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Wednesday 16 May 2007

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Mercredi 16 mai 2007

Standing committee on general government

Education Amendment Act
(Progressive Discipline
and School Safety), 2007

Comité permanent des affaires gouvernementales

Loi de 2007 modifiant
la Loi sur l'éducation
(discipline progressive
et sécurité dans les écoles)

Chair: Kevin Daniel Flynn
Clerk: Susan Sourial

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Wednesday 16 May 2007

Mercredi 16 mai 2007

The committee met at 1619 in room 151.

EDUCATION AMENDMENT ACT (PROGRESSIVE DISCIPLINE AND SCHOOL SAFETY), 2007

LOI DE 2007 MODIFIANT LA LOI SUR L'ÉDUCATION (DISCIPLINE PROGRESSIVE ET SÉCURITÉ DANS LES ÉCOLES)

Consideration of Bill 212, An Act to amend the Education Act in respect of behaviour, discipline and safety / Projet de loi 212, Loi modifiant la Loi sur l'éducation en ce qui concerne le comportement, la discipline et la sécurité.

The Chair (Mr. Kevin Daniel Flynn): I'll call the committee to order. This is the second day of hearings on Bill 212, An Act to amend the Education Act in respect of behaviour, discipline and safety.

ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION

The Chair: Our first presenters today are Donna Marie Kennedy and Victoria Hunt from OECTA, the Ontario English Catholic Teachers' Association. Come forward and make yourselves comfortable. Each delegation has been granted 10 minutes; you can use that time as you see fit. If there is some time left over at the end of the presentation, we will share it amongst the three parties equally. The floor is all yours.

Ms. Donna Marie Kennedy: Our submission is before you, so I'm not going to read it, but I do have some comments that I would like to make to the panel.

First of all, we're very pleased with the government's recognition of bullying as a factor. This association, along with OSSTF and ETFO, is calling to survey teachers in Ontario, and we know that bullying is a serious and prevalent problem for teachers and students in this province.

We do need to be consulted on cyber-bullying, in particular. We are concerned that there was a recent meeting with 50 students about the issue of cyber-bullying, and while we can appreciate that that's important, it's very important that the professionals who are dealing with this problem on a daily basis be consulted.

On average, our office receives at least five calls a week on this topic of cyber-bullying. I thought it was important for you to hear an example of the cyber-bullying that occurs on a regular basis across this province. I'm going to read to you from a page from Facebook. I will not use the language there and I will insert "expletive deleted" because of Hansard. These are students talking: "She talks about her daughter way too"—expletive deleted—"much and it really"—something—"me off. She talks about her"—expletive deleted—"Inuit daughter. Ha. Pretty soon her husband will leave her for another man. If I was that"—expletive deleted—"I would turn gay too." In two sentences, we have racist, sexist and homophobic remarks that are on the Internet and have gone across this province and, quite frankly, could have gone around this world. This is a serious issue for teachers and for students. The really sad part about this case is this particular student was not disciplined. There was no suspension. The person was allowed to stay in the school.

This not only happens to teachers but it happens to students in our schools. Can you imagine the devastating effect these kinds of comments have on our students? So cyber-bullying is a serious, serious issue and we need to deal with it as a school system and as a government.

We understand the principles behind progressive discipline and the need to recognize mitigating factors. However, teachers and students need to know that there will be appropriate consequences for inappropriate actions. The application of mitigating factors should not be an excuse to do nothing. OECTA requests that we be consulted in the development of the regulations surrounding mitigating factors.

We also have a concern that our principals receive in-service. How are they going to know what the rules will be for these mitigating factors? It is important that everyone know what these rules are.

We need to monitor the discipline and to keep teachers aware of decisions that are made at the school level. It's not good enough to send a student down to the principal's office and to have that student returned to the classroom without some kind of record-keeping, without some kind of notice of what discipline has occurred. There needs to be supports not only for the teacher and for that student, but we need to know what the consequences are for actions.

We need to know what the definitions are of the mitigating factors. They cannot be left up in the air. Teachers

need to have input into the development of those regulations.

While progressive discipline is a lofty ideal, in reality it only works if there are sufficient support services within the system: child and youth care workers, psychologists, social workers, guidance counsellors. All of these services were severely cut in the last decade. Progressive discipline will not work unless the students' behaviours and needs are being addressed. If a student is not suspended and is only to be sent back to the classroom, then the problems have not been addressed. There is no point in having a program in place without some kind of consequence, without some kind of follow-up. It sends a message that anything goes. This is not what we want. We need to be assured that appropriate actions are being initiated immediately and what the consequences will be.

Lastly, do not forget that our classroom teachers are already overloaded. We oppose any attempt by the government to download discipline onto the classroom teacher. It's not fair to the other students in the classroom; it's not fair to the teacher. It's an impossible expectation for the teachers to handle all the discipline in the classrooms. It needs to be handled at the principal's office.

Finally, funding will have to be provided if these programs are to be successful.

I leave it open for questions.

The Chair: Thank you very much, Ms. Kennedy. You've left about three minutes, so there's time for a question from each party, starting with Mr. Klees.

Mr. Frank Klees (Oak Ridges): Thank you very much for your submission. I'm interested in the fact that you've zeroed in on this issue of progressive discipline and the lack of a definition for it, really. I know we'll hear from the principals' council as well, later. They share your concern.

On the one hand, the government here, through this bill, is trying to send a signal that they're kinder and gentler, that there's a better way to deal with discipline. Yet what I'm hearing from you is that what you don't want to lose are the consequences of bad behaviour. Can I ask this: What is your sense of the direction that the government is taking this legislation in? Are they losing a sense of the responsibility to empower teachers, to have the necessary authority that is rightfully theirs in the classroom? Is that balance being tipped by the direction of this legislation if we don't get the appropriate amendments in place?

The Chair: It would have to be a very, very short answer.

Ms. Kennedy: Well, it was a very, very long question. I think the issue is this: We never, as an association, wanted the power to suspend students. What we are saying is we understand what progressive discipline is, but there has to be a record of that. That's our frustration. We don't believe that the zero tolerance policy worked either, quite frankly, because there was, again, not a concise record-keeping process to find out what the proper discipline was. We're being asked to be consulted on the regulations. I think it's clear that we need to define those—we need to define what mitigating circumstances are—and those do need to be outlined and clearly stated.

The Chair: Thank you, Ms. Kennedy.

Mr. Rosario Marchese (Trinity–Spadina): Just a couple of quick statements: I agree with cyber-bullying being included as an offence—I do—and I also believe that when comments are made outside of the school, it's as if they're made inside the school. What is printed on a little computer or BlackBerry or whatever stays for a long time, travels far and wide, and it has serious, hurtful implications. People are looking for guidelines and I agree with that, but generally, I have a sense of where we're going with this.

Your point, which I agree with, about the need for child care workers and guidance counsellors—because that's the question I wanted to ask you, and you included that. Our point is, unless you bring back those youth counsellors, the youth workers and supports like social workers—if we don't bring them back to help kids who are troubled and in need, it's going to be very difficult for teachers to be able to say, "Here they are back in the classroom. What do I do?" So your point that I agree with is, "We need these extra workers."

Ms. Kennedy: I think we're also saying that we need guidance counsellors in elementary schools. Bullying doesn't start in high school; bullying starts in the elementary school. That's where we need additional resources as well.

Mr. Marchese: Absolutely. I agree with that.

The Chair: Thank you, Mr. Marchese. Thank you, Ms. Kennedy. Mrs. Sandals?

Mrs. Liz Sandals (Guelph–Wellington): Yes, just to note for the record, the mitigating factors will be clearly defined in regulation, and the intent would be to have a PPM around progressive discipline to clarify the policy guideline.

My colleague Mr. Levac has a question.

Mr. Dave Levac (Brant): Thanks very much for your presentation. As an educator for 25 years, and part of that as a principal, I definitely appreciate the evolution of what discipline means and that we don't need to have handcuffs on us. I appreciate the fact that you've acknowledged that and the fact that we are uploading some of those things that you said were not a problem.

Thank you for mentioning that we did meet with students. I do accept that as a kind comment, which means that if we need to hear exactly what's happening on the inside of those kids' minds, we need to talk to them as well. I moderated that, and I can tell you that there were very positive things said about their teachers and the people who supported them. They do understand that they will be part of the solution as opposed to part of the problem. I encourage us to use them as well.

I appreciate your comment that you need to be spoken to as well. That will happen.

Ms. Kennedy: Thank you. I don't disagree with your comments. My concern is that those comments that I read from Facebook were from good students.

Mr. Levac: Absolutely.

The Chair: Thank you very much for attending today. Thank you for your presentation.

ONTARIO PRINCIPALS' COUNCIL

The Chair: Moving on now to the Ontario Principals' Council—Peggy Sweeney?

Interjection.

The Chair: Peggy, you've changed. Peggy, Laura and Karl. If you would each identify yourselves for Hansard; you've got 10 minutes. You can use that any way you like. At the end, we'll share the time remaining among the parties. The floor is yours.

Ms. Laura Hodgins: Good afternoon. My name is Laura Hodgins and I'm the vice-president of the Ontario Principals' Council. Joining me today are Karl Sprogis, another executive member and chair of the Toronto School Administrators' Association, and Sarah Colman, our general counsel.

In light of our limited time here today, we have prepared a more detailed backgrounder with our main concerns and proposed revisions to the bill. We will leave that with all members of the committee, but we will touch on a few of the items at this time.

