

Submission to The Standing Committee on Social Policy  
on Bill 13 and Bill 14

By

Dominic Tse  
Jubilee Centre for Christian Social Action (JCCSA)

This submission is an attempt to combine elements of Bill 13 and Bill 14 to produce a bill that would achieve the stated purpose of both bills, namely, to counter bullying and to promote a safe school environment. The Explanatory Notes and the Preamble are not included as they are not the legally binding sections of the Bill.

Sections in Courier New font are those of Bill 13, while section in italic Times New Roman font are those of Bill 14, while my explanatory notes are in brackets and underlined.

1. (1) Subsection 1 (1) of the Education Act is amended by adding the following definition:

*“bullying” means the severe or repeated use by one or more pupils of a written, verbal, electronic or other form of expression, a physical act or gesture or any combination of them if it is directed at another pupil and if it has the effect of or is reasonably intended to have the effect of,*

*(a) causing physical or emotional harm to the other pupil or damage to the other pupil’s property,*

*(b) placing the other pupil in reasonable fear of harm to himself or herself or damage to his or her property,*

*(c) creating a hostile environment at school for the other pupil,*

*(d) infringing on the legal rights of the other pupil at school, or*

*(e) materially and substantially disrupting the education process or the orderly operation of a school; (“intimidation”)*

(Note: This section from Bill 14 is chosen because it is more detailed and avoids the use of more subjective languages such as "ought to know" and "would likely.")

And

the behaviour occurs in a context where there is a real or perceived power imbalance between the pupil and the individual based on factors such as size, strength, age, intelligence, peer group power, economic status, social status, religion, ethnic origin, sexual orientation, family circumstances, gender, race, disability or the receipt of special education;

(Note: This section of Bill 13 is retained for the merit of setting out the situations and reasons where bullying acts occur in school.)

(2) Section 1 of the Act is amended by adding the following subsection:

### *Cyber-bullying*

*(1.2) Without limiting the generality of the definition of "bullying" in subsection (1), bullying includes bullying, known as cyber-bullying, that is done through any form of electronic means using any technique, including,*

- (a) creating a web page or a blog in which the creator assumes the identity of another person;*
- (b) impersonating another person as the author of posted content or messages; and*
- (c) communicating material to more than one person or posting material on an electronic medium that may be accessed by one or more persons.*

### *Bullying in schools*

*(1.2.0.1) For the purposes of this Act, bullying shall be deemed to occur in a school if it occurs,*

- (a) on a school site or public property within 50 metres of a school site;*
- (b) during the course of an activity, function or program that is conducted for a school purpose, whether or not it takes place at a school site;*
- (c) through the use of technology or an electronic device provided to pupils by a school; or*
- (d) through the use of technology or an electronic device that is not provided to pupils by a school if the bullying has the effect of or is reasonably intended to have the effect described in clause (c), (d) or (e) of the definition of "bullying" in subsection (1).*

(Note: This section from Bill 14 is chosen over that of Bill 13 because of it is more comprehensive in spelling out the various means of bullying and the circumstances in which bullying occurs in school.)

**2. Section 3 of the Act is amended by adding the following subsection:**

Same, acts of bullying

(2) The report shall specify,

(a) the number of reports of an act of bullying that the Minister has received from boards under paragraph 7.8 of subsection 170 (1) during the immediately preceding fiscal year; and

(b) the steps that the Minister has taken during the immediately preceding fiscal year to address bullying in schools.

**3. (1) Paragraph 29.1 of subsection 8 (1) of the Act is repealed and the following substituted:**

equity and inclusive education

29.1 require boards to develop and implement an equity and inclusive education policy through consultation with all stakeholders in the school community and members of community at large.

(Note: This section is added to ensure boards hold broad based consultation with all stakeholders. The reference to the Minister is dropped for the simple reason that a democratic decision making process involving schools, Board, Trustees, and members of the public should be trusted and respected.)

(2) Subsection 8 (1) of the Act is amended by adding the following paragraph:

surveys under s. 169.1 (2.1)

31. establish policies and guidelines respecting the surveys referred to in subsection 169.1 (2.1);

**4. (1) Subsection 169.1 (1) of the Act is amended by adding the following clauses:**

(a.1) promote a positive school climate that is inclusive and accepting of all pupils, including pupils of any race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability;

(a.2) promote the prevention of bullying;

(2) Section 169.1 of the Act is amended by adding the following subsections:

School climate surveys

(2.1) In fulfilling its duties under clause (1) (e) with respect to the effectiveness of policies developed by the board to promote the goals referred to in clauses (1) (a.1) and (a.2), every board shall use surveys to collect information from its pupils at least once every two years in accordance with any policies and guidelines made under paragraph 31 of subsection 8 (1).

