

When the most elementary becomes secondary: Homework Incomplete

Follow-up on the report

Toronto
July 2016

Commissariat aux
services en français
de l'Ontario



Office of the
French Language Services
Commissioner of Ontario

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ACRONYMS AND ABBREVIATIONS

Charter	<i>Canadian Charter of Rights and Freedoms</i>
CSDCCS	Conseil scolaire de district catholique Centre-Sud
CSV	Conseil scolaire Viamonde (public)
EQAO	Education Quality and Accountability Office
FLSA	<i>French Language Services Act</i>
FLSC	Office of the French Language Services Commissioner
FOLS	First official language spoken
IDF	Inclusive Definition of Francophone
PAL	Aménagement Linguistique Policy
TCDSB	Toronto Catholic District School Board
TDSB	Toronto District School Board (public)

CONTEXT

In January 2016, the Ministry of Education provided the Office of the French Language Services Commissioner (FLSC) with information about enrolment trends for the province's French-language school boards. On the basis of the Ministry's data, a few observations were made about the health of Ontario's minority school system. First, the enrolment figures for the past 10 years show a sharp increase in demand, from nearly 90,000 students in 2004-2005 to almost 102,000 in 2014-2015, which is excellent news for the French-language school boards.¹ In Southern Ontario alone, there has been an increase of almost 10,000 students, or 27%, in the last 10 years.² In addition, the upward trend seems to be accelerating: since the 1998-1999 school year, the Southern Ontario school boards have had to deal with an increase of about 47%.³ The Ministry's projections indicate no slowdown in this growth in the coming years. By 2036, Ontario's French-language school boards may have as many as 130,000 students.⁴

Despite this pleasant news, there is a shadow in the picture painted by the Ministry's statistics. Some French-language schools are having difficulty retaining their students as they make their way through the education system. In 2014-2015, students enrolled in French-language schools made up 6.7% of the province's total student population in junior kindergarten, but only 3.1% in Grade 12. That is a 24% decline in the French-school attendance rate – a shortfall of nearly 32,000 students – between the first year and the final year of education in the provincial system.⁵ **Southern Ontario, despite its spectacular growth in recent years, is the region most seriously affected by this trend, losing almost a third of its student population between junior kindergarten and Grade 12.⁶ Just between Grades 8 and 9, more than one in five students enrolled in a French-language school in that region transfers to a school in the English system.⁷**

Yet the reason for the hemorrhaging experienced by Southern Ontario boards has been known for years: difficulty accessing French-language high schools in that region, especially in the Greater Toronto Area (GTA), the most densely populated part of the province. The Commissioner studied this issue in 2011, after receiving a number of complaints from French-speaking parents in Toronto, and shared the results of his investigation with the Ministry of Education.

1 – INITIAL FLSC INVESTIGATION REPORT, JUNE 2011

In June 2011, the Commissioner's Office published a report entitled ***French-language schools in the Greater Toronto Area: When the most elementary becomes secondary***. The report presented the findings of an investigation in response to more than 70 complaints concerning a "perceived shortage of French-language schools in the Greater Toronto Area."⁸ According to the report, there were not enough schools in the GTA to meet the demand, as demonstrated by the number of overcrowded French-language

1 Ministry of Education, 2016b: 10. See also Table 1 in the Appendix.

2 *Ibid.*: p. 14. See Table 2.

3 *Ibid.*: p. 41. See Table 3.

4 *Ibid.*: p. 20. See Table 4.

5 *Ibid.*: p. 60. See Table 5.

6 *Ibid.*: p. 72. See Table 6.

7 *Ibid.*: p. 91; p. 92. See Table 7.

8 Office of the French language Services Commissioner, 2011: p. 1.

schools there. Because the schools are scattered so widely over this large area, some students had to “travel over two hours every day”⁹ in a bus to get to school. **This situation was particularly acute at the secondary level**, as there were only three secondary schools in the GTA: two public high schools (Conseil scolaire Viamonde (CSV)) and one Catholic high school (Conseil scolaire de district catholique Centre-Sud (CSDCCS)). What’s more, the two public secondary schools were already overcrowded in 2011: École secondaire Étienne-Brûlé was at 105% of capacity, and the Collège français was at nearly 110%.¹⁰

FLSC calculations, based on 2006 Census data, showed that to achieve formal equality¹¹ between the number of English-language schools and the number of French-language schools in the GTA while maintaining the status quo for the total number of schools there, at least 10 new French schools were needed.¹² The shortage was more serious at the secondary level than at the elementary level, since only 3 of the 16 French schools in the GTA were high schools. This insufficiency at the secondary level was especially worrisome, since nearly 20% of French-speaking students were transferring to English boards between Grades 8 and 9. As the Commissioner explained in 2011, “[t]here can be little doubt that this situation is directly related to the inaccessibility of French-language schools since data demonstrates that retention rates decline as distance and inaccessibility of schools increase.”¹³ Based on these observations, the Commissioner’s first recommendation in his 2011 report was that the Ministry of Education

- a. **build or provide new facilities in underserved areas of the Greater Toronto Area, in order to close the gap in the number of schools versus the number of French-language students**
- b. **direct all French-language boards in the Greater Toronto Area to work cooperatively in order to close that gap, and**
- c. **use, from now on, the Inclusive Definition of Francophone (IDF) to identify French-language education needs.**¹⁴

The Commissioner also pointed out at the time that, as the number of French-speaking students in Toronto was increasing steadily, the number of English-speaking students was declining. As a result, there were some vacant schools in the inventories of the GTA’s English-language boards, namely the Toronto District School Board (TDSB) and the Toronto Catholic District School Board (TCDSB). What the Ministry of Education and the school boards do in such situations is governed by **Ontario Regulation 444/98 – Disposition of Surplus Real Property**. Under this regulation, it is the boards’ responsibility to “determine what properties or portions of properties are surplus”, and they have the “authority to sell, lease or purchase property.”¹⁵ As the Commissioner pointed out, the regulation also allows the boards to subdivide a piece of land before putting it up for sale. This practice gives the boards an opportunity to make a larger profit from the sale, but it also makes it impossible for other school boards to purchase

9 *Ibid.*

10 *Ibid.*: p. 27.

11 “Formal equality” refers to purely mathematical equality: since 3.2% of the school-aged children in the city are Francophones, 3.2% of the city’s schools, or 26 out of 822 schools, should be French schools. But in 2011, there were only 16 French schools. In 2011, the 16 French schools made up just under 2% of Toronto’s publicly funded schools. Moreover, in 2011, the Ministry of Education was not using the Inclusive Definition of Francophone (IDF) to estimate the number of rights holders in Ontario, which means that that percentage was appreciably lower than the actual proportion of potential students in French schools in Toronto.

12 Office of the French language Services Commissioner, 2011: p. 7.

13 *Ibid.*: p. 9.

14 *Ibid.*: p. 10.

15 *Ibid.*: p. 18.

the properties, because their size makes them useless for educational purposes. For boards that wanted to purchase the properties in their entirety, it was an unfair selling practice. A school board that has surplus property also has the option of renting out its buildings for non-educational purposes. Under Regulation 444/98, the Ministry has no authority over these practices, which are completely devoid of public transparency, and no authority to protect the integrity of the properties owned by the boards. Nor does it have “the legal authority to require boards to deem a property surplus or to sell a surplus school.”¹⁶ However, the Ministry does have some financial control over one board buying property from another, since such purchases are subject to its approval.

This situation left the French-language school boards in a position of systemic inequality with respect to their English-language counterparts, since the French boards did not exist before 1998, while the English boards had owned many schools for a long time. In 1998, the French-language boards “had to build their school system with facilities transferred from English-language school boards,”¹⁷ some of which were outdated or needed considerable renovation. Moreover, between 1998 and 2005, Regulation 444/98 allowed a board to sell its properties to another board for the sum of \$1, a practice that the Commissioner applauded, because to him, it did not make sense for taxpayers to have to pay a second time for a capital investment they had put up the money for in the past. The Ministry stopped that practice in 2005. In short, the regulation prohibited, for various reasons, the acquisition of vacant schools belonging to English-language school boards by French-language school boards, even though they did not have enough schools and some of the schools they had were already operating above capacity.¹⁸

In view of this, the Commissioner’s second recommendation was that Regulation 444/98 needed to be amended so that

- a. the Ministry of Education has the authority to direct school boards to sell unused or surplus sites in particular circumstances**
- b. there are limits to how long a property can be held by school boards and remain unused**
- c. there are limits to how long an offer to acquire a property is valid before a financial transaction takes place**
- d. severed properties can only be offered to and purchased by school boards for educational purposes, unless an exception is obtained from the Minister, only under particular circumstances**
- e. lease costs to coterminous school boards reflect an “at-cost” approach, so that school boards do not profit from leasing to each other**
- f. the Regulation better supports more effective and efficient transactions between school boards**
- g. the Ministry of Education reports publicly, on a regular basis, on the disposition of surplus real property.¹⁹**

Lastly, the Commissioner recognized that the public and Catholic school boards would benefit by working together to provide French-language school facilities as rationally as possible across the GTA, because of the

¹⁶ *Ibid.*: p. 18.

¹⁷ *Ibid.*: p. 8.

¹⁸ *Ibid.*: p. 27.

