

## OPSBA PRELIMINARY RESPONSE (August 13, 2009)

# ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION RESPONSE TO CONSULTATION ON PROVINCIAL INTEREST REGULATIONS

### PREAMBLE

The Ontario Public School Boards' Association (OPSBA) thanks the Ministry for the opportunity to comment on its consultation paper on Provincial Interest Regulations. The accompanying communication indicated that this consultation process was being undertaken with OPSBA and other provincial trustee associations in compliance with Section 11.1(2) of the Education Act. This provision, as well as the enabling language by which the Ministry would draft provincial interest regulations related to student achievement, were amendments to the Education Act as a result of Bill 78 which was given Royal Assent in June 2006.

It is important to note that a great deal of Member Board input on discussion areas that are relevant to student achievement had already been compiled by OPSBA through internal regional consultations held earlier this year as part of the Ministry's governance review. In those meetings, trustees dealt specifically with key question areas in the earlier Governance Review Committee (GRC) consultation that focussed on student achievement and board accountability. The final submission arising from the consultations was approved by our Board of Directors and provided to the GRC. However, the specificity of the directions and detail elements contained in the Ministry's current consultation documents go significantly beyond what our Member Boards considered in the GRC discussions and a great deal of what follows speaks to this departure from expectations.

### Consultation Process

With regard to the timing of the consultation process, OPSBA has advised the Ministry both orally and in writing that any consultation confined to the summer months, when schools are closed and no school board meetings are scheduled, means that school board members, who are so closely affected by the content of the consultation, have very little opportunity to contribute. This also applies to key staff members, those who are responsible for assembling the various reports and data that is referred to in the Annual Reports section of the consultation paper. The current consultation period began on July 1<sup>st</sup> and the deadline for response is August 31<sup>st</sup>. We find the selection of the timeframe is inefficient in terms of encouraging meaningful input and does not recognize the operations of school boards.

It is important to note here that a parallel process in the form of Bill 177 which is not expected to receive Second Reading until fall, 2009 contains related draft provisions concerning the duties of school boards. Having both processes running concurrently makes it difficult to separate them. Indeed, the Ministry's introductory comments in its consultation paper intertwines the two processes and the question areas in the paper anticipate the passage into law of Bill 177. Because of this, OPSBA finds a certain

## **OPSBA PRELIMINARY RESPONSE (August 13, 2009)**

element of prematurity in posing detailed questions based on legislation that is yet to be passed. It also leads to confusion.

Despite the timing of the consultation, OPSBA has made every effort to involve its members; while we have not had input that results from meetings at the board level, a number of individual trustees have provided input. These trustees are from small, mid-size and large boards and from all regions of the province. A number of board chairs have indicated that they will provide input later when they have had an opportunity to meet as a board. The meshing of the two areas of legislation in the consultation paper noted above, has resulted in OPSBA receiving input that includes commentary covering both.

We trust that this is a preliminary consultation and express our strongest interest in further consultations on the draft regulations that will emerge from this stage of the process. In addition, we anticipate the opportunity to comment on the preliminary concepts and draft regulations for the remaining areas to be addressed under Bill 177.

### **CONSULTATION PAPER – GENERAL RESPONSE**

Overall, in responding to the content of this paper, we do not take issue with the prime importance of a focus on students and their success, nor board accountability, nor transparent reporting to parents, community and the Ontario public. In fact, these are key values for us and the cornerstones of our commitment to an excellent system of public education.