1630

The Ontario Principals' Council is the professional association representing 5,000 principals and vice-principals in Ontario's publicly funded school system. We are concerned that this bill may change the way student discipline is applied in schools, impacting detrimentally on student safety by undermining the leadership and responsibility of school principals.

We've identified several areas of concern that require amendment before this bill is passed. Specifically, these areas are:

—the re-characterization of progressive discipline techniques used by teachers and principals, previously called detentions, to in-school suspensions. Detentions should not be subject to the same provisions as more serious infractions such as assault, vandalism or the possession of alcohol or drugs. Schools should maintain the ability to deal with less serious infractions informally, rather than formalizing the consequence by calling it a suspension;

—the inclusion of these in-school suspensions on a student's Ontario student record. Some school boards have adopted a policy of recording every suspension on a student's OSR. This new practice would unfairly include relatively minor issues on a student's permanent record;

—the lack of available supervision for in-school suspensions. Under the proposed legislation, suspensions of one or more classes must be served in school. Unfortunately, most schools simply do not have enough teachers or other suitably trained adults to carry out the required supervision. As a result, principals may refrain from assigning any in-school suspensions. Disciplinary issues would go unaddressed, sending the wrong message to students about their behaviour and the lack of appropriate consequences, or suspensions would be assigned for one day or more to be served at home, resulting in students spending more time out of school and away from their learning environment;

—the omission of formal suspension reviews by supervisory officers. These formal reviews often addressed the concerns of parents and eliminated the need for appeals. Held at the school, they also reduce the amount of time that a principal has to be away from the school;

—the ability to formally appeal every suspension, including those of one or more classes and those of one day. Last year, close to 50% of the suspensions assigned in the Toronto District School Board were for one day. There are no data available on the number of detentions, now called in-school suspensions, and therefore no ability to predict accurately how many appeals might be generated due to these. Allowing all of these suspensions to be appealed could literally grind the system to a halt or, more concerning, discourage principals from suspending at all. That would weaken the entire disciplinary process in a school, completely undermining the safe environment that this bill purports to support. We also share the concern expressed by CODE, OPSOA and OPSBA that the timeline for suspension appeals is too short and that convening three trustees to hear appeals will be problematic, especially in small boards with large geographical boundaries;

—the duplicative appeal process. Two hearings for the same incident is unnecessary and a waste of resources. The panel of trustees considering the evidence and hearing the arguments related to expulsion should have the jurisdiction to make a final decision about suspension as well;

—the lack of a comprehensive definition of bullying. It is imperative that this definition be clearly defined so that students and parents understand what does and does not constitute bullying;

—the focus on the rights of the individual versus the rights of the whole school. The list of mitigating factors that principals and trustees must consider before imposing suspensions or expulsions will be significantly expanded. While we support the concept of considering mitigating factors, individual rights should not override the rights and safety of all others in the school;

—the exacerbation of the administrative burden currently faced by principals. Under Bill 212, there will be a significant increase in administrative work due to the increased number of suspensions and the appeal process. Principals will be spending their time on management, as opposed to instructional leadership. This goes directly against a clearly stated priority of this government: to revise the role of the principal to that of an instructional leader. While we acknowledge that the process around suspensions, expulsions and appeals should be fair to all parties and be thorough and transparent, these additional administrative requirements have the potential to add tremendously to the workload of schools, taking away from our primary role of educating kids;

—alternative education programs. In our view, if a student needs to successfully complete an alternate education program prior to re-admission, then that program should be identified as mandatory. It is also imperative that funding be provided to transport students to and from these alternative programs.

While Ontario's public school principals and vice-principals support schools that are safe, we are concerned that the result of this legislation will erode the ability of school leaders to appropriately apply discipline at the school level. For schools to be effective learning communities, the needs of all students must be taken into consideration.

We encourage this committee to carefully consider the recommendations we have made, which we believe will improve this important piece of legislation.

The Chair: Thank you very much. You've left enough time for each party for one brief question and answer, starting with Mr. Marchese.

Mr. Marchese: I have many questions, but the quick one is on point 9: "Principals will be spending their time on management, as opposed to instructional leadership." I understand this, but in the past, thousands of students were being expelled—black students, mostly, and students who had a disability. It was a serious problem. We've been trying to say to the government that we need to change this. This is obviously an attempt by the government to finally address that. If we don't do that, what do you recommend?

Ms. Hodgins: Our concern is more with the broadened definition of what a suspension is. It's now the removal of a student from one or more classes, and if that's the case, then we need to look at suspensions and the paperwork that goes with them. That's where the administrative burden would be added. So that is really the concern.

The Chair: Thank you, Ms. Sweeney.

Ms. Sandals.

Mrs. Sandals: I'm actually a little bit surprised by the interpretation that all removal from class is automatically labelled a suspension. In my read of what the act says, if a principal decides to impose a suspension, it could include a partial day suspension, not that any removal from class or detention must be a suspension. I'm wondering if you could point us to how you get that read.

Mr. Karl Sprogis: I think where it says "one or two classes." In a regular school day there are four classes. If you remove a student for a half day, two periods, parents want to know the legitimate reasons for doing that. So you have to account for where that student was. If they're not in class, where are they? They need to be in a formal setting, and that would be the formal, in-school suspension, if the definition of progressive discipline is rather limited. I think we've been doing detentions, but this problem has existed all along. When you take that student out of the class, what is that really? Is that not a suspension?

We feel that this proposed legislation formalizes what has been happening in schools, and we're concerned about how we would account for the removal of that student for one, two—maybe the whole day.

The Chair: Mr. Klees.

Mr. Klees: We heard from OECTA just previously that they really don't want teachers involved in discipline in the classroom, that that's a job for principals. What I'm seeing here is that you are suggesting that, based on all the new responsibilities, it's going to be impossible for principals to actually carry out this responsibility. How do you see the squeeze coming together?

Mr. Sprogis: That's part of the responsibilities of a teacher. If progressive discipline is going to be a major feature of this new legislation, that's what progressive discipline is all about. As misbehaviours begin to occur, they need to be dealt with as soon as possible and corrective measures, proactive measures, need to take place. That needs to start in the classroom.

Mr. Klees: How do we square that off, then? If this legislation puts progressive discipline at the forefront, how can we accommodate the request of the teachers to relieve them of that responsibility?

Mr. Sprogis: Well, my position is and would be that that is part of their responsibility. It has to start. The students know the teacher best; the teacher knows the students best. That's where those corrective measures can begin. By the time a student is sent to the office, things have become very serious and it's very difficult to go backwards. That's why we're referring to it as progressive discipline. This was a debate I had with the members of the Human Rights Commission in November 2005. We dealt with this measure, and that was one of their recommendations. There was great debate about how this would happen. It also comes down to what is happening in that classroom.

The Chair: Thank you very much for attending today.

My apologies, Ms. Hodgins; I've called you Ms. Sweeney throughout the presentation.

Ms. Hodgins: Thank you.

1640

ELEMENTARY TEACHERS' FEDERATION OF ONTARIO

The Chair: Our next presenters are from the Elementary Teachers' Federation of Ontario, ETFO, Vivian McCaffrey and Gene Lewis, if you'd like to come forward. Make yourselves comfortable. Thank you very much for attending today. You've got 10 minutes to use as you see fit. If there's any time remaining, we will share that time among the parties. The floor is yours.

Mr. Gene Lewis: Thank you very much for the opportunity to appear before you today. The Elementary Teachers' Federation of Ontario represents 70,000 teachers in the public elementary schools of Ontario.

I think one of the components that we'd like to underline is that schools should be safe places for all, and "all" includes students and staff who work in the schools. The safety of both the students and the staff of the schools is affected by the behaviour of the students, the parents and

the school administrators. We're certainly looking for safe places for our members and for the students they teach.

The Safe Schools Act, 2000, introduced by the previous government was a rather simplistic approach to some complex issues. While it was aimed at removing troubled students from school, it did very little to actually address the cause of their behaviour problems. In fact, the Ontario Human Rights Commission has found that in some cases it was actually discriminating against racialized students and students with disabilities. The legislation also was introduced in an environment of funding cuts. I think it was recognition that it's easier to ignore problems than to fix them. It's much cheaper to ask the student to step out of the school than it is to provide the resources to support that student to have an effective education. The strict discipline approach, as it was labelled, was just another impact of funding cuts on the public education system. Suspending the student is much cheaper than supporting the student to take advantage of the education system.

We do support the components of Bill 212 that restore a more progressive approach to student discipline to the system. We think it's important to have a framework, however, to deal with the most severe infractions that may occur during a student's time at school. We support the fact that this new bill adds bullying to the list of student behaviours that are subject to possible suspension. It's important. We've seen a lot of media reports lately about cyber-bullying and the impact that has both on students and staff. I think people overlook the impact it has on the parents that are involved, as well. We believe that, one, there should be a definition of bullying in the bill and it should include cyber-bullying. Part of that definition should address the issue of defamation of teachers on the Internet, which has become increasingly important, at least in the media, but it's certainly an issue that all of our members are dealing with in their day-to-day lives.

I think discipline is an issue. The members of the committee need to recognize that it's an issue not just for secondary students, but for elementary students as well. Our members are increasingly reporting incidents of bullying. We did a survey a short while ago in cooperation with OECTA, as was mentioned earlier. At some point in their career, 55% of the teachers in the public and Catholic systems have been bullied either by someone in a superior position, a parent, a guardian or a student. So bullying is something that one out of two teachers can look forward to during the extent of their career. We recommend in the recommendations that Bill 212 include a definition of bullying that encompasses cyber-bullying.

