

Terms of Settlement

THIS AGREEMENT ENTERED INTO THIS 10th Day of April 2007

ONTARIO HUMAN RIGHTS COMMISSION
(Hereinafter the "OHRC")

and

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE
MINISTER OF EDUCATION
(Hereinafter the "Ministry")

WHEREAS on July 7, 2005, the OHRC initiated a complaint, number GKEA-6DUH6W, pursuant to subsection 32(2) of the *Human Rights Code* in the public interest and on behalf of racialized students and students with disabilities alleging that the application of the safe schools provisions of the *Education Act* and the Ministry's and school boards' policies on discipline are having a disproportionate impact on racial minority students and students with disabilities.

NOW THEREFORE, the Parties agree to settle these matters as follows:

I Statement of Agreed Principles

1. The Ministry acknowledges the widespread perception that the application of the current safe schools provisions of the *Education Act* and related regulations and policies can have a disproportionate impact on students from racialized communities and students with disabilities and can further exacerbate their already disadvantaged position in society.
2. The parties agree that there is no reference in the *Education Act* or in the related regulations or policies to the concept of zero tolerance nor should there be any language in the legislation, regulations or policies that suggests the concept of zero tolerance.
3. The parties agree that every student should reach the highest level of achievement that his or her ability and willingness to work hard will permit.
4. The parties agree that the safe schools provisions of the *Education Act* and related regulations and policies must be applied in a manner that complies with the Ontario Human Rights Code (the "Code").
5. The parties agree that the Code has primacy over all other provincial legislation (unless otherwise stated). It applies to all government ministries and school boards and covers education policies, practices and procedures.

II Review of the Safe Schools Provisions of the Education Act

6. The Ministry is committed to a comprehensive review of the safe schools provisions of the *Education Act*. As a first step, the Minister designated the Safe Schools Action Team to hold public consultations into this matter.
7. After having heard the OHRC's concerns about the composition of the Safe Schools Action Team, the Ministry of Education reviewed the composition of the Team and changed it to include representation from and full participation by persons from racialized and disability communities.
8. After having heard the OHRC's concerns about the contents of the Discussion Guide that was to be used during the consultation, the Ministry formulated additional questions for it that included reference to the Complaint and questions about the possible disproportionate impact of the safe schools provisions of the *Education Act*.

9. The Ministry agrees to remove the term "zero tolerance" from any Ministry documents in which it may appear.
10. Upon settlement of this Complaint, the Ministry agrees to communicate to boards that it wishes to propose amendments to the safe schools provisions of the Act and regulations. At that time, the Ministry will inform boards that

a. There is no reference to the concept of zero tolerance in the *Education Act*, regulations or related policies, nor should there be in any amendments to the *Education Act*, regulations or related policies, and;

b. Prior to suspending or expelling a student, principals and school boards should review and consider the mitigating factors set out in current regulations to see whether they apply;

c. The existing mitigating factors in the regulations are broad enough to include those listed in clause 11 and should be considered by principals when disciplining students;

d. The Ministry believes in the concept of progressive discipline in order to avoid suspensions and expulsions and encourages school boards to apply these strategies, including but not limited to: in-school detentions, peer mediation, restorative practice, referrals for consultation, and/or transfer;

e. The Ministry will direct school boards to begin implementing alternative education programs at the beginning of the 2007-08 school year for students who are expelled or on long-term suspensions (of more than five school days) so that they may continue their education;

f. The alternative education programs are to follow the Ontario curriculum guidelines and standards unless the student has an Individual Education Plan (IEP) that provides for something other than the regular curriculum;

g. The Ministry expects school boards to review their local school board/police protocols to ensure that they are consistent with the Provincial Model for a Local Police/ School Board Protocol. School boards will be directed to submit their protocols to the Ministry where they will be reviewed for consistency with the Provincial Model. The Ministry will report on this review to the Commission. The Ministry expects school boards to work cooperatively with their local police departments to ensure that, when the police are called to a school to investigate an incident, the protocol is followed and students and staff are treated with fairness and respect. In particular, the Ministry expects school boards to comply with the requirement in the Provincial Model that the school board/police protocols address police interviews of students at school; particularly in relation to contacting parents of students being interviewed;

h. If the *Education Act* is amended, school board staff will be provided with training as to the intent and application of the amendments.

