commission against the Ministry of Education and the Toronto District School Board.¹⁵

As against the Toronto Board, the complaint alleged that the TDSB had failed to meet its duty to accommodate racialized students and students with disabilities in the application of discipline, including providing adequate alternative education services for racial minority students and students with disabilities who are suspended or expelled. This amounted to a failure on the TDSB's part to provide equal access to education services and constituted discrimination, the complaint alleged. In pursuing its complaint, the Human Rights Commission focused on the TDSB's "unfortunately titled" Grid¹⁶ as evidence of a "zero tolerance intent" on the part of the Board.

While the complaint against the Ministry remains unresolved, the complaint against the TDSB was settled within a matter of months, in November 2005, with Terms of the settlement posted on the Commission website. They include:

- The TDSB accepted and acknowledged a "widespread perception" that the application of the Safe Schools Act (and related regulations and policies) can have a discriminatory effect on students from racialized communities and students with disabilities and further exacerbate their already disadvantaged position in society;
- The TDSB agreed to begin collecting and analysing data on suspensions and expulsions to determine the extent to which the Safe Schools Act is having an adverse impact on individuals protected under the *Human Rights Code*, in particular, students from racialized communities and students with disabilities;
- The TDSB will rewrite its "Grid of Consequences" and all related documents to ensure that the exercise of discretion and the consideration of mitigating factors are emphasized
- The parties note that "nowhere in the Safe School Act, regulations or related policies do the words 'zero tolerance' appear" [emphasis added];
- While the Safe Schools Action Team review of the Safe Schools Act is taking place, the Commission requires that the TDSB will ensure that principals are familiar with the current requirement under Board policy that they consider a wide variety of factors in exercising their authority to suspend and expel students¹⁷ and they will be informed that, when they interpret mitigating factors, "they should consider whether racial or other

¹⁵ As noted above, in explaining why the Safe Schools Act was being reviewed, the Safe Schools Action Team directly acknowledged the OHRC complaint, among other things, as a reason for the review: Ontario Safe Schools Action Team, *Safe Schools... Safer Communities* (Toronto: Queen's Printer for Ontario, 2005) at p. 13.

¹⁶ As described by the TDSB's own Grant Bowers in Ontario Bar Association, *Education Law*, Vol. 16, No. 1 (September 2006) at p. 5.

¹⁷ The TDSB's own Code of Conduct (Policy P.044 SCH), as adopted April 10, 2002 pursuant to the Safe Schools Act, makes specific mention of the mitigating factors to be considered in connection with suspensions and expulsions.



harassment predicated the student's behaviour, and whether the principles of progressive discipline have been followed";

- The TDSB will implement a procedure for student discipline with the goal of avoiding suspensions or expulsions. This procedure will be based on principles of progressive discipline and will include but is not limited to:
 - i. Detention;
 - ii. Peer mediation;
 - iii. Restorative justice;
 - iv. Referrals for consultation; and
 - v. Transfer;
- Principals will be encouraged to provide curriculum in accordance with the Ontario curriculum standards for all suspended students and the TDSB will ensure that no student's education is interrupted by a suspension over 5 days or an expulsion from their home school by ensuring that alternative education programs are made available, including: in school suspension facilities; alternative schools or programs that are, where possible, locally accessible;
- The TDSB will ensure that a student with a disability who has been disciplined will be reassessed periodically and will not be removed from a regular school placement indefinitely, unless to include the student would cause undue hardship; and
- The TDSB will determine the current educational status of expelled students and, where they have not had the opportunity to complete credits for graduation, the Board will implement a system to give them that opportunity.

Recommendations of the Safe Schools Action Team

Clearly, some aspects of these settlement terms anticipate the later recommendations of the Province's Safe School Action Team. In its June 2006 report, the Action Team made specific recommendations regarding amendments to the Safe Schools Act, which include:

- Expanding the mitigating factors to be considered before suspension or expulsion;
- Ending the ability of teachers to suspend pupils;
- To consider having one-day suspensions served in schools (so such suspensions are not viewed as "an approved holiday", especially by older students);
- Making exclusions subject to a right of appeal;
- Providing for only one kind of expulsion with a minimum duration of 21 days, to be decided at the Board level, where Boards are required to provide an alternative program to the student and the student must complete the program before readmission.

