

BILL 157

MANDATORY REPORTING IN SCHOOLS

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Bill 157 entitled the *Education Amendment Act (Keeping Our Kids Safe at School) 2009*, was given royal assent on June 5, 2009. Among other things, the Bill requires a principal who believes a student has been harmed because of certain activities to notify the student's parent or guardian. It also requires all employees of school boards who become aware that a student may have engaged in certain activities to report this information to the principal. The new legislation will come into force on February 1, 2010.

Bill 157 amends the safe schools provisions in the *Education Act*. The current safe schools provisions came into force on February 1, 2008 with the introduction of Bill 212.

NOTICE TO PARENT OR GUARDIAN OF THE VICTIMS

Bill 212 placed a strong emphasis on transparency, accountability and procedural fairness. In this regard, Bill 212 contained a range of protections regarding the rights of an alleged perpetrator. For example, under Bill 212, the alleged perpetrator has a right to receive a copy of a written notice of suspension promptly from the principal. With respect to the principal's investigation of an incident, he or she is required to make reasonable efforts to speak with the alleged perpetrator. In addition, Bill 212 provides that a student, who is not a party to a suspension appeal, has a right to be present at the proceeding and make a statement on his or her behalf.

Notwithstanding these protections for alleged offenders, Bill 212 was silent on the rights of the victim. It was also silent on providing information to parents of a victim of the nature of the activity, which resulted in harm and steps taken to protect the victim's safety.

These concerns have now been addressed with the introduction of Bill 157. Under the proposed amendments to the *Education Act*, if the principal of a school believes that a student has been harmed as a result of an activity described in the suspension (subsection 306(1)) or expulsion (subsection 310(1)) sections of the *Education Act*, the principal is required, as soon as reasonably possible, to notify the parent or guardian of the victim.

The proposed legislation contains two exceptions to this requirement. First, the principal shall not, without the student's consent, notify a parent or guardian of a student who is:

- a. 18 years or older; or
- b. 16 or 17 years old and has withdrawn from parental control.

Second, a principal is not required to notify a parent or guardian, if in the opinion of the principal, doing so would put the student at risk of harm from a parent or guardian of the student, such that the notification is not in the student's best interests.

Bill 157 provides that, in notifying a parent or guardian of a student, the principal is required to disclose the following:

- a. the nature of the activity that resulted in harm to the student;
- b. the nature of the harm to the student; and
- c. the steps taken to protect the student's safety, including the nature of any disciplinary measures taken in response to the activity.

The proposed legislation also provides that when notifying a parent or guardian, the principal shall not disclose the name or other identifying or personal information about a student who engaged in the activity that resulted in the harm, except insofar as is necessary to provide the information set out above.

Prior to this new legislation, to protect the privacy rights of the student offender, where there had been school disciplinary action taken against an offender, many school boards instructed their principals to inform parents of a victim that "appropriate disciplinary action" had been taken. In general, principals would not inform parents of a victim of the specific disciplinary measures taken by the school.

Under Bill 157, the principal is now required to inform parents of the victim the nature of the activity that resulted in the harm to their child, the nature of the harm, the steps taken by the school to protect their child and the specific disciplinary measures taken by the school against the offender. However, the principal is not permitted to disclose the name of the offender or any identifying information about that individual.

In this regard, the legislation is attempting to balance the victim's rights to certain information and to be protected from harm against the rights of the offender with respect to privacy and procedural fairness.

REPORTING TO THE PRINCIPAL

Bill 157 also contains proposed revisions to the *Education Act* with respect to mandatory requirements to report to the principal. It provides that an employee of the school board who becomes aware that a student of the school may have engaged in an activity described in the suspension or expulsion sections of the *Education Act*, shall, as soon as reasonably possible, report the matter to the principal of the school.

This new reporting requirement applies to all board employees, including school assistants, custodians, teachers and educational assistants. This reporting requirement will need to be introduced with significant education and training to inform these employee groups about the scope and nature of this obligation. In particular, employees should be informed of:

- a. the scope and nature of an individual becoming “aware” of an activity;
- b. the activities described in the suspension and expulsion sections of the *Education Act*; and
- c. the meaning of the term “as soon as reasonably possible.”

Bill 157 also provides that the Ministry may establish policies and guidelines requiring service providers, who are not board employees, who become aware that a student may have engaged in an activity described in the suspension or expulsion sections of the *Education Act*, to report to the principal of the school about the matter, as soon as reasonably possible.

DELEGATION BY PRINCIPALS

In addition, Bill 157 provides that a principal of a school may delegate in writing any of his or her powers, duties or functions under the safe schools sections of the *Education Act* to:

- a. a vice-principal of the school; and
- b. a teacher employed in the school.

A teacher who is not a vice-principal may only act under a delegation if the principal and vice-principal of the school are absent from the school.

This new provision is a recognition that there are times when the principal and/or vice-principal may be absent from the school and delegation is required to carry out the principal’s powers, duties and functions under the safe schools sections of the *Act*.

Although the new legislation will come into force on February 1, 2010, significant preparation and training will be required for all employees at every school board in Ontario with respect to the additional duties and obligations. In addition, principals will need to understand their new obligations and responsibilities around notification of parents or guardians of a student who has been harmed as a result of specific activities. This will require a thoughtful and thorough educational program in every school board across the province. The introduction of this legislation will also require the co-operation of relevant unions and associations who represent and provide support to these employee groups.

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