11. Pending the Ministry's review of the safe schools provisions of the *Education Act*, but in any case no longer than 120 days from the signing of these Minutes of Settlement, the Minister of Education will request through the Cabinet's regulation process, amendments to Regulations 37/01 and 106/01, so that:

i. the following mitigating factors proposed by the OHRC are represented in the regulations:

a. whether racial or other harassment was a factor in the student's behaviour;

b. whether the principles of progressive discipline have first been attempted;

c. the impact of the suspension or expulsion on the student's continued education;

d. whether the imposition of suspension (or expulsion) would likely result in an aggravation or worsening of the student's behaviour or conduct;

e. the age of the student;

f. in the case of a student with a disability, whether the behaviour was a manifestation of the disability and whether appropriate accommodation, based on the principle of individualization,

had first been provided; and
g. the safety of other students.

ii. principals and school boards are required to consider the mitigating factors prior to suspending or expelling any student.

- 11.1 The Ministry will issue a Policy/Program Memorandum requiring principals and boards to consider the following prior to suspending or expelling a student with a disability:
- a. not suspending or expelling a student where the student's behaviour was directly caused by a disability;
 - b. the provision of alternative education where a student with a disability must be removed from the classroom for health, safety or other reasons;
 - c. the return of the student to the his/her regular classroom;
 - d. consultation with parents around the management of behaviour arising from a disability; and
 - e. the application of progressive discipline.
12. As part of the legislative review, the Ministry will consider including a requirement in the *Education Act* and/or regulations and associated policies that suspension and expulsion are to be used only after progressive discipline has been attempted. Strategies may include but are not limited to: in-school detentions, peer mediation, restorative practice, referrals for consultation, and/or transfer.
 13. If amendments to the safe schools provisions of the *Education Act* are passed by the Legislature, the Ministry will review its relevant policies to ensure that they are consistent with the amendments.
 14. At present, Policy and Program Memorandum (PPM) 119 (Development and Implementation of School Board Policies on Antiracism and Ethnocultural Equity), dated July 13, 1993 says, in part, that:
 - a. "equitable employment practices form an integral part of boards' antiracism and ethnocultural equity policies and practices" and further recognizes that "the workforce in the school board should reflect and be capable of understanding and responding to the experiences of Ontario's culturally and racially diverse population"; and
 - b. "...a high priority shall be assigned to broadening the curriculum to include diverse perspectives and to eliminating stereotyping."
 15. The Ministry of Education continues to support the principles of PPM 119. The Ministry agrees that any review and reissue of PPM 119 will not reflect a weakened or reduced commitment to the principles of anti-racism and ethnocultural equity. Any reissue of PPM 119 will, at a minimum, direct school board to review their safe schools and discipline policies to ensure that they are consistent with the Youth Criminal Justice Act (YCJA), the Code and any amendments to the *Education Act*.
 16. Any reissue of PPM 120 (School Board Policies on Violence Prevention in Schools) will also direct school boards to review their safe schools and discipline policies to ensure that they are consistent with the same legislation as that referred to in clause 15.
 17. Any PPMs issued for the first time or reissued will direct boards to apply their policies in a manner consistent with the legislation set out in clause 15. This would also apply in the case of the Ministry reviewing and revising or reissuing its Provincial Model for a Local Police/School Board Protocol.

III Monitoring for Disproportionate Impact (Data Collection)

18. The Ministry will examine its data collection and analysis capacity in order to improve its understanding of student behaviour and the supports available to students.
19. The parties agree that data collection will only ever be undertaken in accordance with freedom of information and protection of privacy legislation, the OHRC's *Guidelines for Collecting Data*

on Enumerated Grounds under the Code (September 2003), and other relevant legislation and that the data will only ever be used for legitimate purposes consistent with the Code, such as ameliorating disadvantage, removing systemic barriers, and promoting substantive equality for individuals and groups protected by the Code.

