

Keeping Our Kids Safe at School Act and Revised Policy and Program Memoranda (PPM) 144 and 145

QUESTIONS AND ANSWERS

LEGISLATION

Q. What changes were made to the safe schools provisions of the *Education Act*?

A. The Ontario Government has passed legislation amending the safe schools provisions of the *Education Act*. The following requirements come into effect on February 1, 2010:

- All employees of the board are required to report serious student incidents that could lead to suspension or expulsion to the principal;
- Principals are required to notify parents of students who are victims of such incidents unless, in the principal's opinion, notification of the parents would put the student at risk of harm from the parents. The Ministry has issued both a regulation and a policy memorandum (Policy/Program Memorandum No. 145) that sets out what the principal must do in these situations (please see below).
- Where the parents are not notified, boards must have procedures in place outlining how schools will support these students and principals must refer these students to a community agency that can provide the appropriate type of confidential support.
- Board employees who work directly with students – including but not limited to, teachers, and non-teaching staff - are required to respond to incidents that may have a negative impact on school climate.
- Principals may delegate their duties, powers, and functions under Part XIII of the *Education Act*.

REPORTING OF SERIOUS STUDENT INCIDENTS

Q. Who must report?

A. The new reporting requirement applies to all employees of the board e.g. teachers, non-teaching staff, educational assistants, administration staff, custodial staff. Boards may also put policies into place to require other non-board employees who come into direct contact with students on a regular basis to report such matters to the principal (e.g. outdoor education instructors).

Q. What incidents will board employees be required to report?

A. Board employees who become aware that a student may have engaged in any activity for which suspension or expulsion must be considered, must report the matter to the principal as soon as reasonably possible, but in any case, no later than the end of the school day.

These include:

- Activities for which suspension must be considered:
 - Uttering a threat to inflict serious bodily harm on another person
 - Possessing alcohol or illegal drugs
 - Being under the influence of alcohol
 - Swearing at a teacher or at another person in a position of authority
 - Committing an act of vandalism that causes extensive damage to school property at the pupil's school or to property located on the premises of the pupil's school
 - Bullying
 - Any other activity that is an activity for which a principal may suspend a pupil under a policy of the board



- Activities for which expulsion must be considered:
 - Possessing a weapon, including possessing a fire-arm
 - Using a weapon to cause or to threaten bodily harm to another person
 - Committing physical assault on another person that causes bodily harm requiring treatment by a medical practitioner
 - Committing sexual assault
 - Trafficking in weapons or in illegal drugs
 - Committing robbery
 - Giving alcohol to a minor
 - Any other activity that, under a policy of a board, is an activity for which a principal must suspend a pupil

Q. Why is the Ministry requiring all board employees to report serious student incidents to the principal?

A. All school staff play a critical role in building and sustaining a positive school climate. This is everyone’s responsibility. The Safe Schools Action Team (SSAT) recommended that all school staff be required to report serious student on student incidents at school to the principal. These are serious incidents – serious enough that the principal is required to consider suspension or expulsion. In order to do that, he/she needs to know about these incidents as soon as possible.

Q. What about bus drivers?

A. Through Ministry policy, boards will be required to include bus driver reporting requirements in their transportation policies and contracts.

Q. Why are volunteers excluded?

A. While volunteers are an integral part of the school community, the legislative requirements do not apply to them, as volunteers are not employees of the board, nor are they contracted through the board. Volunteers are seldom in sole contact with students and are often accompanied by other professionals. This legislation does not preclude school boards from having policies to permit volunteers to report to the principal, but it does not require them to do so.

Q. What does “reporting” entail?

A. Board employees are required to report to the principal any student incidents for which suspension or expulsion must be considered. The employee must consider the safety of others and the urgency of the situation in reporting the incident, but, in any case, must report it to the principal no later than the end of the school day and then follow up by a written report in the form set out in Policy and Program Memoranda 144 and 145.

In cases where an immediate action is required, a verbal report to the principal may be made. A written report must be made when it is safe to do so.

All employee reports made to the principal must be confirmed in writing, using the “Safe Schools Incident Reporting Form – Part I.

Q. Will staff be receiving a copy of the incident report they submit to the principal with details about what action has or has not been taken?