¹⁹ *Ibid.*: p. 21.

low density of the Francophone population in some districts, and that the Ministry was making an effort to facilitate agreements between the two boards. The Commissioner also mentioned the Public Asset Working Group, formed in 2009, whose membership included the GTA's four school boards, the City of Toronto, the Toronto Lands Corporation and the Ministry of Education. The group's purpose was to explore opportunities for cooperation and to improve the use of public assets in Toronto. However, the group was unable to address the deficiencies in Toronto's French-language education system, especially after Grade 8, in a reasonable length of time. As a result, the Commissioner's third recommendation was that

in order to support collaborative projects by French-language school boards, the Ministry: (i) explore the possibility of providing incentives for joint capital projects between school boards, and (ii) prepare a conceptual and administrative framework for the planning and implementing of such projects.²⁰

2 – RESPONSE BY THE MINISTRY OF EDUCATION, FEBRUARY 2012

Eight months after the publication of the report by the Commissioner's Office, the then-Deputy Minister of Education sent the Commissioner a response in the form of a memorandum. The memorandum described significant investments in the expansion of Toronto's French-language school system. In the spring and summer of 2011, the Ministry approved \$700 million in capital investments so that the French-language public and Catholic boards could acquire or enlarge nine schools:

- an elementary school in southern Etobicoke for the Conseil scolaire **Viamonde (CSV)**
- **an elementary school in southern Scarborough for the CSV**
- **an addition to an elementary school (Pierre-Elliott-Trudeau) in Toronto for the CSV**
- **a secondary school (western Toronto) in Toronto for the CSV (this would be a collaborative project with the Conseil scolaire de district catholique Centre-Sud (CSDCCS), which had received funding in the past)**
- **a new elementary school in The Beaches (southeastern Toronto) for the CSDCCS**
- **a new elementary school in Etobicoke for the CSDCCS**
- **a new elementary school in Stouffville for the CSDCCS and**
- **a new secondary school in Stouffville for the CSDCCS (to be built as a JK-12 school).²¹**

According to the Ministry's memorandum, in view of the Commissioner's recommendation that about 10 new French-language schools were needed in Toronto, [translation] "the investments we have made in the nine additional new schools adequately meet the program requirements for expanding the French-language system in Toronto."²² Though significant, these investments covered the building of seven new elementary schools, a JK-12 school and a single secondary school, even though the Commissioner had shown that the greatest need in Toronto's French-language education system was at the secondary level. In other words, **only two of the nine new schools directly addressed the**

²⁰ *Ibid.*: p. 23.

²¹ Ministry of Education, 2012: p. 4.

²² *Ibid.*: p. 5.

Commissioner’s recommendation. Moreover, the students enrolled in those new elementary schools will eventually reach the secondary level. Where will they go if the existing high schools are already overcrowded and no new schools are being built to accommodate them?

The Deputy Minister also informed the Commissioner that, despite his limited authority to incentivize collaboration between school boards, he supported partnerships, and that the two school boards were members of the Toronto Public Asset Working Group, among others. In addition, the memorandum referred to February 2012 meetings in which the Deputy Minister had proposed that the French-language school boards “engage in a joint capital planning process,” and indicated that Ministry “staff will be following up with them.”²³

With regard to the Ministry using the IDF in estimating the number of rights holders, the memorandum argued that the difference between using statistics based on first official language spoken (FOLS) and the IDF was less than 1% and therefore not significant.²⁴ The Ministry maintains that, although it endorses the IDF in a political context, the data collected through Statistics Canada do not contain IDF data, since the latter would not yet be considered standard variables. It is also important to bear in mind that census data do not enable a determination of the exact number of rights holders. Only a post-censal survey, **as it was in 2007**, might make it possible to extrapolate the number of rights holders.

With respect to the Commissioner’s recommendations on amending Regulation 444/98, the Ministry announced that the regulation was under review with the aim of proposing changes that would make it more effective regarding the use of capital assets.²⁵ However, the Ministry pointed out that certain more substantial changes would require amendments to the *Education Act*, and therefore that the Ministry could not take unilateral action on the matter, since it was subject to the will of the Legislature.

In summary, the Deputy Minister’s memorandum described improvements being made by the province to the GTA’s French-language school system, and showed signs of being open to most of the Commissioner’s recommendations. Nevertheless, the matter of the small number of French-language high schools being funded, as well as the many issues in this memorandum (collaborative projects between school boards, use of the IDF in assessing French-language schools’ pupil-place needs and amendments to Regulation 444/98), remained unresolved. The Commissioner decided to reopen the file this year, to do a follow-up.

3 – CONSTITUTIONAL, LEGISLATIVE AND REGULATORY CONTEXT

Minority official language education in Ontario is governed by a number of constitutional, legislative and regulatory provisions. The following is a brief overview.

Section 23 of the *Canadian Charter of Rights and Freedoms*, and its interpretation by the courts

Since the *Canadian Charter of Rights and Freedoms* (the Charter) was adopted in 1982, parents “whose first language learned and still understood is that of the English or French linguistic minority population

²³ *Ibid.*: p. 6; see also p. 8-p. 9.

²⁴ *Ibid.*: p. 6-p. 7.

²⁵ *Ibid.*: p. 7.

of the province in which they reside, or [...] who have received their primary school instruction [...] in English or French [...] have the right to have their children receive primary and secondary school instruction in that language”.²⁶ Minority Francophones who wanted to exercise this right have turned to the courts repeatedly to have this constitutional provision interpreted. A few decisions of the Supreme Court of Canada have subsequently clarified the scope and limits of Section 23, and are useful for understanding the Ontario government’s obligations regarding minority official language education, which are at issue in this report.

In 2000, the Supreme Court handed down its ruling in the case of *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3. A group of parents in the Summerside area had been demanding a French-language school in their city for a number of years – a priority that had been stated by the province’s French-language school board. The provincial government refused to approve the school’s construction even though the school was warranted by the number of potential students in the area, suggesting instead that the parents send their children to immersion school or to the school in Abram’s Village, 28 km away. The Supreme Court ruled unanimously in favour of the Francophone parents. Busing the children from the Summerside area to École Évangéline in Abram’s Village did not fulfil the province’s obligations under Section 23. The Department of Education could not use its discretionary power to reverse the French-language school board’s decision to offer French-language classes in Summerside, especially since that decision did not present a financial obstacle for the province.²⁷ As the justices explained, “[w]here a minority language board has been established in furtherance of s. 23, it is up to the board, as it represents the minority official language community, to decide what is more appropriate from a cultural and linguistic perspective.”²⁸ The high court also explained in this decision that the minority needed to have local facilities where that was reasonable, and that “minority language parents and their representatives are in the best position to identify local needs”.²⁹ The question of local facilities is also directly related to the issue of school transportation and the transportation time that can be considered reasonable for a student to get to school. According to the Supreme Court, transportation questions, like any other issue associated with minority-language education, must be examined from the perspective of substantive equality, i.e., so as to take account of the differences experienced by minority children compared with majority children, which will be discussed later in this report, in the section that deals specifically with school transportation.

It is therefore the responsibility of the Ministry of Education to take these differences into account in assessing the need for a French-language instruction facility.

Three years later, the Supreme Court ruled again on the scope of the protections provided by the Charter, in *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3. A group of parents wanted French-language secondary schools to be built in the five school districts where they were from and where there were already elementary schools. From 1997 to 1999, the government announced the construction of these new schools.³⁰ By 1999, however, the schools had not been built. The group of parents and the Fédération des parents francophones took their case to the Supreme Court of Nova Scotia the same year.

26 *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, enacted as Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.

27 *Arsenault-Cameron v. Prince Edward Island* [2000] 1 S.C.R. 3: para. 55.

28 *Ibid.*; para. 42.

29 *Ibid.*; para. 57.

30 *Doucet-Boudreau v. Nova Scotia (Minister of Education)* [2003] 3 S.C.R. 3: para. 38.

At trial, the parents' right to have homogeneous French-language secondary schools was upheld, since they were warranted by the number of potential students. According to the judge, the province had not met its obligations under Section 23, by failing to take into account the particular situation in Nova Scotia, where the assimilation rate was "serious".³¹ To fulfil its obligations, the province should have acted without delay to counter the assimilation rate. He directed the province to build the schools and offer the necessary educational programs in the districts concerned, by relatively specific deadlines, requiring it to use its "best efforts" to meet its obligations within a reasonable length of time.³² A few years later, the Supreme Court upheld the trial judge's decision, pointing out the important temporal nature of the rights entrenched in Section 23:

[M]inority language education rights [are] particularly vulnerable to government delay or inaction. For every school year that governments do not meet their obligations under s. 23, there is an increased likelihood of assimilation which carries the risk that numbers might cease to "warrant". Thus, particular entitlements afforded under s. 23 can be suspended, for so long as the numbers cease to warrant, by the very cultural erosion against which s. 23 was designed to guard. [...] If delay is tolerated, governments could potentially avoid the duties imposed upon them by s. 23 through their own failure to implement the rights vigilantly. The affirmative promise contained in s. 23 of the Charter and the critical need for timely compliance will sometimes require courts to order affirmative remedies to guarantee that language rights are meaningfully, and therefore necessarily promptly, protected.³³

In short, the Supreme Court ruled, in the *Doucet-Boudreau* decision, that judges had the power to ensure that a government took action to fulfil its constitutional obligations promptly, when there is a "critical need for timely compliance".³⁴ The assimilation rates affecting the Francophone minority population concerned and the education department's continuing inaction justified a firm remedy from the Court.

Lastly, the most recent judgement by the Supreme Court of Canada on education rights, ***Association des parents de l'école Rose-des-vents v. British Columbia (Education)***, 2015 SCC 21, supports the concept of substantive equality in minority-language education. The case was about the minority education system in Vancouver, where the only French school was overcrowded and very poorly equipped,³⁵ in contrast to the English schools in the same catchment area.³⁶ In addition, "[o]ver two thirds of these students spen[t] more than 30 minutes per bus trip", whereas most students enrolled in English schools were able to walk to school.³⁷ According to the plaintiffs, this inequality between the educational experience of the students attending the French-language school and the students attending the English-language schools in the same area violated Section 23.

31 *Ibid.*: para. 6.

32 *Ibid.*: para. 7.

33 *Ibid.*: para. 29.

34 *Ibid.*: Introduction.

35 *Association des parents de l'école Rose-des-vents v. British Columbia (Education)*, 2015 SCC 21: paras. 6-7.

36 *Ibid.*: para. 8.

37 *Ibid.*: para. 9.

To decide the question at issue, the Supreme Court identified some key factors to be analyzed in determining whether there was “substantive equivalence” between the majority school system and the minority school system.³⁸ It also made clear that the markers of formal equivalence, such as *per capita* cost, should be subordinate to the markers of substantive equivalence, particularly in light of the economies of scale that benefit majority schools, which necessarily have more students.³⁹ Substantive equivalence should instead “focus on comparisons that would adversely affect the realization of the rights under s. 23 of the Charter”,⁴⁰ such as the possibility that a reasonable parent would be dissuaded from exercising his or her rights because the minority school was inferior to a majority school in the same area:

If rights holders consider which school their child should attend, or whether to withdraw their child from a minority language school, they will look to nearby majority language schools as alternatives. It follows that the comparator group that will generally be appropriate for the assessment of substantive equivalence of a minority language school will be the neighbouring majority language schools that represent a realistic alternative for rights holders.⁴¹

Later in its decision, the Court lists the specific comparison criteria that it considers important for determining the **substantive equivalence of the educational experience**:

Thus, the comparative exercise is **contextual and holistic**, accounting for not only **physical facilities**, but also **quality of instruction, educational outcomes, extracurricular activities**, and **travel times**, to name a few factors. Such an approach is similar to the way parents make decisions regarding their children’s education.⁴²

In summary, these three decisions clarify **the Ontario government’s responsibility** with respect to the GTA’s two French-language school boards and the boards’ mandate. The justices of the Supreme Court of Canada specify the obligation of governments to **respect their official language minority’s right of access to an education in their language within a reasonable period of time, to avoid an increased risk of assimilation**. They also specify the obligation of governments to provide official minority-language school boards with the means necessary to offer an **educational experience that is substantively equal to that of the majority** “wherever [they are] in the province”,⁴³ i.e., an experience that would pass a general and contextualized comparison test **with regard to instruction, student achievement, extracurricular activities and travel times from home to school**.

