

---

## Backgrounder - Human Rights Settlement Reached with Toronto District School Board

### Terms of Settlement

WHEREAS the Commission on July 7, 2005, initiated a complaint pursuant to subsection 32(2) of the *Human Rights Code* (the "Code") in the public interest and on behalf of racialized students and students with disabilities alleging that the application of the *Safe Schools Act* and the Toronto District School Board's ("TDSB") policies on discipline are having a disproportionate impact on racial minority students and students with disabilities. The complaint alleges that the TDSB had failed to meet its duty to accommodate racialized students and students with disabilities in the application of discipline, including providing adequate alternative education services for racial minority students and students with disabilities who are suspended or expelled and that the above amounts to a failure on the part of the TDSB to provide equal access to education services and that this constitutes discrimination and contravenes sections 1, 11 and 9 of the *Human Rights Code* ;

THEREFORE, the parties agree to settle this matter as follows:

1. The TDSB accepts and acknowledges a widespread perception that the application of Ontario's school disciplinary legislation, regulations and policies can have a discriminatory effect on students from racialized communities and students with disabilities and further exacerbate their already disadvantaged position in society.
2. The TDSB will determine the most appropriate methodology to collect and analyse data on suspensions and expulsions under the *Education Act* to determine the extent to which the *Act* is having an adverse impact on individuals protected under the *Code*, in particular, students from racialized communities and students with disabilities. When collecting the data, the TDSB will ensure that individual data is collected in a manner that is provided for in the Commission's *Guidelines on Special Programs*, and the Commission's *Guidelines for Collecting Data on Enumerated Grounds under the Code* and is used only to address inequities and to promote compliance with the Ontario *Human Rights Code*. The TDSB will take steps to ensure the confidentiality of students in this process. In the event that the TDSB does not issue a clear directive requiring data to be collected commencing in the 2006-07 school year, the TDSB agrees to re-open settlement discussions with the OHRC on this specific issue.
3. The TDSB will rewrite its grid of consequences and all related documents to ensure that the use of discretion and the use of mitigating factors are emphasized. The TDSB will ensure that school principals and all other staff are fully informed of and in compliance with this directive. The parties note that nowhere in the *Safe Schools Act*, regulations or related policies do the words "zero tolerance" occur.
4. The TDSB has provided and will continue to provide appropriate training on racial stereotyping and profiling, anti-racism, cross-cultural differences, and how to effectively deal with students whose disabilities may cause them to be disruptive in school. The training will be provided to the administrators of discipline including teachers and all persons in positions of authority.
5. In keeping with its "Equity Foundation Statement and Commitments to Equity Policy Implementation", the TDSB will continue to train staff that it is an expectation that staff be aware of and sensitive to the presence of racially biased education in the elementary and secondary school curriculum. Where bias is found to exist, the TDSB will ensure that school principals take corrective measures to make the curriculum inclusive of all of the communities it serves.
6. In accordance with its "Equity Foundation Statement", the TDSB has and will continue to actively recruit qualified and certified teachers and administrators from within Canada and elsewhere who are members of racialized groups and will develop a procedure with respect to the recruitment, retention and promotion of racialized teachers in order that there is an equitable representation reflective of the Toronto Community. The TDSB will undertake to make the College of Teachers

and the Ministry of Colleges and Universities aware of the TDSB's position regarding:

