

Toronto District School Board

Operational Procedure PR.522 SCH

Title: **SUSPENSIONS APPEALS AND EXPULSIONS HEARINGS**

Adopted: December 1999

Revised: **January 30, 2008**

Authorization:

1.0 OBJECTIVE

To establish the rules of procedure for suspension appeals and expulsion hearings

2.0 DEFINITIONS

Education Act the *Education Act, R.S.O. 1990, c.E.2*

Chair Chair of the Board, or delegate

Committee a committee of the Board; established under authority of the *Education Act*, s.309 (12), and s.311.3 (9)

School day a school day as defined under O. Reg. 304, as a day that is within a school year and is not a school holiday

Director Director of Education, or delegate

Hearing a hearing in any proceeding and includes:

- an oral hearing, where parties and witnesses give evidence and submissions in person before a Committee
- a written hearing, where evidence and submissions are tended by way of the exchange of documents in writing
- an electronic hearing, where evidence and submissions are given by parties and/or witnesses through teleconferencing or video conferencing

OSR Ontario Student Record

Parent includes one or both parents, and one or more guardians, of a student, as the case requires

Party means:

- the student who is at least 18 years old
- the Parent of the student if the student is a minor

- the principal whose decision is being appealed or who has referred the matter to the Board (*Act* s.309 (8), s.311(2))
- the student who is sixteen (16) or seventeen (17) years of age and has withdrawn from parental control

Proceeding includes:

- a hearing regarding an appeal against a decision by a principal to impose a suspension
- a hearing regarding a referral by the principal of a matter of expulsion of a student
- a preliminary, procedural or interlocutory matter as part of any one of the foregoing

Proceeding chair the chair of the committee, or the sole trustee assigned to hear the proceeding;

SPPA the *Statutory Powers Procedure Act, R.S.O. 1990, c. S.22*

3.0 RESPONSIBILITY

Associate Director

4.0 PROCEDURE

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Appendix A: Questions and Answers re Appealing A Suspension

Appendix B: Questions and Answers re An Expulsion Hearing

Appendix C: Questions and Answers re Appealing An Expulsion Decision Of The Board

Appendix D: What you need to know about suspension appeals and expulsion hearings

1. GENERAL

1.1 General Purpose

These Rules are made pursuant to s. 25.1 of the *Statutory Powers Procedure Act, R.S.O. 1990, c. S.22*. The rules apply to proceedings under the *Education Act, R.S.O. 1990, CHAPTER E.2*. The purpose of these Rules is to ensure that parties to a proceeding receive procedural fairness and the rules of natural justice are observed. The Rules are intended to assist the Board in providing a just, efficient, expeditious and accessible process to those involved in a proceeding before the Board.

1.2 Application of the Rules

- (a) The Board may exercise any of its powers under these Rules on its own initiative or at the request of a Party.
- (b) The Board may control its own processes, and may issue practice directions as it sees fit. (*SPPA*, s.25.0.1)
- (c) The Board may waive application of or vary any of the Rules at any time, subject to considerations of procedural fairness, and consistency with the *SPPA* and the *Education Act*.
- (d) The Board may amend the Rules from time to time.
- (e) 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. (*SPPA*, s.28)
- (f) 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*. (*SPPA*, s.25.1(3))

1.3 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. (*SPPA*, s.2)

1.4 Computation of Time

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

- (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, which is not a holiday.

1.5 Waiver of Procedural Requirement

Any procedural requirements of the *SPPA*, the *Act*, or any legislation, which applies to a proceeding, may be waived with the consent of all parties to the Proceeding and the Board. Any provision of these Rules, including the time for doing any act or thing, may be waived at the discretion of the Board, upon its own motion or upon the application of any party. (*SPPA*, s. 4)

1.6 Adding a Student as a Party

The Board may add a student as a party to a proceeding.

1.7 Pupil May Attend

A pupil who is not a party to a Hearing under s. 309 (8) or s. 311.3 (3) of the *Education Act*, has the right to be present at the Hearing and to make a statement on his or her behalf.

1.8 Different Kinds of Hearing in one Proceeding

The Board may, in a Proceeding, hold any combination of written, electronic and oral hearings. (*SPPA*, s.5.2.1)

1.9 Right to Representation

A Party to a Proceeding may be represented by counsel or an agent. (*SPPA*, s. 10) 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.

2. PROVISIONS RESPECTING THE BOARD

2.1 The Role of the Committee of the Board

- (a) The Board shall hear and determine a suspension appeal or a recommendation for expulsion, and for that purpose, the Board has powers and duties set out in its Policy.
- (b) The Board may delegate its powers and duties to hear and determine a suspension appeal or expulsion proceeding to a Committee of the Board.
- (c) The Committee of the Board shall consist of at least three (3) members of the Board.
- (d) A Member of a 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.
- (e) A Member of a Committee who has not been present through the whole of the hearing shall not take part in the deliberations, the decision or the reasons.
- (f) In reaching a decision, the 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.

2.2 Expiry of Term

If the term of office of a member of the 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. (*SPPA*, s.4.3)

2.3 Incapacity of Member

If the term of office of a member of the 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. (*SPPA*, s.4.4 (1))

3. DECISION NOT TO PROCESS COMMENCEMENT OF PROCEEDING

3.1 Decision Not to Process Commencement of Proceeding

Subject to paragraph 3.3, upon receiving documents relating to the commencement of a Proceeding, the Board or a safe schools administrator may decide not to process the documents relating to the commencement of the Proceeding if,

- (a) the documents are incomplete;
- (b) the documents are received after the time required for commencing the Proceeding has elapsed; or
- (c) there is some technical defect in the commencement of the Proceeding (*SPPA*, s.4.5(1))

3.2 Notice of Decision

The Board or the appropriate safe schools administrator shall give the party who commences a Proceeding notice of the decision under paragraph 3.1 and shall set out in the notice the reasons for the decision and the requirements for resuming the processing of the documents. (*SPPA*, s.4.5 (2))

3.3 Resumption of Processing

The processing of the documents may be resumed:

- (a) when the documents are complete;
- (b) after the Chair in his/her discretion extends the time for commencing the Proceeding; or
- (c) if the technical defect identified by the Board or the safe schools administrator is remedied.