French Language Services Act (FLSA)

The preamble of the *French Language Services Act* (FLSA) states that

the French language is an historic and honoured language in Ontario and recognized by the Constitution as an official language in Canada; and whereas in Ontario the French language is recognized as an official language in the courts and in education; and whereas the Legislative Assembly recognizes the contribution of the cultural heritage of the French speaking population and wishes to preserve it for future generations.⁴⁴

38 *Ibid.*: para. 22.

39 *Ibid.*: para. 33.

40 *Ibid.*: para. 35.

41 *Ibid.*: para. 37.

42 *Ibid.*: para. 39. Bolding added.

43 *Canadian Charter of Rights and Freedoms, op. cit.*: Section 23. (3) (a).

44 *French Language Services Act*, R.S.O. 1990, Chapter F.32: Preamble.

Under the FLSA, the Commissioner's Office is responsible for conducting independent investigations in response to complaints or on its own initiative. Its mandate is also to "receive and handle complaints and follow up on them"⁴⁵ using its investigative powers, and to monitor the progress of government agencies in delivering French-language services in Ontario.

Education Act

The *Education Act* enables the Ministry of Education to administer the public elementary and secondary education system. Section 0.1(3) of the Act spells out the role that partners in education, such as the Minister, the Ministry and the boards, have to "play in enhancing student achievement and well-being, closing gaps in student achievement and maintaining confidence in the province's publicly funded education systems."⁴⁶

Aménagement Linguistique Policy (PAL)

The Ministry of Education's Aménagement Linguistique Policy (PAL), adopted in 2004, includes the following objectives: (i) in French-language schools, deliver high-quality instruction adapted to the minority setting, (ii) educate young Francophones to become competent and responsible citizens, empowered by their linguistic and cultural identity, and (iii) increase the vitality of educational institutions in Ontario by focusing on student retention and increased enrolment in French-language schools, thus contributing to the sustainable development of the French-language community.⁴⁷

ISSUES COVERED BY THIS FOLLOW-UP

As the FLSC's initial report was published more than four years ago, the Commissioner's Office felt it was appropriate to conduct a follow-up to determine what progress had been made on the following issues since the Ministry's February 2012 response:

- A. Analysis of substantive equivalence between the GTA's French-language school system and the majority-language system:
 - a. The perceived shortage of French-language schools in the GTA, particularly at the secondary level
 - b. Comparison of minority-language school facilities and majority-language school facilities in the GTA
 - c. The quality of instruction⁴⁸ and
 - d. The length of travel.
- B. incentives for collaboration and joint planning between the GTA's French-language public and Catholic school boards
- C. use of the IDF in assessing French-language education needs in Toronto
- D. revision of Regulation 444/98.

⁴⁵ Available online: csfontario.ca/en/mandat (page consulted in June 2016).

⁴⁶ Office of the French Language Services Commissioner, 2011: p. 4.

⁴⁷ *Ibid.*

⁴⁸ For the purposes of this report, only academic results will be considered. Extracurricular activities, though a critical aspect of instruction in the schools, cannot be studied with the available data.

INVESTIGATION PROCESS

For this update of the June 2011 report, the consultants carried out the following activities:

- analysis of the June 2011 report
- analysis of the February 14, 2012 memorandum from the Deputy Minister of Education
- analysis of the legal and regulatory framework for minority official language education in Ontario, including recent decisions handed down by the Supreme Court of Canada
- meetings with the following people:
 - Ministry of Education officials responsible for fixed assets
 - the CSV's director of education and fixed assets manager
 - the CSDCCS's director of education and fixed assets manager.

ANALYSIS: THE CURRENT SITUATION – WHERE DO WE STAND TODAY?

The next few sections contain an update on the status of the French-language education system in the Greater Toronto Area, particularly in light of the recommendations in the first report by the Commissioner's Office following the 2011 investigation.

Analysis of substantive equivalence between the GTA's French-language school system and the majority-language system

The perceived shortage of French-language secondary schools in the GTA

As noted previously, in 2011, the Commissioner notified the Ministry of Education of a large number of complaints from the GTA's Francophone community regarding the shortage of French-language schools, particularly at the secondary level. There were only three French-language secondary schools in the entire city of Toronto. A few months after the publication of that report, the Ministry freed up the funds for the construction of a new secondary school and a JK-12 school. In September 2013, a new joint school of 948 pupil places (pp) was opened in Toronto: 474 pp at ÉSP Toronto Ouest for the CS Viamonde and 474 pp at ÉSC Saint Frère André for the CSDCCS.

In November 2015, the Ministry of Education announced new capital investments of nearly \$500 million in the construction or improvement of 56 schools in the province. The projects included some French-language schools in the GTA:

- a new Catholic elementary school (École élémentaire catholique Mississauga) in Mississauga
- a new public elementary school (Académie de la Moraine) in Richmond Hill and
- reconstruction of École secondaire publique Gaétan-Gervais in Oakville.⁴⁹

Finally, in March 2016, the CSDCCS awarded the contract for construction of a 500pp school in Scarborough and the construction started in April 2016.

49 For information: <https://news.ontario.ca/edu/en/2015/11/ontario-investing-in-56-new-and-improved-schools-2135-new-licensed-child-care-spaces.html> (page consulted in June 2016).

Though necessary, most of these investments did not provide funds for the construction of *new* French-language secondary schools in Toronto – which remains the most serious need in the entire system, especially in the eastern part of the city – despite five different proposals to that effect presented by the two French-language school boards to the Ministry.⁵⁰

This major institutional deficiency in the French-language school system is of particularly dramatic significance for the vitality of the Francophonie in Southern Ontario. First, as Landry et al. explain, [translation] “Francophones who settle in the large urban centres tend not to cluster in an area with an established, concentrated community, and they do not always automatically create a community.”⁵¹ Urbanization makes this population much more prone to assimilation, and institutional deficiencies in education only contribute to that phenomenon. Also worth noting is what these same researchers have to say about schools:

[Translation] The school is the pillar of cultural autonomy. It is not only the source of all other institutions, in that it prepares the future leaders of all other sectors of community vitality (as long as education in the group’s language can also be pursued at the post-secondary level), but concomitantly a key locus of socializing proximity, the primary setting for linguistic socialization for the full development of language proficiency and an identity-building factor as critical as family and the social networks. [...] The school and other actors of civil society [...], through their leadership in the community, can indeed serve as agents of awareness. That acquisition of awareness of the group’s vitality issues is essential to the community engagement of group members, and school can be a prime location for acquiring awareness. In short, “lifelong education” in institutions managed by the group is indispensable to institutional completeness and, by extension, to any cultural autonomy project.⁵²

Second, the school boards in Southern Ontario are experiencing substantial growth in demand (enrolment has increased by 47% in the last 15 years⁵³) – growth that is unmatched in the rest of the province, and particularly in comparison with the English-language boards, where demand continues to decline. It is reasonable to expect the Ministry of Education to provide those boards with the resources to properly respond to this growth.

It bears repeating that the Supreme Court clarified the provinces’ obligation to provide minority-language instruction by emphasizing **their obligation to take action within a reasonable period of time**. The provinces’ inaction cannot be tolerated in the case of a right that applies only “where numbers warrant,” because

[f]or every school year that governments do not meet their obligations under s. 23, there is an increased likelihood of assimilation which carries the risk that numbers might cease to “warrant”. [...] The affirmative promise contained in s. 23 [includes] the critical need for timely compliance [...].⁵⁴

50 However, according to information from the Ministry, the two boards had presented the Ministry with a high number of demands through the Capital Planning Capacity program and have been awarded \$172 million, or 7% of the program’s budget since 2011 (Ministry of Education, 2016a: p2).

51 Landry, Allard and Deveau, 2010: p. 29.

52 *Ibid.*: p. 37.

53 Ministry of Education, 2016b: p. 41. See Table 3.

54 *Doucet-Boudreau op. cit.*: Introduction.

To put it another way, the real and urgent need for new French-language secondary schools in Toronto is a breach of the Ontario government's obligations under Section 23 of the Charter. But it goes beyond that. The very survival of the Franco-Ontarian community is at risk without an education system that is substantively complete and substantively equal in quality – which includes accessibility – to that of the majority-language group. Clearly, that substantive equality has not been attained in secondary education in the GTA.

RECOMMENDATION 1

Considering the manifestly inadequate number of French-language secondary schools in the Greater Toronto Area,

Considering that since the FLSC's first report in 2011, only two new French-language high schools have been added to the inventory of Toronto's secondary education facilities,

Considering that several existing French-language high schools are at or above capacity,

Considering the meteoric increase in demand experienced by the French-language school boards in Southern Ontario in recent years,

Considering the province's legal obligation to act within a reasonable length of time to fulfil its obligations under Section 23 of the Charter, and considering that the province has not taken adequate action in response to the FLSC's first report in the last five years,

The Commissioner recommends that the Minister of Education:

- (1) act without delay to provide the Conseil scolaire Viamonde and the Conseil scolaire de district catholique Centre-Sud with the resources to respond appropriately to the meteoric increase in demand they are experiencing, through additional funding, part of which would be allocated to the construction of new secondary education facilities in the Greater Toronto Area.**
- (2) honour the Francophone community's right to an educational experience that is substantively equivalent to that of the majority, particularly in the areas of instruction, educational outcomes, extracurricular activities, and student travel times between home and school.**

The problem of retention and the loss of enrolment in the GTA's French-language school system

The retention rates of the GTA's French-language school boards are indisputable proof of the minority-language school system's deficiency in secondary instruction. As noted in the introduction to this report, the latest analyses from the Ministry of Education show the extent of the losses that the French-language school boards are incurring in this part of the province: nearly a third of the students who start their education in the French system will have left it before completing high school.⁵⁵ **More than 20% of the students enrolled in Southern Ontario school boards switch to the English system between Grades 8 and 9.**⁵⁶ As we will see later, this migration cannot be due to the quality of classroom instruction, since the academic results of students in the French-language boards are comparable to or better than the

⁵⁵ Ministry of Education, 2016b: p. 72. See Table 6.

