



ISSN 1180-5218

Legislative Assembly
of Ontario
Second Session, 38th Parliament

Assemblée législative
de l'Ontario
Deuxième session, 38^e législature

Official Report of Debates (Hansard)

Monday 28 May 2007

Journal des débats (Hansard)

Lundi 28 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

Président : Kevin Daniel Flynn
Greffière : Susan Sourial

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.
e-mail: webpubont@gov.on.ca

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Exemplaires du Journal

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8
courriel : webpubont@gov.on.ca

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 28 May 2007

Lundi 28 mai 2007

*The committee met at 1600 in room 151.*EDUCATION AMENDMENT ACT
(PROGRESSIVE DISCIPLINE
AND SCHOOL SAFETY), 2007LOI 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): Okay, we do have a quorum, ladies and gentlemen, and we're ready to proceed. We're dealing this afternoon with Bill 212, An Act to amend the Education Act in respect of behaviour, discipline and safety.

Are there any comments, questions or amendments to any section of the bill, and if so, to which section?

We're beginning with what's marked as page 1. It's a PC motion. Just allow me a little explanation on this. Mr. Klees, you may be interested in this. If you would like to move these, we've had some questions raised about them. I'll let you start with the procedure and then I'll outline what I've heard so far.

Mr. Frank Klees (Oak Ridges): Okay.

I move that the bill be amended by adding the following section:

"0.1 The Education Act is amended by adding the following section:

"Ombudsman may investigate boards

"Role of Ombudsman

"218.1 The Ombudsman appointed under the Ombudsman Act may investigate any decision or recommendation made or any act done or omitted in the course of the administration of a board and affecting any person or body of persons in their personal capacity and, for that purpose, a board shall be considered a government organization within the meaning of the Ombudsman Act and that act applies to a board with necessary modifications."

The Chair: I've been asked about this, actually about the first three amendments. This one, in my opinion, with the support of staff, is actually beyond the scope of this

committee. This committee is here to deal with matters of behaviour, discipline and safety. We could deal with it if unanimous consent were granted by the committee.

The other two, just so you'll know in advance, were questioned but actually are in order.

Mr. Klees: I understand. I was aware that that would probably be your ruling. I did feel that it was an important issue to raise and was hoping that I could presume on the unanimous consent of the committee, hoping that the government members and my colleague from the third party would agree—

Mrs. Liz Sandals (Guelph–Wellington): No, there will not be unanimous consent.

Mr. Klees: —and especially the parliamentary assistant, who I'm sure is a strong advocate of transparency and accountability, would lend her unanimous support.

Mr. Rosario Marchese (Trinity–Spadina): I introduced Bill 90, which is exactly what the member talks about. It has a lot to do with the safety of children or defending students, which has a lot to do with not just defending the individual but also how we protect individuals from potential abuse, or how we give parents a voice in the event that somehow they feel they have not been able to get any proper attention from the principal or the superintendent or the school trustee, or even the board, and that where they followed the rules—

Mrs. Sandals: On a point of order, Mr. Chair: If this has been ruled out of order, why are we debating it?

The Chair: We aren't debating it; I think people are just expressing their opinions on it.

Mr. Marchese: Making a case to you.

The Chair: Yes. Mr. Klees asked for unanimous consent of the committee, or was about to ask for unanimous consent. Mr. Marchese, are you just about done?

Mr. Marchese: I was just making a case to you as to why it would be in order, but you're saying that you and the clerk have already said that this is not in order.

The Chair: That's right. It's beyond the scope of the committee. It's in order to move an amendment to the section; there's no problem with that. It's just that the substance of the amendment is beyond the scope of this committee.

Mr. Marchese: I would support the motion, obviously, for unanimous consent.

The Chair: It's been moved by Mr. Klees that unanimous consent be granted. Is there unanimous consent?

Mrs. Sandals: No.

The Chair: We're moving on to page 2. Mr. Klees.

Mr. Klees: I move that the bill be amended by adding the following section:

“0.2 The Education Act is amended by adding the following section:

“Legislative grants—guaranteed minimum funding

“234.1 In making regulations governing education funding under section 234, the Lieutenant Governor in Council shall ensure that sufficient funding is provided to every board so that,

“(a) there is a guidance counsellor in every elementary school of the board;

“(b) the board can provide appropriate supervision so that pupils who are suspended for one day or less can serve their suspensions in their schools;

“(c) the board can provide transportation to and from a program for suspended pupils or expelled pupils under part XIII; and

“(d) the board can provide services related to early identification and intervention in response to pupils with special behavioural and learning needs.”

The Chair: Thank you, Mr. Klees. Speaking to the motion?

Mr. Klees: I feel that if the government is serious about this bill and providing the additional services that would be necessary to support students who find themselves in difficulty, this section would be supported by the government. In fact, the issue of having the appropriate supports, first of all through the presence of a guidance counsellor in the elementary schools at the very least, would provide an important step to filling the gap that we hear from the Ontario Principals' Council exists today.

As a result of some of this government's policies, we hear from the Ontario Principals' Council that they're very concerned that, with the reduction in supervision, it's difficult for them to carry out their mandate to provide adequate levels of supervision. Particularly in light of the tragic circumstances that were experienced this past week with the loss of a student in our school, I think it's incumbent upon us to consider taking very serious steps that would provide counselling and a safe place for students to go if they feel threatened, if there are circumstances in a student's life that may be challenging.