20. In response to the Commission's concerns, the Ministry made suspension and expulsion data available on its website for the first time this year. The data includes information for the years 2000-01, 2001-02, 2002-03, and 2003-04 and is also broken down by exceptionality. In addition to the data, the Ministry's website provides trend analysis.
21. The Ministry agrees to make suspension and expulsion data available (by Board) on its website on a regular basis.
22. The Ministry supports the efforts of school boards that are prepared to collect data on suspensions and expulsions for the purpose of determining the extent to which these forms of discipline may have an adverse impact on individuals protected under the Code. The Ministry will hire an independent, qualified researcher with expertise in the area of data collection and usage of data by race to work with these school boards to:
 - develop best practices and a common methodology to ensure that data is collected in accordance with the Commission's Guidelines for Collecting Data on Enumerated Grounds Under the Code;
 - ensure that data collected will be anonymized and will comply with freedom of information and privacy protection legislation;
 - ensure that parents, students and relevant communities have been and can be involved in the formulation of the identified best practices; and
 - evaluate the data collection projects at regular intervals and report to the Ministry the benefits, risks and lessons learned from it.
23. The researcher will be required to report to the Ministry every six months starting from the date of being hired until completion of the contract. The Ministry will provide copies of the researcher's reports to the OHRC as part of its reporting requirements as set out in clause 52.
24. Upon completion of the research contract the Ministry agrees to re-examine its existing position on race-based data collection.

IV ALTERNATIVE PROGRAMMING AND SUPPORTS

25. The Ministry has introduced strategies and initiatives designed to improve student achievement and the graduation rate. The \$1.3 Billion three-phase Student Success strategy includes the introduction of legislation to keep students learning until graduation or until the age of 18; lighthouse and pilot projects and other supports for disengaged, struggling and underachieving youth who are facing significant challenges in completing their diploma requirements. Students who are already expelled will also benefit from these initiatives. All students will benefit from bullying prevention initiatives that promote a safe environment for learning.
26. The existing Strict Discipline Programs (SDPs) are pilot projects and are being reviewed and assessed for the effectiveness of their outcomes. The Ministry will study what elements of the projects result in positive outcomes for students who have attended them.
27. The Ministry is committed to supporting and funding model projects in the 2006-07 school year that provide for alternative education programs for students who are expelled or who are on long term suspensions (i.e. more than five school days), or who are at risk of being suspended or expelled. These projects will focus on prevention, early identification, intervention and alternative programming. Priority in the selection of projects will be given to those that target the needs of racialized students and students with disabilities.
28. As part of its policy analysis of the strict discipline programs, and possible development of alternative education programs, the Ministry agrees that, within 180 days of the signing of these Minutes of Settlement, the Ministry will request Cabinet approval for the development of a policy regarding alternative education programs to address:
 - a. the availability of alternative programming;
 - b. the availability of other supports for students who are suspended or expelled;

- c. the imposition of limited expulsions;
- d. the availability of alternative programming outside of major urban centres;
- e. methods of monitoring the delivery and evaluating the success of alternative programming.

V CURRICULUM

29. The Ministry recognizes that students who are engaged and achieving are less likely to become involved in activities that lead to suspensions and expulsions.
 - 29.1 For greater clarity, a long-term suspension is any suspension of more than five school days.
30. The Ontario curriculum is designed to provide students with the knowledge and skills they will need to be successful when they leave school. The Ministry has revised 12 curriculum documents to include instructional strategies and resources that recognize and reflect the cultural diversity in the classroom and that suit individual strengths and needs critical to student success. For example, the Kindergarten Program (revised 2006) has specific direction for teachers regarding English Language Learners, Children with Special Education Needs and Antidiscrimination Education. In addition, the revised 2006 Business Studies, Grades 9 - 12, the revised 2006 Guidance and Career Education, Grades 9 - 12; the revised 2006 Mathematics, Grade 1-11; and, the revised 2006 Language, Grades 1 - 8 all have specific direction for teachers regarding English Language Learners, Planning Programs for Students with Special Education Needs and Antidiscrimination Education.
31. The Ministry
 - a. acknowledges the need to ensure educational institutions in Ontario adopt policies and practices to implement educational strategies and techniques that value diversity from within an anti-racism context. These must be consistent with PPM 119 and with the goals and objectives of the Ministry of Education (Literacy and Numeracy Secretariat).
 - b. Further to clause 30 of this agreement, the Ministry will invest in resources for teachers to inform them of strategies for the teaching of Black, aboriginal and other racialized students. Principals, guidance counsellors and teachers will be trained in anti-racism principles, consistent with the goals and objectives of PPM 119, in order to ensure student success in accordance with the abilities of the student.
 - c. The Ministry will highlight resources for teachers and guidance counsellors to help inform strategies for the teaching of racialized students and students with disabilities, to ensure the success of those with historic or current disadvantage.