⁵⁶ *Ibid.*: p. 91. See Table 7.

results of students in the English boards. The large number of complaints received by the FLSC from Francophone parents in Toronto reporting that the high school closest to them is an unacceptable distance away is due to this major deficiency.

It is not a coincidence that such a large transfer of students from the French boards to the English boards should take place during the final transition years before the end of their education. **The lack of access to French-language post-secondary studies in Central-Southwestern Ontario, a subject on which the Commissioner's Office published a major report in 2012,⁵⁷ is another probable cause of this migration.** At that time, the FLSC pointed out that **"Francophones in the region have only 3% access rate to French-language undergraduate and college programs."**⁵⁸ Nevertheless, the region's Francophone community had the highest post-secondary graduation rate in the province:

[A]lmost a third of Francophones in Central Ontario have a university degree, compared to one in ten in Northeastern Ontario. In fact, proportionately more Francophones in Central Ontario have at least a bachelor's degree than Ontarians overall (32.2% compared to 28.1%). However, in view of the severe lack of French-language postsecondary options, it is likely that these students receive degrees from English-language universities.⁵⁹

It can reasonably be concluded from these statistics that at least some of the students enrolled in the region's French-language school boards are deciding to switch to the English system to improve their proficiency in English before moving on to the post-secondary level (which a larger percentage of them are doing than in the rest of the province), since those students do not see any way of pursuing their education in French in that region after Grade 12. The FLSC arrived at the same conclusions in its 2012 report:

Despite the constitutional right to linguistic minority education, and despite policies such as the *Politique d'aménagement linguistique*, the lack of French-language postsecondary programs and institutions has the effect of dissuading primary and secondary school students from entering and remaining in French-language education in Central-Southwestern Ontario. The shortfall in French-language programs and institutions in the region appears to be seen as limiting a student's career and marketability.⁶⁰

Consequently, it is impossible to examine the issue of French-language education in that region without considering the post-secondary level, where access to minority-language programs is virtually non-existent. Since the Central-Southwestern region also has the fastest-growing Francophone population in Ontario,⁶¹ it seems imperative for the Ministry to make major investments in both secondary and post-secondary education.

Comparison of minority-language school facilities and majority-language school facilities in the GTA

When consulted, representatives of the GTA's two French-language school boards said they were aware of the efforts that the Ministry had made in the area of fixed assets since 2011 and of the investments made in Toronto in particular. However, those efforts have not been sufficient to meet the growing demand

57 Office of the French Language Services Commissioner, 2012.

58 *Ibid.*: p. 17.

59 *Ibid.*: p. 22.

60 *Ibid.*: p. 32.

61 *Ibid.*: p. 25. (Based on data from the 1991 to 2006 censuses.)

that the boards are experiencing, or to ensure that they can build a school system of equal quality to the majority-language system. In some cases where the Ministry has allowed the French-language school boards to acquire old schools that used to belong to the English boards so that they could renovate them, the funding for upgrading awarded by the Ministry has sometimes been inadequate, according to the school board representatives interviewed. As examples of additional expenditures they incurred, the boards mentioned the upgrading of heating systems and wiring, the renovation of washrooms, the modernization of gymnasiums, the installation of building accessibility features for people with reduced mobility, and repairs to the roofs of the newly acquired buildings. Budget problems are already cropping up for some new schools, such as École élémentaire catholique Saint-Noël-Chabanel, which has just been expanded and is already at maximum capacity.⁶² The Ministry had also imposed another requirement on the CSV: temporary sharing of the building housing École élémentaire Charles-Sauriol with the TCDSB. Any building-sharing project generates additional costs despite subsequent economies of scale, since special arrangements have to be made to safeguard the integrity of the two systems.

Moreover, action by the Ministry is still needed to address the boards' priorities regarding access to French-language secondary instruction in the GTA. The seriousness of the above-mentioned retention problem that the French-language boards have in the transition between the elementary and secondary levels is particularly revealing in this respect. To avoid making further investments in the capital assets of French-language school boards, the Ministry points out that some French-language schools are not at capacity. This argument ignores local realities. When they acquire an existing school, the French-language boards do not necessarily need all of the space in their new building when the school first opens, since they often decide to phase new facilities in gradually (one grade per year). They sometimes rent out space to organizations to supplement their revenue when the building turns out to be too large over the longer term.

This problem of French-language school boards "inheriting" surplus schools that are sometimes too large for their needs from the majority-language system is due to the fact that the French-language boards were created relatively recently and are still "catching up" to their English-language counterparts. While the latter have had established schools and agreements with municipalities for years, the French-language boards still have to search for vacant land suitable for school construction, and concluding agreements with municipalities is far from a *fait accompli*. For example, there are 178 municipalities in the CSV's catchment area and 123 in the CSDCCS's area. It takes a great deal of effort for these boards to establish working relationships with the local governments and find appropriate pieces of land for acquisition.

While the shortage of French-language schools is particularly acute in Southern Ontario, enrolment in English-language boards in the same region is declining. Since 2002, enrolment in their schools has decreased by nearly 100,000, or 5.9% of total enrolment.⁶³ This decline means that the occupancy rates of majority-language schools are also falling. The GTA's two English-language boards currently own schools that are either vacant or rented out for non-educational use. This issue will be discussed in detail later in this report.

The quality of instruction

The academic achievement of Ontario students is tested periodically to assess student performance in reading, writing and mathematics in relation to the expectations and learning content specified in the Ontario curriculum by the Education Quality and Accountability Office (EQAO). The EQAO results

62 According to the interviews with French-language school board principals.

63 Ministry of Education, 2016b: p. 41. See Table 3.

in turn help school boards and schools identify areas where special attention is needed to improve teaching and learning.

The most recent round of EQAO tests taken by students in the GTA's two French-language boards produced the following information:

- The data for the **Conseil scolaire Viamonde** show a steady improvement in its elementary schools. In Grade 6 writing, the pass rate was 90%, which is above the provincial average and an increase of 2 percentage points from last year's results. In reading, Grade 6 students performed 3 percentage points better than last year, and their results were the same as the provincial average. In mathematics, 76% of Grade 3 students and 81% of Grade 6 students achieved Level 3 or 4. Over the last five years, Grade 3 students have been gradually getting closer to the provincial average, while Grade 6 students are at or above the provincial average on the EQAO tests. The results of the EQAO tests show that the work being done by teachers, parents and students is beneficial and producing results comparable to the provincial average.⁶⁴
- For the **Conseil scolaire de district catholique Centre-Sud**, last year's EQAO test results surpassed provincial standards. Over the last five years, there has been a steady increase in the number of CSDCCS students who meet the provincial standard. The most spectacular gain has been in the Grade 3 reading test results, which jumped 16% in five years. In every category, the percentage of CSDCCS students at or above the provincial standard is higher than the provincial average.⁶⁵

With regard to the high school math tests, the results of French-language schools are up and comparable with the provincial standard.

In summary, the EQAO test results of students in French-language schools suggest that **the quality of instruction in the schools of the GTA's two French-language school boards is comparable to that of majority-language schools, and is not a factor in the dramatic loss of enrolment experienced by those boards.**

The length of travel

One of the important ways in which the work of the French-language boards differs from that of the English-language boards is unquestionably the matter of student transportation. Busing students is a formidable challenge, and the time that it takes students of French-language boards to get to school, coupled with the distance covered, can deter parents from enrolling their children in French school. On the basis of interviews with CSV and CSDCCS principals, the distance between the students' home and their school can be about 10 km, and the length of the bus trip can range from a few minutes to more than an hour.⁶⁶

This long trip has a twofold effect on the (non-)fulfilment of government obligations regarding minority official language instruction, as pointed out by the justices of the Supreme Court of Canada in their decision on the *Arsenault-Cameron* case:

First, unlike majority language children, s. 23 children were faced with a choice between a locally accessible school in the majority language and a less accessible school in the minority language. The decision of the Minister fostered an environment in which many of the s. 23 children were discouraged from attending the minority language school because of the long travel times. A similar disincentive would not arise in the circumstances of the majority.

64 The data is obtained by the CSV.

65 The data is obtained by the CSDCCS.

66 According to the interviews with principals.

Second, the choice of travel would have an impact on the assimilation of the minority language children while travel arrangements had no cultural impact on majority language children. For the minority, travel arrangements were in large measure a cultural and linguistic issue; they involved not only travel times but also a consideration of distances because of the impact of having children sent outside their community and of not having an educational institution within the community itself.⁶⁷

These observations are fully applicable to the situation in the GTA. First, long bus trips directly undermine access to education in the minority official language: GTA parents consider it unacceptable for their children to be on a bus for such a long time every day. And, since the issue has to do primarily with the transition to high school, it has to be recognized that, for students who are also beginning to have a say in their education, the option of spending several hours a day on a school bus or on public transit seems much less attractive. This situation has a direct impact on student retention in the French-language system, since parents have the option of sending their children to a majority-language school near them. As shown above, the transition between the elementary and secondary levels (between Grades 8 and 9) is the point where the GTA's French-language boards lose the most students, in alarming proportions. The shortage of French-language secondary schools in the GTA and the resulting increase in travel times for most students who attend them are having a serious effect on the boards' retention rates.

Second, busing compromises the *quality* of instruction: the distance makes it particularly difficult for many students to participate in extracurricular activities, which take place outside school hours. These activities are critical in maintaining and developing students' language skills and cultural knowledge. The fact that some students live too far from the school to take part in these activities contributes to their assimilation.

In summary, the issue of school transportation is central to the attainment of *substantive equality* in minority-language instruction, and the current situation in the GTA demonstrates that substantive equality is still a long way off.