We heard from representations to this committee from a number of sources, specifically one of the teacher federations, that teachers don't have the time to actually take on the responsibility of what is being referred to as “progressive discipline” by this government, not a new concept but certainly a concept that is being advocated through this bill, and we've heard the Minister of Education speak to this. If teachers don't have the time to focus on students and provide that kind of ongoing oversight and assistance and counselling, then at the very least one would think that the government would be willing to step forward with funding to ensure that at least there is a guidance counsellor available.

The same rationale is there for the other provisions of this amendment. If in fact there is to be a program for suspended students or expelled students, as is the very

cornerstone of this legislation, then one would expect that the funding would be there to support not only the program but also access to the program by the student and, hence, clause (c) of this amendment that speaks to the provision of transportation to and from that program.

Probably most important relating to this amendment is the issue of providing services relating to the early identification and intervention with regard to students who demonstrate special behavioural needs and certainly learning needs.

I think as well if we go through a number of the representations that were made to this committee by various stakeholders, this amendment incorporates a number of the appeals that were made to the government to ensure that the necessary resources and funding would be available to support the program.

1610

Mr. Marchese: I just want, for the record, to point out that the Conservative Party has shown incredible sensitivity in one term of opposition. I'm hoping that they will have another term in opposition to show greater sensitivity to the issues, because I support the amendment. I think it's great. I support (a), (b), (c) and (d) and would have included an (e), which you forgot about—

Mr. Klees: I was leaving it to you.

Mr. Marchese: That's why I say one more term will show greater sensitivity—and that is “ensure meaningful programs are provided,” because I'm worried about that. I don't believe this government's going to offer the meaningful programs; I really don't believe that. I know they claim they are and I know they're claiming to spend \$25 million extra. I don't think that money is there. I think they're inventing that number. It's just a number that they throw out in the air, but it won't be a real number, and if it's a real number, they'll simply steal from another program and then, lo and behold, there's \$25 million.

But I agree with every one of the elements that you have included because I think they would be very helpful, and I would have added “ensure meaningful programs are provided.”

Mrs. Sandals: First of all, as we all know, funding is dealt with annually for the grants for students' needs. In fact, that is the area of the act where there's a regulatory structure set up for an annual regulation which controls the funding, the transfer of funds to school boards. That is the appropriate technical place for funding to be described, not buried within the act itself in terms of specific funding. It takes a certain amount of gall—perhaps a colossal amount of gall—after the amount of money that was removed from the education system under the previous government, to turn around and try to convince us that we should now start picking off individual funding lines and embedding them in the act.

Having said that, I would point out that there has been a commitment to \$31 million being spent on implementation of this act, if it is passed when it goes back to the House. Of that, \$23 million is specifically targeted for the implementation of the alternative programs for long-term

suspended and expelled students, which will be required under Bill 212. I would like to assure Mr. Marchese that that is a real \$31 million. I can assure him that the battles which the Minister of Education has gone through in getting that to Management Board and approved through the budgetary process, that is real money and is approved in the budget.

The other thing is that, even from a technical point of view, this is not a particularly sensible amendment. If we look at clause (a) requiring a guidance counsellor in every elementary school of each and every board in the province, in fact the primary function of guidance counsellors is to provide academic guidance in terms of program choice. You would not normally find a guidance counsellor in a K-to-6 school in any school in any board. That is not the function that they carry out. So the amendment isn't even sensible from a technical point of view. We will not be supporting it.

Mr. Klees: I find the parliamentary assistant's comments interesting. I think that to the degree that she might attempt to live in the present, it might help her somewhat. Given the circumstances that we face today, the very real circumstances in our schools, there may well be an opportunity to provide a new definition for what guidance counsellors do, particularly in our elementary schools. I would think that might be forward thinking: that there should be someone designated; that there be some effort put into considering what we can and should be doing in our schools to provide the necessary support for students who are finding it challenging; that perhaps the roles and responsibilities of a guidance counsellor be broadened; that the necessary training perhaps be provided.

You mentioned that you're committing \$31 million, and \$23 million of that is going to be specifically targeted to some of your support program. Based on what I read in the press release, where the \$23 million was going to be spent was very succinctly detailed. There was nothing there for the actual programs. There was funding designated for training, for teachers, for principals—I don't have the list. I was looking for the release. I don't have it with me, but I can certainly access it.

My point is that, along with that program, you made it very clear when you made the funding announcement that resources would be delivered into our schools to better equip teachers, to better equip principals. I'm simply proposing here that perhaps what we should also deliver are some additional bodies into those schools so that we can actually do the job that has to be done. If you want to call them something else, call them something else, but the principals are telling us that they don't have the ability to do what has to be done in our schools. That's as a result of your government's policies. It's not me; this is the Ontario Principals' Council. It's the teachers' federations that are telling us that teachers don't have the time to do it. If principals don't have the resources and teachers don't have the time, who's going to do it?

As far as having gall, I do find that offensive. We're here to deal with a very serious piece of legislation. I've

already indicated that as a caucus, we will support it. What we're trying to do in this place is to help make this legislation better, to improve it. Unless this is a farce here, I would think, at the very least, the parliamentary assistant would take this exercise seriously and be willing to consider the proposals that are made factually.

The Chair: Thank you, Mr. Klees. Mr. Marchese.

Mr. Marchese: I have just a few comments to the parliamentary assistant, because she's commenting on the fact that the \$31 million will be real—and I'm assuming it will be so because you say it will be real—except you promised \$300 million in child care that was never delivered. You promised 20,000 units of public housing; I think we only built, to be generous with you, a couple of thousand—just to be generous. You were going to spend \$4 billion in capital programs, but from the facts I saw about a year ago—I haven't seen anything new, even though I've asked—only \$225 million has been spent.

