



## Education Law eBulletin

A newsletter for educators

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### SAFE SCHOOLS UPDATE

On October 4, 2007, the Ministry of Education released three Policy/Program Memoranda ("PPM") to supplement the new student discipline regime created under the *Education Amendment Act (Progressive Discipline and School Safety), 2007*.

#### PPM 128: THE PROVINCIAL CODE OF CONDUCT AND SCHOOL BOARD CODES OF CONDUCT

PPM 128 revises the Provincial Code of Conduct, originally released in April 2000, to reflect the recent changes to the student discipline regime. The PPM provides direction to school boards to review and revise their codes of conduct to make them consistent with the new Provincial Code of Conduct by February 1, 2008. If applicable, school boards must also require principals to review and revise their local school codes of conduct by the same deadline.

#### PPM 144: BULLYING PREVENTION AND INTERVENTION

PPM 144 defines bullying and requires school boards and schools to develop and implement policies on bullying prevention and intervention consistent with the PPM by February 1, 2008, or to review and revise their existing bullying policies to ensure their consistency with the PPM. The policies must provide for training for board personnel at the board and school levels. The PPM requires that the policies provide for a review and monitoring process and requires boards to actively communicate their policies and the definition of bullying to the school community. The PPM also requires each school to have a safe schools team responsible for school safety, although the mandate for this committee is not clear.

PPM 144 provides the following definition of bullying:

"Bullying is typically a form of repeated, persistent, and aggressive behaviour directed at an individual or individuals that is intended to cause (or should be known to cause) fear and distress and/or harm to another person's body, feelings, self-esteem, or reputation. Bullying occurs in a context where there is a real or perceived power imbalance."

Administrators should consider this definition, as well as various examples provided in PPM 144, when determining whether a pupil has engaged in bullying which may warrant suspension. The definition is fairly broad, and an administrator should also look to school policies, procedures, and protocols for further guidance. Administrators will be required to apply the school board policies regarding bullying prevention and intervention as they related to incidents of student misconduct.

#### PPM 145: PROGRESSIVE DISCIPLINE AND PROMOTING POSITIVE STUDENT BEHAVIOUR

Although the notion of Progressive Discipline had not been defined in Bill 212 or related regulations, it has now been addressed by the Ministry of Education in PPM 145. The PPM requires school boards and schools to apply a progressive discipline approach to matters of student discipline as set out in the PPM.



PPM 145 describes “progressive discipline” as follows:

“Progressive discipline is a whole-school approach that utilizes a continuum of interventions, supports, and consequences to address inappropriate student behaviour and to build upon strategies that promote positive behaviours described above. When inappropriate behaviour occurs, disciplinary measures should be applied within a framework that shifts the focus from one that is solely punitive to one that is both corrective and supportive. Schools should utilize a range of interventions, supports, and consequences that include learning opportunities for reinforcing positive behaviour while helping students make good choices.”

The PPM also notes that:

“In some circumstances, short-term suspension may be a useful tool. In the case of a serious incident, long-term suspension or expulsion, which is further along the continuum of progressive discipline, may be the response that is required.”

PPM 145 requires school boards to implement progressive discipline policies that include both early and ongoing intervention strategies, and strategies for addressing inappropriate behaviour when it occurs and that a school board’s strategies for addressing inappropriate behaviour should involve the use of a “range of interventions, supports, and consequences that are developmentally appropriate, and should incorporate opportunities for students to focus on improving behaviour.” In this respect, the PPM stipulates that early and ongoing intervention strategies should provide students with “appropriate supports that address inappropriate behaviour and that would result in an improved school climate.” Early interventions may include “contact with parents, detentions, verbal reminders, review of expectations, or a written work assignment with a learning component” and ongoing interventions may include: “meetings with parents, volunteer service to the school community, conflict mediation, peer mentoring, and/or a referral to counselling.”

PPM 145 identifies the following key elements to consider when administering a progressive discipline approach: 1) the student’s circumstances, 2) the seriousness of the conduct, and 3) the impact of the conduct on the school community.

The above are only highlights of the Policy / Program Memoranda. As the Memoranda set out specific requirements which must be met or incorporated into the above-mentioned policies. Accordingly, school board administrators and school leaders must familiarize themselves with these PPMs to ensure that written policies and their implementation accord with Ministry requirements. Shibley Righton LLP’s Education Law Group is trained and available to answer any questions which may arise in respect of these issues.

### Cases

The Newfoundland and Labrador Provincial Court acquitted a student who had been charged with conveying a false alarm due to a lack of evidence, in part because the timing function on the school’s answering machine was unreliable. *R. v. S.D.*, [2007] N.J. No. 258.

The Ontario Divisional Court dismissed an application for a stay of the Ministry of Labour’s June 22, 2007, order in which it revoked a previous order allowing the school board to establish a multi-site joint health and safety committee. *Elementary Teachers’ Federation of Ontario v. Ministry of Labour for Ontario and the Greater Essex County District School Board*, [2007] O.J. No. 3229.

The Ontario Superior Court of Justice dismissed an application by a Part-Time Students’ Association which disagreed with an increase to compulsory student ancillary fees, finding that the provisions of the protocol followed by the University were not ambiguous, and it had the power to make such adjustments to the fees in question. *Assn. of Part-Time Undergraduate Students of the University of Toronto v. University of Toronto*, [2007] O.J. No. 3231.

The British Columbia Court of Appeal dismissed a schoolteacher’s appeal of the lower court’s dismissal of an action for loss of income and breach of contract as against the employer School Board, finding that the issue should have been brought before the labour relations board. *Haynes v. British Columbia Teachers’ Federation*, [2007] B.C.J. No. 2050.

The Alberta Court of Queen’s Bench held that a school board breached its duty of fairness by changing its policy regarding bussing out of area students without consulting the parents of those students. *Czerwinski v. Mulaner*, [2007] A.J. No. 1005.

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