With respect to suspensions, as was said by our colleagues, we never did support the concept that teachers should be suspending students. We think that's a role for the school administration. Teachers do have a role in student discipline. Certainly classroom management is key to effective instruction, so there is a disciplinary component to that, but when it comes down to suspensions and expulsions, those are in the domain of the administrators in the school.

With respect to the programs for suspended and expelled students, when I was a principal I think the program was they'd sit in my office for the day, or sometimes a longer period. That was a reflection in some part of a lack of sophistication of the times, but also a lack of recognition of the long-term impact that bullying has on the students involved, both the aggressor and the child being bullied. We certainly need resources. I mean, it's pretty easy to write in legislation that we'll have students in a special program, but for the teachers and for the principals in the school, it's much more difficult to put into practice, and it certainly requires significant resources and support.

The legislation, as it is now, is not specific as to who would be providing these programs for suspended and expelled students. We think there should be some degree of formality to that, and the instructional programs should be offered by qualified teachers.

With respect to the Ontario student record, a somewhat different position than our colleagues before us: We think there are cases where records of violent incidents should be included in the Ontario student record folder. We don't think that's happening consistently across the province now, based on the information we receive from our members, and the failure to include violent incident reports in the Ontario student record card puts our members in jeopardy potentially, and other students in jeopardy as well. Our members need to be aware if a student has violent tendencies to protect the students they teach, but also to protect their own right to refuse work that's unsafe under the Occupational Health and Safety Act.

The Chair: You have about a minute left, sir.

Mr. Lewis: Well, in that minute, I'll just make the point that funding is critical. We support progressive discipline. It requires early identification, it requires reintroduction into the schools of behaviour counsellors, psychologists, audiologists, all of those student supports that were eliminated by the funding cuts of a prior government.

I think the key point is that adequate funding is critical. Students and teachers need the protection in the schools, the support of adequate legislation; principals need the courage to act; and school boards need to be in a position to support all three—the students, the teachers and the principals.

The Chair: Thank you, Mr. Lewis. We appreciate your presentation today. Unfortunately, there's no time for questions. We do have your written submission.

JUSTICE FOR CHILDREN AND YOUTH

The Chair: We move on now to the next delegation, which is Martha Mackinnon, executive director of Justice for Children and Youth. Ms. Mackinnon, please make yourself comfortable. You have 10 minutes. You can use

that any way you see fit. Any time left over we'll share amongst the parties.

Ms. Martha Mackinnon: Thank you very much. First, I'd like to thank you very much for the opportunity to appear before you today. Like the people who have preceded me, I'm not going to read my submissions. You have them in writing. They flesh out some of the points in more detail that I wish to make orally.

1650

The first thing I really wanted to say is, the stimulus for my being really happy to be here is that when what is often called the Safe Schools Act of the former regime was introduced, the number of expulsions in Ontario increased by more than tenfold. It was dramatic. It has remained nearly that high ever since—a slight decrease in 2005. But an enormously larger number of students are not in school and many more have been dropping out as a result of the academic falling behind that happens when they miss so much school. So from that perspective and from the perspective of an executive director of a legal clinic which represents young people—low-income young people—across Ontario, Bill 212 is a very welcome improvement.

I also want to just add personally that I am not only the executive director of a legal clinic who works with young people, I'm a former teacher and a former in-house counsel to a school board. So the issues that are addressed in this legislation are ones that I've seen in the course of my career from all kinds of perspectives.

The first thing—and I think this was perhaps a response or a comment on something that Mr. Klees has suggested—is that it's not a question of whether discipline is harsh or soft. It's a question of whether it's effective. I think that's the first thing that's important in assessing legislation.

The second thing is that it must be fair. So often, whether someone wins or loses an appeal, the part that helps to restore their relationship with the school is whether or not the process felt fair to them. Bill 212 makes some suggestions in that direction. There are a few other suggestions that we have that are set out in our submission. At the end of the day, the largest frustration that we hear from parents and from students is that they are frustrated by their lack of ability to question the evidence before the principal.

The third thing that's essential to student discipline, in our submission, is that there must be standing in the process for the young person who is affected. It's a requirement of the United Nations Convention on the Rights of the Child, which Ontario has happily accepted. It's the convention that stands for human rights for young people around the world, with every single country in the world signing it and ratifying it except the United States; and Canada was a proponent of it. Children are required to have the right to participate in the processes that affect them. While Bill 212 gives increased rights to 16- and 17-year-olds who have left home, I can assure you that I have represented people who have not left home whose views are quite different from their parents, who say, "I don't want to appeal. We want to go to Florida. We're not going to tie ourselves up in order to do an appeal." In my submission, there just isn't any way that you can justify not allowing a student to decide whether to appeal or not and to have standing at an expulsion hearing.

The fourth point is timeliness. The safe schools legislation did in fact try to increase the turnaround time on expulsion hearings and appeals, and that was good. As we all know, time moves at a different pace for young people and they have moved on in a different way, and we need to move fairly quickly if our responses are supposed to be effective. Bill 212 makes it even more timely, and that's a good thing. My only comment here is, it's going to be a long and frustrating wait until February 2008 for students who face discipline in the short time that remains of this school year and all of first semester in the fall.

The fifth point—and here I am more critical of the legislation—is that it fails to address two responses that schools are also using to effect discipline without having to go through any process. The first is exclusions. Students who are excluded under section 305 of the Education Act can be excluded without any right of appeal or any due process. Some school boards use an exclusion following a suspension. So they have already determined that a student's conduct does not warrant expulsion and yet, when the suspension is up, they are permanently excluded from their home school. There is such a case before the Divisional Court at the moment. A different approach has been that some schools simply do what they call an administrative transfer. That is to say, they just say to a student, "You can't come back here. We've moved you to another school." While that may be useful at times, repeated transfers are very destructive both for the social development of a child and also for their academic progress. It happens not because of the actions of school boards, but to kids who are in the care of children's aid societies regularly, and we have lots of literature showing how it damages their education. In my submission, Bill 212 should address, limit and specify in what circumstances exclusions and administrative transfers can be used.

My final oral point refers to something that others have addressed, which is the need for clarity around two of the new concepts in Bill 212. The first is the notion of discipline for affecting school climate and the second is bullying. My clinic represents both kids who do bullying and kids who are bullied. We represent kids who are afraid to come to school because they have special education needs. We've seen all sides of it, and therefore, in my submission, it's critically important that we manage to keep schools safe while recognizing the limits of schools and the fact that there is a zone of privacy for students, that there are places where they can just be themselves, and that they also, as does everyone else in Canada, have rights to free expression. So in my submission, we set out some more guidelines on those points, and I would say that more clarity is needed with respect to those two terms.

Those are my oral remarks.

The Chair: Thank you very much. You've left time for one very, very brief question from each party.

Mrs. Sandals: It was our intent to deal with the exclusion problem, so we will go back. I know exactly what you're talking about, and we'll have a look at that.

Your question around timing: One of the pushbacks that we've heard on the appeal issue is that if boards are only required to sit once a month, when you get into geographic challenges, rural and northern, can you actually require things to be held more quickly than people are legally required to convene, especially if we're saying that we need three people to sit? Do you have any comment on the geography versus expediency?

The Chair: It's going to have to be a brief comment.

Ms. Mackinnon: In my view, expedience can never actually yield to fairness. We're trying to teach kids the social, democratic and civil society values that we want them to have as adults, so we can't cut back on that. But there are electronic means of having hearings. Furthermore, it doesn't have to be a whole school board, it only has to be a committee of three, and I believe that we can, as we do now for bail hearings, have a version—where it's very hard to get together personally—of an actual hearing promptly.

The Chair: Mr. Yakabuski, a brief question.

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke): Thank you for joining us today. I came in partway through the submission, but I was intrigued by your comments with regard to the right of appeal on the part of the student even if they're not a 16- or 17-year-old living outside the home. Are you suggesting that the right of a 13-year-old to appeal should trump the authority of their parents, if they're not looking for an appeal on a disciplinary situation at a school—that a 13-year-old should be able to overrule their parents?

Ms. Mackinnon: Two pieces out of that, as quickly as I can.

The first is, I don't think there's anything magic about 13 or 16 or 17. I think it's a capacity issue, the same way kids of whatever age can access health treatment. If they're capable of understanding and making a decision, then they should be granted standing. That's the first point.

The second thing is, I don't think it's a question of trumping anyone's rights. I think that a student should have a right to appeal and a parent should have a right to appeal, and if they make different decisions—

Mr. Yakabuski: If they differ, who makes the call?

Ms. Mackinnon: One of them appeals and the other does not. If you looked at it—you can't say to a kid, "We're going to try you in criminal court for assault, but we aren't going to let you come." How can you say to a child, "We're going to expel you for drug trafficking, but we won't let you show up and give your side"?

The Chair: Mr. Marchese.

Mr. Marchese: Two quick comments: I agree with you on the timeliness. We said that the implementation should happen faster and not wait until 2008, so I agree with you on that. And there was some suggestion that you'd have one trustee to hold the hearing. I'm not in favour of that, because one trustee could present a problem, based on his or her view. What is your sense of that?

