



ALGONQUIN AND LAKESHORE CATHOLIC DISTRICT SCHOOL BOARD

ADMINISTRATIVE PROCEDURES

EXPULSION HEARING AND RELATED MATTERS (Policy Statement: Caring and Safe Catholic Schools)

Purpose

To establish the process and requirements for conducting expulsion appeal meetings which is consistent with the requirements of the *Education Act* and the *Statutory Powers Procedure Act*.

References

Education Act, as amended and Regulations, O. Reg. 472/07, Suspension and Expulsion of Pupils Education Act, Sections 306, 307, 308, 312, 315; Regulations 37/01(2), 106/01
Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990
Statutory Powers Procedure Act, R.S.O. 1990, c. S 22

Procedures

1. Definitions

- 1.1 *Discipline Committee* means a committee of the Board established under *Education Act*, s.309 (12), and s.311.3 (9) that presides over expulsion hearings.
- 1.2 *OSR* is the Ontario Student Record
- 1.3 *SPPA* the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

2. Responsibility

Superintendent of School Effectiveness – Caring and Safe Catholic Schools

3. General Expulsion Hearing Procedure

- 3.1. General Purpose

These Rules are made pursuant to s. 25.1 of the *Statutory Powers Procedure Act*. The Rules apply in

respect of expulsion hearings conduct pursuant to the *Education Act*.

3.2. Application of the Rules

- a) The Discipline Committee may exercise any of its powers under these Rules on its own initiative or at the request of a party.
- b) The Discipline Committee may control its own processes.
- c) The Discipline Committee may waive application of or vary any of the Rules at any time, subject to limitations or restrictions in the *Education Act*.
- d) No Proceeding is invalid by reason only of a defect or other irregularity in form. Substantial compliance with a form, notice or document required under the *SPPA*, the *Education Act*, or these Rules, is sufficient to establish the validity of the form, notice or document.
- e) Where an issue arises which is not covered by these Rules, it shall be resolved in a manner consistent with the Rules, the purpose of the Rules, the *SPPA*, and the *Education Act*.

3.3. Liberal Construction of Rules

These Rules shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits.

3.4. Hearing Deadline

The Board shall not expel a pupil if more than 20 school days have expired since the pupil was suspended, unless the parties to the expulsion hearing agree on a later deadline.

3.4. Computation of Time

In the computation of time under these Rules or in a decision or order of the Discipline Committee,

- a) where the time for doing an act under these Rules expires on a holiday, the act may be done on the next day that is not a holiday;
- b) where a document would be deemed to be received on a holiday, it shall be deemed to be received on the next day that is not a holiday;
- c) a document received by a party or the Board after 4:00 p.m. shall be deemed to have been received on the next day that is not a holiday.

3.5. Waiver of Procedural Requirement

Any non-mandatory procedural requirements of the *SPPA* or the *Education Act* may be waived with the consent of all parties to the Proceeding. Any provision of these Rules, including the time for doing any act or thing, may be waived at the discretion of the Discipline Committee, upon its own motion or upon the application of any party.

3.6. Parties

The parties to an expulsion hearing are:

- a) the principal who suspended the pupil;

- b) the pupil, if
 - i) the pupil is at least 18 years of or older
 - ii) the pupil if 16 or 17 years old and has withdrawn from parental control
- c) the pupil's parent or guardian, if the pupil's parent or guardian appealed the decision to suspend the pupil; and
- d) in the event that a pupil does not have a parent or a formal guardian, such other persons as the Chair of the Hearing Committee in his or her discretion may direct.

3.7 Pupil Right to Attend

A pupil who is not a party to the expulsion hearing under the above subsection (under the age of 16) has the right to be present at the hearing and to make a statement on his or her own behalf.

3.8. Superintendent of School Effectiveness May Attend

The Superintendent of School Effectiveness responsible for the school(s) represented at the hearing has a right to be present at the hearing.

3.9. Right to Representation

A party to a Proceeding may be represented by counsel or an agent. In the event that a Parent/adult student retains either counsel or an agent, the cost of such services will be incurred at the Parent/adult student's own expense.

3.10 Hearing Closed to the Public

- a) Information relating to the education of an individual is personal information under sections 2(1) and 32 of the *Municipal Freedom of Information and Protection of Privacy Act* and there are restrictions on its disclosure.
- b) Section 207 (2) (b) of the *Education Act* gives the Board the authority to close a Committee proceedings to the public, if the subject under consideration involves the disclosure of personal information about an employee, student, parent, or guardian.
- c) Where approved by the Discipline Committee, the Expulsion Hearing will be closed to the public.