One of the reasons for the 2011 report was precisely the fact that some of the complaints received by the Commissioner's Office were calls for help from parents in The Beaches, a large district in the eastern part of the city that has no French-language high schools. One parent put it this way:

[Translation] We understand the importance of learning French at the secondary level and, if it weren't for the courageous decision of our youngest child, we were quite ready to contemplate other options, including leaving the French-language system. It's radical, but we haven't yet ruled it out completely.⁶⁸

Unfortunately, in 2015, **neither of Toronto's French-language school boards has yet received funding to open a French-language high school in The Beaches, even though they have made it a priority to expand access to French-language secondary instruction in that part of the city.**⁶⁹

Lastly – and this point has more to do with busing than with travel time as such – since most students enrolled in majority-language schools are within walking distance of their facility, the schools do not have loading areas where buses can drop them off safely. French-language schools need loading areas,

67 *Arsenault-Cameron v. Prince Edward Island* [2000] 1 S.C.R. 3; para. 50.

68 Office of the French Language Services Commissioner, 2011: p. 2.

69 According to information from the Ministry, « [t]he 2015 Capital Priority process was the first time either CSDC Centre-Sud or CS Viamonde submitted a business case for a new secondary school in The Beaches. It was identified as the 3rd priority for CSDC Centre-Sud and the 6th priority for CS Viamonde. The Ministry did not fund either of these requests but did provide funding for high priority requests from both CSDC Centre-Sud and CS Viamonde » (Ministry of Education, 2016a: 11).

for the reasons mentioned above, and also because of municipal by-laws. However, loading areas take up a great deal of space, and that space is not taken into account in assessing the land requirements for French-language schools. As a result, the space left over for school buildings is smaller than the space that English-language schools have, since they do not need the same outdoor facilities.

RECOMMENDATION 2

Considering that some parts of the city, including The Beaches, still do not have their own French-language secondary school, despite the increased demand for such facilities across the Greater Toronto Area,

Considering that students attending French-language schools in the GTA have to travel longer distances than their Anglophone counterparts and therefore require school bus transportation,

Considering that the travel time can be more than one hour every morning and every afternoon, which many parents have already described as unreasonable in complaints to the FLSC,

Considering the obligation that the Ministry of Education must consider the detrimental effects of long bus rides on the quality of minority education and the short-, medium- and long-term effects on the vitality of the minority community, as indicated by the Supreme Court of Canada in the Arsenault-Cameron decision,

Considering especially the alarming proportion of students who switch from the French system to the English system when they make the transition from elementary to secondary school in the GTA, a phenomenon that is unequalled in the rest of the province and is due to the major deficiencies in access to French-language secondary schools in the GTA,

Considering that, on the basis of recent court decisions, the Minister of Education has a duty to honour the Francophone community's right to an educational experience that is substantively equivalent to that of the majority, particularly in the areas of instruction, educational outcomes, extracurricular activities, and student travel times between home and school,

The Commissioner recommends that the Minister of Education:

- (1) provide additional funding to the GTA's French-language school boards without delay, so that they can begin building or acquiring secondary education facilities, particularly in districts where the number of such facilities is inadequate and where the length of the bus ride to the nearest secondary school is currently most significant, so as to close the gap between the number of schools and the number of Francophone students, and ensure access to French-language secondary education in Toronto,**
- (2) henceforth take the space needed to build safe bus loading areas into account in allocating land for the construction or renovation of schools to be used by the Francophone minority, so that French-language schools will have classrooms and playgrounds that are comparable in size to those of majority-language schools for the same number of students.**

INCENTIVES FOR COLLABORATION AND JOINT PLANNING BETWEEN THE GTA'S FRENCH-LANGUAGE PUBLIC AND CATHOLIC SCHOOL BOARDS

The Commissioner's Office and the Ministry of Education have both recognized the benefits of collaboration between the GTA's two French-language school boards to ensure better planning of the French-language school system's development and improved access to French-language schools in Toronto. As is highlighted by the Ministry, joint planning partnerships hold many advantages for the school boards, as well as for the students, namely « reduced construction and operation costs », « greater space flexibility », and « an opportunity to provide increased programming to students ».⁷⁰

In the past, the Ministry of Education put considerable effort into facilitating the negotiation of agreements between the two French-language boards. In addition, a Public Asset Working Group, whose members included Toronto's four school boards, the City of Toronto and the Ministry, was formed in 2009. It was impossible to find out whether the Working Group had made any recommendations on the use of fixed assets to meet the needs of the French-language school boards. The Working Group's mandate was terminated in 2014, and it was replaced in 2015 with a new Community Planning and Partnerships Guideline. As explained by the Ministry of Education, this Guideline:

requires boards to [publicly] consult with their co-terminous boards as well as municipal and community partners to inform them of plans to address underutilized space within their board. This will enhance the knowledge sharing between boards as well as within their community to create new planning opportunities.⁷¹

However, the impact of this Guideline on the use and sale of surplus schools and spaces belonging to school boards is yet to be known. The Commissioner's Office wishes to mention, however, the Ministry's recent investments in the Capital Planning Capacity program, which provides funding intended to facilitate the school boards' real estate planning. In March 2016, the Ministry announced it would reserve \$600,000 from this program's annual budget to support joint planning and use of schools.⁷²

In 2013, the Ministry of Education had also published *Memorandum 2013: B18 Initiative to Encourage Joint Use / Collaboration Between School Boards on Capital Projects*. "This initiative encourages all school boards [...] to explore opportunities where boards can share existing space or build joint facilities [...] the Ministry also committed to review joint projects funding requests before evaluating other capital priorities submissions."⁷³

The Ministry rightly argues that this initiative would especially benefit high school projects, as secondary education entails the offering of an array of specialized programs:

One advantage of larger schools, especially at the secondary level, is the ability to offer a broader spectrum of program offerings. Smaller schools that lack a "critical mass" of students have difficulty providing non-core course options. In joint schools, boards with independently small school populations can combine to provide their students with a wider variety of courses.⁷⁴

70 Ministry of Education, 2016a: 10.

71 *Ibid.*: p. 4.

72 *Ibid.*: p. 5.

73 *Ibid.*: p. 3.

74 *Ibid.*: p. 4.

In March 2016, the CSDCCS and the CSV informed the Ministry of their intention to collaborate on the construction of a French-language high school in Hamilton⁷⁵, an initiative which the Commissioner wishes to salute and which could serve as an example of best practices for similar projects in the future.

RECOMMENDATION 3

Considering the Ontario government's constitutional obligations to respect the integrity of the public and Catholic school boards,

Considering the savings that the French-language school boards can make if they collaborate on joint planning to expand the GTA's French-language school system,

Considering the difficulties experienced by the two boards in searching for vacant land or suitable facilities for expanding the French-language school system in the GTA,

The Commissioner recommends that the Minister of Education:

- (1) continues providing the public and Catholic boards with collaboration incentives for joint capital projects,**
- (2) develops an administrative framework for planning and implementing such joint capital projects, and**
- (3) sees to the implementation of the Community Planning and Partnerships Guideline in order to mandate the school boards to proceed to public consultations regarding their real estate planning and the possible solutions to reduce their surplus capacity.**

USE OF THE IDF IN ASSESSING FRENCH-LANGUAGE EDUCATION NEEDS IN TORONTO

The IDF helps capture the number of immigrants who speak French but whose mother tongue is not French. The Ministry of Education's latest enrolment statistics for French-language schools show that the number of foreign-born students enrolled in French schools has increased significantly in recent years. In 2013-2014, nearly 10% of the students in the province's French-language schools were foreign-born, compared with more than 5% in 2008-2009.⁷⁶ For half of those students, French was not their first language learned.⁷⁷ In 2013-2014, **the GTA's two school boards alone accounted for almost half of the foreign-born students who attended French-language school in Ontario.**⁷⁸ Although this percentage is high, the Commissioner considers it relatively conservative since the data do not include many children born in Canada to immigrant-background parents and therefore do not accurately reflect the demographic reality of the French-language school boards, particularly in the GTA.

In fact, the Ministry's data support this hypothesis, since the percentage of four- and five-year-olds enrolled

⁷⁵ *Ibid.*

⁷⁶ Ministry of Education, 2016b: 97. See Table 8.

⁷⁷ *Ibid.*: p. 102. See Table 9.

⁷⁸ *Ibid.*: p. 98. See Table 10.

in French-language schools is greater than the percentage of Francophone children in the province, according to the 2011 Census.⁷⁹ Hence, the Ministry's estimate of the number of children who are potential French-system students, based on "first official language spoken" variables, seems low for the GTA; using the IDF might provide a more realistic picture and enable the Ministry to make projections accordingly.

The Ministry has recently informed the Commissioner that it is « currently involved in collaborative work with French-language school boards to make use of updated data derived from the 2011 Census that will incorporate IDF as an additional source of information on language ». ⁸⁰ This is good news, but as there is no schedule for the integration of the IDF into studies commissioned by the Ministry, the Commissioner prefers to stay cautious and to formulate the following recommendation.

RECOMMENDATION 4

Considering that the Ontario government officially introduced the Inclusive Definition of Francophone (IDF) in 2009 to better reflect demographic reality and diversity,

Considering that the IDF provides a more accurate picture of the province's French-speaking community than FOLS, particularly in Southern Ontario, where a large percentage of French speakers are of immigrant background,

Considering that the GTA's two school boards alone accounted for almost half of the foreign-born students who attended French-language school in Ontario,

Considering that the number of students enrolled in French-language schools is larger than the number of Francophone students indicated by Census data (based on FOLS) in junior and senior kindergarten in Southern Ontario, which points to probable disparities in the provincial needs data for other grades,

The Commissioner recommends that the Minister of Education revise its practices for assessing French-language education needs and use the IDF, the calculation method adopted officially by the Ontario government, in order to better reflect the diverse reality of the French-language school boards' potential student population and make more accurate enrolment projections.

REVISION OF REGULATION 444/98

In 2011, the Commissioner informed the government of the many flaws in Regulation 444/98 governing the sale of surplus real property. As the Commissioner put it in 2011,

Under the regulation, the board is required to offer the property to the public bodies listed by order of priority in the Regulation (other school boards, colleges and universities, municipalities, the province, the federal government) and to provide the parties with 90 days to respond prior to offering the property to other entities.⁸¹

At the time, the regulation was criticized for allowing transactions that lacked public transparency and permitting school boards to engage in practices that were unfair to other public bodies, in particular by

79 *Ibid.*: p. 58. See Table 11.