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Ms. Mackinnon: Our actual experience of that has been deeply disappointing. For one thing, they don't get enough training, and there are lots of reasons that the consistency of decisions made by single trustees would not be there. Secondly, if I were going to be more candid, I have seen trustees say, "What do you mean, kids don't like it? You're a basketball player. All kids like basketball players." It's just not a very sophisticated process, and I think you need the checks and balances of more than one trustee.

The Chair: Thank you, and that's the end of your presentation. Thank you very much for coming today. It was appreciated.

Ms. Mackinnon: Thank you for the opportunity.

ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

The Chair: If we can move on to the next presentation of the day, the Ontario Public School Boards' Association: Rick Johnson, president; David Walpole, director of program policy; and Jennifer Trépanier, legal counsel. Please come forward, and make yourselves comfortable. You have 10 minutes, like everybody else, to use as you see fit. Any time left over will be apportioned between the three parties. The floor is all yours.

Mr. Rick Johnson: I'd like to thank you for the opportunity to address you this afternoon. OPSBA represents the interests of 31 public school boards across all regions of Ontario that are responsible for the education of over 1.3 million elementary and secondary school pupils.

Bill 212 issues in the proposed changes to the Education Act and the implementation of the revised requirements of school boards as a result of the passage of Bill 212.

Let me begin by saying that OPSBA is supportive of the shift in the underlying philosophy of maintaining student discipline. Bill 212 signals a change from that of a zero tolerance model to that of a model based on progressive discipline within a framework which identifies the activities for which a student may be suspended or possibly expelled. It is encouraging to see the removal of terms such as "compulsory" and "mandatory" and a change to language that is less arbitrary and inflexible.

We would like to comment on Bill 212 in two ways. First, we would like to identify those requirements in the bill which have been brought to our attention by member boards as problematic and which do not, in our opinion, add to the effectiveness of maintaining school safety. Secondly, we would be pleased to offer some comments on the implementation of the requirements of the pro-

posed legislation, which we understand is scheduled for passage in early July 2007.

I'd like to pass it over to Dave Walpole, our director of policy and program.

Mr. David Walpole: Thanks very much. Glad to be here. I won't spend any time talking about the things that the other organizations have talked about, such as bullying. Those will be in our written submission, so you'll be able to read them, but we do share some concerns that it needs some clarification.

We have some concerns about the one-day-or-less suspension, in that it could be interpreted in ways that I suppose it wasn't meant to be interpreted. One of the things, quite frankly, that less-than-a-day suspensions are used for is what's commonly called "time outs," where children who are misbehaving are sequestered until they can get their acts together and come back to class with a better spirit. So we don't really want to complicate this in terms of making requirements and paperwork that may not be necessary.

We also note that there is the removal of a currently less formal suspension review process that exists, which is used quite commonly and actually does stem many of the requests for appeals before they are generated. Speaking of hearing appeals, the 10-day notice and having an appeal within that time will logistically cause difficulties. As you know, the requirement for a three-member board—for example, in Rainbow District School Board there are nine members on the board. That's a third of the board who would have to be present within a nine-day period. That could be a difficulty, and it needs to be recognized.

Other than the fact that parents may not consent to an extension of the 10-day limit, we suspect that further complications exist in here. One that needs to be looked at, we believe, is the appeal of the suspension prior to the expulsion hearing, which would in current proposals stand as a separate event, and it need not. In order to get this done in a fashion which would move things along for everybody's sake, it could be handled as an adjunct to the hearing for the expulsion once that part of the meeting's over.

So we suggest, really, that suspensions of one day or less be looked at. The time limit of 10 days would be unreasonable, we believe, in order for boards to adhere to that. The composition, we think, is a difficulty, requiring three; less might be okay, notwithstanding Martha's comments on basketball. And empower the committees to hear the suspension appeal following the expulsion hearing.

I want to get to mitigating circumstances, because that is a new component that is going to be brought into this—not that we dispute those, but we don't know about them. We believe there are some significant components that principals and board members are going to really have to understand in the use of these in order to make effective decisions at both hearings and appeals.

We also have a concern with the removal of regulation 474 as a tool which is used occasionally by principals to deny access. We do know, of course, that it should not be abused and should not be used in circumstances where it's not warranted, but we have some concerns that it will simply disappear without a real discussion on that, and there are some reasons included in our proposal which would support that.

With respect to the implementation requirements, there are some things that we would have some concerns about. One is that the act and regs require boards to have policies and procedures in place. That's going to be very difficult, given the current timelines. We would suspect that this could go into a hurry-up offence in order to get these things done, but we don't see them being in place in September, and that could cause problems because now you've got an uneven set of implementation dates which will cause misunderstandings in the community in expectations for parents and students.

The issue of planners you've heard about from previous presenters.

Also, we would like to comment on the requirements of the ministry in terms of getting us ready in boards for the replacement programs for students who are expelled and suspended to replace the strict-discipline programs. We don't know anything about those, and we're going to need to know. That really is something that we'd have concern about in terms of the fall semester, where we're in that in-between phase. We think it would be a good idea to look at February 1 for a full implementation. That would allow school board staff to really get their heads around the required changes to make this, which we believe is a good act, work well and without hitches in the community.

Ms. Jennifer Trépanier: I just want to comment briefly. From my experience in dealing with the Safe Schools Act since it came out, we've been faced with so many challenges, and one of the major criticisms as a whole about the regime was its complexity and legalistic nature. I've been involved in a number of conflicts that have arisen in that regard.

Just to demonstrate this, I'm going to refer you—I won't go on further, but the two charts that we prepared at our firm in that respect show the expulsion process because that is, generally speaking, the most complex, and it demonstrates what the process looks like under the Safe Schools Act and under Bill 212. I think you'll see on its face as it is currently drafted that it's at least as complex as the current, but with some of the proposed changes that could change; it's been somewhat streamlined. In any event, we would hope that it becomes a little more simplified to avoid a little bit of the legalistic nature, which is really not appropriate for a school setting.

One other comment in respect of Ms. Sandals: I know you had raised the concern about what is the reading that concludes that a suspension becomes—that it is termed a suspension. Essentially, when a parent sees that any time limit has a right to be appealed, whatever you label it, that is going to be the parents requesting that, and I think that's where the interpretation stems from.

Thank you so much for the opportunity.

The Chair: Speaking of time limits, that was good time management. Your time is up. Thank you very much for being here today.

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ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

The Chair: Our next presenter is OSSTF: Mr. Coran, if you'd come forward. If you could identify yourself for Hansard, you've got 10 minutes, like everybody else. Any time left over will be shared amongst the parties.

Mr. Ken Coran: Thank you. Ken Coran, and I'm the president of the Ontario Secondary School Teachers' Federation. You have a six-page submission, which I will follow loosely, I guess would be the best way to describe it.

You can see on the first page that we do represent a very vast group of educational workers. Sometimes it's perceived that we only represent secondary school teachers, but, in fact, we do have 60,000 members and they are not just teachers; they are what we call support staff workers as well. There is a list of some of those people: child psychologists, attendance counsellors, educational assistants, child and youth workers and so on. These people work not only in the public system but also in the Catholic system, and also in elementary schools and even in the university setting as well. We're very vast in scope, and we have a number of interests, obviously.

We did work quite extensively on the safe schools action team. We do applaud the government for the recommendations. However, there are always some cautions. The cautions are, let's look at now developing the regulations, the policies and the implementation, because it's truly only through those processes that we can achieve the success that I think everyone in this room is hoping to achieve, which is ultimately the students' success, improving the graduation rate and reducing the dropout rate.

On that note, there are a couple of concerns. I did just come from an executive meeting where we discussed Bill 212 in an extensive format. We had some pretty healthy debate this morning regarding 212. These are some of the things that came forward. These are not actually included in the paper, but they're things that I think you should be aware of. We would all agree that—ultimately, do any of us want suspensions or expulsions? No, we don't. We would like the world to be a nice, quiet place where everyone could live together, work together and respect the law and authority, but that's not the case. However, we can be very proactive to try to achieve those things.

The only way you can be proactive is to provide the services that will provide those services. What we are seeing right now in a number of areas is, with funding problems, a lot of the personnel who would deliver the services to provide the proactive nature of this are being reduced. I could give you a couple of examples. Up in Marathon, at Marathon High School, there were previously 13 educational assistants. This isn't in the document. There were 13 educational assistants and that has now been reduced to three. Now, granted—has there been declining enrolment? Obviously, there has been, but the fact is, we are seeing that the number of suspensions has gone up as a result of this decline of people who are providing proactive services.

In the Windsor area, there were 10 child and youth workers cut. They worked with high-needs students in the grade 7-8 setting. As a result, we are seeing increased suspensions. Up in the Ottawa-Carleton area, a very recently released one, with the funding issues there and $21 million in cuts, one of the cuts they are suggesting is that 21 EAs be let go. Once again, these are people who provide those services. Will those cuts be realized? That remains to be seen over the budget process. Those are things we see out there.

One of the other issues in the bill is that there are events where there shall be suspensions and there are events where you shall consider expulsions or suspensions. Being in the room for about 30 minutes now, I think all of those have been alluded to: the cyber-bullying and the bullying issue. We see there being a lot of onus on the principal now, and we agree with you that it should be the principal who delivers the discipline for suspensions and the board that does the expulsions. But will there be somewhat of a workload issue for the principals whereby they may consider not going through with all the steps? The mitigating factors are important because we want to make sure that justice is served. Will there be a reluctance in actually suspending people because of this increased workload issue for them and the whole appeal process? If that is the case, will we see suspensions actually going up or down—possibly going down? Will there be external pressures from the community and so on saying, "School X has a high suspension rate. What is the problem there?" Or will the principal say, "I'm not suspending as many people because that makes my record look bad." I think these are real issues that we should look at, and that's not in the paper.

