


# Submission to the Standing Committee on Social Development

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

May 4, 2009



Elementary Teachers' Federation of Ontario/  
Fédération des enseignantes et des enseignants de l'élémentaire de l'Ontario  
480 University Avenue, Suite 1000, Toronto, Ontario, M5G 1V2  
Telephone: 416-962-3836 Toll-free: 1-888-838-3836  
Fax: 416-642-2424  
Website: [www.etfo.ca](http://www.etfo.ca)



The Elementary Teachers' Federation of Ontario (ETFO) appreciates the opportunity to participate in the Standing Committee on Social Policy hearings on Bill 157, the *Keeping Our Children Safe at School Act, 2009*. The federation represents 70,000 teachers and education support personnel who work in public elementary schools across the province.

The current government has introduced a number of initiatives aimed at making Ontario schools safer and more inclusive places to learn and work. ETFO supported the move towards a more progressive discipline approach introduced through Bill 212, the *Education Amendment Act (Progressive Discipline and School Safety) 2007*. We were particularly pleased that bullying was identified as a possible ground for student suspension. Teachers and education support personnel increasingly have been targeted as subjects of cyberbullying by students and parents. The Bill 212 amendments gave our members the legal framework they needed to address these incidents. We also welcomed the Safe School Action Team's December 2008 report on gender-based violence, homophobia, sexual harassment, and inappropriate sexual behaviour: *Shaping a Culture of Respect in our Schools*, and the Equity and Inclusive Education Strategy released a few weeks ago. Addressing homophobia, racism, and other forms of discrimination in schools has been a longstanding ETFO priority.

As the Minister of Education acknowledged when introducing Bill 157, much of the legislation simply formalizes common practice. Teachers, as part of their daily classroom responsibilities, address anti-social behaviour and, when necessary, report serious behaviour to the school principal. Rather than a cure for a systemic problem, the bill is a response to a few isolated incidents that recently received high profile attention in the media and the Legislature.

By proposing to standardize the procedures for reporting student anti-social behaviour, Bill 157 moves us a few steps further along the continuum of creating positive and safe school environments. ETFO supports the bill's general thrust. It makes sense to have a clear protocol to report serious incidents that occur at school; it's important for parents and guardians to be notified in a timely fashion of such incidents except in situations where so doing would put the student at risk of harm; and there should be clear expectations that adults in the school intervene when they witness inappropriate behaviour that negatively affects the school climate.

Although ETFO supports the general intent of the bill, this submission raises a number of concerns about some aspects of the legislation and identifies issues that should be addressed once the Ministry of Education turns its attention to developing the various regulations, policies, and guidelines for which the bill creates ministerial authority.

## **Delegation by Principals**

Section 300.1 adds a new section to the *Education Act* that gives the principal the authority to delegate his or her powers and duties to either the school vice-principal or a teacher on staff. The delegation power in the bill is not clearly defined and raises a number of concerns about the implications of this section.

Bill 81, the *Safe Schools Act, 2000*, introduced by the former Conservative government, gave teachers the authority to suspend students for up to a day. ETFO cautioned its members not to exercise that authority but to defer decisions regarding student suspensions to the school principal or vice-principal. Bill 212, the 2007 legislation, acknowledged our concerns related to this provision and repealed it. Section 300.1 of Bill 157 appears to return us to the situation where teachers could be asked to make decisions about student suspensions. The Federation does not support this.

Downloading such authority to teachers could lead to inconsistent decisions related to suspensions at the school level and also leave teachers vulnerable to unfair liability and involvement in litigation for their decisions. Authority for making such determinations properly lies within the professional responsibilities of school administrators.

Currently, there are occasions when teachers are asked to stand in for an absent principal, to be the “teacher in charge.” Under our members’ collective agreement provisions, this temporary designation is voluntary. Bill 157, or the regulations drafted to support its provisions, should clearly indicate that teachers may only be delegated

authority under Section 300.1 on a voluntary basis and that such delegation not conflict with the provisions of the teacher's collective agreement. Further, there should be clear limitations applied to protect teachers' liability. Specifically, a teacher delegated under this provision should not be expected to replace the principal in terms of making decisions about student suspensions or reporting to the police. When serious incidents occur in a school during a period when a teacher has been designated as "teacher in charge", that teacher should only be expected to intervene to end inappropriate student behaviour and ensure a safe school environment and, if necessary, to move the offending student to the principal's office. It should be the responsibility of the principal to follow up regarding appropriate student discipline, documentation, and reporting regarding the incident.

The attendant regulations, policies, and guidelines need to address when the principal's delegation of authority to a teacher may occur, how teachers who undertake these obligations will be protected, what training will be provided, and whether teachers accepting this delegation will be provided with legal counsel or other supports during the exercise of these powers and any appeals or lawsuits flowing from the exercise of these powers. The federation also assumes that a teacher who takes on the principal's role should be considered to hold a position of added responsibility and be paid accordingly for the duration of the post.