What is real? How does one determine what is real, especially when they're in opposition or when they're waiting, those who are teachers or students or parents, saying, "How will we know whether this \$31 million will be real, except that you say so?" Will it be in instalments over four years, like most of your programs appear to be? Is it annually? Will there be some accounting? Will we have a standing committee on education finance so we can review that yearly? How are we going to know?

1620

The Chair: Any further speakers?

Mrs. Sandals: In terms of taking the process seriously, we have a whole package of amendments here which in fact are very serious responses to the comments that we heard at public hearings. It is our belief that Bill 212 is a very good bill. It is our belief that if we could process the government amendments, we will make a good bill even better.

I would be delighted to engage in a debate on the substance of the bill.

Going back to the substance of the particular amendment before us, aside from the political discussion about funding, which is not the content of Bill 212, the technical content of the amendment does not achieve what I believe the PC member wants it to achieve, because if in fact you are asking to have counselling ability in every school, you would not be necessarily dealing with academic guidance counsellors; you would be dealing with child and youth counsellors or some other description of youth worker who has formal training as a youth worker rather than as a teacher, if we're addressing behaviour.

Mr. Marchese: I'd just like to remind the parliamentary assistant that the matter we're raising is serious. The \$31 million is something you announced, and I assume you take that seriously. The point of the \$31 million is to provide programs for those students who get suspended. That is serious. We don't know what kinds of programs you're going to be providing. That is serious for me. I'm not certain that the money you're promising

is real. That is serious. It relates very much to the substance of the changes you're making in this bill.

Mrs. Sandals: I can only respond that I can give assurances to the member that the \$31 million is real, that the commitment within that \$31 million of \$23 million toward alternative programs is real; I agree that that is a serious matter, that those programs must be funded. We have made that commitment. I'm sorry that he doesn't accept that commitment, but I can only repeat it.

The Chair: Are there any further speakers to the amendment?

Mr. Klees: I, too, won't let the parliamentary assistant's comments about her amendments being serious—the very clear implication is that the amendment before us now is not serious, and I won't accept that attitude at this committee. I think the parliamentary assistant should try, to some degree, to take off her partisan hat here. This is not a political campaign debate at this committee.

Laughter.

Mr. Klees: I realize that the parliamentary assistant is amused; I'm not. I'm here on behalf of stakeholders; I'm here on behalf of my caucus. We have put forward a very serious amendment. The parliamentary assistant will conduct herself as she chooses, but it's not very complimentary to her position, certainly not to her role as a parliamentary assistant. Others will be observing what is going on here, and it certainly doesn't speak very highly for this government's suggestion that they might be serious about democratic reform. To consider the comments that are being made here and to read them carefully, as Hansard will represent them, will give people some indication of how seriously this government takes this process.

The Chair: Are there any further speakers? We're on the first formal amendment. Seeing none, all those in favour?

Mr. Klees: Recorded vote.

Ayes

Klees, Marchese.

Nays

Brownell, Duguid, Ramal, Sandals.

The Chair: That motion is lost.

Moving on to page 3 of your agenda, a PC motion: Mr. Klees.

Mr. Klees: I move that the bill be amended by adding the following section:

“0.3 The Education Act is amended by adding the following section:

“Principal's duty, clarification

“265.1 For greater certainty, a principal may not refuse entry to a school or classroom under clause (m) of subsection 265(1) to a pupil who is enrolled in the school.”

The Chair: Thank you, Mr. Klees. Speaking to the motion?

Mr. Klees: I think it's very straightforward. There should be no arbitrary refusal to any student who's enrolled in a school, being kept from entry of the school or the classroom without reason. I think this is simply a protection for that.

The Chair: Further speakers?

Mrs. Sandals: I quite agree with the intent of this motion, which is to make sure that there is no arbitrary refusal of the right to attend. That will be an ongoing theme as we debate this, I'm sure. However, clause 265 has not been identified by the stakeholders as the problematic instrument within the act. Clause 265 does have with it a right to appeal, so if a student was to be removed under 265, in fact, the student or the parents of the student do have the right to appeal.

The clause—it's not actually a clause, but the regulation which has been identified by the various associations, and certainly in the safe schools action team's consultation the clause which was identified as being problematic, is actually regulation 474-00, the access-to-school-premises regulation, which does not include a right of appeal and which has been used inappropriately in, unfortunately, quite a few cases to exclude students from the school they attend.

It is the government's intent that we will be amending reg 474 to make it clear that that cannot be used to apply to students who are enrolled in the school, so that students cannot be excluded under reg 474 from the school in which they are enrolled. We will be amending the regulation. Obviously because this is the act, there's no way we can indicate that in the act per se. But it's not 265 which is the primary problem here; 265 does have a right of appeal.

The Chair: Further speakers?

Mr. Marchese: I wanted to agree with the parliamentary assistant in this regard. Also, I think the principal needs to have the right to control access to the school and needs to have that discretion. On the whole, the parliamentary assistant is correct.

The Chair: Mr. Klees, further comment?

Mr. Klees: No.

The Chair: Very good. All those in favour of the amendment on page 3? Those opposed? That motion is lost.

Moving on, then, to section 1, there's a government motion on page 4.