Our Association has recently re-affirmed as a priority the need to actively promote services and conditions that support meeting the needs of the whole child – social, emotional, psychological, physical and intellectual – since well-being in all these areas has a significant impact on a child's success in school. This is recognized in the United Kingdom which has a department dedicated to Children, Schools and Families and a clear long-range vision. It is notable as well that the UK Select Committee on Children, Schools and Families has raised concerns about how the results of standardized testing are over-used and inappropriately used:

*“We remain unconvinced by the Government's assumption that one set of national tests can serve a range of purposes at the national, local, institutional and individual levels.*

*We recommend that the Government sets out clearly the purposes of national testing in order of priority and, for each purpose, gives an accurate assessment of the fitness of the relevant test instrument for that purpose, taking into account the issues of validity and reliability.*

*We believe that the system is now out of balance in the sense that the drive to meet government-set targets has too often become the goal rather than the means to the end of providing the best possible education for all children. National test data are evidence only of a very limited amount of the important and wide-ranging work that schools do.”*

## **OPSBA PRELIMINARY RESPONSE (August 13, 2009)**

It is our understanding that the U.K. government has backed away from a punitive, top-down, narrow numbers driven model for assessing school success.

It is noted that, in its introduction to the Consultation Paper, the Ministry acknowledges the rates of improvement in student achievement at school boards over the past five years. Continued improvement in student achievement is the goal of all OPSBA's member boards.

Despite the references to the Ministry's intention to provide supports to boards to improve student outcomes, it is difficult to ignore that the overall tone of the consultation document is punitive and appears focussed on the path to Ministry supervision of a board. This does not reflect the supportive relationship that has been built up between the Ministry and school boards over that last six years.

Some of the language in the introduction section is particularly offensive. For example, "Boards of trustees become distracted by day-to-day issues which take their focus off the long term." This is a patronizing statement that paints an unfair and negative picture of all school boards.

The consultation paper addresses in detail what would be required of school boards and has little to say about the corresponding responsibilities of the Ministry of Education or the government. For instance, not listed as issues that have considerable impact on a school board's scope to focus on student achievement are: frequently changing provincial education policies, the number of policies issued, overcentralization, an overemphasis on specific absolute outcome aspects of EQAO, delays in a comprehensive approach to education funding, the labour relations climate and an element of micromanagement by the province which is reinforced by the detailed elements contained in this consultation paper. An obvious challenge is that of engaging in effective multi-year planning while absorbing new Ministry initiatives and a "pilot testing approach to aspects of education funding.

It needs to be noted that the introduction indicates (in paragraph 1) that strides are being made toward achieving the provincial standard of 75% and identifies that this is equal to a "B". The levels of achievement 1 to 4 were not meant to be converted to the A to F scale. The paper also notes that the number of students at level 1 or lower has dropped. There is no level lower than 1, only the catchment for those with insufficient response and non participants. We will comment more specifically on the use of EQAO data later.

In OPSBA's input to the GRC, our members placed considerable emphasis on the need for school boards, the Ministry and the government overall to focus on the whole child. The consultation paper refers to "student outcomes", "effective stewardship" and "student well-being" but, beyond a brief definition, doesn't explore these further. In discussing well-being there is no reference to the significant issue of mental health, for example, not just with regard to its impacts on student achievement and on schools but

## OPSBA PRELIMINARY RESPONSE (August 13, 2009)

also the role of schools in responding effectively and the availability of resources in the school and in the community to do so. In the same vein, a reliance on low EQAO scores as a key measure, without taking into account the prevailing socio-economic and other demographic factors in a school's or a school board's catchment area, and without taking into account the element of improvement in scores, is narrow and does not give an accurate picture. One of our respondents noted: "I continue to be concerned that school boards are being held accountable for things that they cannot deliver in isolation. There is an urgent need for a collaborative partnership with all agencies associated with a 'children's agenda'"

The aspects of the consultation paper dealing with supervision and interventions raise the issue of how the role of boards of trustees may be diminished while, at the same time, boards are being held responsible for student achievement in ways that are increasingly codified. Our members note that many of the critical activities that take place in classrooms affecting achievement flow from legislation, regulations, collective agreements, Ministry directives or B Memoranda and that, to any appreciable degree, boards do not consistently have the flexibility in funding to implement locally-needed initiatives that they believe will support student success; these may include smaller schools, summer enrichment programs, or tutoring and mentoring initiatives particularly for at-risk students. In the hands of a future provincial government less sympathetic to the value of investing in public education, the directions emerging here have the potential to turn school boards into a convenient political buffer if student achievement, in terms of absolute scores, falls short of government targets. An even worse prospect for our students is that instead of supports for improvements in the public system, there would be targets for closure of public schools, the establishment of vouchers and support for charter and private schools; such an approach has had frequently negative implications for very vulnerable students under the *No Child Left Behind* policies in the U.S.