4. DISMISSAL OF PROCEEDING WITHOUT HEARING

4.1 When the Board May Dismiss Without Hearing

Subject to paragraph 4.5, the Board may dismiss a Proceeding without a hearing if,

- (a) the Proceeding is frivolous, vexatious or is commenced in bad faith;

- (b) the Proceeding relates to matters that are outside the jurisdiction of the Board; or
- (c) some aspect of the statutory requirements for bringing the Proceeding has not been met. (*SPPA*, s.4.6(1))

4.2 Notice of Intention to Dismiss

Before dismissing a Proceeding under paragraph 4.1, the Board shall give notice of its intention to dismiss the Proceeding to,

- (a) all parties to the Proceeding if the Proceeding is being dismissed for reasons referred to in clause 4.1(b); or
- (b) the party who commenced the Proceeding if the Proceeding is being dismissed for any other reason. (*SPPA*, s.4.6(2))

4.3 Content of Notice

The notice of intention to dismiss a Proceeding shall set out the reasons for the dismissal and inform the parties of their right to make written submissions to the Board with respect to the dismissal within the time specified in the notice. (*SPPA*, s.4.6 (3))

4.4 Right to Make Submissions

A party who receives a notice under paragraph 4.2 may make written submissions to the Board with respect to the dismissal within the time specified in the notice. (*SPPA*, s.4.6 (4))

4.5 Dismissal

The Board shall not dismiss a Proceeding under this section until it has given notice under paragraph 4.2 and considered any submissions made under paragraph 4.4. (*SPPA*, s.4.6 (5))

5. PRE-HEARING CONFERENCES

5.1 Pre-Hearing Conferences

The Board, at the request of a Party or on its own motion, may direct the parties to participate in a pre-hearing conference to consider,

- (a) the settlement of any or all of the issues;

- (b) the simplification of the issues;
- (c) facts or evidence that may be agreed upon;
- (d) the dates by which any steps in the Proceeding are to be taken or begun;
- (e) the estimated duration of the Hearing; and
- (f) any other matter that may assist in the just and most expeditious disposition of the Proceeding. (*SPPA*, s.5.3(1))

5.2 Who Presides

The Chair may designate a Trustee or any other person to preside at the pre-hearing conference. (*SPPA*, s.5.3(2))

5.3 Orders at Pre-Hearing Conference

A Trustee who presides at a pre-hearing conference may make such orders as he or she considers necessary or advisable with respect to the conduct of the Proceeding, including adding parties. (*SPPA*, s.5.3(3))

5.4 Disqualification

A Trustee, who presides at a pre-hearing conference at which the parties attempt to settle issues, shall not preside at the hearing of the Proceeding unless the parties consent. (*SPPA*, s.5.3(4))

6. **DISCLOSURE**

6.1 Required Disclosure

Unless otherwise ordered by the Board, prior to the commencement of a suspension appeal, each Party shall provide to the other Party (or parties if more than one) and to the Board the following information:

- a copy of documents that each Party intends to rely on at the Proceeding.

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

- a list of the witnesses that the party intends to call to give evidence in the Proceeding.

6.2 Board May Order Disclosure

Subject to the provisions of applicable legislation respecting disclosure of personal information, the Board, 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. (*SPPA*, s.5.4(1))

6.3 Exception to Disclosure

Paragraph 6.2 does not authorize the making of an order requiring

- (a) disclosure of privileged information; (*SPPA*, s.5.4(2))
- (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.

6.4 Materials for the Hearing

- (a) 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 Committee, Counsel to the Committee and the safe schools administrator. Materials presented shall be appropriately referenced with title and author and sufficient information to ensure the context is understood.

6.5 Where Character, Conduct or Competence of a Party is in Issue

- (a) Where the good character, propriety of conduct or competence of a party is an issue in a Proceeding, the party is entitled to be furnished prior to the Hearing, with reasonable information of any allegations with respect thereto. (*SPPA*, s.8)

- (b) In the case of a student, the disclosure of the Principal's Report shall be deemed to be compliance with the requirements of clause 6.4(a).

6.6 Alibi Defence

- (a) Where a student intends to rely on an alibi defence he/she shall disclose this to the principal at least five days prior to the hearing.

7. NOTICE OF HEARING AND FAILURE TO ATTEND

7.1 Notice of Hearing

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

7.2 Oral Hearing

A notice of an oral hearing shall include:

- (a) reference to the statutory authority under which the Hearing will be held (i.e. section 309 or 311.3 of the *Education Act*);
- (b) a statement of the time, place and purpose of the Hearing; and
- (c) a statement that if the party notified does not attend at the Hearing, the Committee may proceed in the Party's absence and the Party will not be entitled to any further notice in the Proceeding. (*SPPA*, s.6(1))

7.3 Written Hearing

A notice of a written hearing shall include:

- (a) reference to the statutory authority under which the Hearing will be held (i.e. section 309 or 311.3 of the *Education Act*);
- (b) a statement of the date and purpose of the Hearing, and details about the manner in which the Hearing will be held;
- (c) a statement that the Hearing shall not be held as a written hearing if the Party satisfies the Board that there is good reason for not holding a written hearing (in which case the Board is required to hold it as an electronic or oral hearing) and an indication of the procedure to be followed for that purpose; and