Mrs. Sandals: I move that subsection 300(3) of the act, as set out in section 1 of the bill, be amended by striking out “under subsection 311.1(9) or 311.4(3)” and substituting “under this part.”

This is really just a technical amendment to accommodate some other things that are getting amended and renumbered.

Mr. Marchese: Can you explain that for us, if you have an explanation there?

Mrs. Sandals: Where it says “where notice is given to a person under [the named subsections],” it will end up saying “where notice is given to a person under this part.”

1630

The Chair: Any further speakers? Seeing none, all those in favour of the motion on page 4? Those opposed? That motion is carried.

Moving on to the PC motion on page 5: Mr. Klees.

Mr. Klees: I move that section 300 of the act, as amended by section 1 of the bill, be amended by adding the following subsection:

“Mitigating factors

“(4) Where this part requires that ‘mitigating factors’ be taken into account with respect to a decision to suspend, recommend expulsion for or expel a pupil, it means that the following factors must be taken into account:

“1. Whether racial, disability or other harassment was a factor in the student’s behaviour.

“2. Whether the principles of progressive discipline have first been attempted.

“3. The impact of the suspension or expulsion on the student’s continued education.

“4. Whether the imposition of suspension or expulsion would likely result in an aggravation or worsening of the student’s behaviour or conduct.

“5. The age of the student.

“6. In the case of a student with a disability,

“i. whether the behaviour was a manifestation of the disability and whether appropriate accommodation based on the principle of individualization had been provided prior to the behaviour, and

“ii. whether the school failed to provide the pupil with effective accommodation for the disability and whether this failure contributed to the behaviour.

“7. Whether the pupil has the ability to control his or her behaviour or has the ability to understand the foreseeable consequences of his or her behaviour.”

The Chair: Thank you, Mr. Klees. Speaking to the motion?

Mr. Klees: Mr. Chair, there have been far too many examples of students being dealt with inappropriately, whether it be through suspensions or expulsions from school, that can be and have been traced back to a student’s learning disabilities or special needs, and we have had far too many complaints expressed regarding racial or other harassments as a result of a student’s behaviour. The intent here is simply to ensure that there are some guidelines that are made very clear and that must be taken into consideration as mitigating factors with respect to a decision to suspend or to expel a student.

The Chair: Thank you. Mr. Marchese.

Mr. Marchese: Some of these mitigating factors appear to be very reasonable, in my mind. There were a lot of deputants who talked about the need to state what those mitigating factors are. This is an attempt to do that, which I find useful. Clearly, if you just end with number 7, it then suggests that it is exhaustive and that there’s no other mitigating factor, so presumably one would want a number 8 that talks about “and any other,” because there are other considerations, I am sure. I would be interested to know whether the parliamentary assistant or the

minister or anyone on staff has thought about what these mitigating factors are or ought to be and whether or not this is a useful attempt to build it into the bill, or whether you prefer it to be in the regulations for whatever reason.

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

Mrs. Sandals: The mitigating factors as they currently exist are in regulation. In fact, in the agreement which the Ministry of Education has signed with the Ontario Human Rights Commission, the agreement with the OHRC is that the mitigating factors will continue to be in regulations. That’s actually right in the agreement with OHRC. In some ways, the substantive change around how mitigating factors are treated is that there will now be a requirement, a “shall,” so that the principal “shall” consider, when suspending, whether there are mitigating factors; the board “shall” consider, when expelling, whether mitigating factors apply. That is the piece that gives substance to making sure the mitigating factors will be considered.

In terms of the factors that are laid out here, many of them are actually either in the agreement with the OHRC and therefore will be included in the regulation or are in the existing list of mitigating factors and will continue to be included. However, one of the existing mitigating factors has been left out of this list, and one of the mitigating factors which is in the agreement with the OHRC has actually been left out of this list. Plus, as Mr. Marchese mentions, by keeping the mitigating factors in regulation, there is more flexibility around, as experience shows, new issues arising in schools. If it’s in regulation, we can then add additional mitigating factors if necessary. So we will not be supporting this amendment, not because we don’t agree with the mitigating factors which are listed which will, in one form or another, eventually show up, but just that this list (a) is not exhaustive, and (b) belongs in regulation.

The Chair: Mr. Marchese?

Mr. Marchese: Parliamentary assistant, if all of these are used now, based on what I heard you say, and one is missing, why could we not add the one that is missing, including another 8 or 9, that simply says, “and any other mitigating factor that we have not included”? Why couldn’t we do that? If we include them all now in regulation, why not include them in the bill, where people could easily see them?

Mrs. Sandals: One of the problems when you split the list between the act and then say, “and you can add more later in regulation,” is that you end up with the list in a couple of different places, which tends to make it confusing. People may understand it now, when we first pass it, but two or three years down the road, when you end up with some of the mitigating factors in the act and other mitigating factors in the regs, it does tend to create confusion.

The other thing I would be very nervous about, especially when we’re dealing with an agreement with the OHRC, is our just sort of willy-nilly amending things and possibly not getting the full intent of the agreement with the OHRC captured. Our preference would be to put the whole list in regulation.

Mr. Marchese: Except we are assuming that this is the list that is currently used in regulation, and I'm not sure that in regulation it says, "and other factors that the principal may use." I'm not sure that it said that. The list appears to be exhaustive, I'm assuming, based on what I'm hearing, so it would be the same list that is here with the one addition that we missed, and the number 8 says, "In the event that there's another circumstance that might arise, it could be used." But I can't imagine the Ontario Human Rights Commission saying, "We don't agree with this list because these are the main ones," and that if something else should arise, it will appear somewhere. I don't see that that would be in conflict with the human rights commission—or wouldn't be a conflict with me. I don't see it.