### CONSULTATION PAPER – AREAS FOR DISCUSSION

The Consultation Paper proposes three areas for discussion. OPSBA's response provides a consolidated overview in each of these areas. Specific additional comments received from our members are set out in Appendix 'A'.

#### I. ANNUAL REPORTS

*(Excerpt from Ministry Consultation Paper)*

***The following provisions would require every school board to make annual public reports that address its goals and strategies in key areas set out in Bill 177 - Student Achievement and Governance Act. The reports would also provide an assessment of current status and use indicators of success set out in this regulation.***

1. *School boards would be required to develop and make public annual reports that address the implementation of the duties of boards set out in section 169.1 of the Act (see Appendix A).*

## OPSBA PRELIMINARY RESPONSE (August 13, 2009)

2. The annual report would address:
  - i) the current status of the board's progress in fulfilling each of the duties of school boards set out in section 169.1 of the Act;
  - ii) the achievements made by the board in the previous year; and
  - iii) the challenges faced by the board in the previous year
  
3. The annual report would use the following indicators in its assessment of its progress in the meeting the following goals:
  - i) **student outcomes:** grade 3, 6 and 9 EQAO results; credit accumulation in grades 9 and 10; and beginning in 2011, graduation rates
  - ii) **student well-being:** rate of suspensions, truancy, serious incidents of bullying; evidence of student engagement (active student councils, student groups, etc); results of school climate surveys; student volunteerism; community engagement
  - iii) **effective stewardship:** balanced budget; appropriate resource allocation to support student achievement goals set out in the board's multi-year plan; good governance practices (compliance with trustee provincial code of conduct; board agendas inclusion of items specific to student achievement; professional and effective board meetings, etc); whether it has met the targets in its capital plan and plans for the disposition of surplus properties; collaborative relationship with coterminous boards (i.e. joint agreements with coterminous boards and local municipalities; participation in consortia for the purchase of services); staff turnover and absenteeism
  - iv) **effective and appropriate education programs:** specialized programs (e.g. specialized high-school majors; co-op programs, dual credit programs), their availability (i.e. throughout the board or only in selected schools) and levels of enrolment in such programs, success rates in special education and ESL
  - v) **encouragement of students to pursue their educational goals:** a description of educational supports (e.g. guidance and career counselling), and the level of usage of those supports over the past school year compared to previous years; participation in post-secondary education
  - vi) **communication:** evidence that the board has circulated its multi-year plan to employees, board supporters and the public and has reported on the progress in implementing the multi-year plan; evidence that the board has met with its Parent Involvement Committee to receive updates on the Committee's activities; relations with staff groups; grievances
  - vii) **encourage parent involvement:** communications with school councils, parents and the public; board response to recommendations of school councils and Parent Involvement Committee activities
  - viii) **promote the health of students:** policies and practices on healthy schools (e.g. anaphylactic policy, daily physical activity in elementary schools, compliance with trans-fat standards regulation)
  - ix) **promote the safety of board students and staff:** rate of suspensions, truancy, serious incidents of bullying; compliance with the Occupational Health & Safety Act

The Ministry recognizes that directors of education will need some time to collect the information that will be required to compile the annual report being proposed under the provincial interest regulation. Accordingly, it is anticipated that the annual report, set out below as a proposed requirement under the provincial interest regulation, will provide a more comprehensive assessment with each successive year after the first report in 2010. These proposed annual reports will likely replace Director of Education's annual reports.