The Action Team urges educators to consider all mitigating factors when approaching discipline, and goes further in its recommendations regarding amendments to the Safe School Act, calling for an expansion of those factors under the Act.



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The Action Team also recommends that Boards should offer access to learning and make alternative programs available to all students who are expelled or on long term suspension. The Action Team report notes the concern expressed by parents the vast majority of students who are suspended or expelled are not receiving an education and lose a sense of connection to the school community. The loss of that connection, in turn, has been linked as a factor to students' decision to drop out of the school system. To address this, the report states, "resources should also be available to support students who are suspended or expelled." From the Boards' perspective, this would seem to be the crux of the issue: they lack the financial resources to provide such programs and cannot do so absent additional funding from the Ministry.

In comments that now may seem ironic to some, Tory Education Minister Janet Ecker stressed the importance of providing appropriate supports to suspended students when she introduced the Safe Schools Act. During debate¹⁸ on second reading of the proposed legislation in June 2000, she told the Legislature:

Our consultations over the past two years have told us that people not only want consistent standards and respect and accountability back in the classroom, but they also want supports for students who have been expelled or suspended. We certainly agree. Sending these kids out on the street only puts the problem somewhere else and actually creates additional problems, not only for those students but also for the community... we want to make sure we have the best programs and that every school board is in a position to offer them for suspended students and also for expelled students.

Mr. Bhattacharjee's report for the Ontario Human Rights Commission wryly notes at p. ii:

The *Act* states that the Minister may require school boards to establish and maintain specified courses and services for students who are suspended and expelled. To date, that has not happened.

In his recent article,¹⁹ commenting on the potential for increased supervision or placement of disciplined students in specialized programs, TDSB legal counsel Grant Bowers underscored the Catch-22 facing school boards in the absence of Ministry support:

Of course, funding these options is difficult or impossible for school boards. The cost of accommodation however, is usually no defence to a human rights challenge and the Ministry must soon recognize this funding pressure.

¹⁸ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 37th Parliament, 1st Session (6 June 2000) at 3494

¹⁹ Ontario Bar Association, *supra* Note 16, at p. 5.

Overall, the Action Team is recommending adoption of a comprehensive, “coordinated and consistent” framework for safe schools throughout the province. This Provincial Safe Schools Framework would include:

- The Safe Schools Act (as reflected in Part XIII) of the *Education Act* and related regulations;
- The Code of Conduct;
- A Policy on Anti-Racism and Ethnocultural Equity (PPM 119);
- A Violence-Free Schools Policy (PPM 120);
- A Police/School Board Protocol;
- Related policy statements, other relevant documents and clear statements relating to progressive discipline, early intervention/prevention and continuous learning; and
- Provisions within the Ontario Student Record (OSR) guideline regarding removal of suspension letters.

At the same time, the Ministry would provide clear guidelines regarding the use and implementation of the Safe Schools Framework, while developing a resource guide for educators.

ANTI-BULLYING AND RESPECT INITIATIVES

Beyond its review of the Safe Schools Act, the mandate of the Safe Schools Action Team includes development of a province-wide bullying prevention plan. This actually preceded its development of the June 2006 report. To that end, in November 2005, the Action Team released *Shaping safer schools: A bullying prevention plan*²⁰ (the “Prevention Plan”), described as an action plan for educators, students, parents “and the broader community”.

Anti-bullying programs also played a central role in the Team’s recommendations regarding violence prevention in its Safe School Action Plan, including early intervention and peer mediation to support positive student behaviour.

The Prevention Plan broadly defines the term “bullying” to mean:

... a dynamic of unhealthy interaction. It is a form of repeated aggression used from a position of power. It can be physical, verbal, or social.

Expanding upon that broad definition, the report provides specific examples of the various kinds of bullying present in Ontario schools: physical (hitting, shoving, stealing or damaging property); verbal (name-calling, mocking, sexual harassment, racist or homophobic comments); and social (excluding others from a group, spreading gossip or rumours).