Mrs. Sandals: The point is, however, that if the whole list appears in regulation, then if over time we need to amend that list, we can amend it without coming back to the act.

The Chair: Mr. Klees, any further comments?

Mr. Klees: Yes, just to follow up on that: I don't understand that reasoning. I hear what you're saying, but if in fact a subsequent amendment is required, we can still make an amendment in regulation. You can, and you can also make an amendment to legislation at any time. If it's felt that something is important to amend, that's done all the time.

It was our feeling that it was important up front in the legislation to ensure that anyone who is reviewing this legislation understands very clearly what these mitigating factors are that must be taken into account. There are strong feelings; there were strong feelings expressed by stakeholders on this issue. This is why it was felt important to bring it forward.

1640

I always feel—I know that I'm exposing myself here to my friend Mr. Marchese accusing me of historical sins, but I learned from Mr. Marchese's constant criticism over a period of eight years that what you can put in legislation to make it very clear, you should. I have learned and I do believe that, where we can, it's important to do that. However, I hear the parliamentary assistant, and I'm under no illusion that we'll convince her of this.

I do have a question, though. I think I did hear that there were actually two mitigating factors that are not here.

Mr. Marchese: She said one.

Mr. Klees: Well, she said one, and then she said—

Mr. Marchese: I was adding an eighth, which would be any other factor that might arise.

Mr. Klees: And I agree with that too, but I do think there were two, and I'd like, just for the record, to know what they are.

Mrs. Sandals: They're very similar. I don't have the exact wording of the existing regulation, but in the existing regulation, one of the mitigating factors is whether or not the student presents a danger to other students and

whether their continued presence in the school would present a danger to others students.

In the agreement with the OHRC, there's a very similarly worded one. It was (g) in the OHRC's list, which was that "the safety of other students" was considered to be a mitigating factor. As I say, those are very similar, so when the lawyers have a look at the list of mitigating factors, they're going to have to figure out how that sort of overlap between the two melds into one wording, because they are very similar. But that isn't actually being dealt with in the list here as a mitigating factor.

Mr. Klees: I would have gladly accepted Mr. Marchese's point 8 as a friendly amendment and have it unanimously accepted by this committee, but I somehow don't think that's going to happen. What do you think, Mr. Marchese?

Mr. Marchese: I'm going to support you, Frank.

Mr. Klees: Okay.

The Chair: Unfortunately, the deadline for amendments has passed, friendly or otherwise. That was noon, more than a week ago.

Seeing as we're all getting along so well, are there any further speakers?

Mr. Klees: Unanimously, we can—

The Chair: Even with unanimous consent, we couldn't, unfortunately. The instructions from the House are quite clear.

Any further speakers? Seeing none, all those in favour?

Mr. Klees: Recorded vote, please.

Ayes

Klees, Marchese.

Nays

Brownell, Dhillon, Duguid, Ramal, Sandals.

The Chair: On a recorded vote, that loses.

Shall section 1, as amended, carry? Those in favour? Those opposed? Section 1, as amended, is carried.

There are no amendments put forward on section 2. Shall section 2 carry? Those in favour? Those opposed? That is carried.

Moving on to section 3, likewise there are no amendments before us. Shall section 3 carry? Those in favour? Those opposed? That is carried.

Moving on now to section 4, starting on page 6 of your agenda, PC motion.

Mr. Klees: I move that paragraph 6 of subsection 306(1) of the act, as set out in section 4 of the bill, be struck out and the following substituted:

"6. Bullying, including cyber-bullying, whether of another pupil, a teacher or any other member of the school community."

The Chair: Very good, Mr. Klees. Speaking to the amendment?

Mr. Klees: The importance here is that we include cyber-bullying of students and teachers and that all persons who are part of the school community be included in the broader definition.

The Chair: Further speakers?

Mrs. Sandals: Two issues here: One is that in fact the ministry is planning to issue policy guidelines with respect to the definition of bullying which will be much more substantive than the clause that is given here. Secondly, the actual amendment in Bill 212 which will allow cyber-bullying to be dealt with is the clarification that the principal has the authority to issue a suspension or a consequence not just on the school premises or at school events, but also surrounding issues that have a negative impact on school climate. So it's the impact on school climate which in part will allow the cyber-bullying to be included. But we would want, when we're looking at bullying, to make it clear that we are dealing with verbal, social and physical bullying and that, obviously, cyber-bullying is one of the ways in which either verbal or social bullying can occur. So we will be dealing with this more substantively when we get to the policy guidelines in the bill.

The Chair: Any further speakers?

Mr. Klees: My question would be, if you agree that it should be dealt with more substantively, why would you not deal with it more substantively in legislation?

Mrs. Sandals: We believe that the discussion around how to distinguish bullying from a one-off incident is something that is more appropriately described in the policy guidelines.

Mr. Marchese: A number of deputants talked about having to specify what this means, and clearly the government is going to need a whole lot of time to review the language, and I don't think they're obviously ready. If we had some language, I would have preferred to have seen something in the bill, but I'm sure it's going to be complicated trying to get the right wording on this issue, so we'll wait for the regulation.

The Chair: Are there any further speakers to this amendment? Seeing none, all those in favour? All those opposed? That motion loses.

Moving on: Mr. Klees, your amendment on page 7.

Mr. Klees: We're not doing too well here. I think there's a trend developing.