VI TRAINING AND STAFFING

32. Bullying is a pervasive problem and frequently a precursor to other types of violent behaviour. The government determined that because many of the difficulties that young people experience at school start with incidents of bullying, the creation of a safe and secure school environment must start with bullying prevention.
33. The Literacy and Numeracy Secretariat of the Ministry of Education was created to improve literacy and close the achievement gap between high and low performers. The Secretariat has identified nine strategies, of which #6 is *mobiliz[ing] the system to provide equity in student outcome. The Secretariat will... Commission professional organizations and faculties of education to provide targeted professional development to support improvement of selected groups that continue to struggle, such as Aboriginal students, students in ESL, and special education programs and boys.*
34. The Ministry funded the three Principals' Associations to develop and deliver training materials on Bullying Prevention for principals and vice-principals. These materials were developed with the assistance of the Ministry. The principals' training materials specifically address bullying and school climate in the context of racism, homophobia, and students with special needs. The principals' training materials were provided to the Commission for its information.
35. The Ontario government has a comprehensive strategy to address the barriers facing

- internationally trained individuals seeking access to professions and trades in Ontario. On June 8, 2006, the government introduced Bill 124, the *Fair Access to Regulated Professions Act* and the bill received Royal Assent on December 20, 2006. This legislation requires Ontario's regulated professions to make sure their admissions processes are fair, open and clear, so that internationally trained individuals can work in their field more quickly. The legislation will apply to the Ontario College of Teachers, which is the body responsible for the accreditation of teacher education programs and for the certification of teachers.
36. The Ministry adheres to the Equal Opportunity Operating Policy in all recruitment and learning activities to ensure accessibility and full participation in all aspects of employment. As an equal opportunity employer, the Ministry is dedicated to a fair and equitable hiring process and is committed to eliminating barriers to employment.
 37. The Ministry supports the Ontario Public Service's Human Resources Plan (2005-08) in its goal of having a workforce that is representative of Ontario's population at all levels and follows:
 - Employment Accommodation for People with Disabilities Operating Policy
 - Equal Opportunity Operating Policy
 - Workplace Discrimination and Harassment Prevention (WDHP) Policy.
 38. The Ministry commits to communicating with the Ministry of Training, Colleges and Universities and the Ministry of Education/ education faculties' liaison committees to discuss the issues brought forward by the OHRC regarding their curricula and enrolment practices. In particular, the Ministry commits to proposing that post-secondary institutions that provide teacher training and certification actively promote, advertise and recruit teachers and teaching candidates from racialized communities and disabled persons and other under-represented groups of persons within Ontario.
 39. The Ministry will be monitoring the delivery of Bullying Prevention training to principals and vice-principals.
 40. Teachers will be provided with training on Bullying Prevention.
 41. Principals, vice-principals and teachers will be provided with training on any amendments made to the *Education Act* and regulations related to safe schools.
 42. Further,
 - a. Ministry will include anti-racism, anti-discrimination and cultural awareness training along with any training on amendments to the safe schools provisions of the *Education Act*, regulations and policies.
 - b. Principals and vice-principals will be provided with training on how to apply discipline in a non-discriminatory manner. Specifically, training will be provided on anti-racism, cross-cultural differences and accommodating students with disabilities. The Ministry will also direct boards to ensure that trustees responsible for expulsion hearings/suspension appeals receive equivalent training.
 43. The Ministry will be providing training to teachers and principals to improve decision making so that students have better access to programs and supports