We have had a number of situations that really did work. A few years ago, the government provided extra funding for pilot programs for some of these alternative education situations. They were effective. I think a lot of school boards would report to you that they were effective, and they worked. A lot of students' careers and lives were turned around with those alternative plans.

With funding cuts, those programs were cut. So I guess we would say, let's try to get more funding out there, because some students really don't fit into the normal classroom setting. They just don't, and their being in there is jeopardizing the safety and the education of others.

Let's deal with that issue properly: Let's put them in a setting, fund it and provide the services. By "services," I don't just mean a teacher; I mean the support staff that goes along with the teacher to deliver those services. We would be more than willing to work with the government

to show you some of these pilot programs that did work and worked very, very effectively.

I think the key to a lot of this is, we are educators. What we're trying to do, really, is improve student behaviour. So, will a one-day suspension or an expulsion, with whatever alternative program is provided, end there, and all of a sudden, the student is cured and goes back into the other setting? I think what we have to do is be careful that we provide the services for the re-entry as well, to make sure that we do monitor that student, to make sure that they don't re-commit whatever it was that they were alleged to have done. That's a very important aspect that quite possibly was forgotten. We're educators; we want to improve it. Improvement doesn't happen overnight. We have to provide those services to make sure we see that improvement we want to see.

Basically, there are a number of recommendations in the paper. Like many people who have presented, I'm sure they've mentioned the word "funding" 100 times. The reality is, to do something properly, we have to make sure that the people power is there and that the money is there to accompany it. There are a lot of good ideas out there. We just want to make it work. I heard Rosario say, "Let's do it quicker rather than later," and I heard David Walpole say, "Let's wait until February." Our recommendation would be that if we are providing these alternative programs, which we are strongly suggesting, let's make sure they're in place, because in that interim time period, some boards have access to alternative programs right now and other schools don't. Liz mentioned that northern boards and the small rural schools just don't have the people power or the finances to provide those services.

What we end up with is what most of us in this room, or some of us, maybe, were even in at one point: a detention room. Does a detention room actually provide the instruction and that whole gamut of services that are needed to say, "You have made a mistake; here's what you have to do to improve," or is it just basically a jail where somebody sits for a day, and really nothing comes of it unless they learn on their own?

The Chair: Ken, would you summarize?

Mr. Coran: Sure I can.

Congratulations to the government. I think it's a great step. We do agree with you. I think the discipline was being done in a disproportional manner and some groups were basically being disadvantaged, but I would like to see success in this. I think to see success in this, we really have to make sure that we do it wisely, with additional funding. I do think we're going to need additional people and the services to go along with it.

Sorry I was long-winded there.

The Chair: No, you weren't long-winded at all; you used your time well. Thank you very much for coming today.

Mr. Coran: No questions?

The Chair: There are probably tonnes of questions; there's no time for questions.

AFRICAN CANADIAN LEGAL CLINIC

The Chair: Our 5 o'clock delegation is not coming today, so we move on to the African Canadian Legal Clinic, Marie Chen and Charlene Theodore.

Thank you very much for presenting today. You've got 10 minutes to use any way you see fit. Any time left over at the end will be shared amongst the three parties. If you'd identify yourself for Hansard, the floor is all yours.

Ms. Marie Chen: I'm Marie Chen, a staff lawyer at the African Canadian Legal Clinic. With me is Charlene Theodore, an articling student at our clinic.

For those of you who are not familiar with the African Canadian Legal Clinic, we're a test case litigation clinic focused on addressing anti-black discrimination. Through our case work and our African Canadian youth justice program, we have represented and helped numerous African-Canadian parents and students with safe schools matters on the ground, through the human rights system and in the courts. We have also been extensively involved in law reform in this area.

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Obviously, I'll be speaking from the African-Canadian perspective. This is a community that frankly has borne the brunt of the safe schools legislation. It's a community whose children are either seen as criminals, budding criminals, or unruly and violent. We haven't had time to prepare a written brief. We will be submitting it before the time limit. We received very short notice of these hearings, and I would like to express at the outset our concern with the short notice. There are many community groups out there who have worked long and hard on this issue that are not here. This is a piece of legislation that will impact on the African-Canadian community in a huge way, and you need to hear from them. I note that there are six school organizations here, teachers' organizations. That's more than half of the people who are appearing in front of you. I think that's quite disproportionate.

Obviously, there's no doubt that changes in the current act have been long-needed and that the African-Canadian community has, since its inception, fought for its repeal. But the question remains as to whether or not the changes in this bill will actually make a real difference for African-Canadian children and parents. Will it protect the rights of African-Canadian children to a quality education and to equal treatment, without discrimination? Will it ensure that African-Canadian children are treated fairly in the process? Unfortunately, we believe the answer to these questions is no.

The bill simply falls short; it doesn't go far enough. The changes that we see are inadequate to address current problems. What we needed was a wholesale review of the act; Bill 212 is far from that. We asked for an overhaul, for fundamental, substantive change, but we only got, in large part, cosmetic tinkering.

I will be dealing with some main problems that we have identified with the bill. Firstly, it's still premised on

a law-and-order agenda; it's still underpinned by the law-and-order agenda that was brought in by the Harris government; it still takes a punitive approach to discipline. It is not child-centred. It does not have the best interests of the child as its focus. It does not even out the vast power imbalances between parents and children and the school authorities. To put it another way, this bill is Harris lite.

The fundamental problem is that it does not prevent the disproportionate impact that we have seen this bill have on African-Canadian children. The bill will not prevent African-Canadian children from continuing to be the ones who will be disproportionately targeted, suspended and expelled. Let's not forget why these changes are being brought about in the first place. It is because of the concerns of the disparate impact of the act on African-Canadian children. The Ontario Human Rights Commission complaint was largely brought as a result of that. The Ontario Human Rights Commission had earlier noted the impact of the safe schools provisions in its racial profiling inquiry report. Minister Wynne herself, when she was a school trustee, publicly spoke to her own experience in seeing racialized children as being disciplined more than others. Nothing in this bill is going to change that.

The bill will not prevent African-Canadian children from being brought into the disciplinary process in the first place—from being more stigmatized than they already are. Much has been made of the changes to the bill, for example, regarding a fairer process and alternative programs for students who are suspended and expelled. But the issue is not only how we deal with children once they are in the discipline process, but why and how they're brought into the system in the first place. It is cold comfort to tell parents that the bill gives them a clearer idea of the process when they are already caught up in it.

Why will this bill not prevent disparate impact? It is mainly because there is no change in the grounds justifying suspension and expulsion. The grounds are exactly the same as in the current act. In our experience, these are the very grounds that led to African-Canadian children being suspended and expelled disproportionately. The catch-all ground of "any other activity" under board policy gives a lot of discretion to school authorities and is open to interpretation. This facilitates decisions based on stereotypes about African-Canadian children, stereotypes about criminality, troublemaking and about their credibility as well. Because of the broadness of this ground, it allows for discretion to be exercised in a discriminatory way against African-Canadian students.

In addition, the bill still allows for mandatory suspensions. As you know, mandatory discipline is in the current act. In our experience, this has meant that school authorities feel they're compelled to suspend or expel because it is mandated. If you have it, they will use it. This bill still allows schools to do that. In our experience, many African-Canadian children end up being suspended and expelled for trivial reasons without a fair inquiry into the full context surrounding the incident, and they are more harshly treated. Often, after the fact, we would discover that racial harassment or bullying preceded the incident, which were ignored by school authorities, and yet when children react, they're punished. Often, rough-housing behaviour, seen as acceptable with other children, is interpreted as dangerous or violent in African-Canadian children. African-Canadian children were not protected and their side of the story either not believed or investigated sensitively or fully by school authorities.

A third problem with the bill is that it's silent in many important areas. Where are the progressive discipline provisions? I know it's in the title of the act, but on my reading of the bill, I can't find any specific reference to it. Also, what will the mitigating factors be? While this bill sets out that mitigating factors must be considered, we don't know what the regulations will look like. I note that mitigating factors are not new; they're contained in the current act, but this does not prevent disparate impact on African-Canadian children. Why are mitigating grounds not included in the legislation, especially if they're based on and reflect core human rights principles that should not be relegated into regulations? We believe that it's important to make it clear and up front, and there's not reason not to. It can always be supplemented by legislation or regulations later. It's easy. There's ready-made language available. Use the Ontario Human Rights Commission settlement, which the minister has agreed to.

A fourth problem is that there's not enough procedural protection or clarity in the bill. There are no minimum standards of fairness and a lot is still left to the board. We've seen problems of differing policies and procedures established by different boards with respect to fair process. Power imbalances are also not considered. School authorities usually have access to and are represented by legal counsel. Almost all African-Canadian parents are usually unrepresented; advocates and legal representation are sorely needed. However, resources are extremely scarce for African-Canadian parents and students, who are already disadvantaged. Legal aid coverage is extremely limited.

Another concern with the bill is the quality of the alternative programs. How do we guarantee that the standards of the alternative programs ensure that children are indeed getting a quality education? Alternative programs are not new; school boards already provide them. But there have been huge problems with qualities and standards. Will African-Canadian children simply be warehoused in these programs?