The Chair: I think Rosario is warming up to you, though. That was the feeling I was getting.

Mr. Klees: I don't know.

I move that subsection 306(2) of the act, as set out in section 4 of the bill, be amended by striking out "any mitigating or other factors prescribed by the regulations" at the end and by adding the following clauses:

"(a) the safety of all pupils and staff in the school;

"(b) the pupil's discipline history;

"(c) the mitigating factors; and

"(d) any other factors prescribed by the regulations."

The Chair: Speaking to the amendment?

Mr. Klees: It's very clear from a submission by the Ontario Principals' Council that they would like to ensure that they have the latitude to consider a number of

factors as they assess the issue, and that they should be able to consider, for example, the discipline history of a student. Without that latitude, it would be difficult for them to ensure that the appropriate progressive discipline is applied.

The Chair: Are there any further speakers?

Mrs. Sandals: If we look at what is being stricken, the bill already references the consideration of mitigating or other factors prescribed by the regulations. As I just mentioned, the issue of the impact on the safety of others in the school of having the student continue to attend school is already part of the mitigating factors, and presumably the principal would be considering the pupil's discipline history as part of the review of the progressive discipline to date. So, quite frankly, those things are already covered in the bill as stated.

Mr. Marchese: Just a question again to the parliamentary assistant: Because (c) and (d) cover what's already there and it is true that one assumes that the principal is taking into account (b) and surely (a) as part of what they would do, I'm not sure it would hurt to state it—to leave (a) as it is in a public way; I don't think it takes away from anything—and to include "(b) the pupil's discipline history." It simply says in law that they will do that automatically, rather than assuming that that is the case. I'm not sure it's a problem to have it written in this way.

1650

Mrs. Sandals: These things will be covered in the mitigating factor regulation. As I say, (c) and (d) are already covered in the language of the bill, which refers you to go to the regulation. These are issues, like the other ones we looked at in the last amendment, that will be covered within the regulation. So it's there already. I don't think we need to introduce re-stating what is already there.

Mr. Klees: I would then ask, for the record, that the parliamentary assistant be willing to give us an assurance that (a) and (b) will in fact be included in regulation.

Mrs. Sandals: As I said before, (g), which was left out of the previous amendment which you had proposed, is the safety of other students. That's right in the OHRC agreement. It's also covered in the existing mitigating factors. So that will be dealt with. In the list which you had submitted, which is in the OHRC agreement, the principles of progressive discipline being recognized, when you review what has taken place through progressive discipline, you're by definition looking at the discipline history of the student, and when you review the progressive discipline, you're by definition looking at the discipline of the student. Those really are getting covered in slightly different wording, but they are covered.

Mr. Klees: I think it would have been far simpler to simply accept the amendment and a lot shorter in duration, but we're not in control.

Mr. Marchese: They're just so unfriendly to you, Frank. I just don't get it.

The Chair: We have a motion on the floor now, moved by Mr. Klees, on page 7.

Mr. Klees: A recorded vote.

Ayes

Klees, Marchese.

Nays

Brownell, Dhillon, Duguid, Ramal, Sandals.

The Chair: That motion loses.

Moving on to the government amendment on page 8.

Mrs. Sandals: I move that subsection 306(3) of the act, as set out in section 4 of the bill, be struck out and the following substituted:

“Suspension

“(3) If a principal decides to suspend a pupil for engaging in an activity described in subsection (1), the principal shall suspend the pupil from his or her school and from engaging in all school-related activities.”

The effect of this is that the section being amended was where it brought up the idea, which raised some discussion at the hearings, of suspension from one or more classes—in other words, the issue of a time out or a withdrawal for part of the day—being considered as a suspension. We heard from quite a number of the stakeholders that they were very concerned that the progressive discipline, which might see a student removed from a class or might see a time out when they’re having a meltdown, or might see a detention at noon hour, for the sake of argument—that under that wording, things which educators would regard as forms of progressive discipline might be inadvertently treated as a suspension. We do not want that to happen. We obviously want to encourage those forms of progressive discipline. So this amendment is a companion with another amendment that we will be placing shortly where we will define a suspension as being from one to 20 days, and we’re removing the time out/withdrawal from the suspension language. The two will fit together as a package to make it clear that suspension is something that takes one or more days.

The Chair: Speakers? Seeing none, all those in favour? Those opposed? That motion on page 8 is carried.

Moving on to the PC motion on page 9.

Mr. Klees: Chair, given the behaviour of the government with my previous amendment, I’ll withdraw this one because it will just save some time.

The Chair: Thank you, Mr. Klees.

Moving on to the government amendment on page 10.

Mrs. Sandals: I move that subsection 306(4) of the act, as set out in section 4 of the bill, be struck out and the following substituted:

“Duration of suspension

“(4) A suspension under this section shall be for no less than one school day and no more than 20 school days and, in considering how long the suspension should be, a principal shall take into account any mitigating or other factors prescribed by the regulations.”

I just explained why we’re doing that. It’s companion with the other one so that suspension is one to 20 full days.

The Chair: Any speakers to that motion? Seeing none, all those in favour? Those opposed? That motion is carried.

Moving on to the government amendment on page 11.

Mrs. Sandals: I move that subsection 306(5) of the act, as set out in section 4 of the bill, be amended by striking out “On and after February 1, 2008” at the beginning.

The Chair: Speaking to the motion?

Mrs. Sandals: We will be making an amendment later to the coming-into-force date, so there are a number of technical amendments along the way which allow that to make sense.