80 Ministry of Education, 2016a: p. 5-p. 6.

81 Office of the French Language Services Commissioner, 2011: p. 17-p. 18.

subdividing their plots of land, thereby making them useless for educational purposes. For example, in 2013, the TDSB severed 2.74 acres at Fisherville Senior Public School and proceeded to sell it on the open market.⁸² In addition, the Ministry had at the moment no authority over school board assets; for example, it did not have the power to direct a school board to dispose of surplus schools or land. The Ministry is not planning for any future changes in this regard. The Commissioner also expressed regret at the repeal in 2004-2005 of the provision that allowed a school board to sell a property to another board for the sum of \$1 and to be compensated through the removal of “the schools’ New Pupil Places capacity which generated additional capital grants for the board.”⁸³ It makes no sense that a school board that has received funding from the Ministry to build an educational facility can then turn around and sell the facility to another public body at market value. For taxpayers, this amounts to paying twice for the same school.

It should be noted that the current situation is highly disadvantageous to the French-language school boards: since they did not exist before 1998 and their facilities at the time were old schools disposed of by the English-language boards, their buildings are of lower value than the buildings owned by their English-language counterparts. In 2011, the Commissioner made a number of recommendations designed to remedy this situation.

In his response to the Commissioner, the Deputy Minister announced that revisions to the regulation were being made to increase its effectiveness and enable the school boards to make better use of their fixed assets.⁸⁴ However, the Ministry pointed out that certain more substantial changes would require amendments to the *Education Act*, and therefore that the Ministry could not take unilateral action on the matter, since it was subject to the will of the Legislature.

Almost four years later, the situation has not changed. Regulation 444/98 was the object of thorough revisions in 2015, following a series of consultations with stakeholders; these revisions will be effective as of September 1, 2016.⁸⁵ No amendments to the *Education Act* have been introduced in the Legislative Assembly to change the Ministry’s powers with regard to the exchange of fixed assets between school boards.

The Commissioner would therefore like to remind the Minister that Regulation 444/98 has numerous flaws that impede the fair exchange of fixed assets and even encourage unfair competition in the disposition of real property owned by school boards. The Ministry of Education should have the power to oversee the sale of fixed assets, since it is an impartial party whose focus is strictly on education, not on profit.

The school boards’ capital plans and priorities are based on the eligibility criteria of Ministry programs. When the TDSB or the TCDSB declares a property surplus, the Ministry should facilitate the efforts of the GTA’s two French-language boards to acquire it. The Ministry should allocate additional funding to meet the needs of the GTA’s two French-language school boards, since their enrolment is increasing each year, some areas of the city do not have French-language schools and the need is particularly serious at the secondary level.

82 This information was provided by the Ministry of Education.

83 *Ibid.*

84 Ministry of Education of Ontario, 2012: p. 7.

85 Ministry of Education, 2016a: p. 6.

Currently, the Ministry of Education has the authority to amend Ontario Regulation 444/98 in a manner that is consistent with the *Education Act* and does not grant the Minister additional powers. In other words, the regulation cannot be amended to give the Minister the authority to direct boards to sell specific sites or sites of a specific size. Nevertheless, the Ministry has a complete profile of every school in the province, including its occupancy rate. It could intervene directly with certain school boards and force them to sell some of their facilities. In the case of the TDSB and the TCDSB, the Ministry could “suggest” that they reorganize their attendance areas to reflect the needs of the two French-language boards in various parts of Toronto. Thus, the two French-language boards could satisfy their legal obligations and provide French-language education in areas that are currently not being served. This approach would also be economically viable for all parties, including the Ministry.

RECOMMENDATION 5

Considering that, in the process for disposing of school boards' surplus real property, there is still a lack of transparency and unfair competition between school boards is not penalized,

Considering the numerous obstacles that school boards' individual interests present to the fair exchange of surplus school properties,

Considering that all the schools in the school boards' property inventories, including surplus facilities, were paid for with public money during their construction,

The Commissioner reiterates his recommendation that the Minister of Education amend Ontario Regulation 444/98 – Disposition of Surplus Real Property to protect the integrity of school boards' property inventories. The Regulation should be amended so that

- (a) the Ministry of Education has the authority to direct school boards to sell unused or surplus sites in particular circumstances,**
- (b) the Ministry of Education sets limits on how long a school board can hold an unused or surplus property,**
- (c) the Ministry of Education sets limits on how long an offer to acquire a property is valid before a financial transaction takes place,**
- (d) the Ministry of Education introduces legislation to prohibit the practice of subdividing school lands, which creates unfair competition between the private sector and the school boards, with the aim of selling surplus buildings to private developers for a higher price than public bodies can afford,**
- (e) subdivided properties can only be offered to and purchased by school boards for educational purposes unless the Minister grants an exception, limited to particular circumstances,**
- (f) the Ministry of Education explores the possibility of reinstating the process under which surplus buildings can be transferred from one school board to another for the sum of \$1,**
- (g) the Ministry of Education amends the Regulation to better support more effective and efficient transactions between school boards, and**
- (h) the Ministry of Education produces, and makes public, regular reports on dispositions of surplus school properties.**

CONCLUSION: IT'S TIME FOR ACTION

In 2011, the FLSC sounded the alarm concerning the lack of access to minority-language education in the Greater Toronto Area, particularly at the secondary level. Five years later, despite some effort by the Ministry of Education to meet the Commissioner's expectations, the situation remains, unfortunately, virtually unchanged. First, the French-language school boards have still not received the resources they need to address the fast-growing demand in the GTA. Second, the boards are experiencing a dramatic decrease in enrolment due to transfers to majority-language schools between Grades 8 and 9 – a crucial point in students' education, where they are consolidating and honing their knowledge of the language, and also where their cultural identity is taking shape. As sociologist Mireille McLaughlin explains,

[Translation] **Fluency in French does not develop in adulthood.** In fact, studies of linguistic insecurity around the world show that **it tends to develop in adolescence.** Young people who feel comfortable speaking French are therefore more likely, when they reach adulthood, to want to transmit French to their children.⁸⁶

Only the French-language school, as a community institution, can perform this task of paramount importance in preventing assimilation. But as long as parents are unable to send their children to a school within a reasonable distance of their home, the French-language school boards will have difficulty retaining students through to graduation, jeopardizing the survival of the Franco-Ontarian community.

In Ontario, the Ministry of Education, as the body responsible for elementary and secondary education, has an obligation to uphold Ontarians' right to a French-language education under Section 23 of the Charter. That legal protection has been interpreted by Canada's highest court as an obligation for the provinces to provide minority-language school boards with the resources to provide access to education that is substantively equal and equivalent to the education available to the majority. To that end, the Minister of Education must do everything in its power to promote access to French-language instruction and to influence the most critical factor governing that access: proximity to French-language schools. It is imperative that the Minister take action without delay to provide the GTA's French-language school boards with the resources to address enrolment growth and retention challenges by improving access to and proximity of French-language schools in Toronto.

⁸⁶ Jean-Pierre Dubé, "Une nouvelle théorie pour transmettre la langue", Franco-Presse, February 2, 2016, available online: <http://francopresse.ca/index.cfm?id=69691&Voir=article> (page consulted in June 2016). Bolding added.

APPENDIX

Table 1: JK-12 enrolment in Ontario's French-language schools



Table 2: Enrolment in French-language schools by region

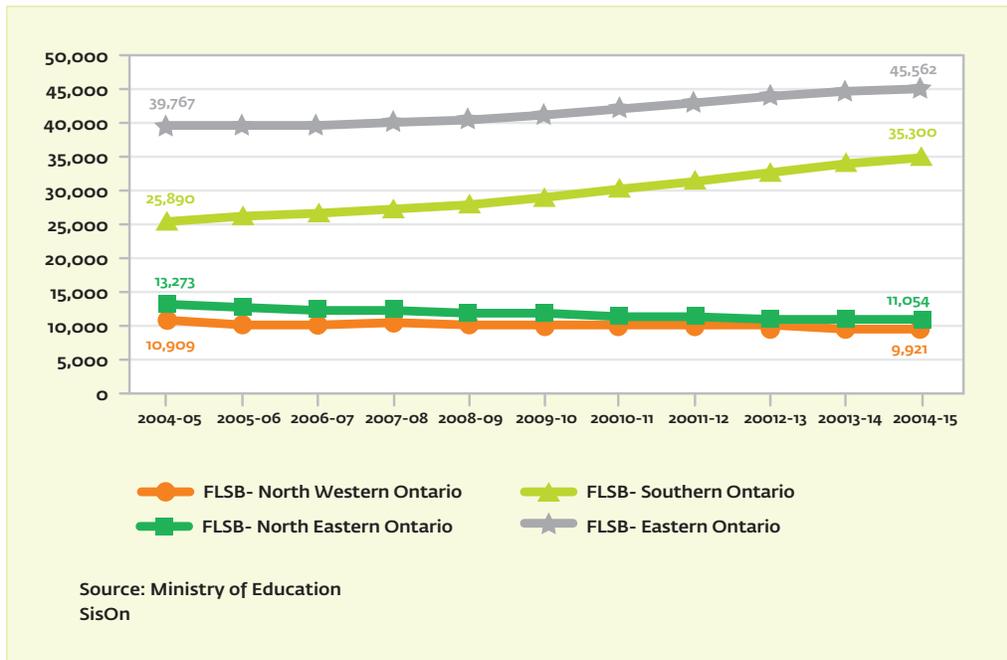


Table 3: Enrolment trend, 1998-1999 to 2014-2015 – Southern Ontario school boards