3.11 Conduct of the Hearing

- a) Hearings shall be conducted in accordance with the relevant provisions of the *Education Act* and the Regulations made under it, any applicable Ministry of Education Policy and Program Memoranda, the relevant provisions of the *Statutory Powers Procedure Act* and Board Policy.
- b) General guidelines for the conduct of the Hearing are set out in Appendix A.

4. Provisions Respecting the Board

4.1 The Role of the Discipline Committee

- a) The Board delegates its powers and duties to hear and determine a recommendation for expulsion to a Discipline Committee.
- b) The Discipline Committee shall consist of at least three (3) members of the Board.

- c) A Member of a Discipline Committee who has any direct involvement in a matter prior to the commencement of the Hearing shall disqualify himself/herself and will not take part in the Hearing, the deliberations, the decision and the reasons.
- d) A Member of a Discipline Committee who has not been present through the whole of the hearing shall not take part in the deliberations, the decision or the reasons.
- e) In reaching a decision, the Discipline Committee shall have regard only to the evidence, argument and submissions made at the hearing and the debate during the deliberations, and not to any information that may have come into its possession prior to or outside the course of the hearing itself.

4.2 Expiry of Term

If the term of office of a member of the Discipline Committee who has participated in a Hearing expires before a decision is given, the term shall be deemed to continue, but only for the purpose of participating in the decision and for no other purpose.

4.3 Incapacity of Member

If a member of the Discipline Committee who has participated in a Hearing becomes unable, for any reason, to complete the hearing or to participate in the decision, the remaining Trustee or Trustees may complete the hearing and give a decision.

5. Disclosure

5.1 Required Disclosure

Prior to the commencement of an expulsion hearing, each party shall provide to the other party (or parties if more than one) the following information:

- a) list of the witnesses that the party intends to call to give evidence in the Proceeding;
- b) a copy of the documents that the party intends to rely on at the Proceeding.

5.2 Chair of the Discipline Committee May Order Disclosure

The Discipline Committee, at the request of a party or on its own motion, and at any stage of the Proceeding before a hearing is complete, may make orders for,

- a) the exchange of documents;
- b) the oral or written examination of a party;
- c) the exchange of witness statements and reports of expert witnesses;
- d) the provision of particulars; and
- e) any other form of disclosure.

5.3 Exception to Disclosure

Section 4.32 does not authorize the making of an order requiring

- a) disclosure of privileged information;
- b) production of another student's OSR, such as the OSR of an alleged victim or witness; or

- c) any other disclosure that is contrary to law or that could jeopardize the safety of any individual.

5.4 Materials for the Hearing

Each party to the hearing is required to provide sufficient copies of all documents or other productions that it intends to rely on. A party should prepare a minimum of eight (8) copies for disclosure to the other party, the Discipline Committee and the Registrar. Materials presented shall be appropriately referenced with title and author and sufficient information to ensure the context is understood.

6. Notice of Hearing and Failure to Attend

6.1 Notice of Hearing

The parties to a proceeding shall be given reasonable notice of the hearing by the Board.

6.2 Notice of Expulsion Hearing

The Notice of Expulsion Hearing shall be sent to every person entitled to appeal the suspension and shall state:

- a) the date, time and place of the Hearing;
- b) the purpose of the Hearing;
- c) the Hearing is being held pursuant to the *Education Act* and the *Statutory Powers Procedure Act* (section 311.3 of the *Education Act*);
- d) if a party does not attend the Hearing, the Discipline Committee may proceed in their absence and determine the outcome of the expulsion without further notice of the proceeding;
- e) each party and his or her representative (lawyer or agent) are entitled to attend the Hearing.

6.3 Hearing Deadline

The Board shall not expel a pupil if more that 20 school days have expired since the pupil was suspended, unless the parties to the expulsion hearing agree on a later deadline.

7.0 Settlement Meeting

7.1 The current Superintendent of School Effectiveness – Caring and Safe Catholic Schools or his or her delegate shall be the person appointed by the Board for the purposes of conducting any settlement meetings prior to the commencement of the Expulsion Hearing by the Discipline Committee.

7.2 Settlement Meeting

- a) If possible, prior to the commencement of the Hearing by the Discipline Committee, the Superintendent of School Effectiveness responsible for the school shall convene a settlement meeting with Parties to the hearing and/or their representatives.
- b) The purpose of the above meeting is to hear the positions and interests of the Parties to the hearing and to attempt to reach a settlement of any or all of the issues in dispute and/or an agreement on any matters which may expedite the hearing.
- c) The communications of the Parties in this settlement process is privileged and shall not be

released to the Discipline Committee.