- (d) a statement that if the Party notified neither acts under clause 7.2(c) nor participates in the Hearing in accordance with the notice, the Board may proceed without the Party's participation and the Party will not be entitled to any further notice in the Proceeding. (*SPPA*, s.6(4))

7.4 Electronic Hearing

A notice of electronic hearing shall include:

- (a) reference to the statutory authority under which the Hearing will be held (i.e. section 309 or 311.3 of the *Education Act*);
- (b) a statement of the time and purpose of the hearing, and details about the manner in which the hearing will be held;
- (c) a statement that the only purpose of the Hearing is to deal with procedural matters, if that is the case;
- (d) if clause 7.4(c) does not apply, a statement that the Party notified may, by satisfying the Board that holding the hearing as an electronic hearing is likely to cause the Party significant prejudice, require the Board to hold the hearing as an oral hearing, and an indication of the procedure to be followed for that purpose; and
- (e) a statement that if the party notified neither acts under clause 7.4(d), if applicable, nor participates in the Hearing in accordance with the notice, the Board may proceed without the Party's participation and the Party will not be entitled to any further notice in the Proceeding. (*SPPA*, s.6(5))

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

- (a) With respect to an oral hearing, where notice of a Hearing has been given to a Party in accordance with these Rules, and the Party does not attend at the Hearing, the Board may proceed in the absence of the Party, and the Party is not entitled to any further notice in the Proceeding. (*SPPA*, s.7(1))
- (b) With respect to a written hearing, where notice of a Hearing has been given to a Party in accordance with these Rules, and the Party neither acts under clause 7.3(c) nor participates in the Hearing in accordance with the notice, the Board may proceed without the Party's participation and the Party will not be entitled to any further notice in the Proceeding. (*SPPA*, s.7(2))
- (c) With respect to an electronic hearing, where notice of a Hearing has been given to a Party in accordance with these Rules, and the Party neither acts under clause 7.4(d), if applicable, nor participates in the Hearing in accordance with the notice,

the Board may proceed without the Party's participation and the Party will not be entitled to any further notice in the Proceeding. (*SPPA*, s.7(3))

8. WRITTEN HEARINGS GENERALLY

8.1 Board May Hold a Written Hearing

The Board, at the request of a Party, or on its own motion, may hold a written hearing.

8.2 Exception

The Board shall not hold a hearing in writing if a Party satisfies the Board that there is good reason for not doing so. (*SPPA*, s.5.1(2))

8.3 Exception Not Applicable Where Procedural Only

Paragraph 8.2 does not apply if the only purpose of the hearing is to deal with procedural matters. (*SPPA*, s.5.1(2.1))

8.4 Time Limit for Seeking Electronic or Oral Hearing

A party who wishes to satisfy the Board that there is good reason for not holding a hearing in writing shall provide such reason to the Board in writing:

- (a) in the case of an appeal of a suspension, within five (5) school days after receipt of the notice of hearing; and
- (b) in the case of an expulsion referral, within five (5) days after receipt of the notice of hearing.

8.5 Determination by the Board

The Board shall determine whether a Party has satisfied the Board that there is good reason for not holding a written hearing.

8.6 Documents

In a written hearing, all the parties are entitled to receive every document that the Board receives in the Proceeding. (*SPPA*, s.5.1(3))

9. ELECTRONIC HEARINGS GENERALLY

9.1 Board May Hold an Electronic Hearing

The Board, at the request of a Party, or on its own motion, may hold an electronic hearing.

9.2 Exception

The Board shall not hold an electronic hearing if a Party satisfies the Board that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice. (*SPPA*, s.5.2(2))

9.3 Exception Not Applicable Where Procedural Only

Paragraph 9.2 does not apply if the only purpose of the hearing is to deal with procedural matters. (*SPPA*, s.5.2(3))

9.4 Determination by the Board

The Board shall determine whether a party has satisfied the Board that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.

9.5 Procedure at Electronic Hearing

At the commencement of the hearing and so often thereafter as may seem just in the circumstances:

- (a) the Proceeding Chair shall ascertain who is present electronically;
- (b) the Proceeding Chair shall require each participant to prohibit any person other than:
 - a Party, and such Party's counsel or agent, and
 - witnesses while giving evidence,
- (c) from listening to anything disclosed at the Hearing without the express prior approval of the Proceeding Chair;
- (d) the Proceeding Chair shall require all participants to notify the Proceeding Chair before any person present electronically leaves the hearing, and in default of any

such notification, such person shall be deemed for all purposes to have been present throughout the whole of the hearing; and

- (e) the procedure followed in an electronic hearing shall comply with the requirements of section 10, and, as far as is feasible and practical, otherwise follow the same process as would be followed in the case of an oral hearing.

10. PROVISIONS FOR BOTH ORAL AND ELECTRONIC HEARINGS

10.1 Privacy of the Hearing

The Committee may order that the Hearing be held *in camera* where matters involving public security may be disclosed or where intimate financial, personal or other matters may be disclosed. (*SPPA*, s.9(1))

10.2 Transcript of Proceeding

There is no requirement that the Committee keep a transcript of the oral testimony given at the Hearing. However, in event that further proceedings are taken as a result of the Hearing, the Committee may find it useful to record the evidence given in a manner that will ensure an accurate reproduction. If necessary, a transcript can be made from this recording.

10.3 Maintenance of Order at Hearings

The Board may make such orders or give such directions at an oral or electronic 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 Committee member may call for the assistance of any peace officer to enforce the order or direction. (*SPPA*, s.9(2))

10.4 Time Limitations

The Committee may impose reasonable time limits, so long as each of the parties is given an adequate opportunity to present its case. If the 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 Committee will have regard to, if possible, the schedules of the parties and their witnesses in fixing the adjourned date and time.