This last aspect, social bullying, includes the emerging area of cyber bullying, as technology tests the limits of educators to respond to – and even detect – the use by students of an array of new media to harass and intimidate their peers, both at school and after school hours. As discussed further below, this calls into question how the phrase “school-related activity” might be

²⁰ Ontario Safe Schools Action Team, *Shaping safer schools: A bullying prevention action plan* (Toronto: Queen’s Printer for Ontario, 2005).



interpreted for the purposes of imposing discipline under the *Education Act*, in response to cyber bullying.

Prevalence and Impact of Bullying in Ontario Schools

The Prevention Plan paints a stark picture of the impact that bullying of any sort has in Ontario's schools, noting that in a recent survey approximately one in three students in Grades 7 to 12 reported having been bullied in school. More recent statistics, drawn from the 2005 OSDUS (Ontario Student Drug Use Survey) Mental Health and Well-Being Report²¹, a province-wide survey of Grade 7 to 12 students conducted by the Centre for Addiction and Mental Health²², include:

- Among all students, 31 per cent (representing about 310,000 student in Ontario) reported being bullied at school since the previous September²³;
- 27 per cent of students reported bullying others at school;
- The most common form of bullying was verbal (25 per cent), while 4 per cent of students said they had been physically bullied and 2.5 per cent said they were victims of theft or vandalism;
- About 10 per cent of students reported being bullied on a daily or weekly basis, and about 20 per cent said they were bullied monthly or less often;
- More females are bullied than males (34 per cent to 28 per cent);
- By grade, 7th and 8th grade students were most likely to be bullied (about 40 per cent) and 12th graders the least likely (21 per cent);
- 18 per cent of students (or about 182,000 across Ontario) reported fighting on school property at least once (27 per cent of males, compared to 9 per cent of females), while 7th graders (at 30 per cent) were most likely to fight at school, versus 12th graders (11 per cent) as the least likely;
- among all students, 12 per cent (or about 117,000 in Ontario), said they had assaulted someone at least once in the 12 months before the survey (16 per cent of male students and 7 per cent of females)²⁴;
- 10 per cent of all students (about 95,000) reported carrying a weapon such as a knife or a gun during the prior 12 months (15 per cent of males and 4 per cent of females) and 8 per cent of students reported having been threatened or injured with a weapon on school property in the prior year (12 per cent of males and 5 per cent of females);

²¹ Edward M. Adlaf et al., *OSDUS Highlights: The Mental Health and Well-Being of Ontario Students 1991-2005* (Toronto: Centre for Addiction and Mental Health, 2006).

²² The survey results reflect a sample size of 7,726 7th to 12th graders from 42 Boards, 137 schools and 445 classes.

²³ For the purposes of the survey, "bullying" was defined as "when one or more people tease, hurt or upset a weaker person on purpose".

²⁴ This number actually has dropped significantly from a peak of 22 per cent in 1997. Similarly, students are less likely to carry a weapon today as compared to 1993 statistics, when 16 per cent reported doing so.

- about 2 per cent of students (about 19,000) reported carrying a handgun at least once in the prior year;
- Among all students, about 2 per cent (representing about 18,200 students across Ontario) reported using a crisis helpline to discuss a problem during the previous year;
- Generally, 36 per cent of students reported a feeling of constantly being under stress.

The Prevention Plan bluntly dismisses any suggestion that bullying is to be accepted as a schoolyard rite of passage, commenting on its impact on victims at pp. 10-11:

Victims of bullying often deal with social anxiety and loneliness, withdrawal, physical ailments such as headaches and stomach aches, low self esteem, school absenteeism, diminished academic performance, phobias, depression, aggressive behaviour. In the most extreme cases, the result is suicide. Students who drop out to escape bullying suffer the long-term personal and socio-economic consequences of an interrupted education...

Too often, bullying has been downplayed as simply “part of growing up”. On the contrary, research and experience have consistently shown that bullying is a serious issue, with far-reaching consequences to individuals, their families, peers, and the community at large.

At the same time, the report at page 8 recognizes the potential impact that bullying may have on bullies, themselves, “who learn to use aggression as a form of power” and may develop other significant problems including “moral disengagement, delinquency, substance abuse, adult criminality, and even suicide.”