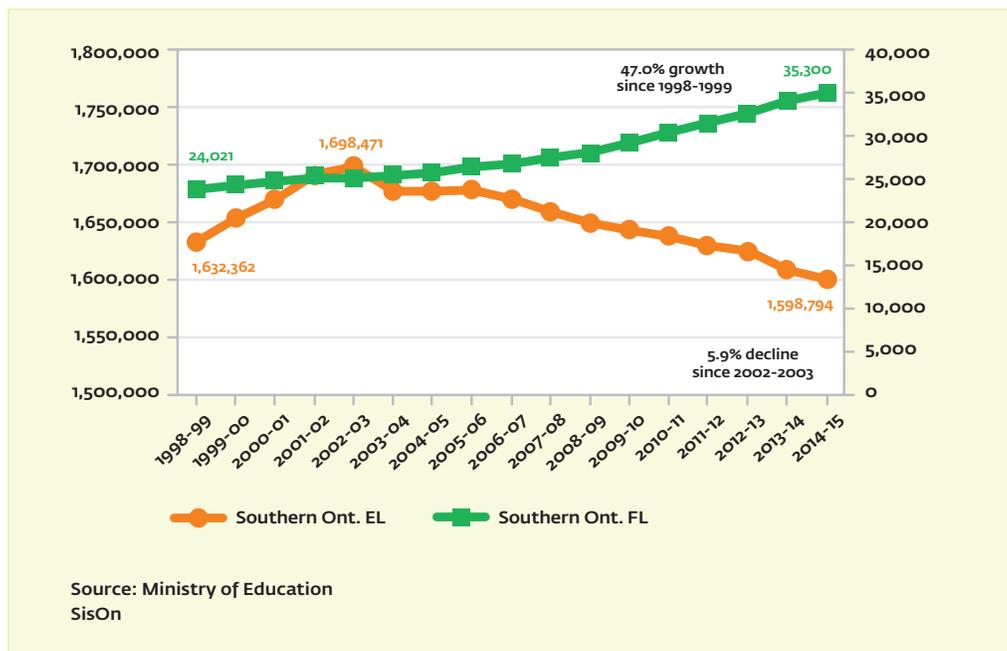


Table 4: Enrolment projections for Ontario's French-language schools, 2006-2036

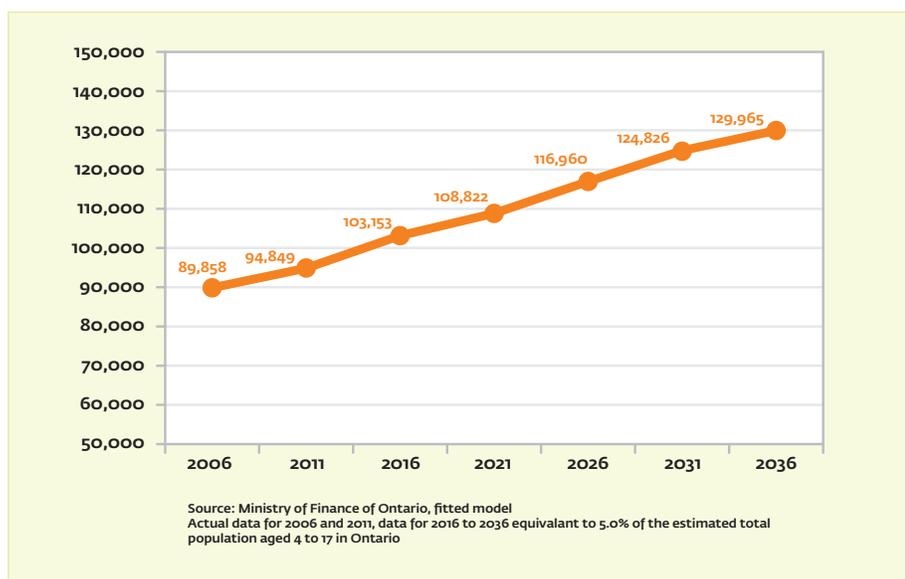


Table 5: Enrolment shortfall in 2014-2015 – Ontario's 12 French-language school boards

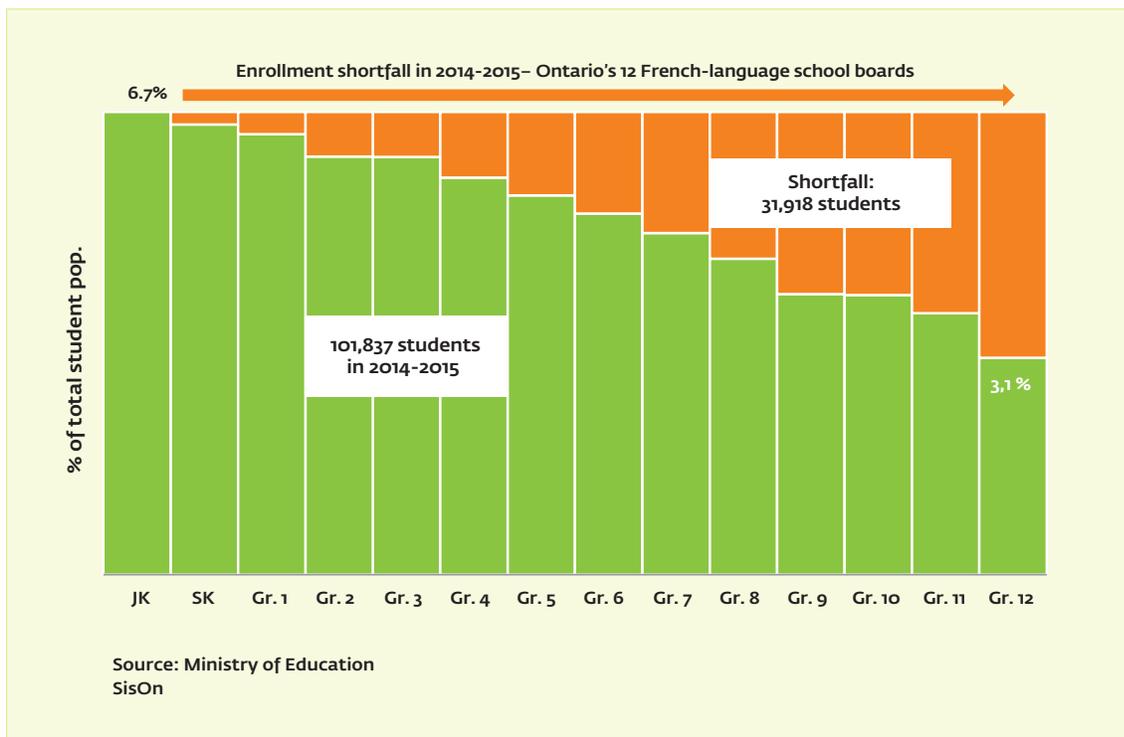


Table 6: Potential enrolment growth in 2014-2015 – Southern Ontario French-language school boards

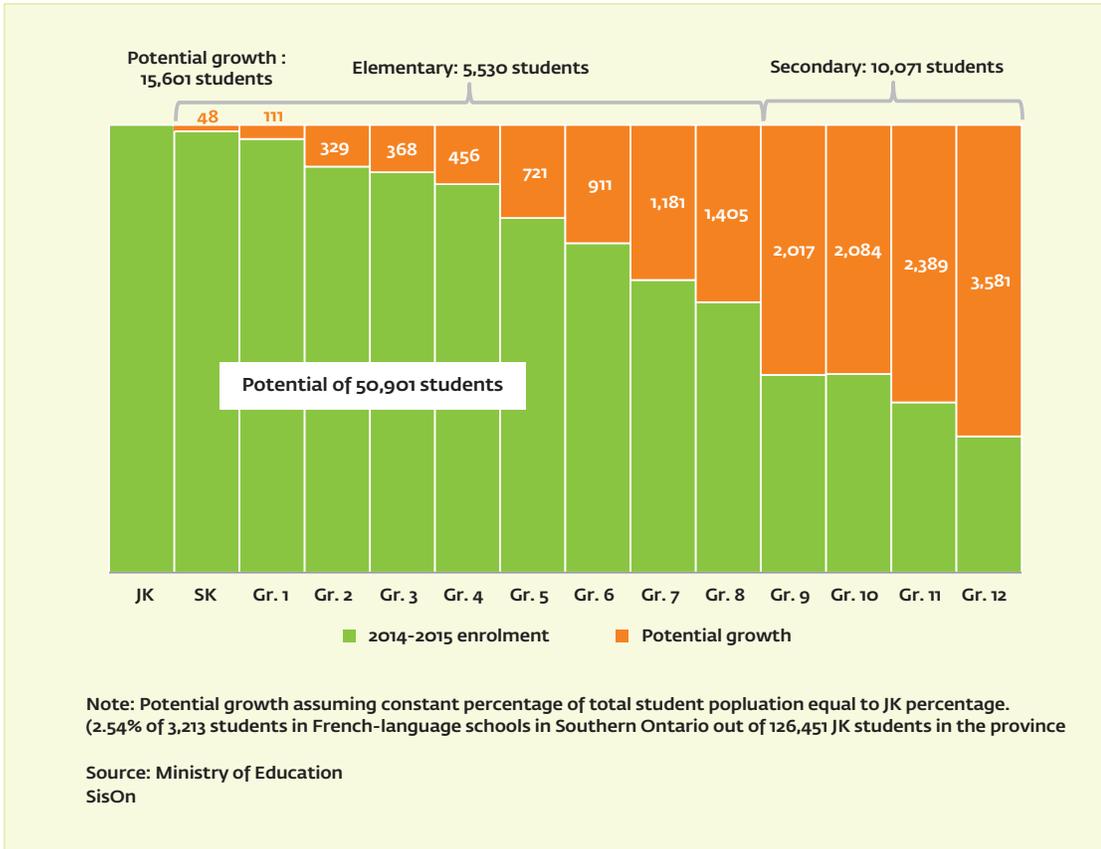


Table 7: Student transfers to English-language schools – 2011-2012 to 2012-2013, 3 Southern Ontario school boards

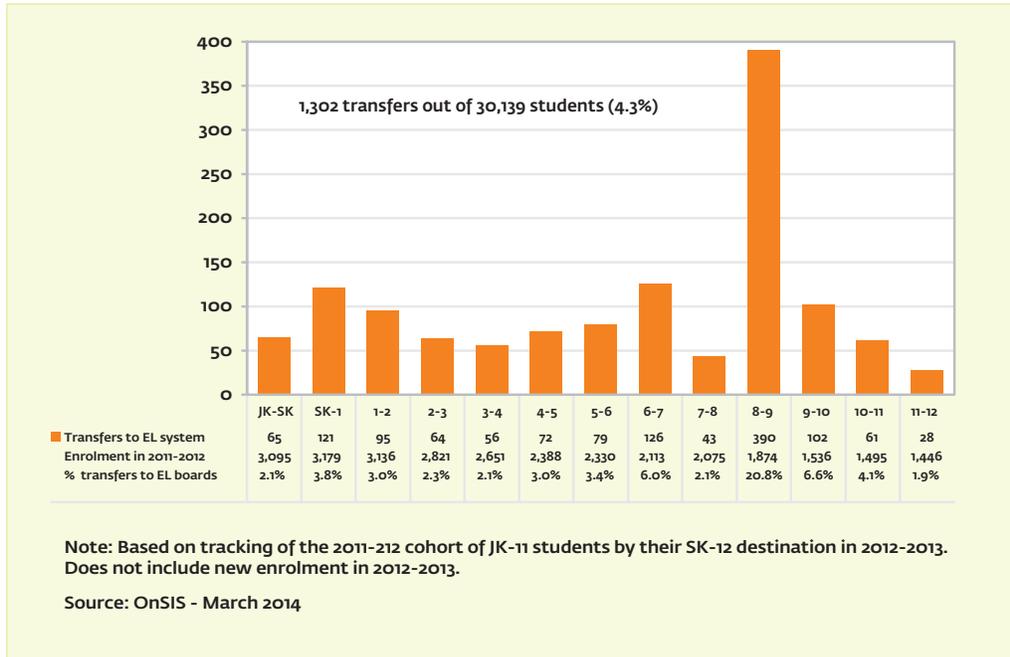


Table 8: Number and percentage of foreign-born students in Ontario's French-language elementary and secondary schools