10.5 Documents to be Relied Upon During Hearing

- (a) In an electronic or oral hearing, all the parties are entitled to receive every document a Party intends to rely upon. Such documents shall be provided to all parties and the appropriate safe schools administrator prior to the commencement of the Proceeding.
- (b) In an oral hearing, if the documents are not provided to the parties and the appropriate safe schools administrator in advance of the Hearing, a party may attend with eight (8) copies of the documents, and seek leave of the Committee to admit the documents.

10.6 Subpoenaing Witnesses

- (a) To enable the parties to bring forth witnesses, the Committee 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 subpoena a witness. If a party wishes to do so, they should inform the appropriate safe schools administrator who will contact the Board's Legal Services Department to obtain a blank summons signed by the Chair or Vice-Chair of the Board. The party or his/her counsel will complete the summons and insert the name or names of the witness(es). The party or his/her counsel will arrange for proper service of the summons to witness and will provide appropriate attendance money to each witness.

10.7 Examination of Witnesses

Subject to the limitation set out in paragraphs 10.9 and 10.10, 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. (*SPPA*, s.10.1)

10.8 Questions in Reply and From the Board

Subject to paragraph 10.9, all witnesses in a Hearing shall be subject to questions in reply, and questions by the Board.

10.9 Limitation on Examination and Cross-examination

The 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. (*SPPA*, s.23(2))

10.10 Limitation of Evidence

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

10.11 Right of a Witness to Counsel

A witness at an oral or electronic hearing is entitled to be advised by 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 Committee. (*SPPA*, s.11(1))

10.12 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. (*SPPA*, s.14(1))

11. APPEAL OF A DECISION TO SUSPEND A STUDENT

11.1 Who May Appeal a Suspension

The following persons may appeal, to the Board, a principal's decision to suspend a pupil under section 306:

1. The pupil's parent or guardian, unless,
 - (i) the pupil is at least 18 years old, or
 - (ii) the pupil is 16 or 17 years old and has withdrawn from parental control.
2. The pupil, if,
 - (i) the pupil is at least 18 years old, or

- (ii) the pupil is 16 or 17 years old and has withdrawn from parental control;
- 3. Such other persons as may be specified by Board policy.

11.2 Board Designate

The Board designates the superintendent of education responsible for the relevant school for the purpose of receiving notices of intention to appeal a suspension.

11.3 Notice of Appeal

A person who is entitled to appeal a suspension under subsection 309 (1) of the *Education Act* must give written notice of his or her intention to appeal to the appropriate superintendent of education within 10 school days of the commencement of the suspension.

11.4 Board to Inform All Parties

After receiving a notice of intention to appeal, the Board will promptly contact every person entitled to appeal the suspension under subsection 309 (1) and inform him or her that it has received the notice of intention to appeal.

11.5 Suspension Appeal Process

(a) Parties to the Appeal

The parties to the appeal are:

- (i) The principal who suspended the pupil.
- (ii) The pupil, if,
 - the pupil is at least 18 years old, or
 - the pupil is 16 or 17 years old and has withdrawn from parental control.
- (i) The pupil's parent or guardian, if the pupil's parent or guardian appealed the decision to suspend the pupil.
- (ii) The person who appealed the decision to suspend the pupil, if the decision was appealed by a person other than the pupil or the pupil's parent or guardian.
- (iii) Such other persons as may be specified by Board policy.

(b) Hearing of the Appeal

The Board will hear and determine the appeal within 15 school days of receiving notice of suspension, unless the parties agree on a later deadline, and will not refuse to deal with the appeal on the ground that there is a deficiency in the notice of appeal.

(c) Content of Notice of Appeal

An appeal of the decision to suspend a student will be in writing, and the notice of appeal will include the specific reasons for the appeal, including why the party believes that the suspension should not have been imposed, or why the length of the suspension should be altered.

(d) Receipt of Notice

Where notice is given, it shall be considered to have been received by the person in accordance with the following rules:

- (i) If the notice is sent by mail or another method in which an original document is sent, the notice shall be considered to have been received by the person to whom it was sent on the fifth school day after the day on which it was sent.
- (i) If the notice is sent by fax or another method of electronic transmission, the notice shall be considered to have been received by the person to whom it was sent on the first school day after the day on which it was sent.

(e) Timing of the Appeal

- (i) Written notification of the appeal of the decision to suspend a student shall be delivered to the appropriate superintendent of education within 10 school days of the commencement of the suspension. This notification must be delivered in one of the following ways: hand delivery, courier, facsimile transmission or any other way agreed upon by the parties.
- (ii) The superintendent of education will send a return letter which acknowledges receipt of the notice of appeal.
- (iii) The superintendent of education will forward a copy of the appeal notice with a copy of a letter of response to the appropriate safe schools administrator.

(f) Appellant Bears Onus of Proof

In an appeal of the decision to suspend a student, the appellant (parent or adult student) shall bear the onus of proof.

(g) Order of Presentation

Where the Committee hears an appeal of the decision to suspend a student either electronically or orally, the appellant shall proceed first in the calling and examination of witnesses and presentation of evidence and submissions, and the principal shall be the second to do so, unless the parties agree otherwise.

(h) Guidelines to Complete a Suspension Appeal

Under section 16.2 of the SPPA, a tribunal shall establish guidelines setting out the usual timeframe for completing proceedings that come before the tribunal and for completing the procedural steps within those proceedings. In hearing and determining a suspension appeal, the following guidelines will apply for completing a suspension appeal:

- (i) Five minute introduction of the parties and the Committee of the Board, with discussion on the issue or issues to be addressed by the Committee;
- (ii) Ten minute presentation by the appellant in presenting evidence and submissions on behalf of the pupil;
- (iii) Ten minute presentation by the principal in presenting evidence and submissions on behalf of the School; and
- (iv) Five minute questions and answer session by the Committee. Caucus, deliberations and decision by the Committee. The Committee has the power to reserve its decision.