### **Discussion Questions**

A. Should the annual report address any other issues in addition to those proposed in this consultation document?

## OPSBA PRELIMINARY RESPONSE (August 13, 2009)

B. Are the indicators identified sufficient for a comprehensive assessment of each of goals (i.e. student outcomes, effective stewardship, parent involvement)?

C. Should boards be required to report on all indicators in each annual report or:

- a. report on some indicators one year, other indicators in a second year, and the last set of indicators in a third year?
- b. If 'a' above is preferred, should all boards have to report on the same indicators for the first, second and third years, or should this be at the discretion of the board?

### OPSBA RESPONSE

In responding to the GRC consultations, OPSBA fully supported the need for Boards to report on their performance to their communities and to the Ministry of Education in a manner that is clear, transparent and easily understood. At that time, our Association elaborated as follows:

*“Boards should be held accountable for doing everything in their power to provide programs and services to help students succeed and providing a culture that focuses on student success. Every possible effort should be made through their budget decisions. Any accountability framework needs to recognize that students come from different environments, have different support bases and learn at different rates. An accountability system of rates of achievement based on numerical results of snapshot standardized tests will not tell the whole story of students’ achievements in school. Boards should determine or be fully involved in determining standards and parameters of achievement that would apply to their own board.*

*Boards should be measured by what they are accountable for:*

- *Quality education for all students. This encompasses helping students reach their full potential and incorporates character education; it means that education is as concerned with students becoming participating and successful members of society as it is with academic achievement.*
- *Excellence in student achievement*
- *Fiscal accountability – effective and efficient use of allocated funding*
- *Providing a safe and caring learning environment*

*It is important to emphasize that the measure of student success goes far beyond goals such as the percentage of students achieving Level 3 or 4 on EQAO testing. Frequently for students who are striving to overcome challenges, moving from Level 1 to Level 2 is an outstanding achievement and a triumph for those students and their teachers. Broad measures also include engagement of students in learning, the pace of credit accumulation, reducing achievement gaps for vulnerable students, success in graduation whether or not it is achieved within four years, student involvement in their communities and in humanitarian activities, school climate. For the most part, these are qualitative matters and not subject to numerical measures. Success in these areas frequently requires local*

## OPSBA PRELIMINARY RESPONSE (August 13, 2009)

*solutions and it is important that Boards have a reasonable level of local flexibility and corresponding flexible funding to enable them to do an effective job.*

*Reporting out should be a regular process and involve methods of communication that are meaningful for parents and members of the community. School boards would benefit from Ministry support and funding in their efforts to implement high quality reporting to the public. Test scores such as those generated by EQAO should be reported but the discrete areas they cover need to be carefully explained. Care should be taken that they are not used as a standalone measure to make political judgement. There is ample evidence of this happening through the use of this information by “think tanks” who rank schools and consequently do universal public education a great disservice.”*

The scope of the proposed annual report is very comprehensive. While there is general support for a comprehensive approach that results in boards reporting on comparable matters, the details set out in the consultation paper raise some issues.

Overall, there needs to be a correlation between the content and format of the report and its intended audience. It would be helpful to have the opportunity to discuss how the annual report fits into the Ministry’s commitment to streamlining reporting requirements. If the streamlining means that the proposed Annual Report is not an “add-on”, this would alleviate concerns about costs and allocation of resources to such an undertaking.

It has been the stated intent of the Minister and Ministry to reduce the number of reports boards are required to make and consolidate where possible. An example is the consolidation of the Special Education Plan with the K to 12 achievement report. It would be repetitive to have yet another report which would contain much of the same information. A comprehensive and consolidated report on student achievement would serve both public and Ministry needs and the indicators reported on could be cycled over a 3 year period to focus on a portion of the indicators. Having said this, OPSBA emphasizes its reservations about the use of indicators as “triggers” for reasons set out below.