Although we believe that the bill needs to be overhauled, we do not think that this is likely to happen, but we're still recommending—and hopefully, you'll be adopting—specific recommendations to the bill to address the concerns we have identified. We are recommending what we believe are safeguards to prevent disparate impact on African-Canadian children—safeguards that, at minimum, need to be incorporated into the bill. First, an explicit prohibition of racial discrimination must be included, and we suggest language such as, "that

racial discrimination and racial profiling are prohibited in the application and exercise of the duties and powers under this part of the act."

Also, a specific clause dealing with fairness and the best interests of the child should be included; for example, "that these provisions be exercised and applied in accordance with the principles of fairness and in the best interests of the child"; that the reference to mandatory suspensions be repealed; that the grounds upon which to suspend or expel must be related to actual safety issues; that the list of mitigating factors be incorporated into the body of the bill in accordance with the language of the Ontario Human Rights Commission settlement; that the principle of progressive discipline and the types of progressive discipline be included in the bill; that legal representation be available to parents and students at suspension appeals and expulsion hearings; and that additional funding be provided to Legal Aid Ontario, including community legal clinics—

The Chair: You have about 20 seconds left.

Ms. Chen: Thank you—that alternative programs for suspended or expelled students be staffed by certified instructors and that the content and quality of these programs are, at minimum, of equivalent standard as elementary and secondary school curriculums; and that monitoring and review be conducted annually on the impact of these provisions on racialized students and the quality of these alternative programs.

The Chair: Thank you very much. We appreciate your presentation today.

Mr. Marchese: I'm sorry, Mr. Chair. The submission is going to be given to us after; is that the point you made earlier?

Mr. Yakabuski: Will we get a copy of the written submission?

Ms. Chen: Yes, I will have a written brief. I believe we have until May 25. Like I said earlier, because of the shortness of notice, we weren't able to prepare it.

The Chair: Thank you very much.

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LESA McDOUGALL

The Chair: We move on, then, to the next presentation, which appears will probably be the last presentation before the vote. We may be able to get two in. Lesa McDougall? Ms. McDougall, if you'd come forward, we have your presentation before us. You have 10 minutes and you may use that any way you like.

Ms. Lesa McDougall: Thank you. I am a parent of four students in the elementary education system in the Bluewater District School Board, which is a northern board, from Toronto's perspective. We have a very small school of approximately 230 students. I am a former teacher. I taught at this school, I attended this school, I was the chair of the school advisory council in this school.

I am here because I have very serious concerns regarding student safety. I would like to thank you for visiting the legislation and for using terminology like "progressive discipline" and "safe schools." I am, overall, a supporter of the revisions to the ed act, which seek to regard discipline as progressive and recognize the importance of safety in schools. Given the climate of school violence in our society, these considerations are timely and necessary. I believe that changes ought to assist schools, school boards and the ministry in achieving safety and discipline.

However, I have grave concerns about the provisions that seem to be lacking from a parent's perspective with regard to transparency and accountability in education. There seems to be, in a parent's estimation, because I have been through the system now, a lack of governance from a parental perspective, and I will use this time to just give you a synopsis of what my own family has experienced.

From March 2006 through to April 2007, my son has been assaulted repeatedly by a child whose parents are on staff at the school that my child attends. When my child was first assaulted, he did not respond or retaliate; he turned the other cheek. The parent that meted out the discipline was the teacher involved. When I went to the school with concerns about the process, I was told that, had he been any other child, he would have been suspended. Like other presenters today, I do see suspensions and expulsions as punitive. We've never asked for those kinds of punitive measures to be in place. What we have asked for is a safe, uninterrupted education provided for all students, which should be afforded every student in the province.

The experience for our family escalated to the point where on March 20, 2007, our son was assaulted physically in front of an educational assistant. This had escalated from the point where the boy had waited in a darkened ballroom with a baseball bat, came out swinging, saying he was going to kill my son.

What ensued was a very thorough investigation, according to the principal involved. That thorough investigation meant that I was not afforded access to our principal for 56 hours after the assault. Three days after the assault there was a superintendent, I assumed, at a meeting with the principal, the teacher involved, my husband and myself—and we had asked our trustee to come. What was produced was a document entitled "Observations" of my son and this other student's exchanges. I was suspect of the document in the beginning. I had had a history with this principal as chair of the council and I just asked what was the question had been posed to the students. I was told that they were only asked what they had observed between these two students. What was reflected in the observations did not reflect the question that she suggested had been posed, and I asked to see the notes. After several requests to see the notes, I was finally told that the meeting was over. I asked my trustee to stay in our stead, and what was produced subsequent to that, several hours later, was a document entitled "Revised Observations," which included, then, nine of the assaults that this child had committed against my son,

three witnessed death threats involving a musical recorder, a chair, a baseball bat, a sharpened wooden stake, and the physical assault that had happened in front of an ed assistant.

When this document was produced to our family, I asked the board again to re-investigate. I was told in no uncertain terms on the day that I put the request in writing to the Bluewater District School Board that the case was closed; there would be no further discussion about what the recourse was. It was indicated to me that corrective measures were in place, none of which were visible to me as a parent. I was not asking for punitive measures. I was merely asking for the safety for all students.

We kept our son home for six days in hopes that the Bluewater District School Board would act. I contacted my trustees. I contacted another superintendent. I contacted the director of education for the Bluewater District School Board. I was consistently told that colleagues don't look over colleagues' work; that the issue was closed; that they believed that the measures were in place, which, by the way, were that my son being removed from the other child's line of sight would be adequate to protect my child, who had been threatened and who had been assaulted, in fact; and that I should be pleased with the provision of alternate school bells so that the children would play on opposite ends of the school field and the children would enter at different bells.

I was not content that that was providing the safety that my child needed nor the safety that the other children in the class needed, so I pursued my situation with the chair of the trustees, the chair of the board. I was told that these were dire concerns. They would investigate. That was the week of April 5. I've heard nothing back since. I contacted my member of provincial Parliament's office and Mr. Tory indicated I should contact the Ombudsman. The Ombudsman's office, to my knowledge now, has no jurisdiction over the Ministry of Education or the boards of education. I was told to go back to the board of education and try to dialogue with them, which I did. I was told again that a supervisory officer would not investigate another colleague's work, that there would be no further comment. I was denied access then to not only the principal but also to my classroom teacher.

On April 25 we removed my son. This boy continues to harass another child in my son's—he did get a suspension for assaulting another child. My son's perspective on that is, "It's okay to hit me." Apparently it's not okay to hit a CAS student, because the boy did get a suspension after that. This boy has assaulted another child subsequent to this. When I queried the board about it, they said it was not my concern any longer because I no longer had a student in grade 6.

Mr. Coran's comments about the administration's reluctance, by a principal, to act because of mitigating circumstances is in fact what I have encountered as a parent. As a teacher, I am appalled by the fact that there is no governance in education, apparently. I've gone right to what I thought was the top. I worked through the channels I thought I could work through, and I've been told by the Ministry of Education that school boards are outside their jurisdiction. I have been told that school boards are duly constituted corporations that apparently are not governed. Although, when I read this act and I read the revisions indicated here, there is some provision for a minister to act, but when I contacted Ms. Wynne's office after she made comments about the overhaul of the Safe Schools Act and about the consistency of application, I was again told that I had been given their position and that was that school boards are outside their jurisdiction and that they are held to no account, apparently.

I told Mr. McGuinty's office that I was extremely concerned about the safety of a child in a school in Ontario today given what had happened at Virginia Tech, given the climate in our schools right now. I was told that I had already been given their position. When I asked again, "Do you mean you don't care about the fact that a child is not safe?" I was told that my recourse could be legal action. I was told that my recourse could be to talk to the trustees, whom I'd already talked to. So apparently I wait till the next election and hope that the trustees who have failed to act to provide safety for my children are voted out. In the interim, who provides safety for my child in a class in Ontario today?

Those are my concerns. I would hope that at some point there would be consultation with parents. I know that parents can't govern school boards. I'm talking about and suggesting that there needs to be sweeping changes to acts and laws so there is consistent application. Regardless of mitigating circumstances, safety of students is paramount and ought to be paramount.

Mr. Flynn, how many minutes do I have left?

The Chair: You're down to seconds, actually. It would be less than a minute, so if you'd summarize, that would be great.

Ms. McDougall: My summary is, to whom are school boards held to account? What is the governance of school boards and what happens if there are breaches and violations of the Safe Schools Act, for example? What recourse does a parent have when their child is consistently assaulted but their parents are in the system so they have an advocate? I have no advocate. Where do I go from here, short of taking legal action, which I'm not prepared to do at this point? The police are telling me to press charges against this 12-year-old boy. I'm not prepared to do that either. I trust the system to protect my children.

The Chair: Thank you, Ms. McDougall. We really do appreciate you appearing today.

1740

METRO TORONTO CHINESE AND SOUTHEAST ASIAN LEGAL CLINIC

The Chair: Moving on now to the Metro Toronto Chinese and Southeast Asian Legal Clinic, Avvy Go is

here, the clinic director. Greetings, Avvy. You have 10 minutes. If we go sprinting out of here after your delegation, it has nothing to do with the quality of your presentation. It has everything to do with us going and voting. The floor is yours.

Ms. Avvy Go: Chair, I won't take that personally.

Mr. Yakabuski: So is this going to be a 10-minute bell?