- d) In the event that the current Superintendent of School Effectiveness – Caring and Safe Catholic Schools conducts a settlement meeting, the said Superintendent shall not be called as a witness at the Hearing and the Superintendent shall not be involved as an advisor for one or other of the Parties to the Hearing.
- e) In the event that any of the issues in dispute have not been settled, the remaining issues in dispute will be dealt with by the Superintendent of School Effectiveness-Caring and Safe Catholic Schools. The Superintendent of Caring and Safe Catholic Schools shall have the power to make a decision on alternatives to expulsion, including alternative education arrangements for the pupil.
- f) If the Parties to the hearing reach agreement on all of the issues or some of the issues in dispute, the Parties shall sign a binding memorandum of settlement setting out their agreement.
- g) In the event that the Parties agree to either an expulsion from the pupil's school or an expulsion from all schools of the Board, this recommendation will be referred to the Discipline Committee for a determination. Only the Discipline Committee has the authority to expel a student from either his or her school or all schools of the Board.

8.0 Hearing

8.1 All hearings will be oral hearings.

8.2 Effect of Non-Attendance at a Hearing After Due Notice

A party to the hearing will not be entitled to any further notice in the Proceeding.

8.3 Transcript of Proceeding

There is no requirement that the Discipline Committee keep a transcript of the oral testimony given at the Hearing. The Discipline Committee may record the evidence given in a manner that will ensure an accurate reproduction. If necessary, a transcript can be made from this recording.

8.4 Maintenance of Order at Hearings

The Discipline Committee may make such orders or give such directions at a hearing, as it considers necessary for the maintenance of order at the Hearing. If any person disobeys or fails to comply with any order or direction given at a hearing, a Discipline Committee member may call for the assistance of any peace officer to enforce the order or direction.

8.5 Time Limitations

The Discipline Committee may impose reasonable time limits, so long as each of the parties is given an adequate opportunity to present its case. If the Discipline Committee fixes a time limit, that time limit will be announced to the parties at the onset of the Hearing. Should the Proceeding not conclude within the fixed limit, if any, the Discipline Committee will have regard to the schedules of the parties and their witnesses in fixing the adjourned date and time.

8.6 Documents to be Relied Upon During the Hearing

- a) In a hearing, all parties are entitled to receive every document a party intends to rely on.
- b) Such documents shall be provided to all parties prior to the commencement of the proceeding.

c) Each party shall provide 8 copies to the Discipline Committee at the hearing.

8.7 Summoning Witnesses

- a) To enable the parties to bring forth witnesses, the Board has the power to require any person, by summons, to give evidence orally or by production of documents, so long as the same are relevant to the subject matter of the proceeding and otherwise admissible in the Hearing.
- b) A party to the Proceeding may wish to summons a witness. If a party wishes to do so, they should inform the Registrar who will provide a blank summons. The party or his/her counsel will complete the summons and insert the name or names of the witness(es). The completed summons will be returned to the Registrar who will have the summons signed by the Chair or Vice-Chair of the Board. The party or his/her counsel will arrange for proper service of the summons to the witness and will provide appropriate attendance money to each witness.

8.8 Examination of Witnesses

Subject to any limitation determined by the Discipline Committee, a party to a Proceeding may,

- a) call and examine witnesses and present evidence and submissions; and
- b) conduct cross-examinations of witnesses at the Hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the Proceeding.

8.9 Questions in Redirect and From the Board

- a) Subject to any limitations determined by the Discipline Committee, a party is entitled to question a witness in redirect after cross-examination.
- b) The Discipline Committee may ask questions of a witness.

8.10 Limitation on Examination and Cross-examination

The Discipline Committee may reasonably limit the number of witnesses, and further examination or cross-examination of a witness, where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the Proceeding.

8.11 Limitation of Evidence

The Discipline Committee may exclude any evidence which it believes to be unduly repetitious.

8.12 Right of a Witness to Counsel

A witness at a hearing is entitled to be advised by his or her own counsel or an agent as to his or her rights but such counsel or agent may take no other part in the Hearing without leave of the Discipline Committee.

8.13 Protection of Witnesses

A witness shall be deemed to have objected to answer any question asked him or her on the ground that the answer may tend to incriminate him or her or may tend to establish his or her liability to civil proceedings at the instance of the Crown, or of any person, and no answer given by a witness at a

hearing shall be used or be receivable in evidence against the witness in any trial or proceeding against him or her thereafter taking place, other than a prosecution for perjury in giving such evidence.