(i) Adjournments

The Committee may adjourn the appeal from time to time on its own motion or on request by either party where it is satisfied that the adjournment is required to permit an adequate hearing to be held.

(j) Pupil May Attend

A pupil who is not a party to the appeal has the right to be present at the appeal and to make a statement on his or her own behalf.

11.6 Deliberations and Decision of the Board

- (a) The 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 commit the infraction.
- (b) Where the Committee determines that the student committed the infraction, the Committee will determine whether the principal considered the mitigating factors and/or other factors set out by regulation and Board policy. If the principal failed to consider the mitigating factors and/or other factors then the Committee shall do so.
- (c) Following the hearing, the Committee will decide to:
 - (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.
- (d) The decision of a majority of the members of a committee, is the Board's decision. The decision of the Board is final.
- (e) The Committee has the power to reserve its decision.
- (f) The decision of the Committee shall be in writing and signed by the Chair of the Committee. When requested by a party, the Committee shall give written reasons.
- (g) 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.

12. **REFERRAL OF AN EXPULSION MATTER TO THE BOARD**

12.1 Referral to Board

Following an investigation, if the principal is satisfied that the student committed an infraction to which expulsion is warranted, the principal will:

- (a) Notify the appropriate superintendent of education and safe schools administrator of the decision to refer the matter to the Board for a hearing; and
- (b) Notify the parent/adult student who is 16 or 17 and has withdrawn from parental control in writing of the decision to refer the matter to the Board for a hearing.

12.2 Content of Referral

A principal who refers a matter under s.311.1 of the *Education Act* shall deliver the following to the appropriate superintendent of education and safe schools administrator:

- (a) a copy of the Notice of the Suspension Pending Expulsion that is the subject of the referral;
- (b) a copy of the completed principal's report; and
- (c) a copy of the letter notifying the Parent/adult student/student who is 16 or 17 and has withdrawn from parental control of the principal's recommendation.

12.3 Timing of the Hearing

A hearing will be held by the Committee within 20 school days since the pupil was suspended, unless the parties to the expulsion hearing agree to a later deadline.

12.4 Adjournments

- (a) The Committee may adjourn the hearing to a date later than the date referred to in paragraph 12.3 with the consent of the parties.
- (b) In extreme circumstances, such as where the student is incarcerated and cannot attend a hearing within the deadline referred to in paragraph 12.3, the Committee may adjourn the hearing without consent.
- (c) In all adjournments, the suspension pending expulsion shall continue in effect until the conclusion of the hearing and the decision of the Board.

12.5 Parties

The parties to the expulsion hearing are:

- (a) The principal.
- (b) The pupil, if,
 - (i) the pupil is at least 18 years old, or

- (ii) the pupil is 16 or 17 years old and has withdrawn from parental control.
- (c) The pupil's parent or guardian, unless,
 - (i) the pupil is at least 18 years old, or
 - (ii) the pupil is 16 or 17 years old and has withdrawn from parental control.
- (d) Such other persons as may be specified by Board policy.

12.6 Pupil May Attend

A pupil who is not a party to the expulsion hearing has the right to be present at the hearing and to make a statement on his or her own behalf.

12.7 Committee

The Board may authorize a committee of at least three members of the Board to exercise and perform powers and duties on behalf of the Board, and may impose conditions and restrictions on the committee.

12.8 Principal Bears Onus of Proof

In a recommendation by a principal to expel a pupil, the principal shall bear the onus of proof.

12.9 Order of Presentation

Where a Committee hears a recommendation of a principal to expel a pupil either electronically or orally, the principal will proceed first in calling witnesses and presentation of evidence and submissions and the parent/adult student/student who is 16 or 17 and has withdrawn from parental control will proceed second, unless the parties agree otherwise.

12.10 Deliberations and Decision of the Board

- (a) The 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 commit the infraction.
- (b) Where the Committee determines that the student committed the infraction, the Committee will determine whether the principal considered the mitigating factors or other factors set out by the regulations. If the principal failed to consider the mitigating factors or other factors then the Committee shall do so.

- (c) At the hearing, the Board will:
 - (i) consider the submissions of each party in whatever form the party chooses to deliver his or her submissions, whether orally, in writing or both;
 - (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 Board should confirm the suspension originally imposed under section 310, confirm the suspension but reduce its duration or withdraw the suspension.
- (d) In making a determination, the Board will take into account:
 - (i) 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;
 - (ii) any mitigating or other factors prescribed by the regulations; and
 - (iii) any written response to the principal's report recommending expulsion that a person gave to the Board under subsection 311.1 (7) of the *Education Act* before the completion of the hearing.
- (e) After completing the hearing, the Board 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.
- (f) If the Board does not expel a pupil, it will, with respect to the suspension originally imposed under section 310:
 - (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 paragraph (f) above, the Board 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) After determining which action to take under paragraph (f) above, the Board will give written notice containing the following to every person who was entitled to be a party to the expulsion hearing:
 - (i) A statement indicating that that the pupil is not expelled.
 - (ii) A statement indicating whether the Board has confirmed the suspension and its duration, confirmed the suspension but reduced its duration or withdrawn the suspension.
- (i) The decision of a majority of the members of a panel is the Board's decision.
- (j) The Committee has the power to reserve its decision.
- (k) The decision of the Committee shall be in writing and signed by the chair of the Committee. When requested by a party, the Committee shall give written reasons.
- (l) 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.

12.11 If Pupil is Expelled

- (a) If the Board Expels a Pupil

If the Board expels a pupil, the Board shall assign the pupil, to,

- (i) in the case of a pupil 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.
- (b) Notice of Expulsion

The Board will ensure that written notice of the expulsion is given promptly to,

- (i) all the parties to the expulsion hearing; and
 - (ii) the pupil, if the pupil was not a party to the expulsion hearing.
- (c) Contents of Notice

The notice under paragraph 12.11 (b) must include the following:

- (i) The reason for the expulsion.
- (ii) A statement indicating whether the pupil is expelled from his or her school only or from all schools of the Board.