It would be helpful also to discuss an approach to reporting that promotes communication and dialogue with the public, focuses on significant “outcomes” areas and gives boards an opportunity to highlight key initiatives, activities and programs that provide a picture of the culture and climate of the board’s schools. This kind of approach would go further in enhancing public confidence in public education than a document that is a report on “issues” and leaves the public wondering if any good work is being done. On that point, page 3, paragraph 3 of the Ministry document proposes two kinds of indicators; one kind is for the public and one is for the Ministry. No rationale is given. If transparency and clarity are required what is the rationale for a dual reporting mechanism? Also the use of the word “trigger” is troublesome for obvious reasons. Why not use words such as flag, initiate, which do not have gun connotations?

## OPSBA PRELIMINARY RESPONSE (August 13, 2009)

In commenting on the indicators suggested for the annual report, it is difficult not to relate these to the “triggers” in Part II of the consultation document. In that section the first “trigger” proposed is the failure of the board to meet the goals in its annual report for three successive years. The annual report calls for setting goals that address the range of indicators. This is an umbrella that covers 9 indicator areas within which there are upwards of 40 “sub-indicators.” This raises the question of the scope of issues that could lead to Ministry supervision of a board. If only EQAO scores are being used because they are readily quantifiable determinants, what is the intent with regard to indicators? We further suggest that because a factor may be “measurable” this does not automatically translate into its being either an appropriate or reasonable basis for possible intervention.

Many of the indicators for Ministry response are not readily measurable or at best are opinions. Who makes the determination, for example, on what is acceptable community engagement or by whose standard will we judge if a meeting was “professional and effective?” These types of indicators are extremely subjective and practices that work very well in the local setting vary from board to board.

As noted earlier, boards are very supportive of regular reporting to the public. However given the implicit connection between progress on indicators and triggers that could ultimately lead to supervision of a board, OPSBA takes issue with how some of the indicators for assessment of progress are expressed. We note in particular:

- Issues where success is dependent on another party, e.g. partnership with municipalities, participation in consortia, filing of grievances by unions
- The indicator for parent involvement focuses on the Parent Involvement Committee – what about SEAC and other advisory committees with parent representation? What about the valuable role of school councils?
- The student well-being indicator is particularly troublesome, especially in the inclusion of suspension rates. The Education Act, Regulations and PPMs which govern Safe Schools require that boards provide safe and protected environments for students to learn in. The reduction of suspensions for violation of the provincial and board codes of conduct may very well lead to a situation where boards needing to comply with the requirement to reduce suspension rates increase the level of risk for students by not suspending students who have met the criteria for a suspension. This is a safety issue.
- The example given for a “trigger” for a “may respond” by the Ministry is enrolment in specialized programs with a year over year increase of 5%. The Student Success /Learning to 18 initiative is funding the expansion of High Skills Majors in schools and all applicants for expansion are not funded. As this is a high cost program, without funding boards cannot undertake implementation and expansion. This being the case a measure of growth at 5% is unrealistic.
- Co-op education cannot grow infinitely and in some boards there is great difficulty in securing co-op placements for students. This is especially true when local industry closes or leaves town which is happening in many parts of the



## OPSBA PRELIMINARY RESPONSE (August 13, 2009)

province. The measure of co-operative education success is the quality of the experiences for students not the volume of placement.

Finally, it would be useful to know if and when these proposed annual reports will indeed replace Director of Education's annual reports as indicated at the bottom of page 5 of the consultation document.

