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## Memorandum

**To:** Directors of Education, Supervisory Officers, *et al.*

**From:** Robert G. Keel, Nadya Tymochenko, Nicola Simmons, Kate Waters & Kimberley Ishmael

**Date:** June, 2009

**Re:** Bill 157, *Education Amendment Act (Keeping Our Kids Safe at School)*, 2009

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We are writing to provide an outline of Bill 157, the *Education Amendment Act (Keeping Our Kids Safe at School)*, 2009, which received Royal Assent on June 5, 2009, and which comes into force on **February 1, 2010**.

### **BILL 157**

#### **s.1 amends the *Education Act* by adding section 300.1**

ss.300.1(1) provides that a principal of a school may delegate in writing any of his or her powers, duties or functions under Part XIII Behaviour, Discipline and Safety to a vice-principal of the school or a teacher employed in the school.

**COMMENT:** Note that the delegation must be in writing.

A Board policy is required pursuant to (302.01). The delegation of responsibilities by the Principal may be both general and specific. We recommend that Boards, in their Policies and Guidelines, clearly indicate that such delegation would not include the decision whether to recommend the matter for an expulsion, the letter indicating whether or not the matter will be referred for an expulsion hearing, and the preparation of the Principal's Report for the purpose of a recommendation with respect to expulsion. Further, the Principal is designated as the party for a suspension appeal or an expulsion recommendation, and this cannot be delegated. As a result, the Principal will need to be involved or briefed as much as possible leading up to and including an appeal or an expulsion recommendation. In addition, Board Policies and Guidelines should clarify and confirm the role of the Principal with respect to the Student Action Plan and other responsibilities pursuant to the PPMs.

ss.300.1(2) provides that a teacher who has been delegated by the principal may only act under the delegation if the principal and vice-principal of the school are absent from the school.

**COMMENT:** The onus of determining whether to act pursuant to the delegation is on the teacher. In addition, this clause implies that the delegation may be a long-standing one rather than one that is instituted on a case by case basis.

ss.300.1(3) provides that the delegation is subject to any restrictions, limitations and conditions set out therein.

**COMMENT:** Boards may be advised to create standardized forms for the purpose of delegation to vice principals and to teachers .

ss.300.1(4) provides that a delegation shall be in accordance with any policies and guidelines established by the Minister or by the board.

**COMMENT:** Section 301(5.1) provides that the Minister **may** establish policies and guidelines, while section 302(0.1) requires that each board shall create policies and guidelines with respect to delegation. See below.

### **s.1 amends the *Education Act* by adding section 300.2**

s.300.2 provides that an employee of a board who becomes aware that a pupil of a school of the board may have engaged in an activity for which the pupil could be subject to discipline as listed in ss.306(1) [suspension] or ss.310(1) [expulsion] shall, as soon as reasonably possible, report to the principal of the school about the matter.

**COMMENT:** This expands the duty to report to all employees of the board, such as administrative staff and janitorial staff. It should be noted that the reference is to “an employee of a board”, and it is not restricted to an employee of a board at a particular school. As a result, this requirement could include employees who encounter or become aware of such infractions outside of the school, if the employee is aware that the student is a student of a school of the board. Once the employee has reported to the principal, the principal will be required to investigate.

### **s.1 amends the *Education Act* by adding section 300.3**

ss.300.3(1), (2), and (3) provide that the principal of a school shall, as soon as reasonably possible, notify the parent or guardian of a pupil if the principal believes that the pupil has been harmed as a result of an activity for which discipline may be or will be imposed (as listed in ss.306(1) or 310(1)), unless (1) the pupil is 18 years or older and has not provided consent, (2) the pupil is 16 or 17 years old and has withdrawn from parental control and the pupil has not provided consent, or (3) it is the principal’s opinion that notifying the parent or guardian would put the pupil at risk of harm from the parent or guardian such that the notification is not in the pupil’s best interest.