8.14 Correcting Minor Errors

The Chair of the Discipline Committee may at any time and without prior notice to the parties correct a technical or typographical error or similar minor error made in the decision or order, and may clarify a misstatement, ambiguity or other similar problem.

8.15 Deliberations and Decision of the Discipline Committee

- a) The Discipline Committee will assess the evidence as provided by the parties, and determine whether, on a balance of probabilities, it is more probable than not that the student did engage in the prohibited activity or prohibited activities alleged by the Principal.
- b) In making a determination, the Discipline Committee will take into account:
 - i. the relevant evidence
 - ii. all submissions and views of the parties, including their views as to whether the pupil, if expelled, should be expelled from his or her school only or from all schools of the Board;
 - iii. any mitigating or other factors prescribed by the regulations; and
 - iv. any written response to the principal's report recommending expulsion that a person gave to the Board before the completion of the hearing.
- c) At the hearing, the Discipline Committee will:
 - i. consider the submissions of each party;
 - ii. solicit the views of all the parties as to whether the pupil, if he or she is expelled, should be expelled from his or her school only or from all schools of the Board; and
 - iii. solicit the views of all the parties as to whether, if the pupil is not expelled, the Discipline Committee should confirm the suspension originally imposed under section 310 of the *Education Act*, confirm the suspension but reduce its duration or withdraw the suspension.
- d) After completing the hearing, the Discipline Committee will decide:
 - i. whether to expel the pupil; and
 - ii. if the pupil is to be expelled, whether the pupil is expelled from his or her school only or from all schools of the Board.
- e) If the Discipline Committee expels a pupil, the Discipline Committee will assign the pupil to,
 - i. in the case of a pupil expelled from his or her school only, another school of the Board; and
 - ii. in the case of a pupil expelled from all schools of the Board, a program for expelled pupils.
- f) If the Discipline Committee does not expel a pupil, it will, with respect to the suspension originally imposed under section 310 of the *Education Act*:
 - i. confirm the suspension and the duration of the suspension;
 - ii. confirm the suspension, but shorten its duration, even if the suspension that is under appeal has already been served, and order that the record of the suspension be amended accordingly; or
 - iii. quash the suspension and order that the record of the suspension be expunged, even if the suspension that is under appeal has already been served.
- g) In determining which action to take under item 6 above, the Discipline Committee will take into account:
 - i. any submissions made by the parties as to whether the suspension and its duration should be confirmed, the suspension should be confirmed but its duration reduced or the suspension should be withdrawn;

- ii. any mitigating or other factors prescribed by the regulations.
- h) The decision of a majority of the members of the Discipline Committee is the decision of the Board.
- i) The Discipline Committee has the power to reserve its decision.
- j) The decision of the Discipline Committee shall be in writing and signed by the Chair of the Discipline Committee. When requested by a party, the Discipline Committee shall give written reasons.
- k) Copies of the decision and order, along with its reasons, if requested, shall be sent to all parties to the proceedings who took part in the hearing at their respective addresses last known to the Board.
- l) If the Discipline Committee decides not to expel, the Discipline Committee's decision regarding the suspension is final.
- m) There is a right of appeal to the Child and Family Services Review Board from a Discipline Committee's decision to expel a student, either from his/her school only, or from all schools of the Board.

9.0 Assignment to a Program for Expelled Students

9.1 If the Hearing Committee expels a pupil, the Committee shall assign the pupil to:

- a) in the case of a pupil expelled from his or her school only, another school of the board; and
- b) in the case of a pupil expelled from all schools of the board, a program for expelled pupils.

9.2 Assignment to Another Board School:

Where an expelled student who is transferred to another school requires additional support and resources, the Board shall endeavour to provide appropriate support and/or facilitate the student's referral to community agencies.

9.3 Discipline and Safety Requirements:

Prior to entry into a program for expelled pupils, each pupil, if applicable, and the pupil's parent or guardian in the case of pupils under the age of eighteen shall sign a written Agreement agreeing to attend the program for expelled pupils and agreeing to be bound by the discipline and safety requirements set out in Appendix B and in the Agreement in Appendix C. The requirement for the signature of a parent or guardian shall be waived for pupils who are 16 or 17 years of age and who have withdrawn from parental control.

9.4 Student Action Plan (SAP):

A Student Action Plan (SAP) shall be developed for every pupil who has been assigned to a program for expelled pupils provided the necessary written commitment to attend the program and to be bound by the discipline and safety requirements has been obtained.