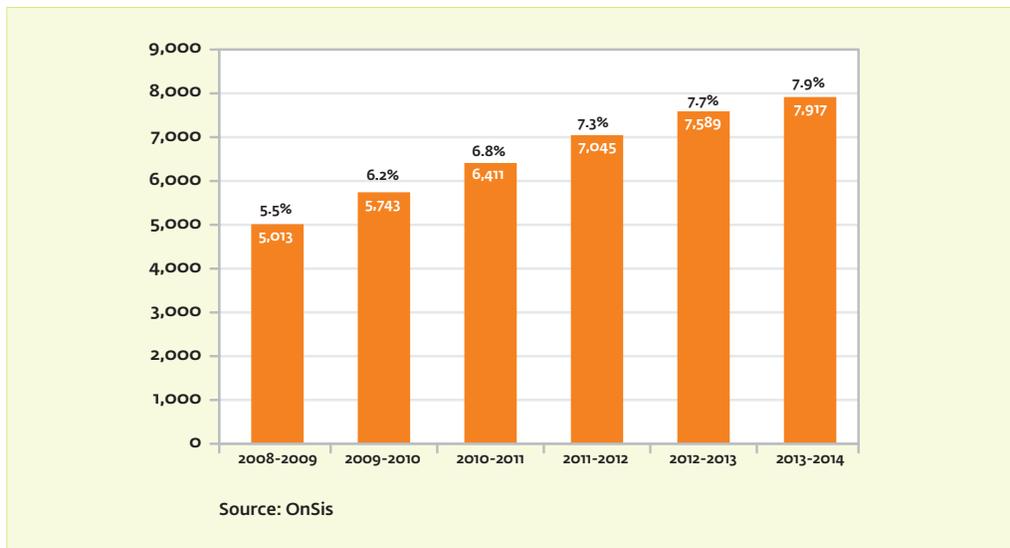


Table 9: First language learned for foreign-born students – Ontario's French-language elementary and secondary schools

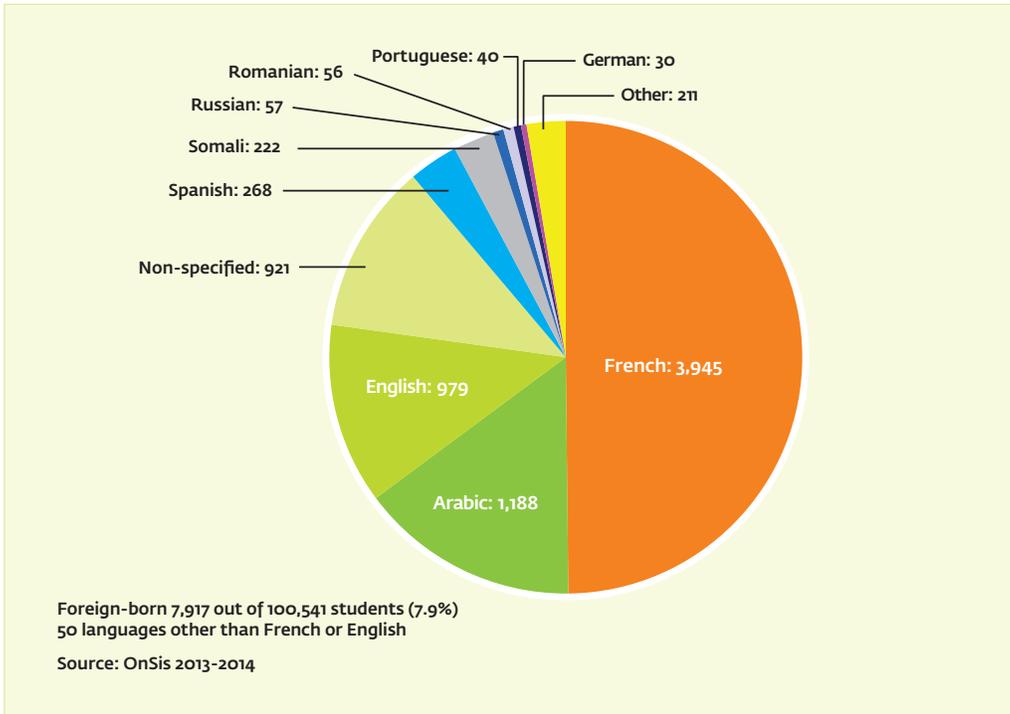


Table 10: Number of foreign-born students for a six-year period – Ontario's French-language school boards

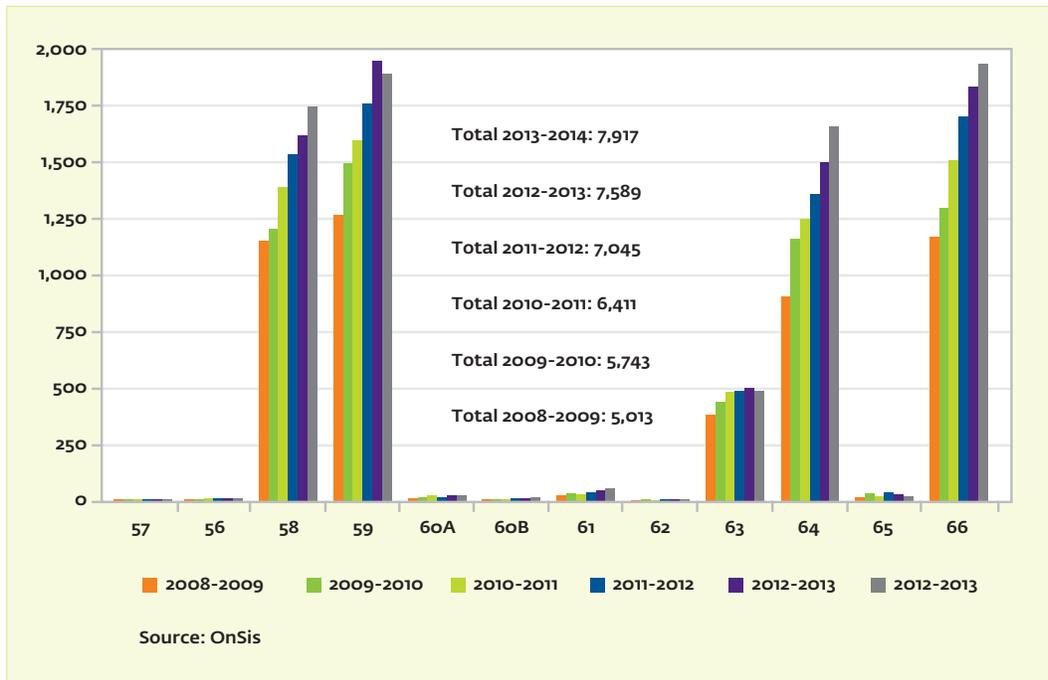
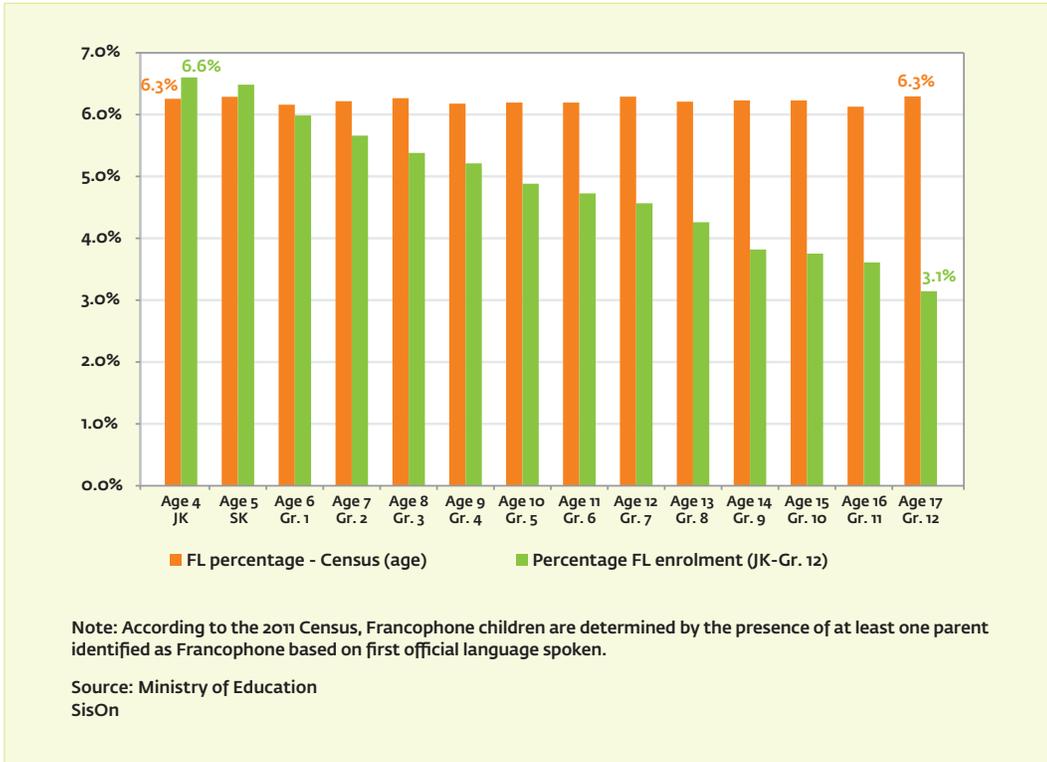


Table 11: Percentage of Francophone school-age children according to the 2011 Census, compared with the percentage of students in French-language schools in Ontario in 2011-2012



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