### II. PROPOSED TRIGGERS FOR MINISTRY RESPONSE

*(Excerpt from Ministry Consultation Paper)*

***The following provisions set out the conditions under which a Ministry response would be triggered. The Ministry would respond when a board, over time, fails to meet several of its own success indicators, or measures prescribed by the provincial interest regulation, or when a board gives evidence, over time, of failure to meet one or more of the requirements set out under section 169.1 of the Education Act – Duties and Powers of Boards.***

1. *The Ministry of Education may respond if a board:*

  - i) *fails to meet its goals for improving student success as set out in its multi-year plan made under section 169.1 of the Act for three consecutive years;*
  - ii) *fails to develop and make public the annual report prescribed in the provincial interest regulation;*
  - iii) *has 40% or more of its schools in the bottom 20% of the schools in the province based on EQAO Grades 3 and 6 scores in reading, writing, and math*
  - iv) *has 40% or more of schools with 35% or more students that earned less than 8 credits in Grade 9, and 40% or more of schools with 35% or more students that earned less than 8 credits in Grade 10*

#### ***Discussion Questions***

- A. *Are the proposed triggers appropriate/reasonable?*
- B. *Are there any other triggers that could be used to identify boards that have significant and persistent problems over a period of time?*
- C. *How do we balance specific measures of academic achievement with broader indicators of board improvement?*

### OPSBA RESPONSE

OPSBA'S comments on the Annual Report with regard to indicators, the appropriateness of their use in this context and issues with their measurability underscore the difficulties inherent in supporting "Trigger 1.i" in the consultation paper.

The examples for achievement "triggers", 1.iii and 1.iv, are ill conceived. The use of a model which is based on a ranking scale for school performance will always have a bottom and a top. The identification of a board having 40% of schools in the bottom 20% is a poor indicator as a board with very few schools is much more likely to end up

## **OPSBA PRELIMINARY RESPONSE (August 13, 2009)**

in this position than a large board. It would make more sense to look at the pattern on the EQAO scores over a multi-year period to identify shifts such as the proportion meeting the provincial standard; the movement in the Level 2 scale from the lower end to the upper end; Level 1 to Level 2 shifts and increases in participation of students with special needs. A further important consideration is triangulating EQAO data with other information that provides validity and contexts for student learning, which could include report card marks for all grades and subjects, data from Diagnostic Reading Assessments and the value-added programs boards put in place to support student success. We would suggest that consultation with experts in the Ministry's Program Branch and in the Literacy and Numeracy Secretariat would provide a helpful filter.

A question raised among our member boards is whether the individual Board would set its own targets. If the Ministry intends to set targets, will they take the differences of Boards into account when setting targets, e.g., differentiated targets where the incidence of students receiving special education services is 23% compared with a provincial average of 16%?

To reinforce the point made in the earlier excerpt from OPSBA's submission to the GRC, our member boards have expressed strong support for a focus on the progress a Board is making as well as actual achievement outcomes. Some boards with very challenging external conditions may be experiencing significant rates of improvement on their way to attainment of provincial averages and this should be recognized.

A key consideration in any form of intervention is an undertaking to examine the causes of lower student achievement rate and, in particular, determine who has control over the contributing causes. It would be reasonable to initiate interventions if a board was aware of the causes, had the resources to address them and wilfully failed to do so.

If indicators in annual reports ultimately translate into "triggers", one questions what measures would appropriately assess student well-being or student outcomes in areas such as equity, character development or children's mental health. Who would decide this?

A "trigger" activated by failing to meet plan goals for three consecutive years is unrealistic. Students are highly individual, with different cohorts each year. Some years will show different outcomes from others for no clearly definable reason. A longitudinal approach may be more appropriate. At least one of OPSBA's members has noted that a significant approach to assessing success would involve tracking students after they leave secondary school for the workplace, college and university. It should be said as well that a "trigger" related to a board failing to meet its own targets may lead to boards being inappropriately risk-averse in determining their goals and this may not, in the long run, work in favour of excellence in student outcomes. It is much more important that the process honour the principle of improvement.