- a. the need to ensure diversity in recruiting, and
  - b. the need to remove barriers to access for internationally-trained teachers who apply to work in Ontario.
7. The TDSB will facilitate a meeting with the OHRC by January 31, 2006 to discuss how the TDSB recruits and enables internationally trained teachers and teachers from racialized communities, who are in the system on a temporary basis, to obtain permanent positions.
8. The Commission requires that while the Ministry of Education's comprehensive review of the *Act* referred to above is taking place, that:
- a. TDSB will continue to take appropriate steps to ensure that teachers and all persons of authority are aware of the expectation and that they will exercise their discretion in applying the *Act* in a manner consistent with the Ontario *Human Rights Code* and the OHRC's *Guidelines on Accessible Education*.
  - b. The TDSB will ensure that principals are familiar with the current requirement in section D of the TDSB Safe Schools Procedures Manual to consider a wide variety of factors when exercising their authority under sections 306, 309 and 310 of the *Education Act* and Regulation 37/01. In addition, principals will be informed that when they interpret mitigating factors they should consider whether racial or other harassment predicated the student's behaviour, and whether the principles of progressive discipline have been followed. This discretion shall include consideration of mitigating circumstances and the implementation of practices of progressive discipline, if discipline is appropriate, when considering whether a student can be either suspended or expelled.
  - c. In the case of a student with a disability, educators shall also assess whether appropriate accommodation has been provided when deciding what appropriate measures to take.
  - d. The TDSB will conduct a thorough review of the current protocol between the school board and the police, to be completed by June 2006, while the *Act* and policies are under review by the Ministry of Education, and will make modifications to ensure that the protocol complies in full with the Ministry of Education's "Provincial Model for a Local Police/School Board Protocol", the *Youth Criminal Justice Act*, and the *Canadian Charter of Rights and Freedoms*. Prior to conducting a review, the TDSB agrees to meet with representatives of the OHRC by December 23, 2005 and to invite the other parties to the protocol. The purpose of the meeting is to inform the parties of the OHRC's concerns with the protocol.
  - e. Whenever the police are called, the TDSB will contact the parent or guardian of the student (s) or, in the absence of a parent, an adult relative or, in the absence of a parent and an adult relative, any other appropriate adult chosen by the young person, as long as that person is not a co-accused, or under investigation, in respect of the same offence. Where there is no parent/guardian or adult relative or appropriate adult available, the principal or his/her delegate will act in *loco parentis* to the student(s), in order to ensure their *Charter* rights are maintained.
  - f. The TDSB will implement a procedure for student discipline with the goal of avoiding suspensions or expulsions. This procedure will be based on the principles of progressive discipline and will include but is not limited to:
    - i. detention;
    - ii. peer mediation;
    - iii. restorative justice;
    - iv. referrals for consultation; and
    - v. transfer.
  - g. The TDSB will develop and distribute a pamphlet which clearly delineates parents/guardians' or adult students' rights in situations of pending or actual suspension or expulsion. The TDSB will provide a draft copy to the OHRC for review.
  - h. Principals will be encouraged to provide curriculum in accordance with Ontario curriculum standards forthwith for all suspensions. The TDSB will ensure that no student's education is interrupted by a suspension of over 5 days or an expulsion from their home school under the *Act* by ensuring that alternative educational programs are made available forthwith to such students. Such alternative programs may include, but are not limited to, in school

- suspension facilities, alternative schools or programs that are, where possible, locally accessible. Further, the TDSB will ensure that such alternative education is provided at a standard equal to the Ontario curriculum.
9. The TDSB will convene a meeting between the OHRC and the TDSB's Special education staff by December 23, 2005. Should an agreement not be reached on the issues (a) to (e) below, the parties agree to re-open settlement discussions on these specific issues:
    - a. How to ensure that accommodation is governed by the principle of individualization;
    - b. How to ensure the most effective means of communicating with parents about special education practices and procedures, which would include, but not be limited to, holding information sessions for parents and guardians of students with disabilities which fully inform them of their rights and responsibilities throughout the accommodation process. The TDSB will discuss the possibility of holding a minimum of two such sessions per school year, with a session occurring both in September and February. The TDSB will also discuss what steps need to be taken to ensure that any such sessions are accessible to all parents, including parents whose first language is not English, and parents who may have disabilities that require information in alternative formats;
    - c. How to provide access to educational services for students with disabilities who have been removed from school;
    - d. How to accommodate students whose behaviour was a manifestation of a disability and how to prevent the labelling of such students;
    - e. How to ensure that the IPRC process is transparent and that parents are adequately informed and supported during the process;
    - f. Other recommendations relevant to discipline included in the OHRC's report "*The Opportunity to Succeed*".
  10. The TDSB will ensure that a student with a disability who has been subjected to disciplinary measures will be reassessed periodically and will not be removed from a regular school placement indefinitely, unless to include the student would cause undue hardship.
  11. The TDSB continues its commitment to the creation and implementation of Individual Education Plans for students with special needs consistent with the expectations of the Ministry of Education as outlined in Regulation 181/98, Identification and Placement of Exceptional Pupils and the Ministry of Education's Individual Education Plans: Standards for Development, Program Planning, and Implementation, 2000.
  12. The TDSB will determine the present educational status of the expelled students, and where they have not had the opportunity to complete the credits for the Ontario Secondary School Graduation diploma, the Board will implement a system by which the students will be given the opportunity to complete the credits for their diploma.
  13. The TDSB will report on the Summer 2005 pilot project on Afro centric schools, as well as any future plans for similar initiatives.
  14. The parties agree that in keeping with the Commission's public accountability and a duty to serve the people of Ontario, as well as to promote understanding of human rights and responsibilities, they will issue a press release relating to the terms and conditions of the Minutes of Settlement, on an agreed upon date, within 30 days of the approval of the Minutes of Settlement by the Commission.
  15. The parties agree that they shall be bound by the provisions of this agreement until the Commission decides whether or not to approve the agreement in accordance with section 43 of the *Code*.
  16. In the event that this agreement is approved by the Commission, it shall continue to bind the parties.
  17. In the event that the Commission does not approve this agreement, it shall be null and void.

**See also:**

News release: Human Rights Settlement Reached with Toronto District School Board