Same

(2.2) In collecting information from pupils under subsection (2.1), a board shall not collect any name or any identifying number, symbol or other particular assigned to a pupil.

**5. (1) Subsection 170 (1) of the Act is amended by adding the following paragraphs:**

instruction on bullying prevention

7.4 provide instruction on bullying prevention during the school year for every pupil who has a right to attend a school under the jurisdiction of the board and ensure that the instruction is appropriate to the age of the pupils receiving it and conforms with the

curriculum guidelines, if any, issued by the Minister under paragraph 3 of subsection 8 (1);

remedial programs for bullying

7.5 ensure that schools within its jurisdiction provide remedial programs designed to assist victims of bullying recover and to discourage perpetrators of bullying from continuing to engage in bullying, which

programs may be offered by social workers, psychologists or other trained professionals;

professional development programs on bullying

7.6 establish professional development programs that are designed to educate teachers in schools within its jurisdiction about bullying and strategies for dealing with bullying, including the strategies, if any, that the Minister has approved, and ensure that the programs are open to teachers' assistants in its schools;

educational material on bullying

7.7 make available to the public information about recognizing and dealing with bullying;

(2) Subsection 170 (1) of the Act is amended by adding the following paragraph:

principals' reports on bullying

7.8 promptly forward to the Minister the reports that it receives from principals under subsection 305.1(4);

**6. Clause 264 (1) (h) of the Act is amended by adding "and the professional development programs established by the board under paragraph 7.6 of subsection 170 (1)" at the end.**

**7. The Act is amended by adding the following section:**

Purpose

300.0.1 The purposes of this Part include the following:

1. To create schools in Ontario that are safe, inclusive and accepting of all pupils.

2. To encourage a positive school climate and prevent inappropriate behaviour, including bullying, sexual assault, gender-based violence and incidents based on sexual orientation.

(Note: The term "sexual orientation" is used in place of the more restrictive and ambiguous "Homophobia.")

3. To address inappropriate pupil behaviour and promote early intervention.

4. To provide support to pupils who are impacted by inappropriate behaviour of other pupils.

5. To establish disciplinary approaches that promote positive behaviour and use measures that include appropriate consequences and supports for pupils to address inappropriate behaviour.

6. To provide pupils with a safe learning environment.

**8. The Act is amended by adding the following section:**

Bullying Awareness and Prevention Week

300.0.2 (1) The week beginning on the third Sunday in November in each year is proclaimed as Bullying Awareness and Prevention Week.

Same, purpose

(2) The purpose of subsection (1) is to promote awareness and understanding of bullying and its consequences in the school community.

**9. (1) Section 300.2 of the Act is amended by striking out "as soon as reasonably possible".**

(2) Section 300.2 of the Act is amended by adding the following subsection:

Same

(2) An employee shall report to the principal as soon as reasonably possible or, if a different time period is specified by the policies or guidelines, within that time period.

**10. Subsection 301 (2) of the Act is amended by adding the following paragraph:**

7. To prevent bullying in schools.

(Note: This section about requiring person or entity to sign an agreement to follow standards that are consistent with the code of conduct is dropped for the following reasons:

a. In section 301(1)the Acts says, "The Minister may establish a code of conduct governing the behaviour of all persons in schools. 2000, c. 12, s. 3." It is clear that the Code of Conduct is meant to govern person in school, i.e. students, teachers and staff, and volunteers in school. To require a third party to follow the Code is clearly not the intent of the Act.

b. This mandatory requirement would add unnecessary administrative burdens to Board Staffs and community organizations. It requires much more than just making third parties sign an agreement. What would happen if third parties fail to follow the agreement? Would their rental agreement be terminated? Would there be an investigative process? Would there be appeal, even litigation?)

(2) Subsection 301 (6) of the Act is repealed and the following substituted:

Same, governing discipline

(6) The Minister may establish policies and guidelines with respect to disciplining pupils, including policies and guidelines respecting,

(a) the use of disciplinary measures within a framework that,

(i) identifies pupil behaviours that are inappropriate and that, without excluding less serious behaviour, include bullying, sexual assault, gender-based violence and incidents based on *Sexual orientation*.