**COMMENT:** These subsections institute a reporting system with respect to pupils affected by activities that might result in discipline and may be in response to calls for “victim’s” rights. Previous amendments to the *Education Act* with respect to discipline and pupil safety related only to those pupils who were subject to discipline.

Query what constitutes “harm” in this context, and on what basis the principal will be required to evaluate the “best interest” of the pupil. Principals should consult with their Supervisory Officer in cases where they suspect a pupil may be in danger of harm in the case of parental/ guardian notification.

Query whether Children’s Services ought to be involved in some such cases.

One potential situation that has been identified by the Minister of Education is a victim of sexual assault whose cultural background places blame on the victim in such cases.

ss.300.3(4), and (5) provide that the principal shall disclose to the parent or guardian (a) the nature of the activity that resulted in harm to the pupil; (b) the nature of the harm to the pupil; and (c) the steps taken to protect the pupil’s safety, including the nature of any disciplinary measures taken in response to the activity. However, the principal

shall not disclose the name or any other identifying or personal information about a pupil who engaged in the activity that resulted in the harm.

**COMMENT:** These subsections are intended to balance the “victim’s” right to information about the incident with the privacy rights of pupils subject to discipline.

The principal would not be permitted to provide the parent or guardian with information with respect to the rationale for any discipline imposed, specifically how the application of the mitigating or other factors impacted on the decision regarding the discipline, for example, if the discipline imposed were mitigated by the fact that the pupil was identified as an exceptional pupil.

Query whether the principal can disclose that the pupil was suspended where the victim is aware of the pupil’s identity?

### **s.1 amends the *Education Act* by adding s.300.4**

ss.300.4(1) and (2) provide that an employee of a board who observes a pupil behaving in a way that is likely to have a negative impact on the school climate shall respond in accordance with the Minister’s policies and guidelines that may be established and in accordance with any policies and guidelines established by the board, unless the circumstance is excluded by regulation.

**COMMENT:** This duty is only in place once the Minister has established policies and guidelines. Note that the Minister may establish such policies and guidelines with respect to employee response (ss.301(5.6), and the board shall establish such policies and guidelines if required by the Minister (ss.302(3.3)). The Minister may also make regulations describing circumstances in which employee response is not required (ss.316(1)(d)).

Training for all board employees as to the meaning of “negative impact on the school climate” might be necessary.

Query what circumstances would create a negative impact on the school climate, which would not be covered by new s.300.2, which refers to the discipline provisions in the *Act*.

As noted above under s. 300.2, again, this provision refers to “an employee of a board”, and is not restricted to an employee of a board at a specific school. Again, this might include an employee who observes behaviour outside of the school, such as at the local mall.

### **s.2 amends the *Education Act* by adding subsections (5.1) – (5.6) to section 301**

ss.301(5.1) provides that the Minister may establish policies and guidelines with respect to delegation of powers, duties and functions by principals under this *Act*.

**COMMENT:** This provision dovetails with the provisions above and is referred to in the Comment under a number of sections above.

ss.301(5.2) and (5.3) provide that the Minister may establish policies and guidelines requiring individuals who are not board employees but who come into direct contact with pupils on a regular basis in the normal course of providing goods or services to the board, including as an employee of a person who provides such goods or services, or providing services to a person who provides goods or services to the board, to report to the principal as soon as reasonably possible if they become aware that a pupil may have engaged in an activity for which discipline may be or will be imposed.

**COMMENT:** These provisions extend the duty to report behaviour for which discipline may be imposed to include persons who are not employed by the board but who provide goods and services to the board in any capacity, such as bus drivers or volunteers. Again, once such behaviour is reported to the principal, the principal’s investigation process will be triggered.

ss.301(5.4) provides that the Minister may establish policies and guidelines with respect to board employees and persons not employed who provide goods and services reporting to the principals.