The Prevention Plan also notes the crucial role that bystanders play either in deterring, or furthering, bullying behaviour, citing research at p. 11 which demonstrates that peers are present in 85 per cent of bullying episodes observed on school playgrounds and are part of the problem 75 per cent of the time (they spend 53 per cent of the time passively watching and 22 per cent of the time helping the bully). Meanwhile, when peers intervene positively in response to bullying, 57 per cent of the time the bullying stops within 10 seconds.

The Emergence and Impact of Cyber Bullying

While the foregoing statistics relate to traditional bullying in the schoolyard, a new and complicated challenge has emerged to face parents and educators in the form of so-called “cyber bullying”.

One cannot underestimate the role that technology plays, today, in the lives of students in the Ontario school system. As stated in an article posted in *AboutKidsHealth*, an online newsletter of The Hospital for Sick Children:

The Internet has taken on a central role in teenage culture, creating a new landscape for social interaction. Lunchroom and after-school cliques have been supplemented or replaced with on-line chat rooms, instant messaging (IM), bulletin boards, e-mail, cell phone text messages and digital photographs, personal web sites and blogging (Web logs or personal diaries on a Web site).



According to the same article, a 2002 Environics survey reported that 99 per cent of Canadian students had used the Internet, while a study by the Media Awareness Network found that nearly 60 per cent of Canadians aged 9 to 17 had used IM and chat rooms. At the same time, the Media Awareness Study found that 25 per cent of young Canadian Internet users had received emails with hateful messages about others. According to the Sick Kids article, about half of children who report being bullied at school also report being harassed on line.

The most extreme examples of cyber bullying have in some cases become part of our popular culture or have received wide exposure in the press, in themselves demonstrating the power of the Internet. For example:

- In perhaps the best-known case, an otherwise ordinary teen in Trois-Rivieres, Quebec, Ghyslain Raza filmed himself (for his own entertainment) in his school's AV lab, fighting invisible enemies with a "light sabre" fashioned out of a broomstick, complete with his own sound effects. A few days later, in April 2003, some other students found the video and posted a clip on the Internet. Within weeks, more than 15 million people had downloaded the two-minute clip of Raza – now internationally dubbed and ridiculed as the "Star Wars Kid" – including most of the student body at his school. A website dedicated to the clip received more than 76 million hits. As reported in *The Globe and Mail*, Raza said the experience left him unable to attend school and he was later diagnosed with depression. He eventually settled a law suit against the students who posted the clip, for an undisclosed amount;
- Burlington teen David Knight was accused of being a pedophile, and he and his family subjected to hateful comments, after anonymous bullies established a website with a home page entitled "Welcome To The Page That Makes Fun Of Dave Knight". It took his family seven months to get the Internet Service Provider to take down the website. Knight withdrew from others, telling CBC's *The National*: "Rather than just some people, say 30 in a cafeteria, hearing them all yell insults at you, it's up there for 6 billion to see. Anyone with a computer can see it. And you can't get away from it. It doesn't go away when you come home from school. It made me feel even more trapped";
- In March 2005, CBC News reported that a 14-year-old Saskatoon girl found a video posted on the Internet of herself being punched and kicked to the ground, unconscious, by two other girls who had attacked her as she walked with a friend. She had received a group email telling her where she could download the clip, after someone in the crowd of 100, who witnessed the beating, had a camera;
- In a seemingly related phenomena, students have taken to posting video clips of consensual "fight clubs" on websites like YouTube.com and MySpace.com. In one case, last September, students posted video of a brawl outside Orangeville District Secondary School, set to music, with the bloodied fighters being cheered on by a large crowd of fellow students. "I'm on the Internet, I'm happy," a student who was the loser in one clip told CTV News. Another student explained, "I think it's kind of funny because everybody comes up when they see you and say, 'yeah, I saw you on the Internet, that's cool!'" CTV News reported that a search of the YouTube website, using the keywords "school fight", turned up thousands of similar clips.

Experts say such cyber bullying in many ways is worse than traditional face-to-face schoolyard bullying. The authors of the Sick Kids article explained that the impact of such harassment is two-fold, because of both the inescapable nature and intensity of the attacks:

Cyber bullying does not end when the child arrives home. Because kids spend so much time on cell phones and the Internet, they are easy targets for cyber abuse. Bullying can continue even in the privacy of a teen's bedroom, with messages suddenly appearing on the computer or cell phone screen. It can happen any time and can be so intrusive that a child or teen feels trapped or helpless. Cyber bullies are like stalkers who don't let up...