VII COMMUNICATION WITH PARENTS AND STUDENTS

44. The Ministry recognises the important role played by parents in the education of their children and the important contribution parental involvement makes to the school community. As part of the Safe Schools Review, the Safe Schools Action Team heard that there must be early and ongoing communication between all school staff and parents on student progress and behaviour; it also heard that schools must work more closely with parents, particularly in regard to disciplinary decisions made about their children.
45. The Action Team report notes that ongoing communication between all school staff and parents on student progress and behaviour is important; and that information must be shared by local schools and school boards with parents, students and the school community about the safe schools provisions of the *Education Act*, the Ontario Code of Conduct and related board and school policies, processes and appeals.

46. The Ministry has created a Parental Engagement Office to coordinate various measures to involve parents more fully in their children's education. This Office is planning to launch a list of annotated web-links to provide parents with access to parenting resources on topics including bullying prevention, safe schools, student behaviour and health.
47. The Ministry is committed to enhancing parental involvement and has developed tools to that end. For example, it has advised boards to create school-based safe schools teams that are to include parent representation. The Ministry has made School Climate Surveys available on its website. One survey is directed at parents and two are for students (one from grades 4-6, and one from grades 7-12). These surveys provide types and examples of bullying, including racial/ethnic bullying. The Ministry has also developed a Bullying Prevention Pamphlet for parents distributed to all schools and posted on the Ministry website in September 2006.
48. The Ministry is supporting Kids Help Phone which provides a safe reporting mechanism for students who bully or who are bullied and access to confidential counselling 24 hours a day, seven days a week. In addition, CyberCops is a software program educating students about internet safety and cyber-bullying which has been distributed to 3,100 schools for use by students.

VIII. SYMPOSIUM

49. Following the passage of any amendments to the safe schools provisions of the *Education Act*, the Ministry will hold a provincial Safe Schools Symposium and/or a series of regional meetings. The OHRC will be invited to participate in the Symposium and/or regional meetings.
50. The agenda could include any of: the Commissioner as a keynote speaker, a workshop hosted by the OHRC, a workshop hosted by police agencies, a best practices workshop on police relations, opportunities for school boards to share best practices, including communicating with parents about special education practices and procedures, a review of how to develop/implement police/school board protocols, etc.

IX. ADMINISTRATIVE ITEMS

51. The Ministry agrees to make this Agreement available to school boards.
52. The Ministry agrees to report back to the OHRC on its progress implementing this Agreement at the one year anniversary of the Agreement and at one year intervals thereafter until completed.
 - 52.1 Forthwith following the one year anniversary of this Agreement, the parties agree to discuss a mutually agreeable end date for this Agreement.
53. The parties agree that in keeping with the OHRC's and the Ministry's public accountability and duty to serve the people of Ontario, as well as to promote understanding of human rights and responsibilities, each may issue a press release relating to the terms and conditions of the Minutes of Settlement after consultation/notification with the other party on timing and content.
54. These Minutes of Settlement are subject to the approval of the Commission under section 43 of the Human Rights Code and may be enforced under that section. The Commission may give the Ministry notice in writing that it is of the opinion that there has been an apparent breach by the Ministry of the terms of these Minutes of Settlement. The Ministry shall then have 90 days to communicate to the Commission in response and the parties agree to meet to attempt to resolve any disagreements that may arise therefrom.
55. It is understood and agreed that the execution of these Minutes of Settlement is without prejudice and without precedent and does not constitute an admission of liability on the part of Her Majesty the Queen in right of Ontario, or on the part of the Minister of Education or their officers, employees, servants or agents.
56. Pending final approval of this agreement by the Commission and the Minister of Education, both parties will conduct themselves in accordance with the provisions contained in this agreement.
57. In the event that either the Commissioners or the Minister do not approve this agreement, it shall be null and void.

IN WITNESS WHEREOF THIS AGREEMENT HAS BEEN
EXECUTED BY THE PARTIES

PARTIES		DATE
Ontario Human Rights Commission		
Her Majesty the Queen in Right of Ontario as Represented by the Minister of Education (I have authority to bind the respondent HMQ)		
Per: Ontario Human Rights Commission		