In this particular case, the clause, as amended, will end up reading: “When a principal suspends a pupil under this section, he or she shall assign the pupil to a program for suspended pupils in accordance with any policies or guidelines issued by the minister.”

The Chair: Further speakers?

Mr. Marchese: Let me understand: The language says, “On and after February 1, 2008.” What this means is that it takes out that any program can be offered immediately rather than after 2008? Is that the effect of this amendment?

Mrs. Sandals: If I may, Chair, we get into the awkward thing that the taking-effect date is the very last clause in the bill, so by the time we get to amending the effective date we’ve done everything else that supports changing the effective date. So if I could perhaps speak to this thing which is going to come much later, then when we get the technical amendments it may make more sense.

As we heard from a number of people, the act as currently structured sees most of the act coming into force on July 1, but the requirement to have alternative programs not coming into force until February. The school boards were very concerned that this was going to create an odd structure, having the bill sort of in force but sort of not in force. It creates a very complicated transitional scheme as well.

The boards were concerned that because between July 1 and September 1 the regulations will have to be approved and promulgated, the policy and guidelines will have to be approved and promulgated, you would have to have all the board policies updated to reflect those new regulations and so forth, and school handbooks reprinted—and something that was going to set up rather a confusing situation in semester one, it would just be cleaner to have the whole thing come into force all at once on February 1. So we will be changing the effective date to February 1. We’ll have the training and implementation period, with the regulations, the policies, the board policies, the training—all those things—taking place in the interim, but the actual effective date will be February 1, and then everything can come into force all together.

So there is a whole bunch of technical amendments that allow us to do that.

1700

The Chair: Thank you, Ms. Sandals.

It's 5 o'clock, and I'm ordered to read this:

"That, pursuant to standing order 46 and notwithstanding any other standing order or special order of the House relating to Bill 212, An Act to amend the Education Act in respect of behaviour, discipline and safety, when Bill 212 is next called as a government order the Speaker shall put every question necessary to dispose of the second reading stage of the bill without further debate or amendment and at such time the bill shall be ordered referred to the standing committee on general government; and

"That the standing committee on general government shall be authorized to meet, in addition to its regularly scheduled meeting times, on May 14, 2007, from 10 a.m. to 12 noon and May 16, 2007, from 10 a.m. to 12 noon for the purpose of conducting public hearings on the bill; and

"That the deadline for filing amendments to the bill with the clerk of the committee shall be 12 p.m. on May 23, 2007. No later than 5 p.m. on May 28, 2007, those amendments which have not yet been moved shall be deemed to have been moved, and the Chair of the committee shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill and any amendments thereto. The committee shall be authorized to meet beyond the normal hour of adjournment until completion of clause-by-clause consideration. Any division required shall be deferred until all remaining questions have been put and taken in succession, with one 20-minute waiting period allowed pursuant to standing order 127(a); and

"That the committee shall report the bill to the House not later than May 29, 2007. In the event that the committee fails to report the bill on that day, the bill shall be deemed to be passed by the committee and shall be deemed to be reported to and received by the House; and

"That, upon receiving the report of the standing committee on general government, the Speaker shall put the question for adoption of the report forthwith, and at such time the bill shall be ordered for third reading, which order may be called on that same day; and

"That, on the day the order for third reading of the bill is called, the time available for debate shall be one hour, and the time shall be apportioned equally among the recognized parties; and

"That when the time allotted for debate has expired, the Speaker shall interrupt the proceedings and put every question necessary to dispose of the third reading stage of the bill without further debate or amendment; and

"That there shall be no deferral of any vote allowed pursuant to standing order 28(h); and

"That, in the case of any division relating to any proceedings on the bill, the division bell shall be limited to 10 minutes."

So we can move on to page 11 of your agenda.

Mr. Klees: Chair, could you just explain the effect of what you've just read?

The Chair: What we will do between now and until we get through these is vote on each of the amendments that are placed before us without debate, based on the orders of the House.

Mr. Marchese: You vote for or against whatever motion is being read out. That's it.

Mr. Klees: So the implication is that—

Mr. Marchese: You guys did it too. It's okay, Frank.

Mr. Klees: —on the one hand, they want to talk about democratic reform but don't allow members of the House to debate the issue.

The Chair: The instructions are quite clear.

Dealing with the motion on page 11, shall the government amendment on page 11 carry? Those in favour? Those opposed? That motion is carried.

Shall the PC amendment on page 12 carry? Those in favour? Those opposed? That motion is lost.

Shall the PC amendment on page 13 carry? Those in favour? Those opposed? That is lost.

Shall the government amendment on page 14 carry? Those in favour? Those opposed? That is carried.

Page 15, PC amendment: Those in favour? Those opposed? That is not carried.

Page 16, PC motion: Those in favour? Those opposed? That is not carried. It's lost.

Page 17, government amendment: Those in favour? Those opposed? That is carried.

Page 18, government amendment: Those in favour? Those opposed? That is carried.

PC amendment, page 19: Those in favour? Those opposed? That motion is lost.

Page 20, government amendment: Shall that carry? Those opposed? That is carried.

Page 21, PC amendment: Those in favour? Those opposed? That is lost.

Page 22, PC amendment: Those in favour? Those opposed? That is lost.

PC amendment on page 23: Those in favour? Those opposed? That is also lost.

Government motion on page 24: Those in favour? Those opposed? That is carried.

Page 25, PC motion: Those in favour? Those opposed? That is lost.