Information about the school or program for expelled pupils to which the pupil is assigned.

Information about the right to appeal, including the steps that must be taken to appeal.

13. APPEAL OF THE BOARD'S EXPULSION DECISION

13.1 Introduction

Pursuant to subsection 311.7(1) of the *Education Act* and Regulation 472/07 under the Act, an appeal of a Board's expulsion decision is to the Child and Family Services Review Board ("CFSRB") in accordance with the Rules of Procedure of the CFSRB, and Regulations 303/01 under the *Child and Family Services Act*.

13.2 Who May Appeal an Expulsion

The following persons may appeal the Board's decision to expel a pupil, whether the pupil is expelled from his or her school only or from all schools of the Board, to the designated tribunal:

- (a) The pupil's parent or guardian, unless,
 - (i) the pupil is at least 18 years old, or
 - (ii) the pupil is 16 or 17 years old and has withdrawn from parental control.
- (b) The pupil, if,
 - (i) the pupil is at least 18 years old, or

- (ii) the pupil is 16 or 17 years old and has withdrawn from parental control.
- (c) Such other persons as may be specified by the designated tribunal.

13.3 Designated Tribunal

The CFSRB is designated for the purposes of the definition of “designated tribunal” under the *Education Act* to hear appeals of board decisions to expel students.

13.4 Notice of Appeal

- (a) To appeal the Board’s decision to expel a pupil, a person who is entitled to appeal the decision shall give the CFSRB a written notice of appeal within 30 days after the date on which he or she is considered, in accordance with the rules set out in subsection 300 (3) of the *Education Act*, to have received the notice given under subsection 311.6 (1) of the Act.
- (b) The CFSRB may extend the period of time for giving the written notice of appeal, before or after the expiry of the period, if it is satisfied that there are reasonable grounds for the extension.
- (c) The notice of appeal shall,
 - (i) set out the date of the decision that is being appealed;
 - (ii) set out the name of the board that made the decision;
 - (iii) state whether the decision expels the pupil from his or her school only or from all schools of the board; and
 - (iv) be in a form acceptable to the CFSRB.
- (d) The CFSRB shall not refuse to deal with an appeal on the ground that there is a deficiency in the content or form of the notice of appeal.

13.5 Parties to the Appeal

The parties to the appeal are:

- (a) The Board.
- (b) The pupil, if,
 - (i) the pupil is at least 18 years old, or
 - (ii) the pupil is 16 or 17 years old and has withdrawn from parental control.

- (c) The pupil's parent or guardian, if the parent or guardian appealed the decision.
- (d) The person who appealed the decision to expel the pupil, if the decision was appealed by a person other than the pupil or the pupil's parent or guardian.

13.6 Hearing of Appeal

- (a) The CFSRB shall commence a hearing within 30 days after receiving a written notice of appeal.
- (b) The CFSRB may extend the period of time for commencing the hearing, before or after the expiry of the period at the request of any party to the appeal.
- (c) A pupil whose expulsion is being appealed has the right to be present at the hearing and to make a statement on his or her own behalf, whether or not the pupil is a party to the appeal.
- (d) After hearing an appeal from a decision of a board, the CFSRB shall do one of the following:
 - (i) Confirm the Board's decision to expel the pupil.
 - (ii) If the Board's decision was to expel the pupil from his or her school only, quash the expulsion and reinstate the pupil to the school.
 - (iii) If the Board's decision was to expel the pupil from all schools of the Board,
 - change the expulsion to an expulsion from the pupil's school only, or
 - quash the expulsion and reinstate the pupil to his or her school.
- (e) The CFSRB shall provide each party, or the party's counsel or agent, with,
 - (i) its decision on the appeal within 10 days after completing the hearing; and
 - (ii) written reasons for its decision within 30 days after completing the hearing.
- (f) If the CFSRB changes an expulsion from all schools of the Board to an expulsion from the pupil's school only or quashes an expulsion and reinstates the pupil to his or her school, it may order that any record of the expulsion of the pupil be expunged or amended if the designated tribunal considers it appropriate in the circumstances.

The practice of the CFSRB is to conduct a *trial de novo*, effectively a full re-hearing of the case. The decision of the CFSRB is final.

5.0 APPENDICES

Appendix A: Questions and Answers re Appealing A Suspension

Appendix B: Questions and Answers re An Expulsion Hearing

Appendix C: Questions and Answers re Appealing An Expulsion Decision Of The Board

Appendix D: What you need to know about suspension appeals and expulsion hearings

6.0 REFERENCE DOCUMENTS

Board documents

Policy P.051: Safe Schools

Policy P.044: Code of Conduct

Operational Procedure PR.586: Programs for Students on Long-term Suspensions and Expulsions

Other documents

Education Act, R.S.O. 1990, CHAPTER E.2

Statutory Powers Procedure Act, R.S.O. 1990, c. S.22

O. Reg. 472/07, Suspension and Expulsion of Pupils

Questions and Answers re Appealing A Suspension

It is a basic principle of the law that persons facing disciplinary consequences be treated fairly. Procedural fairness requires that the disciplinary consequences to a student be imposed by a school administrator who conducts an investigation in an impartial and fair manner. This includes:

- the right to know what rule has been violated and what conduct he/she is being accused of; and
- the opportunity to respond to the allegations against him/her – to tell his/her side of the story.

The following is a guideline regarding the rules of procedure for a suspension appeal. A suspension appeal will be heard by a Committee of the Board of Trustees that will consist of at least 3 Trustees.

What types of decisions can the Committee make when a suspension is appealed?