The advent of technology has taken bullying to new heights. Cyber bullies are often more vicious and hurtful than in-person bullies, saying things on line they would never say face to face. The anonymity of on-line harassment gives bullies the power to attack others with little risk of being caught. Using cyber technology to harass also shields bullies from the consequences of their actions. Having no actual physical contact with their victims, the cyber-bully's feelings of empathy and remorse are minimized.

The Ontario Action Team's Prevention Plan, at p. 20, acknowledges the emergence of cyber bullying and recognizes the role that parents have to play in combating this new form of harassment:

Because bullying takes place both on and off school grounds, it is important for parents to understand how to identify potential bullying situations, and to know what courses of action are available to them in those situations. Internet bullying, for example, is on the increase, and parents need the skills and support to recognize it and deal with it appropriately.

However, the Sick Kids article refers to research finding that cyber bullies tend to have poor relationships and minimal supervision by parents. As a result, the authors conclude, "[t]he role of teachers in combating Internet harassment may be even more critical than that of parents". At the same time, children who are bullied on line may not tell their parents, teachers or other adults because they are afraid of losing their computer privileges.

Dealing With Cyber Bullying Under the Safe Schools Act

As noted above, the provisions of the *Education Act* dealing with mandatory expulsion or suspension provide that such discipline measures may be taken in connection with infractions committed by the student "while he or she is at school or is engaged in a school-related activity".

This can provide a thorny issue for principals and teachers, especially where technology now allows students to continue interacting during and beyond the classroom via cell-phones and the



Internet, while a dispute that might begin during school hours can escalate into harassment or an assault later, on or off school property. In such circumstances, what is “school-related activity” for the purposes of sections 306 and 309 of the Act and can cyber bullying be considered school-related activity?

There is surprisingly little case law that helps to define the limits of “school-related activity” for the purposes of the Safe Schools Act. As a result, the following definitions may be instructive:

- Under section 1 of the *Education Act*, “school” means:
 - (a) the body of elementary school pupils or secondary school pupils that is organized as a unit for educational purposes under the jurisdiction of the appropriate board; or
 - (b) the body of pupils enrolled in any of the elementary or secondary school courses of study in an educational institution operated by the Government of Ontarioand includes the teachers and other staff members associated with the unit or institution and the lands and premises used in connection with the unit or institution;
- Meanwhile, *Black’s Law Dictionary*²⁵ defines “related” as:

Standing in relation; connected; allied; akin...

On this basis, one might argue that “school-related activity” should be given a broad interpretation, to the extent that “school” itself is so broadly defined, not being limited to the four corners of any school property but, rather, with a focus on the body of school pupils. There must, however, be some nexus or connection to the school and/or its students.

At least one author²⁶ Jennifer Trepanier, has advocated such a broad definition, writing:

Students can be disciplined for misconduct that occurs while at school or while engaged in a school-related activity. The definitions of school and school-related activity should, however, be broadly construed to include any type of activity which may have an impact on the school community.

Ms. Trepanier gives the example in her text of an unnamed school board that expelled a student for threatening students of another school with a knife on or near the property of the other school. A Committee of Trustees found that the knife-wielding student presented an unacceptable risk to the safety and security of students at his own school. In doing so, they liberally construed the term “school-related activity”.

One potential counter-argument to such a broad interpretation could be based on the emphasis on “educational purposes” in the wording of the definition of “school” under the Act. If the school-

²⁵ *Black’s Law Dictionary*, 6th ed. (St. Paul, Minn.: West Publishing Co., 1990).

²⁶ Jennifer E. Trepanier, *Student Discipline: A Guide to the Safe Schools Act* (Markham: LexisNexis Canada, 2003) at 14.

related activity in question is not connected to an educational purpose (i.e. after-school conduct) then arguably the *Education Act* would have no application for disciplinary or other purposes.