As stated in our submission to the GRC:

## **OPSBA PRELIMINARY RESPONSE (August 13, 2009)**

*OPSBA supports a collaborative and supportive relationship between the Ministry and the school boards, as exemplified by the current Minister. This is a model that supports a positive environment that works for students and for schools. This would be undermined by a regulation that, for example, “triggers” lockstep intervention related to underperformance based on numerical test scores. A dialogue between the Ministry and school boards that includes consideration of agreed upon supports, strategies and training offers a more effective approach.*

*The government should continue to provide support and maintain an emphasis on creating constructive remedies, providing adequate funding, and supporting locally developed strategies to assist schools and students who need additional assistance.*

On a final note for this section, OPSBA suggests approaching this regulation in the same manner as the Ministry's directive regarding the Pupil Accommodation Review Guideline. The PAR Guideline was issued via a B Memorandum, originally 2006:B12 and now revised through 2009:B7. The Minister is given the authority to issue the guideline through regulation. This then allows the Ministry to issue the detailed guideline and any amendments outside of the regulation. The same approach could be taken with the Provincial Interest Regulation in that the regulation could give the Minister the authority to issue specific guidelines or criteria under which interventions in a school board would occur and then the details could be issued through a Policy Program Memorandum (PPM).

### **III. PROPOSED PROCESS FOR MINISTRY RESPONSE**

*(Excerpt from Ministry Consultation Paper)*

***Once triggered, the process for Ministry response would be one of supportive and directive intervention. The staged response would begin with supports, and if progress is not made following the various steps, supervision could result.***

*Stages of Ministry Response:*

- i. Ministry writes to the board outlining the specific concerns*
- ii. The Ministry meets with the board to discuss the concerns and the board's view of them*
- iii. The Ministry recommends to the Minister course of action which may include:*
  - a) a belief that the concerns are being addressed and no further action is required*
  - b) a recommendation for a new multi-year plan from the board to respond to the issues*
  - c) a recommendation for an external review of the board to provide an independent view of the issues and the board's capacity to respond to them*
  - d) appointment of an assistance team or provision of other supports to help the board respond to the issues*

## **OPSBA PRELIMINARY RESPONSE (August 13, 2009)**

- e) *appointment of an investigator under the Act to provide the Minister with an independent opinion on the board's capacity to address the issues*
- f) *supervision of the board*

### ***Discussion Questions***

A. *Is the proposed graduated mechanism of interventions reasonable and appropriate?*

B. *Are there any other steps that should be considered in the proposed stages of supportive intervention?*

### **OPSBA RESPONSE**

OPSBA seeks clarification around the legislative authority to promulgate a regulation that would cover the Proposed Process. It does not appear to be provided for in Section 11.1 of the Act. If there is authority to promulgate such a regulation, how will this align with Section 230 of the *Education Act* (Compliance with Board Obligations) which permits the Minister to investigate a contravention of a regulation made under Section 11.1 and to issue directions and ultimately ask the Lieutenant Governor in Council to vest in the Ministry of Education control and charge over the administration of the affairs of a board?

The question has been raised about the rationale for a general process leading to the “taking over” of school boards; in the consultation document, and certainly in the report of the GRC, there is an implied sense that the potential need for “takeover” would apply in a very few situations. If this is the case, why does the solution not lie in working directly with those boards rather than developing a broad-sweeping regulation that applies to all boards? OPSBA, nevertheless, responds to this section of the Ministry paper as follows.

There should be clarification specifically in this section of what is meant by ‘board’ in relation to the steps proposed. Does ‘board’ mean administrative board? Earlier the document indicates that the term ‘school board’ is used to refer to the board as a corporate entity and the term ‘board of trustees’ refers to the body of elected and appointed members. In this section the document refers to ‘the board’; therefore, will the Ministry be writing to both the ‘school board’ and the ‘board of trustees’ or just the ‘school board’? Will they meet with one or both? Would they supervise the entire Board, the “school board” or the “board of trustees”? In a situation of supervision, what would the role of trustee be and where would this be clarified?