## **Reporting to the Principal**

Subsection 300.2 (1) of Bill 157 requires a school board employee who becomes aware of student activity that is subject to suspension or expulsion to report that activity to the principal. The section further states that an employee doesn't have to make the report if the employee understands a report has been made by someone else or if his or her report wouldn't provide additional useful information. This section potentially leaves school employees vulnerable in terms of verifying that they have fulfilled their legal obligation to report. If the bill is passed, the federation will be advising members to provide reports in writing to their principals and to request a sign-off of that report. School employees could also be left open to the charge that they should have reported what they believed to be redundant information.

In situations where a group of employees witness a serious incident, there should be a clear process in place to avoid situations where members of the group erroneously assume that one of them has made a report and leave themselves vulnerable to the charge that they failed to report. There will also be situations where school employees are supervising students outside of their contract obligations. Educational assistants and custodians, for example, sometimes provide student supervision over the lunch hour as additional paid work but not as part of their work under the collective agreement. They are therefore not protected by their respective collective agreements during this period.

## **Need for Holistic Review of Reporting Policy and Procedures**

Much of the bill is devoted to creating ministerial authority to establish policies and guidelines related to violent incidents on the part of students. Until these elements are identified it is impossible to fully assess the potential implications and full impact of the legislation. Drafting the policies and guidelines associated with Bill 157 should not be done outside of a holistic review of all existing policies and guidelines related to reporting violent incidents. Bill 157 does not change existing policies regarding mandatory reporting to police and documentation of serious incidents. The Ministry of Education needs to develop standard policies and procedures for the documentation of all violent incidents, not just those that are subject to suspension and expulsion.

For a number of years, ETFO has raised concerns related to the administration of the Ministry of Education guideline governing the Ontario Student Record (OSR) that has been in place since 1994. It needs to be part of an overall review of guidelines and policies as mentioned above. The OSR should be regarded as a key tool in ensuring a safe school climate. Teachers need to be fully informed regarding previous serious anti-social behaviour on the part of a student who enters his or her classroom for the first time. Currently, only instances that result in student suspensions or expulsions are documented on the OSR. There have been situations where violent incidents involving elementary students have been reported to the police but have not resulted in suspensions. So there is no record of the incidents on the OSR. Since considerable discretion is given to boards and principals regarding the interpretation of the OSR

guidelines, there is a lack of consistency across the province regarding what is documented. There is a need to revise the guidelines and ensure the policies are clear and standard across the province.

ETFO believes that all forms of student-to-student violence and student-to-teacher violence should be documented and placed on the student's OSR through the use of Violent Incident Forms. These forms should describe the incident, state the resolution or remedial measures taken with the student, and indicate whether police or other agencies were involved and whether further education or action is necessary. This is an important step to protect the health and safety of other teachers working with the student. This type of documentation will also provide teachers with the necessary knowledge and ability to monitor a student's progress and prepare an individual program designed to ensure the student's future success.

### **Ministry of Labour Workplace Violence and Harassment Bill**

The Minister of Labour introduced Bill 168, the *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace)*, 2009 on April 20. The bill proposes to require employers to provide employees with information, including personal information, related to a risk of violence if that employee is likely to encounter that person in the course of his or her work. This section would appear to address our concerns about the need to have clear and consistent policies related to documentation of serious incidents on a student's OSR. Given the provisions of this Ministry of Labour

bill, there is clearly a need for the Ministry of Education to incorporate the policies of Bill 168, if passed, when drafting regulations, policies, and guidelines related to Bill 157.

### **Ministry Training and Funding**

Since Bill 157 will be codifying school employees' responsibilities regarding reporting and intervening with respect to serious student behaviour, it exposes these employees to new risks of reprisal, discipline, and legal action. In order to protect school employees from increased liability, the government has a responsibility to provide the funding and training to ensure employees are well-informed about their new legal responsibilities and the procedures they are expected to follow. Such training will be important for all employees, but perhaps particularly for non-teaching staff who may have been less involved in intervening with serious incidents.

### **Stakeholder Consultation**

Since Bill 157 is not slated to take effect until February 1, 2010, there should be opportunity for the Ministry of Education to undertake a full review, in consultation with education stakeholders, of all policies, guidelines, and regulations related to reporting and documenting incidents of student violence. Such consultation is fundamental to ensuring that the concerns identified in this submission, as well as those by other employee organizations, are effectively reviewed and addressed.

## **Recommendations:**

1. That section 300.1 be amended to clarify that a principal's temporary delegation of authority to a teacher to cover the principal's absence from school be strictly voluntary on the part of the teacher and that such delegation not be in conflict with the provisions of the teacher's collective agreement.
2. That the Ministry of Education consult with ETFO and other education stakeholders when drafting the policies and guidelines for the reporting and intervention procedures effected through Bill 157.
3. That the Ministry of Education undertake, in consultation with ETFO and other education stakeholders, a comprehensive review of policies and guidelines related to the documentation of all violent incidents.
4. That the Ministry of Education work with the Ministry of Labour to ensure that the obligation of employers to provide employees about information related to an individual with a history of violent behaviour that employees are likely to encounter in the workplace be reflected in the regulations, policies, and guidelines drafted in relation to Bill 157.
5. That the Ministry of Education provide funding to school boards to support comprehensive employee training to support the implementation of Bill 157.

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