The current statutory language, specifically referring to infractions at school or during a school-related activity can be contrasted with the wording of section 23 under the old Act, which permitted suspension of a student for conduct injurious to the moral tone of the school or to the physical or mental well-being of others, and expulsion where the student's conduct was so refractory that his or her presence was injurious to other pupils. Such language did not restrict the student's conduct (giving rise to the suspension or expulsion) to that occurring at school or in a school-related activity.

In fact, the language of former section 23 seems to bear close relation to present language of O. Reg. 474/00 (in conjunction with s. 305 of the Act) providing that a principal may exclude a student from the school premises where "his or her presence is detrimental to the safety and well-being of a person on the premises". This may offer another tool for principals to remove a student who poses a threat to others through bullying (whether cyber bullying or otherwise).

For now, it remains to be seen whether discipline of a student for cyber bullying, resorting to measures available under the current statutory language, would survive legal challenge.

Action Team's Recommendations on Bullying Prevention

The Prevention Plan stresses the importance in a successful anti-bullying plan of sending a message to the broader school population that bullying will not be ignored, by demonstrating consequences, both as a deterrent to bullies and to instil confidence in other students, who must perceive that action will be taken.

On this basis, the Prevention Plan's overarching recommendation is:

Bullying prevention should be identified as a **priority** for every school board and every school. Every school board in the province should adopt a bullying prevention **policy** and, flowing from that policy, each school in the province should, as a priority, implement an effective bullying prevention **program**.
[emphasis in original]

The Prevention Plan identifies principals as "the most important person in the school for bullying prevention" stating that it is essential that every principal identify bullying prevention as a priority and recognize that a "code of silence" often surrounds bullying. For that reason, the Prevention Plan urges that an environment must be established where students are encouraged to identify incidents to educators and view this as "reporting" rather than "tattling" or "ratting" on other students.

The report calls on the Ministry of Education, among other things, to provide:

- Immediate and mandatory training on bullying prevention to school administrators and through the Principal's Qualification Program;



- School board funding for bullying prevention training for teachers and other school staff and purchase or development of prevention programs (with consideration of additional professional development days to facilitate training); and
- A bilingual, toll-free, 24-hour province-wide Anti-Bullying Hotline to offer support, advice and referrals to parents, teachers and students. (On receipt of the Prevention Plan, the Ministry announced an ongoing partnership with Kids Help Phone to expand its ability to respond to calls about bullying.)

The Action Team has built upon those recommendations in its more recent June 2006 report on the Safe Schools Act, calling upon Boards to:

- Provide support to students and families affected by bullying or acts of violence (e.g. restorative practice, healing circles);
- Develop policies to support and protect students who have been bullied or affected by violence including the implementation of safe reporting processes and initiatives that result in students being safe from reprisal; and
- Actively engage parents in this process.

In response to the Action Team's bullying prevention report, the Province announced that it was investing \$23 million over three years to launch a comprehensive province-wide bullying prevention strategy. The Prevention Plan acknowledges that successful anti-bullying programs already exist, including some in Ontario, and the Action Team looks to build upon that base by calling on each school in the province to identify a bullying prevention plan and then to incorporate that plan into the school's Code of Conduct.

CONCLUSION

At present, nearly eight months have passed since the Action Team's delivery of its report on the Safe Schools Act. The Minister of Education's response to the report remains forthcoming, and likely has been delayed by the recent appointment of Kathleen Wynne as the new Minister last September (making her the third Minister since the appointment of the Safe Schools Action Team by Gerard Kennedy in December 2004). A response has been assured by Action Team Chair Liz Sandals (who doubles as the Minister's Parliamentary Secretary).

Of course, the Action team's work and the Minister's deliberations must be viewed against the backdrop of a provincial election pending this October. What remains to be seen is the extent to which the Action Team's recommendations will be adopted, with that in mind, and whether the era of "zero tolerance" in Ontario schools will be put to rest, in favour of a progressive discipline approach.

At the same time, it seems clear that a need for some guidance from the Ministry exists – either by way of legislative amendments or policy direction – to assist school boards in dealing with the new challenges posed by technology, and the issue of whether the current disciplinary system affords educators the tools they need to deal with off-school cyber bullying.

For more information, please feel free to contact:

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