Following the suspension appeal hearing, the Committee can make only one of the following decisions:

- confirm the suspension and the duration of the suspension;
- confirm the suspension, but shorten its duration and order that the record of suspension be amended accordingly; or
- quash the suspension and order that the record of suspension be expunged.

Does the appeal of a suspension delay the suspension?

No. Even if there is an appeal, the suspension must still be served by the student.

Who are the parties to the hearing?

A “party” to a hearing is a person who has a legal right to participate in the hearing. The parties to a suspension appeal hearing are:

- the parent/guardian of a student under the age of 18;
- an adult student;
- a student who is 16 or 17 years old and has withdrawn from parental control; and/or
- the school principal.

Can the student who has been suspended attend the hearing even if he or she is not a party?

Yes. The student named in the suspension has the right to be present at the hearing and to make a statement on his or her behalf.

Does every party have a right to representation?

Yes. A party to the hearing may be represented by counsel or an agent. Counsel is a lawyer. An agent may be a trusted family friend, a religious advisor or other person who can assist with the presentation of the case.

What is the role of the Committee?

The Committee will hear and determine an appeal. Members of the Committee who may have had any direct involvement in the matter prior to the suspension appeal hearing will disqualify themselves and will not take part in the hearing, the deliberations, the decision or the reasons. Members of the Committee who have not been present for the whole hearing will not take part in the deliberations, the decision or the reasons.

Is there a requirement for each party to provide its evidence to the Committee and to the other party before the hearing?

Yes. Unless otherwise ordered by the Committee, prior to the commencement of the hearing, each party will provide to the Committee, and to the other party, a copy of the documents that the party intends to rely on at the hearing.

Will the hearing be held in private?

Yes. The Committee will normally order that the hearing will be held in private session, unless there is an objection by one of the parties.

When will a suspension appeal hearing take place?

The Committee will hear and determine a suspension appeal within 15 school days of receiving the notice of appeal, unless the parties agree otherwise.

What is the order of presentation at the hearing?

When the Committee hears an appeal of the decision to suspend a student, the parent or adult student will be the first party to present evidence and make submissions, and the principal will present evidence and make submissions after the parent or adult student, unless the parties agree otherwise.

How will the suspension appeal hearing be organized?

In a suspension appeal hearing, the following guidelines will apply:

- (a) The parties cannot call witnesses to give evidence. If a party requires evidence from a witness to present its case, the witness' evidence may be presented to the Committee by a sworn affidavit from the witness.
- (b) Five minute introduction of the Committee and the parties. The Committee will consult with the parties to determine, and narrow, the facts and issues in dispute;

- (c) Ten minute presentation by the parent or adult student to present evidence and make submissions on behalf of the student;
- (d) Ten minute presentation by the principal to present evidence and make submissions on behalf of the School; and
- (e) Five minute question and answer session by the Committee. Caucus, deliberations and decision by the Committee. The Committee has the power to reserve its decision.

What if translation or interpretation services are required?

If translation or interpretation services are required, the time limit in each step may be altered.

What will the Committee consider to make its decision?

The 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 committed the infraction. If the Committee determines that the student committed the infraction, the Committee will determine whether the principal considered the mitigating factors or other factors prescribed by the regulations. If the principal failed to consider the mitigating factors or other factors, then the Committee will do so.

Can the Committee reserve its decision?

Yes. The Committee has the power to reserve its decision to take more time for its deliberations and conclusions.

Will the Committee issue a decision in writing?

Yes. The decision of the Committee will be in writing and signed by the Chair of the Committee. A copy of the decision will be sent to all parties to the proceeding who took part in the hearing at their respective addresses last known to the Board.

Is the Committee's decision final?

Yes, the Committee's decision is final.

Questions and Answers re An Expulsion Hearing

It is a basic principle of the law that persons facing disciplinary consequences be treated fairly. Procedural fairness requires that the disciplinary consequences to a student be imposed by a school administrator who conducts an investigation in an impartial and fair manner. This includes:

- the right to know what rule has been violated and what conduct he/she is being accused of; and
- the opportunity to respond to the allegations against him/her – to tell his/her side of the story.

The following is a guideline regarding the rules of procedure for an expulsion hearing. An expulsion hearing will be heard by a Committee of the Board of Trustees that will consist of at least 3 Trustees.

Who are the parties to the hearing?

A “party” to a hearing is a person who has a legal right to participate in the hearing. The parties to an expulsion hearing are:

- the parent/guardian of a student under the age of 18;
- an adult student;
- a student who is 16 or 17 years old and has withdrawn from parental control; and/or
- the school principal.

Can the student who has been suspended attend the hearing even if he or she is not a party?

Yes. The student named in the expulsion referral has the right to be present at the hearing and to make a statement on his or her behalf.

Does every party have a right to representation?

Yes. A party to the hearing may be represented by counsel or an agent. Counsel is a lawyer. An agent may be a trusted family friend, a religious advisor or other person who can assist with the presentation of the case.

What is the role of the Committee?

The Committee will hear and determine whether a student will be expelled. Members of the Committee who may have had any direct involvement in the matter prior to the Principal’s decision to refer the matter for an expulsion hearing will disqualify themselves and will not take part in the hearing, the deliberations, the decision or the reasons. Members of the Committee who have not been present for the whole hearing will not take part in the deliberations, the decision or the reasons.

Is there a requirement for each party to provide its evidence to the Committee and to the other party before the hearing?

Yes. Unless otherwise ordered by the Committee, before the hearing begins, each party will provide to the Committee and to the other party the following information:

- a list of the witnesses that the party intends to call to give evidence in the proceeding; and
- a copy of documents that the party intends to rely on at the hearing.

Will the hearing be held in private?

The Committee will normally order that the hearing will be held in private session, unless there is an objection by one of the parties.

When will an expulsion hearing take place?