A. The principal must provide the employee who reported the incident with written acknowledgement of receipt of the report, using the “Safe Schools Incident Reporting Form – Part II”, and must specify whether action has been taken or no action is required. If no further action is taken by the principal, the principal is not required to retain the report, and should destroy it. Information that could identify the student(s) involved must not be part of the acknowledgement.

Q. How do these reporting requirements affect the confidentiality requirements of the codes of ethics of some staff working in schools (e.g. social workers)

A. Professional staff in schools already have the responsibility to inform their clients of any limits on client confidentiality. The new Bill 157 reporting requirements will need to be clearly communicated to staff as well as students.

Q. Are there consequences for board employees who fail to report infractions for which students may be suspended or expelled to the principal?

A. The Professional Misconduct regulation (O. Reg 437/97) under the *Ontario College of Teachers Act* sets out what activities are defined as professional misconduct for teachers and other board staff who hold teaching certificates and are members of the Ontario College of Teachers (OCT) (e.g., principals and superintendents). Included in the list are: failing to comply with the *Education Act* or the regulations made under that Act; Sanctions for those failing to comply with their duties can range from a reprimand up to the revocation of certification. It is up to the College of Teachers to investigate and determine whether the activity constitutes professional misconduct and only then, could the teacher be penalized.

Other staff who work with students, but who do not hold teaching certificates could be subject to board disciplinary policies and procedures.

REQUIREMENTS FOR BOARD EMPLOYEES TO RESPOND

Q. Who must respond?

A. Board employees who work directly with students – including administrators, teachers, and non-teaching staff (including staff in social work, child and youth work, psychology, and related areas, and educational assistants) – must respond to any student behaviour that is likely to have a negative impact on the school climate.

Q. Are these board employees required to respond to every student incident?

A. Board employees who work directly with students are required to respond to any student behaviour that is likely to have a negative impact on the school climate. These behaviours include racist, sexual, sexist, or homophobic comments, slurs, and jokes or graffiti, as well as activities for which suspension and expulsion must be considered.

Ontario Regulation 472/07, “Behaviour Discipline and Safety of Pupils” (formerly, “Suspension and Expulsion of Pupils”) has been amended to set out where no response is required by a board employee.

Under this Regulation board employees are not required to respond to incidents that may have a negative impact on school climate where responding to the incident would, in the employee’s opinion, cause immediate physical harm to their own safety or to that of a student or another person.

Q. What is meant by “response”?

A. Responding may include asking a student to stop the inappropriate behaviour, naming the type of behaviour and explaining why it is inappropriate and/or disrespectful, and asking the student for a change in future behaviour. By responding in this way, board employees address and deter student behaviour that may have a negative impact on school climate.

Board employees are not required to respond, if in their opinion, responding would cause immediate physical harm to himself or herself or to that of a student or another person.

Q. Why are all board employees required to report and only some required to respond?

A. The Safe Schools Action Team (SSAT) recommended that all board employees be required to report serious student incidents to the principal. This will support the principal in his/her duty to maintain a safe learning and teaching environment for all staff and students. Through policy, the Ministry has extended this requirement to non-board staff such as bus drivers.

In the case of response, the SSAT recommended that all school staff who work directly with students -- including, but not limited to, teachers and non-teaching staff in social work, child and youth work, psychology, and related areas, as well as educational assistants – are required to respond to incidents that may have a negative impact on the school climate.

SSAT restricted their recommendation to board employees who work directly with students because these are the staff who could reasonably be expected to have the knowledge necessary to respond. Response by untrained staff has the potential to make a bad situation worse.

Q. Will there be any consequences if board employees staff fail to respond?

A. The Professional Misconduct regulation (O. Reg 437/97) under the *Ontario College of Teachers Act* sets out what activities are defined as professional misconduct for teachers and other board staff who hold teaching certificates (e.g., principals and superintendents).

Included in the list are: failing to comply with the *Education Act* or the regulations made under that Act; Sanctions for those failing to comply with their duties can range from a reprimand up to the revocation of certification. It would be up to the College of Teachers to investigate and determine whether the activity constitutes professional misconduct and only then, could the teacher be penalized.

Other staff who work with students, but who do not hold teaching certificates could be subject to board disciplinary policies and procedures.

INFORMING VICTIMS' PARENTS

Q. Why did the ministry introduce legislation that requires principals to inform parents/guardians of victims of serious student -to-student incidents?