**COMMENT:** Permits the Minister to issue one comprehensive PPM or Guideline addressing both employees and others in schools.

ss.301(5.5) provides that the Minister may establish policies and guidelines with respect to the support to be provided to a pupil when a principal does not notify a parent or a guardian because the principal is concerned that notification would put the pupil at risk of harm from a parent or guardian such that the notification is not in the pupil's best interest.

**COMMENT:** Presumably this refers to counselling or other psychological support services.

ss.301(5.6) provides that the Minister may establish policies and guidelines with respect to responses by employees of a board to observing a pupil behaving in a way that is likely to have a negative impact on the school climate, including but not limited to policies and guidelines with respect to the kinds of responses that are appropriate.

**ss.3(1) amends the *Education Act* by adding subsection 302(0.1)**

ss.302(0.1) provides that every board shall establish policies and guidelines with respect to delegation by principals of their powers, duties or functions, and such policies and guidelines must be consistent with the policies and guidelines established by the Minister and must address such matter and include such requirements as the Minister may specify.

**COMMENT:** Note that the Minister is not required to establish such policies and guidelines but is given the power to do so, but boards are required to create such policies and guidelines. Hopefully, the Minister will provide policies and guidelines so that boards are able to meet the requirements of this subsection.

**ss.3(2) amends the *Education Act* by adding subsections (3.1) – (3.3) to section 302**

ss.302(3.1) provides that if required to do so by the Minister, boards shall establish policies and guidelines with respect to reporting to principals by employees or by individuals who are not board employees but who have regular direct contact with pupils and provide goods and services to the board. The policies and guidelines must be consistent with those established by the Minister under s.301 (see above) and must address such matters and include such requirements as the Minister may specify.

**COMMENT:** Boards are required to establish policies and guidelines if required to do so by the Minister.

Please note the comments above with respect to ss. 300.1(1).

ss.302(3.2) provides that if required to do so by the Minister, a board shall establish policies and guidelines with respect to the support to be provided to a pupil when a principal does not notify a parent or guardian of the pupil because the principal is of the opinion that to do so would put the pupil at risk of harm from a parent or guardian such that the notification is not in the pupil's best interest, which are consistent with those established by the Minister under s.301 (see above) and must address such matters and include such requirements as the Minister may specify.

**COMMENT:** Boards are required to establish policies and guidelines if required to do so by the Minister.

Please note the comments above with respect to ss. 300.1(1).

ss.302(3.3) provides that if required to do so by the Minister, a board shall establish policies and guidelines with respect to responses by employees of a board to observing a pupil behaving in a way that is likely to have a negative impact on the school climate, including but not limited to policies and guidelines with respect to the kinds of responses that are appropriate, and the policies and guidelines must be consistent with those established by the Minister under s.301 (see above) and must address such matters and include such requirements as the Minister may specify.

**COMMENT:** Boards are required to establish policies and guidelines if required to do so by the Minister.

Subject to any specific requirements from the Minister, boards should take into consideration the concerns expressed above with respect to “observing” a pupil.

**s.4 amends the *Education Act* by adding the following clauses to s.316(1)**

ss.316(1)(c) provides that the Minister may make **regulations** governing actions to be taken by a principal who does not notify a parent or guardian of the pupil because it is the principal’s opinion that notification would put the pupil at risk of harm from a parent or guardian of the pupil such that notification is not in the pupil’s best interest.

**COMMENT:** Please note the power to make regulations. In particular, these are regulations by the Minister as opposed to Cabinet. The Ministry prefers Policies and Guidelines which can be changed rather than Regulations which have a more definitive legal process. However, if any regulations are promulgated, this will be a significant initiative by the Ministry with respect to the issues as set out above.

ss.316(1)(d) provides that the Minister may make **regulations** setting out circumstances in which employees are not required to respond when the employee has observed a pupil behaving in a way that is likely to have a negative impact on the school climate.

**COMMENT:** Note the comments above with respect to Regulations.

**s.5 provides that these amendments to the *Education Act* come into force on February 1, 2010.**

**KEEL COTTRELLE LLP  
June 2009**