(Note: "Sexual Orientation" is preferred over the restrictive and ambiguous term "homophobia.")

(ii) provides for appropriate consequences for pupils who engage in inappropriate behaviour,

(iii) provides for progressively more serious consequences for repeated or more serious inappropriate behaviour,

(iv) provides support for pupils who are impacted by inappropriate behaviour, and for pupils who engage in inappropriate behaviour, to assist them in developing healthy relationships, making good choices, continuing their learning and achieving success,

(v) provides for prevention strategies, and

(vi) provides for early and ongoing intervention strategies;

(b) opportunities for all pupils, their parents and guardians, and all teachers and other staff members in a school to increase their understanding and awareness of inappropriate pupil behaviour;

(c) opportunities for all teachers and other staff members in a school to increase their ability to respond to inappropriate pupil behaviour;

(d) training for all teachers and other staff;

(e) procedures for responding appropriately and in a timely manner to inappropriate behaviour;

(f) resources to support pupils who are impacted by inappropriate behaviour;

(g) resources to support pupils who have engaged in inappropriate behaviour;

(h) a process that parents or guardians of pupils described in clause (f) or (g) can follow if they have concerns about the support provided to their child.

(3) Section 301 of the Act is amended by adding the following subsections:

Same, bullying

(7.1) The Minister may establish policies and guidelines with respect to bullying prevention and intervention in schools, including policies and guidelines respecting,

(a) training for all teachers and other staff;

(b) resources to support pupils who are impacted by bullying;

(c) the resources provided, as part of programs described in section 312, to pupils who have been suspended or expelled for bullying;

(d) procedures that allow pupils to report incidents of bullying safely and in a way that minimizes the possibility of reprisal;

(e) the use of disciplinary measures within the framework described in clause (6) (a) in response to bullying;

(f) procedures for responding appropriately and in a timely manner to bullying.

. . . . .

Approval and changes, board policies and guidelines

(11) The Minister may require boards to submit any policy or guideline established under section 302 to the Minister and to implement changes to the policy or guideline as directed by the Minister.

**11. (1) Subsection 302 (2) of the Act is repealed and the following substituted:**

Same, governing discipline

(2) Every board shall establish policies and guidelines with respect to disciplining pupils, and the policies and guidelines must,

(a) be consistent with this Part and with those established by the Minister under section 301;

(b) address every matter described in clauses 301 (6) (a) to (h); and

(c) address any other matter and include any other requirement that the Minister may specify.

(2) Section 302 of the Act is amended by adding the following subsection:

Same, governing bullying

(3.4) Every board shall establish policies and guidelines with respect to bullying prevention and intervention in schools, and the policies and guidelines must,

(a) be consistent with those established by the Minister under section 301;

(b) address every matter described in clauses 301 (7.1) (a) to (f); and

(c) address any other matter and include any other requirement that the Minister may specify.

**12. The Act is amended by adding the following sections:**

*Model provincial bullying prevention plan*

*303.1 (1) In consultation with other Ministers of the Government of Ontario, the Minister shall develop a model bullying prevention plan to assist a board in establishing its bullying prevention plan under section 303.2.*

*Not binding*

*(2) The model bullying prevention plan is not a policy of the Minister and is not a regulation within the meaning of Part III (Regulations) of the Legislation Act, 2006.*

*Communication to boards*

*(3) The Minister shall make a copy of the model bullying prevention plan available to every board.*

*Same, information on bullying*

*(4) The Minister shall compile a database of information about recognizing and dealing with bullying and make the database available to every board.*

*Board's bullying prevention plan*

*303.2 (1) Every board shall establish a bullying prevention plan for bullying in schools within the board's jurisdiction and submit it to the Minister for approval.*

*Contents*

*(2) The bullying prevention plan shall,*

*(a) include descriptions of bullying and retaliation to bullying;*

*(b) establish procedures for persons, including the pupils, teachers and staff of the board and the parents and guardians of the pupils, to report bullying or retaliation to bullying to persons or bodies specified in the plan;*

*(c) require that the person or body that receives a report of bullying or retaliation to bullying shall keep the identity of the person reporting confidential, if the person so requests, and that*

*no disciplinary action shall be taken under this Part against a pupil solely on the basis of a request that a report involving the pupil be kept confidential;*