A. During its consultations, the Safe Schools Action Team heard that parents of victims of serious student incidents were not always contacted. Prior to this legislation, there were no legislative or policy provisions that required principals to contact the parents of victims of such incidents.

In order for students to be best supported, parents need to be informed when their child is a target of a serious student incident at school.

Q. For what kind of incidents will the principal be required to contact the victim's parents?

A. Principals will be required to inform parents/guardians of students who have been harmed as a result of any incident for which suspension or expulsion must be considered.

Q. What kind of information can the principal share with the parents of the victim?

A. Principals will be required to inform the parents of the victims about;

- The nature of the incident that resulted in harm to the student;
- The nature of the harm to the student; and
- The steps taken to protect the student's safety, including the nature of any disciplinary action taken in response to the incident. (e.g. calling the parents of the aggressor, detention or suspension).

Q. What kind of information will the principal not be allowed to share?

A. Principals are not permitted to share the name of the aggressor or any other identifying or personal information about the aggressor with the parents of the victim other than the above information (e.g. counselling, anger management).

Q. Will principals need to take the age of the victim into account when notifying their parent or guardian?

A. The changes to the *Education Act* do not allow a principal to notify a parent or guardian of a student who is 18 years or older; or is 16 or 17 years old and has withdrawn from parental control. These changes are consistent with other provisions in the Act with regard to a student's age. This does not prohibit the principals from contacting parents/guardians if the student gives consent.

Q. Are there provisions which do not require the principal to contact the parents of victims?

A. Principals are not permitted to inform the parents of victims when, in the principal's opinion, doing so would put the victim at risk of harm from the parent.

Q. What are some examples of when a principal may choose not to call a parent?

A. **Example 1:** A female student has been inappropriately touched and requests that her parents not be informed for a variety of reasons, including fear of being blamed and punished by them.

Example 2: During an investigation of an incident of homophobic bullying, a student discloses to the principal that he is gay and that he has not shared and is not ready to share this information about his sexual orientation with his parents. He says that if his parents are told, they will throw him out of the house.

Q. What if a principal decides not to notify the parent of a victim of a serious student incident?

A. Ontario Regulation 472/07, "Behaviour Discipline and Safety of Pupils" (formerly, "Suspension and Expulsion of Pupils") has been amended to set out what a principal must do if he/she does not notify the parent of a victim:

- document the rationale for the decision not to notify the parent/guardian of the pupil;
- inform the appropriate supervisory officer of this decision;
- if a teacher reported the harm to the principal, inform the teacher of the decision; and
- if they determine it is appropriate to do so, inform other board employees of the decision not to notify a parent or guardian of the pupil.

Q. If the principal does not call the parents what else will he/she be required to do?

A. If the principal has reasonable grounds to suspect that a child is or may be in need of protection from the person having charge of the child and the child is under the age of 16, the principal must call a Children's Aid Society.

In addition, the Ministry has issued a policy memorandum (PPM 145) requiring school boards to have procedures in place outlining how schools will support these students and requiring principals to refer the students to a community agency that can provide the appropriate type of confidential support. (e.g. sexual assault centre, Kids Help Phone).

Q. Is there a legislative or policy requirement to contact the parents of the aggressor?

A. The safe schools provisions of the *Education Act* already require that parents of aggressors be informed of incidents for which students are suspended.

DELEGATION OF AUTHORITY

Q. Why has legislation been put in place to allow principals to delegate their authority?

A. The *Education Act* outlines specific duties of the principal around suspensions and expulsions and informing parents. However, there is no provision for principals to delegate these duties. In practice, vice-principals are actively involved in many activities related to student discipline.

The new legislation permits a principal to delegate his or her powers, duties and functions under Part XIII of the Act, as per ministry policy.

Q. Why has the Ministry decided to deal with only these SSAT recommendations at this time?

A. The ministry is currently reviewing the remainder of the recommendations which have longer implementation timeframes.

Q. Will the Ministry of Education develop a provincial manual to support board employees in responding to student-to-student incidents of sexual assault as recommended in the SSAT report?

A. Yes. In a forthcoming ministry resource guide, information will be provided for schools on supporting students when responding to issues involving student-to-student sexual relationships, including dating violence and sexual assault.