Page 26, PC motion: Those in favour? Those opposed? That is lost.

PC motion on page 27: Those in favour? Those opposed? That is lost.

Government motion on page 28: Those in favour? Those opposed? That is carried.

Mr. Klees: I'd like to ask a question: Is there any chance that any of our amendments might pass between now and the end of this process?

The Chair: Ms. Sandals, any comment? You're certainly not compelled to answer, but the question has been asked.

Mrs. Sandals: There are ones where you're doing the same thing as we are doing, but I think ours tend to come before yours, so we'll pass ours before you do yours.

Mr. Klees: I thought so. So there really is no reason for me to continue.

Mrs. Sandals: There are places where in fact we are suggesting the same thing, so our intent is the same.

Mr. Klees: Thank you very much. Enjoy.

The Chair: Thank you very much. We're with you in spirit.

Moving on to page 29, there's a PC amendment. Those in favour? Those opposed? That motion is lost.

Moving on to page 30, there's a government motion. Those in favour? Those opposed? That is carried.

PC amendment on page 31: Those in favour? Those opposed? That is lost.

Dealing with a couple of amendments out of order, page 33, PC amendment: Those in favour? Those opposed? That is lost.

There's a government amendment now on page 32. Those in favour? Those opposed? That is carried.

PC amendment on page 34: Those in favour? Those opposed? That is lost.

Mrs. Sandals: You're getting ahead of Susan.

The Chair: I am. That's right. Okay.

Page 35: We have a PC amendment. Those in favour? Those opposed? That is lost.

Page 36: We have a PC amendment. Those in favour? Those opposed? That is lost.

We have a government amendment on page 37. Those in favour? That is carried.

Mrs. Sandals: And that goes over several pages before we get to 38.

The Chair: Page 38: We have a PC amendment. Those in favour? Those opposed? That is lost.

Page 39: We have another PC amendment. Those in favour? Those opposed? That is lost.

We have a government amendment on page 40. Those in favour? Those opposed? That is carried.

Page 41: We have a government amendment. Those in favour? Those opposed? Carried.

We have a PC amendment on page 42. Those in favour? Those opposed? That is lost.

Page 43: We have a government amendment. Those in favour? Those opposed? That is carried.

Page 44: We have another government amendment. Those in favour? Those opposed? That is also carried.

Shall section 4, as amended, carry? That is carried.

Moving on to section 5, we have a government amendment. We're dealing out of order with these again.

Mrs. Sandals: So we're on 46 now?

The Chair: Page 46, dealing with a government amendment: Those in favour? Those opposed? That is carried.

Moving on to the PC amendment on page 45, those in favour? Those opposed? That is lost.

Dealing with the government amendment on page 47: Those in favour? That is carried.

Dealing with the PC amendment on page 48: Those in favour? Those opposed? That is lost.

Shall section 5, as amended, carry? That is carried.

Dealing with section 6 now, we've got a PC amendment on page 49. Those in favour? Those opposed? That is lost.

We have a government amendment on page 50. Those in favour? Those opposed? That is carried.

Page 51: We have a government amendment. Those in favour? Those opposed? That is carried.

Page 52: We have a PC amendment. Those in favour? Those opposed? That is lost.

We have a government amendment on page 53. Those in favour? That is also carried.

Moving on now to page 54, we've got a government amendment. Those in favour? Those opposed? That's carried.

Page 55 is another government amendment. Those in favour? Those opposed? That is carried.

Page 56: We have a government amendment. Those in favour? Those opposed? That is carried.

Page 57: A government amendment. Those in favour? Those opposed? That is carried.

Page 58: We have a government amendment. Those in favour? Those opposed? That's carried.

Page 59: We have a government amendment. Those in favour? Those opposed? That is carried.

Shall section 6, as amended, carry? That is carried.

Moving on now to section 7, we have a PC amendment on page 60. Those in favour? Those opposed? That does not carry. Therefore there is no amendment.

Shall section 7 carry? Those in favour? That loses.

Moving on now to section 8, there is a government amendment on page 62. Those in favour? Those opposed? That is carried.

Shall section 8, as amended, carry? That is carried.

Section 9 is the short title. Shall section 9 carry? That is carried.

Shall the title of the bill carry? That's carried.

Shall Bill 212, as amended, carry? That also is carried.

Finally, shall I report the bill, as amended, to the House? Those in favour? Those opposed? That is carried.

Thank you very much. We're adjourned.

The committee adjourned at 1712.

CONTENTS

Monday 28 May 2007

**Education Amendment Act (Progressive Discipline and School Safety), 2007, Bill 212,
*Ms. Wynne / Loi de 2007 modifiant la Loi sur l'éducation (discipline progressive
et sécurité dans les écoles), projet de loi 212, M^{me} Wynne*..... G-1191**

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. Kevin Daniel Flynn (Oakville L)

Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)

Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)

Mr. Kevin Daniel Flynn (Oakville L)

Mr. Jerry J. Ouellette (Oshawa PC)

Mr. Mario G. Racco (Thornhill L)

Mr. Lou Rinaldi (Northumberland L)

Mr. Peter Tabuns (Toronto–Danforth ND)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Substitutions / Membres remplaçants

Mr. Frank Klees (Oak Ridges PC)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Khalil Ramal (London–Fanshawe L)

Mrs. Liz Sandals (Guelph–Wellington L)

Clerk / Greffière

Ms. Susan Sourial

Staff / Personnel

Mr. David Halporn, legislative counsel