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Safe and Compassionate Schools Taskforce
Toronto District School Board
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Dear Taskforce:

Thank you for inviting us to your Roundtable discussions about the safe schools provisions of the *Education Act* and their implementation by the Toronto District School Board, and for listening to our comments and suggestions. In our discussions, Trustee Chris Bolton advised us that your taskforce is meeting in the evening of May 19th to consider any written submissions and the drafting of your Report to the Board. Thank you for the opportunity to submit some comments in writing.

Justice for Children and Youth is a legal clinic and the operating arm of the Canadian Foundation for Children, Youth and the Law. The clinic provides select legal representation to youth aged 17 and under in the areas of education, income maintenance, criminal law, family law, mental health law, health law, constitutional law and human rights. Our staff provides public legal education to young people and to youth-serving agencies.

The Foundation prepares policy/law reform positions on issues relating to the legal work of the clinic based on the needs and experience of its clients. The clinic also provides public legal education to youth and youth-serving agencies.

We have been interested in the Safe Schools Act since before it was enacted, and were consulted about the “mitigating circumstances” set out in the regulations. We made written and oral submissions to the Norton Taskforce that did consultations across the Province before the Human Rights Commission released its Report: *The Opportunity to Succeed: Achieving Barrier-free Education for Students with Disabilities*. Many of our submissions were quoted in the Report.

While there are many longer-term, more complex issues that must be addressed, I am writing now to set out in writing the immediate concrete steps we would urge the Board to take before the beginning of the next school year.

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1. The TDSB should amend its policy governing parties to suspension appeals and expulsions to provide that the student to be subjected to discipline should be a party to his or her own hearing. The most important individual legal right that a school-aged person has is the right to attend school. This right should not be taken away without the student having the right to participate in the process. From a legal perspective, the current policy denies the student natural justice and fairness. From a pedagogical perspective, the student is more likely to consider the process fair, to internalize the seriousness of the right to education, and to accept responsibility for the results of a process in which the student has participated fully. Furthermore, as the Supreme Court of Canada pointed out in *Eaton*, parents do not always act in the child's best interests and, in making decisions, the views of a child able to express them are of great importance. The participation of children in decision-making processes affecting them is a fundamental principle of the *United Nations Convention on the Rights of the Child*.
2. Education is a service which must be provided in a manner that is non-discriminatory under the Ontario Human Rights Code. With respect to students with disabilities, this means that rule-breaking that could lead to suspension or expulsion for a student without a disability cannot be applied in the same way to a student with a disability if the misconduct is related to the disability. Thus it is discrimination to suspend a student with Tourette Syndrome for swearing at a teacher. The student must be accommodated to the point of undue hardship. While the principal's manual includes a reference to the fact that principals should consider the effect of a student's disability before imposing discipline, it does not make it clear that disciplining a student for conduct associated with a disability is discrimination and illegal, unless the student has been accommodated to the point of undue hardship. Even if the manual were amended, it is clear that many principals have not had time to read and remember all of the current version. In order not to discriminate against students with disabilities, the Board must pass a clear policy stating that students with disabilities must first be accommodated to the point of undue hardship before suspensions or expulsions can be imposed. This policy should be reinforced by principal and (even more importantly) vice-principal training.
3. Misconduct should not result in academic consequences, especially when the provincial curriculum is intended to set out learning outcomes, not the number of classes the student was forced to miss. A student who can multiply should not get zero for a test on multiplication that he missed because he was suspended. Students who are suspended or expelled will either drop out or return to school. Dropping out is a poor choice, not only for the student, but for society generally. Students who return to school behind in their work are almost certain to misbehave again, since they will not be able to follow what is going on in class. Forcing a student to repeat an entire course or year is also counter-productive, since the student will be bored much of the time. The Board should ensure that homework is provided to all students who are under suspension and should ensure that they have an alternative setting or time to write tests or hand in assignments.
4. Principals often call the police as well as imposing school discipline. The youth criminal justice system strongly encourages community-based solutions to youth misconduct. Young people may be referred to a program or asked to repair the harm they did. They may be asked to participate in a conference or peer mediation to restore the community of which they are a part. Schools must be willing to participate in these out-of-court resolutions to youth misconduct.

Principals should be directed, once they have involved the police, to participate in conferences or diversionary measures when asked by judges, attorneys or police in the criminal justice system. Schools should be encouraged to develop the programs their students need in order to successfully re-integrate in their own school community.

5. Students and their parents feel a large imbalance in knowledge and power about safe schools procedures and policies. The manual developed for school administrators should be available on the board's website. The manual is certainly available as a public document through access to information legislation. To help communities feel that disciplinary decisions are arrived at fairly and to help make the accountability of school administrators more apparent, the manual should be as available to the public as possible. The TDSB website is a good one and makes so much of the Board's decision-making accessible to its students and community. The manual should be on it.

These changes can and should be made before September. In order to better understand what should be improved in the medium and long term, the Board should require the collection of statistical information about suspensions and expulsions. The Board should require monthly reports to be presented to it at each of its monthly meetings. The reports should include the number of suspensions, set out by school. The number of suspensions should be further broken down by length of suspension, grade of student, sex of student, general category of misconduct, nature of disability or exceptionality of student if any, race or ethnic or cultural association of student, and whether or not the misconduct was gang related. Although the collection of data about race or racialized communities is controversial and risks misuse, the perception of many racialized communities is that it must be done. The Human Rights Commission refers to this possibility as a way of enhancing public confidence in a discipline system that feels discriminatory to many families. Many feel they have nothing to lose and the hope of something to gain in the collection of statistical racial data. In our Roundtable discussions, it was interesting to hear support for the collection of such data from the representative of Jane Finch Community Legal Services (who also sits on the board of PEACH) and from the representative from the Centre for Spanish-Speaking Peoples. The Community Equity Reference Group also supports the collection of statistical information. Such data could be collected on an anonymous, statistical basis for research purposes (to ensure non-discriminatory, equitable student discipline), with consent, as part of an approved affirmative action program, or for a purpose consistent with another statutory duty of the Board.

Finally, we have received many complaints about the ever-expanding scope of school discipline for activities that do not occur on school property or during the school day. While there may be cases in which there is such a close nexus between the conduct and the safety of the school that a school discipline response is appropriate, most of such out-of-school conduct is best dealt with by the police. This is particularly true in the case of alleged threats or words on the internet. The seriousness and tone of voice are not easy to judge in such circumstances. Principals and vice-principals must be better trained to be cautious about responding to out-of-school activities. Generally school administrators are not well trained in fair investigative techniques. They may confuse their duty to keep order and discipline in the school with their duty to act in loco parentis.

They may have little training in assessing the reliability of evidence. They may not know how much proof they must have before making a decision. Training is time-consuming and we do not expect that it could be completed before September. Indeed, training must be an on-going effort. However, principals are required to follow the Board's guidelines in their investigations. Revision and expansion of the guidelines should begin this school year.

We strongly encourage the Board to improve its application of the discipline portion of the Education Act in the ways we have suggested. We also applaud the Board's recognition of the importance of the issue in its creation of a Taskforce and are grateful to the Taskforce for its commitment to consultation with those concerned about the issues and those who work with young people. We offer our on-going assistance in the implementation of any of the changes we have suggested.

Thank you for your efforts.

Yours truly,

Martha Mackinnon