The Chair: I think it will be, but it could be called any minute.

Ms. Go: Thank you. My name is Avvy Go. I'm the clinic director of the Metro Toronto Chinese and Southeast Asian Legal Clinic. We are a community-based legal clinic that provides free legal services to mainly Chinese and Vietnamese communities in the Toronto area. I have to also echo what Ms. Marie Chen had said earlier. We only found out about this hearing Monday evening, so we very quickly put together submissions, but certainly a lot more advance notice to as many groups affected by this as possible would have been a much better process.

Over the years, we have represented a number of immigrant parents whose children are subject to suspension and/or expulsion orders from various schools within the Toronto District School Board. As immigrants, many of these parents are often shut out of the education system that the children are placed in. Many do not have any ongoing communications with the school that the children attend because of a number of reasons. Sometimes it's because of the language barriers. Some of these parents work a number of jobs just to make ends meet, so they don't have the time to communicate with the school. Some simply believe that once the kids are there, the school will be there to provide for the kids. They have a lot of deference to the teachers and the school principals. They don't question the authority. As a result, many immigrant parents are not kept abreast of what some of the issues are that their kids are faced with in school. For some of them, the first call they would ever get from the school principal is the one telling them that their kids are being suspended.

To these parents, the whole suspension/expulsion review appeal process is simply beyond their comprehension. From our experience and perspectives, the schools have done very little to inform the parents about the process involved. Under the current framework, the decision to suspend rests solely with the school principals, who have their own personal values, principles, prejudices and biases. By the authority of the legislation, school principals literally hold the future of these students in their hand, yet there is very little accountability as to how such tremendous power is being wielded in any of these individual cases.

We believe that changes to the entire process and system are long overdue. The amendments that are being proposed here under Bill 212 will help in some way to add accountability to the suspension and expulsion process, but it does not in our view address the underlying systemic problems that lead to the alienation of students, particularly immigrant and racialized students, in our system.

I have a number of recommendations. I know the bell is ringing, so—

The Chair: No, we have 10 minutes, so don't let this—I wanted to make sure this didn't interfere with your presentation, so you just keep going.

Ms. Go: Okay. I'm just going to go through some changes that we thought would be able to improve the bill a little bit. First of all, around the mitigating factors, we agree with the African Canadian Legal Clinic that those factors should be put in the act itself and not left to the regulations. They are too important to be left to the regulations. Certainly, the terms of settlement provided by the Ontario Human Rights Commission and the ministry will be a good place to start.

Secondly, we want to make sure that suspension and expulsion decisions are made in a truly transparent and accountable manner. We recommend that the act be amended to make it explicit that decisions to suspend and expel students can only be made as a last resort after all other non-disciplinary measures have been tried and have failed to address the problem. Such decisions have to be made in accordance with the best interests of the child, subject to the suspension or expulsion order in question.

We also believe that mandatory suspension goes against the principle of progressive discipline that this act is supposed to promote, so we recommend that the act be amended to remove any form of mandatory suspension.

We also think that while it's good that the act requires the principal who makes the decision to ensure that written notice of the decision is given promptly to the student and his or her guardian, in our experience, in reality school principals do not respect that requirement. Rather than leaving it up to the individual principal to determine what "promptly" means, we recommend that the act be changed so that principals are required to give written notice within two school days of the decision to suspend or expel a student.

On the issue of investigation, it's our experience that many school principals make suspension decisions without first hearing from the students or the parents involved. The bill now requires a principal to make "all reasonable efforts to speak with" the students and the parents, but we think that's simply not good enough. The principles of fairness and natural justice require that the person who is most directly affected by the decision be given an opportunity to present his or her case before the final decision is made. Therefore, we recommend that instead of just saying you have to make reasonable efforts, the act should require and mandate school principals to actually talk to the students and the parents before they suspend anyone.

We also recommend that the Ministry of Education set up an office whose mandate is simply to act as an advocate and support for families whose children are subject to suspension and expulsion orders. The story that you've heard—I guess in a way, it's the other side of the story, but it's the same idea. The parents are very much

excluded from the whole process, particularly from our point of view when we deal with immigrant parents. They have no idea what the process is like, they have no knowledge of the system, how to appeal the suspension order. Nobody tells them anything. Now maybe they will get a letter that says there's this appeal process, but how would many of them actually do anything about it when they have no resources to do so? You can't count on legal clinics. Many of them may not even do these kinds of cases, and even those that do can only take on very few cases at the same time. You need to have a body whose job is really to advocate for the parents and therefore for the children. They don't have anyone advocating for them right now. There is a huge power imbalance between the school on the one hand and the parents and students on the other. So make sure that you have an advocate there and make sure the advocate will be able to assist those who are the least able to advocate for themselves, meaning those whose first language is not English or French, or those who have other difficulties in accessing the school.

In conclusion, while we recognize that the government is moving in the right direction by bringing forward the bill to improve procedural fairness, it doesn't really go to addressing the substantive systemic issues behind why students may end up in the situation where they might be subject to suspension or expulsion. We think that a lot more needs to be done in that respect—of course, I'm sure you've heard this 20 times now—investment in our public school system, investment in the children and investment, honestly, in the broader society, because the school is just a mirror of what is happening outside. If we're not addressing the inequities that exist outside, they will be transferred into the school system itself. Thank you.

The Chair: Wonderful. Thank you very much, Avvy. Unfortunately, you've left us with about a minute for all of us to ask you questions, so if you don't mind foregoing that minute—

Ms. Go: Sure.

The Chair: —or do you have anything to say for a minute?

Ms. Go: No.

The Chair: Okay, thank you. We will leave it at that and let the members go and vote.

We need to go upstairs. A vote will be held in about five minutes. Following that vote, we'll be back down here to hear from the last two delegations this afternoon.

The committee recessed from 1749 to 1800.

ARCH DISABILITY LAW CENTRE

The Chair: If I could ask members of the audience to take their seats, and if we could call forward the ARCH Disability Law Centre, Robert Lattanzio. Sir, the floor is yours. We aren't anticipating any interruptions. You have 10 minutes, the same as everybody else. Use that as you see fit, and we'll share the time that's left over, if there is any.

Mr. Robert Lattanzio: Thank you very much. Welcome back. My name is Robert Lattanzio. I'm a staff lawyer with ARCH Disability Law Centre.

I'd just first like to echo comments made by Avvy Go and Marie Chen earlier. It's unfortunate that there wasn't much notice to these hearings. I know of many disability organizations and students and parents who really need to be heard. I just wanted to begin by stating that.

Perhaps I should tell you a little bit about ARCH. ARCH is a charitable, not-for-profit specialty legal clinic, primarily funded by Legal Aid Ontario, that is dedicated to defending and advancing the equality rights of persons with disabilities, regardless of the nature of the disability. We have a provincial mandate and a membership consisting of over 60 disability organizations. ARCH provides education to the public on disability rights and to the legal profession on disability law. We also make submissions to government on law reform matters such as submissions to the safe schools action team. We offer a telephone summary legal advice and referral service, and many calls we receive deal with human rights and education matters. ARCH also maintains an informative website on disability law.

Lastly, ARCH represents national and provincial disability organizations and individuals in test case litigation at all levels of courts and tribunals, including the Supreme Court of Canada. ARCH recently represented the interveners in Wynberg and Ontario at the Ontario Court of Appeal, and not so recently represented the respondent in a seminal Supreme Court of Canada case, Eaton and Brant County Board of Education. I mention these cases because at their very core was the issue of access to education for students with disabilities. It is this theme—access to education—that I wish to talk about today in the context of safe schools.

I will not be providing you today with ARCH's analysis of Bill 212. Although we do have concerns with the bill, we will do so in written submissions to this committee. I believe the deadline is May 25. Rather, I wish to discuss an issue that has unfortunately not been addressed by Bill 212. I am referring to section 305 of the Education Act, also known as regulatory exclusions, or coerced or involuntary withdrawals. The use of this mechanism pursuant to section 305 has had devastating consequences and has been probably the most insurmountable barrier to accessing education for students with disabilities in this province.

Section 305 was proclaimed in force on September 1, 2000, along with the other safe schools amendments, commonly referred to as the Safe Schools Act. Even though it was introduced as part of the Safe Schools Act, this provision and the issue of exclusion generally are, shockingly, completely ignored by Bill 212. ARCH, along with other community groups, has raised this issue many times. I have provided this committee with copies of a brief ARCH prepared in 2003 for the then Minister of Education, Gerard Kennedy, regarding our concerns with safe schools and section 305.

Section 305, together with subsection 3(1) of its corresponding regulation, which is regulation 474, provides principals and vice-principals and any other person authorized by a school board to exclude a person from school premises if, in their judgment, the person's presence "is detrimental to the safety or well-being of a person on the premises...." So the purpose of this section is to help prevent unwanted visitors from coming on to school property. Section 305 not only provides exclusion powers to school officials, but it makes it a provincial offence to contravene a regulatory exclusion, punishable by a fine of up to $5,000. There is no appeal mechanism for a regulatory exclusion. Once a student is subjected to this mechanism, they may find themselves forever unable to access public education and without any means to challenge it.

Students with disabilities are adversely affected by the use of this mechanism of regulatory exclusion. Legal counsel for school boards actively encourage principals to use this power against students, despite the fact that the section was never intended to be used to keep students with disabilities out of school.