*(d) establish procedures for a principal to respond promptly to a report of bullying or retaliation to bullying, including by investigating the report;*

*(e) state that bullying is prohibited and identify the range of disciplinary action under this Part that a principal may take against a perpetrator for bullying;*

*(f) establish procedures for assessing the needs for protection of a victim of bullying and restoring a sense of safety to the victim;*

*(g) establish strategies for protecting from bullying a person who reports bullying or retaliation to bullying, provides information during an investigation of bullying or retaliation to bullying or is witness to or has reliable information about an act of bullying or retaliation to bullying;*

*(h) establish disciplinary action under this Part that a principal may take against a person found to have falsely accused another person of bullying;*

*(i) establish procedures consistent with the law for a principal to promptly,*

*(i) notify the parents or guardians of the perpetrator and the victim of an act of bullying that the act has occurred and the disciplinary action that the principal proposes to take to prevent any further acts of bullying, and*

*(ii) notify the appropriate law enforcement agency that an act of bullying has occurred if criminal charges may be laid against the perpetrator; and*

*(j) include all other matters that the regulations prescribe.*

#### *Consultation*

*(3) When establishing the bullying prevention plan, a board shall solicit the views of the pupils, teachers and staff of the board, the volunteers working in the schools, the parents and guardians of the pupils, school councils and the public.*

#### *Different plans*

*(4) A board may establish different bullying prevention plans that apply with respect to different schools, different circumstances or different classes of persons.*

#### *Not regulations*

*(5) A bullying prevention plan established under this section is not a regulation within the meaning of Part III(Regulations) of the Legislation Act, 2006.*

#### *Approval of plan*

*(6) A bullying prevention plan has no effect until the Minister, by order, approves it, which the Minister shall do only if he or she is satisfied that the plan complies with subsection (2) and that the contents of the plan are effective to deal with bullying in schools.*

#### *Minister's order*

*(7) An order of the Minister approving a bullying prevention plan is not a regulation within the meaning of Part III (Regulations) of the Legislation Act, 2006.*

#### *No hearing required*

*(8) The Minister is not required to hold or afford to a person an opportunity for a hearing before making an order approving a bullying prevention plan.*

#### *Notice of approval*

*(9) Upon approving a bullying prevention plan, the Minister shall notify the board.*

#### *Implementation of plans*

*(10) A board shall ensure that each school within the board's jurisdiction implements the plan that applies to it.*

#### *Communication of plans*

*(11) A board shall ensure that a copy of the bullying prevention plans that it establishes under this section is available to the public, including on the board's website on the Internet.*

#### *Principal's duty*

*(12) A principal of a school shall,*

*(a) provide a copy of the bullying prevention plan established for the school to the pupils, teachers, staff and volunteers working in the school, the parents and guardians of the pupils and the school council; and*

*(b) make a copy of the bullying prevention plan established for the school available to the public, including by posting on the school's website, if any, on the Internet.*

### *Review of plan*

*(13) At times that it considers appropriate or as required by the regulations, a board shall periodically review the bullying prevention plans that it establishes under this section and subsections (2) to (12) apply to the review, reading references to establishing a plan as references to reviewing a plan.*

(Note: The section of Bill 14 is preferred to that of Section 8 of Bill 13, for its comprehensiveness and details.)

[Note the following section is dropped for it is unnecessary and highly problematic.

9. The Act is amended by adding the following section:

Board support for certain pupil activities and organizations

303.1 Every board shall support pupils who want to establish and lead,

(a) activities or organizations that promote gender equity;

(b) activities or organizations that promote anti-racism;

(c) activities or organizations that promote the awareness and understanding of, and respect for, people with disabilities; or

(d) activities or organizations that promote the awareness and understanding of, and respect for, people of all sexual orientations and gender identities, including organizations with the name gay-straight alliance or another name. ]

This section is highly problematic for the following reasons:

a. Only four kinds of activities are explicitly listed while in Section 1 of the Bill, a number of factors relating to bullying are mentioned: size, strength, age, intelligence, peer group power, economic status, social status, religion, ethnic origin, sexual orientation, family circumstances, gender, race, disability or the receipt of special

education. To be fair and comprehensive, all of these issues should be addressed adequately with a line or subsection for each factor. Some of those factors omitted are actually main causes of bullying: e.g. size, religion, social status. The omission make this section of the Bill highly inadequate.

b. Among the four subsections, only the one concerning Sexual orientation has a specific activity mentioned. This is highly unbalanced. To make the law balanced and fair, either the reference to "gay-straight alliance or another name" should be dropped or at least one specific activity or organization should be attached to each subsection.

c. The section begins with "Every board shall support pupils who want to establish and lead." This contains a number of problematic issues;

The term "Board" in the education act means "a district school board or a school authority."