There is support for a multi-step approach and it is noted that this is the approach boards take in the case of students. This support emphasized the need for adherence to a principle of fairness including an undertaking to adhere to the sequence of steps in the process without skipping any of them and ensure there is a clear understanding for the reasons for taking each step. High value is placed on the Ministry continuing to provide support and maintain an emphasis on creating constructive remedies, providing

## OPSBA PRELIMINARY RESPONSE (August 13, 2009)

adequate funding, and supporting locally developed strategies to assist schools and students who need additional assistance.

It would be useful to have an informal process like a pre-hearing that could be off the record. This would provide an opportunity for a board with difficulties to discuss the issues in a more protected and less stigmatized environment. This process has shown itself to be useful in pre-expulsion discussions with staff and the student and parents where warranted. There is too much focus on holding boards responsible and not enough on helping them. There should be explicit mention of the availability of informal supports and liaison ahead of formal steps., e.g. central management resources available from Ministry.

Another step is needed between ii) and iii). A board needs to be given an opportunity to make changes after the first letter and discussion. A graduated process with the emphasis on Ministry support is the most reasonable process. It is critical that no escalation step can be skipped and that if a Board has agreed to implement the recommended plan and is complying, it should not be placed under supervision.

Option 'd' needs to be moved to the front of Step iii. If Ministry staff have a concern they should be liaising with/supporting the Board concerned. (best practice information, board-board comparative analyses, extra specialist staffing, extra/pilot transitional funding, meeting with trustees/staff/the board informally first.)

A step is needed between 'e' and 'f' to allow boards to respond, commit to follow or negotiate investigator's recommendations. A Supervisor should not be given resources that the government is not willing to give the boards themselves – such a provision would balance the obligations of Ministry and board more fairly.

The Consultation Paper does not define what actions by Ministry personnel would ensue when a take-over occurs and how these actions would lead to improvements in student achievement. Why would stakeholders prescribe a means by which a takeover would occur when there is no definition of what would occur when a take-over happens nor the timeframes that could apply to any intervention activities?

There are no criteria for when supervision should end. Intervention in the case of budget deficit is very clear. It is not so easy to predict or establish the timing of better achievement or graduation rates. How will boards know when supervision will end? The virtual impossibility of setting up criteria for ending supervision is an argument for never doing it in the first place. Supervision should be a "virtual" step only, serving as a "rigging" for the rest of the steps.

The process should also provide (a) a means for an investigator to suggest that the Ministry order one or more discrete actions to be taken by a board short of taking the Board over, and (b) a way of restarting if a Board initially improves then stalls. It should not be necessary to go back to the start of the process.

Finally, when the report of the Governance Review Committee was released, OPSBA wrote to the Minister on April 30, 2009, stating:

## **OPSBA PRELIMINARY RESPONSE (August 13, 2009)**

*“With regard to a provision that would call for intervention by the Minister, OPSBA urges that if this recommendation is adopted that it be drafted with due consideration of the fact that not all governments in the past or potentially in the future allocate the same level of priority to education. It is our understanding that the aspect of the recommendation dealing with imposed supervision would be triggered only in the egregious and unlikely situation where a board wilfully and flagrantly neglected its duty to educate students over a substantial period of time. It is also our understanding that the overall approach is one of collaboration, support and offer of resources and that there would be mutual agreement around measures of assessment that would focus on a broad range of indicators and emphasize rates of progress as much as results. (Recommendation #25)”*

### **CONCLUSION**

As we stated at the outset, the central priority of school boards is focussed on students and their success. Boards hold themselves accountable to the public. Boards welcome their responsibility for full and transparent reporting to parents, community and the Ontario public. These are key values for us and the cornerstones of our commitment to an excellent system of public education.

The issue here is the undermining of the valid governance role of school boards and the punitive tone of the directions proposed in the consultation document. Trustees are publicly elected representatives, with accountability to the public who elected them, the same public who have the right not to re-elect them should trustees fail in their responsibilities in any way. Suspending the governance role of trustees is a disenfranchisement of the public who elected them.