At ARCH, we receive many telephone calls from parents concerning the operation of section 305. Typically, principals will contact the parents and tell them in advance that they intend to impose a regulatory exclusion on their children due to concerns about anticipated disability-related behaviours, whatever they may be. The parents will be given the option of withdrawing their child instead of being excluded, and some parents will take that option, fearing any consequences of not taking that option. But whether it's imposed or whether it's just threatened, the effect is essentially the same: Students with disabilities are prevented from attending school, without any available defences, mechanisms or avenues of redress and without the ability to secure any educational programming. Some students return to school several months later; some never do. This is contrary to the Ontario Human Rights Code and the Canadian Charter of Rights and Freedoms.

Based on the calls we receive from parents and pupils, our work with community groups, as well as our litigation, it is our understanding that it is often a lack of appropriate accommodation, pursuant to the Human Rights Code, to meet disability-related needs of students or an unwillingness to provide appropriate accommodations by the school and board that leads to the use of section 305 or the threat to use that section.

As I was preparing my oral submissions today in my office, I coincidentally received a disturbing call from a parent whose child had just been excluded pursuant to section 305, after numerous attempts at trying to secure appropriate accommodations with their school. These are the types of calls we receive regularly.

The effect of the use of section 305 as a disciplinary provision is therefore discriminatory to students with disabilities. Insofar as this provision creates exclusion and segregation, this application of section 305 represents a significant backward step in public policy.

Education is a prerequisite to full citizenship. Students with disabilities must therefore not be needlessly excluded from the public education system. Students with disabilities, unlike their peers, are being excluded because of behaviour which they cannot control. Children should not be punished for having a disability. Children should not be denied a chance to learn just because they have a disability.

We therefore make a recommendation with respect to the bill before us today. This recommendation is simple, captures the true legislative intent of section 305 and would not cost this government any money. Possible language amending section 305 could be as follows: "A 'person' under this section does not include a person enrolled or registered in school or engaged in school-related activities."

A possible mechanism for schools to react to potentially dangerous situations still remains pursuant to subsection 265(1)(m) of the Education Act. More importantly, however, student behaviour is governable through the application of the suspension and expulsion provisions, both of which have corresponding appeal mechanisms.

ARCH's recommendation would ensure that students with disabilities are not excluded from school so easily without any recourse to appeal.

In conclusion, with the passage of the Safe Schools Act, the provincial government created a situation in which public education for children with disabilities is no longer guaranteed and can be—and is presently being—taken away at any time. More and more, the Safe Schools Act is being used against students with disabilities to remove them from the public education system.

We urge this committee to ensure that this bill remedies the discriminatory impact of the Safe Schools Act and, specifically, the incorrect use of section 305 of the Education Act and to also ensure that safeguards are in place for students with disabilities to protect their equal right to access regular public education.

Again, ARCH will provide more detailed written submissions to this committee.

The Chair: Thank you. You've left about a minute in total. Did you have anything else you wanted to say in summary?

Mr. Lattanzio: No, I think that's it.

The Chair: I can't imagine three parties sharing a minute.

Mrs. Sandals: Chair, could I have 30 seconds to clarify an issue which has been raised several times?

The Chair: If the other parties are agreeable to that, yes.

Mrs. Sandals: Regarding the whole issue of section 305: I agree totally with your analysis, the safe schools action team agrees with your analysis, the minister agrees with your analysis.

It is our intent to amend reg 474 so that there will be a section added to clarify that the principal cannot use his or her authority under the regulation to remove students who are enrolled at the school—and then goes on.

Basically, we agree with your intent, so whether we need something to clarify that that intent is publicly understood—but your analysis is bang on. We need to sort that out so that people understand.

Mr. Lattanzio: That is incredibly great to hear.

The Chair: Thank you very much for coming today.

ORGANIZATION OF PARENTS OF BLACK CHILDREN

The Chair: We'll move on to the last delegation of the day, and that is the Organization of Parents of Black Children. Owen Leach, Yolisa Dalamba and Vickie McPhee, please come forward and identify yourselves for Hansard. You have 10 minutes; you can use that any way you see fit, and we'll share the time at the end if there's any left.

1810

Mr. Owen Leach: Oh, I just about made it. It seems that this hearing was pretty secret. Somehow it didn't get around to the community and we managed to catch it at the last minute. I don't know why it has been done like this.

My main critique of the whole approach of the Safe Schools Act is really—I call the Safe Schools Act the criminalization act of African-Canadian students. I think the Liberal Party must get out of the Harris era into a new era and restore the anti-racism and equity policies that were in place before Mike Harris came in, which he actually disbanded. Nothing can be done to make schools safe for African-Canadian youth unless there's an anti-racism policy. You must recognize that we are living in a racialized society, and many incidents that take place in the schools end up with accusations landing on African Canadians rather than on some white students who have initiated the problem. I have intervened in many cases and I speak with authority on that.

The police should not be partners in education in schools. The police are a service to the whole of society. When they become a partner, what happens is that parents only hear about their children's arrests after they have landed in jail, because the school, the principal and the police work in such close partnership that any incident that occurs immediately involves the police. In some schools they're actually patrolling, which is obnoxious to me. It is repugnant that you have a school where the police are patrolling. I think the police should not be there. They should be available in case of any situation where they're needed, but not a partner equal with parents in the school system.

The so-called Safe Schools Act has also been antagonistic to parents. The trespass law has been invoked against many parents and has been held up before them to silence them. Some parents have not been able to go on school premises to accompany their children into the school.

In this short time, I just want to say that when there's an incident at the school, I don't want to hear about an advisory committee. I want the parent to be notified right away, involved in the problem and able to look after their child rather than being told after the fact that their child is in jail. Who decides to put a child, who has come to school to be educated, in jail without the parents' knowledge? That is abominable.

I am also concerned about army recruitment in the school system of Ontario. I am aware that there are co-op courses now available to students to join the army. This can only result in introducing aggressive behaviour in students if they are in school and going into military activity.

The provincial government has broken its promise to repeal the Safe Schools Act, and I say that you must honour your promise in this election or you will have to answer to the people of the province.

Ms. Yolisa Dalamba: My name is Yolisa Dalamba, and I will try to be as quick as possible.

As a racialized parent, I am framed as uncaring, dysfunctional, illiterate, angry and confrontational even before I open my mouth, and this bill perpetuates my criminalization, isolation and exclusion. On one hand, the ministry asserts that Bill 212 will ensure that all students have a right to education in a safe and inclusive environment, and yet all these regulations suggest an even more punitive, bureaucratic, complicated, time-consuming and stressful experience and process, particularly for families and single parents who already have no support systems provided.

I would also like to pick up on a point that was actually made by MPP Rosario Marchese, who talked about the fact that youth workers, social workers, youth counsellors and educational assistants have been systematically cancelled. We believe that this bill does nothing to address the support systems that youth and their families need, and we're calling for the reinstatement of these positions in the school system.

Mr. Marchese also pointed out that issues of fairness and the daily oppression and lived experiences of racialized learners and students with disabilities have been described as a perception. We vehemently want to name the fact that racism, as Owen has just said, exists and it is not a perception but a fact. As a result, it creates a climate of denial, dismissal and lack of accountability when this notion that racism or oppression as a perception continues to be repeated.

In closing, I would like to talk about the fact that you mentioned advisory councils. We want to ensure that the one you are thinking about models the one they have in Nova Scotia. They have the Council on African Canadian Education, which has the direct ear of the Minister of Education. Along with that, there is a Minister of African Nova Scotian Affairs, who deals specifically with issues of education affecting learners, families and their communities. Indeed, we are still calling for the repeal of the Safe Schools Act.

Ms. Vickie McPhee: My name is Vickie McPhee. I am not only part of the OPBC; I am also a member of rights watch network, which was instrumental in the

settlement that came out of the Ontario human rights system.

I'm going to talk for a moment as a parent. I have a five-year-old child at Regent Park/Duke of York Junior Public School. He was out of school for a week. On the Friday, the principal called to tell me that if my child's behaviour continued to escalate in the classroom as it did that afternoon—he was not there for five days—there would have to be measures taken. If my child was not in the school for four days and the principal did not know and still assumed that my child was misbehaving, is my perception that racism exists in the public education system only my perception?

I want to move a little bit from that. The National Inner City Conference was to give parents and community members an opportunity to address strengthening the public education system. That did not happen. While at that conference, a young woman of Caucasian descent stood up and said, "We need to call a spade a spade." I put my hand up as an advocate, a human rights advocate, a well-skilled human rights advocate, and asked for a learning moment. Lloyd McKell's department shut me down. Is my perception of racism in the public education system only my perception? I would say not.

In closing, I want to say that without a full parental consultation on Bill 212, the board again, the ministry again would have fundamentally failed the community you keep telling me you want to support. I want to urge you, please, to take a step back and examine your whole consultation process. Again, it has failed the very community you say you want to help. That's it.

The Chair: Thank you very much for your presentation today. It certainly is appreciated. That is our last presentation of the day.

I just want to remind the committee of some of the details surrounding the committee before we adjourn. Next Wednesday, May 23, is the hard deadline for amendments. That is a hard deadline; there can be no extensions granted to that. Written submissions are due on May 25; however, amendments are due on the 23rd. So any group that has presented so far will be e-mailed, and if they propose to send in any suggestions for amendments, they will be asked to do so by the 23rd. Clause-by-clause will take place at 3:30 on May 28.

This committee is adjourned.

The committee adjourned at 1821.

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