9.5 Planning Meeting:

The Principal shall hold a planning meeting in accordance with the relevant provisions of PPM #142 for holding such planning meetings. A precondition for the said planning meeting is the obtaining of

the necessary written commitment to attend the program and to be bound by the discipline and safety rules.

10. Return to School After Expulsion:

10.1 Status of Expelled Pupil (*Education Act*, s. 313):

- a) An expelled pupil continues to be a pupil of the board that expelled him or her if the pupil attends a program for expelled pupils,
 - i) offered by that board; or
 - ii) offered by another board under an agreement between that board and the board that expelled the pupil.
- b) An expelled pupil ceases to be a pupil of the board that expelled him or her if,
 - i) the pupil is assigned by that board to a program for expelled pupils and does not attend the program; or
 - ii) the pupil registers as a pupil of another board.

10.2 Return to School after Expulsion (*Education Act*, s. 314.1, 314.2 & 314.3):

- a) A pupil who has been expelled from all schools of a board is entitled to be readmitted to a school of the board if the pupil has, since being expelled,
 - i) successfully completed a program for expelled pupils; or
 - ii) satisfied the objectives required for the successful completion of a program for expelled pupils.
- b) The determination of whether an expelled pupil has completed the program for expelled students or has satisfied the objectives required for successful completion of a program is to be made by a person who provides a program for expelled pupils.
- c) An expelled pupil may apply in writing to the current Superintendent of School Effectiveness – Caring and Safe Catholic Schools to be readmitted to a school of the board and, if the pupil has completed a program for expelled students or has satisfied the objectives required for successful completion of a program, the board shall,
 - i) re admit the expelled pupil to a school of the board; and
 - ii) promptly inform the pupil in writing of his or her re-admittance.
- d) An expelled pupil who has been expelled from one school of the Board may apply in writing to the current Superintendent of School Effectiveness – Caring and Safe Catholic Schools to be reassigned to the school from which he or she was expelled.

10.3 Expelled Pupils from Other Boards (*Education Act*, s. 314):

- a) If a pupil who has been expelled from one board registers as a pupil of this Board, the Board may,
 - i) assign the pupil to a school of the Board; or
 - ii) assign the pupil to a program for expelled pupils, unless the pupil has completed a program for expelled students or has satisfied the objectives required for successful completion of a program.
- b) If the Board assigns the expelled pupil to a school without knowing that he or she has been expelled by another board, the Board may subsequently remove the pupil from the school and assign him or her to a program for expelled pupils, subject to the following conditions:
 - i) The Board must assign the pupil to a program for expelled pupils promptly on learning that he or she has been expelled from another board.

- ii) The Board shall not assign the pupil to a program for expelled pupils if the pupil has completed a program for expelled students or has satisfied the objectives required for successful completion of a program.

11. Violent Incident Reporting (PPM 120 and PPMs 144 and 145):

- 11.1 The information relating to a suspension for violent behaviour shall not be removed from the OSR unless three consecutive years have passed during which no further suspensions for serious violent incidents have taken place (or for one year if the suspension was quashed or withdrawn and the record of suspension was expunged).
- 11.2 Information relating to pupil expulsion shall not be removed from the expelled pupil's OSR Folder until five years after the date on which the Board expelled the pupil.
- 11.3 Where an expelled pupil has been readmitted to a school in Ontario, and is expelled again, the information relating to the expulsions shall not be removed from the expelled pupil's OSR Folder until five consecutive years have passed without any further expulsion.
- 11.4 Where the student has not been suspended or expelled, the Violent Incident Form shall be removed after three years if no further serious violent incident is reported to the police during that time.
- 11.5. If the student transfers to another school, the information in the OSR relating to the serious violent incident that led to suspension or expulsion, as well as to a report to the police, will remain in the OSR unless removed under 11.1-11.4 above.
- 11.6 Violent Incident is defined in PPM 120 as the occurrence of any one or more of the following:
- possessing a weapon, including possessing a firearm;
 - physical assault causing bodily harm requiring medical attention
 - sexual assault
 - robbery
 - using a weapon to cause or to threaten bodily harm to another person
 - extortion
 - hate and/or bias-motivated occurrences

Appendices

Appendix 1: General Guidelines for the Conduct of the Hearing
Appendix 2: Discipline and Safety Rules for the Expelled Pupil's Program
Appendix 3: Agreement
Appendix 4: Discipline and Safety Requirements for Program Participants
Appendix 5: Other Requirements for Program Participants

Forms

Approved: October 25, 2011

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