By "district school board" the Act says:

- "district school board" means,
- (a) an English-language public district school board,
  - (b) an English-language separate district school board,
  - (c) a French-language public district school board, or
  - (d) a French-language separate district school board

By "school authority" the Act says:

- "school authority" means,
- (a) a board of a district school area,
  - (b) a board of a rural separate school,
  - (c) a board of a combined separate school zone,
  - (d) a board of a secondary school district established under section 67,
  - (e) a board established under section 68, or
  - (f) a board of a Protestant separate school

It seems very clear that "Every Board" here does indeed refer to all school boards in the province, covering Catholic and Protestant boards. Whether it covers home schools is still unclear. Given the fact that Catholic schools in Ontario has a constitutional guaranteed mandate to teach public doctrine, the explicit reference to gay-straight alliance may unnecessarily open the Ministry of Education to constitutional challenges based on Religious Rights granted to Catholic Schools.

If it does include home schools or home schools associations, it would again unnecessarily open the Ministry of Education to Constitutional challenges based on Parental Rights.

d. The first statement of Section 8 of Bill 13 says, "Every board should support pupils who want to establish and lead." It statement bypasses many levels of decision making in the establishment of any

school clubs and activities. In a school situation, pupils who want to establish any club at schools would go to the school authorities, such as home room teachers, department heads, guidance counselors, vice-principal, or principal. In some cases, parents and school councils would get involved as well. By stating that "every Board should support the pupils who want to establish and lead ...", Bill 13 bypasses or ignores the normal chain of school authority and shuts out parental involvement in the process.

In light of these problems, we recommend this section be deleted. This section is unnecessary as all the activities or organizations mentioned can be established in schools following normal school procedures.)

**13. The Act is amended by adding the following section before the heading "Suspension":**

School staff duties in the case of bullying

305.1 (1) A teacher, staff member or volunteer working in a school who observes an act of bullying occurring in the school shall report it promptly to the principal, regardless of whether any other person has previously reported the act to the principal.

Investigation

(2) A principal who receives a report under subsection(1) or who believes that an act of bullying may have occurred in the school shall investigate it promptly.

Principal's duties

(3) A principal of a school who, after the investigation, believes that an act of bullying has occurred in the school shall,

(a) notify the parents or guardians of the perpetrator and the victim of the act that the act has occurred;

(b) invite the parents or guardians of the perpetrator and the victim of the act to submit a written account of the act to the principal;

(c) notify the appropriate law enforcement agency that an act of bullying has occurred if criminal charges may be laid against the perpetrator;

(d) notify the parents or guardians of the perpetrator and the victim of the act of the disciplinary action that the principal proposes to take to prevent any further acts of bullying; and

(e) require the perpetrator to participate in the remedial programs described in paragraph 7.5 of subsection 170 (1) to discourage the perpetrator from continuing to engage in bullying and allow the victim to participate in the programs.

Principal's report to board

(4) After a reasonable time after the end of every school year, or more frequently if the board so requires, a principal shall prepare and submit to the board a report of,

(a) the number of reports of an act of bullying in the school that the principal has received during the school year;

(b) the number of cases, out of the reports mentioned in clause (a), in which the principal, after an investigation, believed that an act of bullying had occurred; and

(c) the number of cases, out of the reports mentioned in clause (a), in which the principal, after an investigation, contacted a law enforcement agency so that the agency could consider laying a criminal charge against the perpetrator of the act of bullying.

**14. Subsection 310 (1) of the Act is amended by adding the following paragraphs:**

7.1 Bullying, if,

- i. the pupil has previously been suspended for engaging in bullying, and
- ii. the pupil's continuing presence in the school creates an unacceptable risk to the safety of another person.

7.2 Any activity listed in subsection 306 (1) that is motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor.

Commencement

11. (1) Subject to subsection (2), this Act comes into force on September 1, 2012.

Same

(2) Section 5 comes into force on the day this Act receives Royal Assent.

Short title

12. The short title of this Act is the Accepting Schools Act, 2011.