A hearing will be held by the Committee within 20 school days since the student was suspended, unless the parties to the hearing agree otherwise.

What is the order of presentation at the hearing?

When the Committee hears a recommendation of a principal to expel a student, the principal will be the first party to call and examine witnesses, present evidence, and make submissions to the Committee. The parent or adult student will call and examine witnesses, present evidence, and make submissions to the Committee after the principal, unless the parties agree otherwise.

How will the expulsion hearing be organized?

The Chair of the Committee introduces the matter and the parties appearing. The Chair sets out the process for the Committee. The process includes:

- opening statement by the principal, counsel or agent;
- opening statement by the parent/guardian/adult student or counsel/representative;
- Committee consults with the parties to determine, and narrow, the facts and issues in dispute;
- a presentation of evidence, including witnesses, by the principal, counsel or agent;
- cross-examination by the parent/guardian/adult student or counsel/representative;
- re-examination;
- questions or points of clarification, through the Chair, by the Committee, on the principal's presentation;
- a presentation of evidence, including witnesses, by the parent/guardian/adult student or counsel/representative;
- cross-examination by principal, counsel or agent;
- re-examination;
- questions or points of clarification, through the Chair, of the presentation of the student/parents;
- summation by the principal, counsel or agent;
- summation by the parent/guardian/adult student or counsel/representative;

- a statement by the student, if the student chooses to make a statement to the Committee, when the student is not a party and attends the hearings;
- reply by the principal, counsel or agent;
- statement by legal counsel to the Committee on responsibilities of the Committee;
- Committee debates the issue in private and comes to a decision;
- In the event that the recommendation for expulsion is accepted, any motion passed in the private session would be read to the parties in open session; and
- The director and secretary-treasurer of the Board or designate will inform the student/parent of the decision of the Board.

What will the Committee consider to make its decision?

The 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 committed the infraction. If the Committee determines that the student committed the infraction, the Committee will determine whether the principal considered the mitigating factors or other factors prescribed by the regulations. If the principal failed to consider the mitigating factors or other factors, then the Committee will do so.

The Committee will also consider the parties' submissions on whether the student should be expelled from his or her school only, or from all schools of the Board, and the parties' submissions on whether, if the student is not expelled, the Board should confirm the suspension, confirm the suspension but shorten its duration, or withdraw the suspension.

What types of decisions can the Committee make?

After completing the hearing, the Committee will decide:

- (a) whether to expel the student; and
- (b) if the student is to be expelled, whether the student is expelled from his or her school only or from all schools of the Board.

What if the Committee decides to expel the student?

If the Committee expels a student, the Committee will assign the student to:

- (a) in the case of a student expelled from his or her school only, another school of the Board; and
- (b) in the case of a student expelled from all schools of the Board, a program for expelled students.

What if the Committee decides not to expel the student?

If the Committee does not expel a student, with respect to the original suspension, it will:

- (a) confirm the suspension and the duration of the suspension; or

- (b) confirm the suspension, but shorten its duration, even if the suspension has already been served, and order that the record of the suspension be amended accordingly; or
- (c) quash the suspension and order that the record of the suspension be expunged, even if the suspension has already been served.

Can the Committee reserve its decision?

Yes. The Committee has the power to reserve its decision to take more time for its deliberations and conclusions.

Will the Committee issue a decision in writing?

Yes. The decision of the Committee will be in writing and signed by the Chair of the Committee. When requested by a party, the Committee will give written reasons. Copies of the decision, along with written reasons if requested, will be sent to all parties who took part in the hearing at their respective addresses last known to the Board.

Is the Committee's decision final?

No, not if the Committee decides to expel the student, either from his or her school only, or from all schools of the Board. There is a right of appeal to the Child and Family Services Review Board.

However, if the Committee decides not to expel the student, the Committee's decision regarding the suspension is final.

Questions and Answers re Appealing An Expulsion Decision Of The Board

In accordance with the *Education Act* and its Regulations, an appeal of a school board expulsion decision is to the Child and Family Services Review Board (the “CFSRB”). The CFSRB has its own Rules of Procedures for hearings conducted under the *Education Act*. A copy of these Rules of Procedures can be obtained from the CFSRB directly (general inquiry: 416-327-4673).

The following is a guideline to an appeal of a school board expulsion:

Who may appeal an expulsion?

The following persons may appeal the Board’s decision to expel a student, whether the student is expelled from his or her school only or from all schools of the Board, to the CFSRB:

- (a) The student’s parent or guardian, unless,
 - (i) the student is at least 18 years old, or
 - (i) the student is 16 or 17 years old and has withdrawn from parental control.
- (b) The student, if,
 - (i) the student is at least 18 years old, or
 - (ii) the student is 16 or 17 years old and has withdrawn from parental control.
- (c) Such other persons as may be specified by the CFSRB.

What is the timeframe to file an appeal?

To appeal the Board’s decision to expel a student, a person who is entitled to appeal the decision shall give the CFSRB a written notice of appeal within 30 days after the date on which he or she is considered, in accordance with the rules set out in the *Education Act*, to have received the notice. The CFSRB may extend the period of time for giving the written notice of appeal, before or after the expiry of the period, if it is satisfied that there are reasonable grounds for the extension.

What should the notice of appeal contain?

The notice of appeal will:

- (a) set out the date of the decision that is being appealed;
- (b) set out the name of the school board that made the decision;
- (c) state whether the decision expels the student from his or her school only or from all schools of the board; and

- (d) be in a form acceptable to the CFSRB.

Who are the parties to an appeal?

A “party” to a hearing is a person who has a legal right to participate in the hearing. The parties to an appeal are:

- (a) The Board.
- (b) The student, if
 - (i) the student is at least 18 years old, or
 - (ii) the student is 16 or 17 years old and has withdrawn from parental control.
- (c) The student’s parent or guardian, if the parent or guardian appealed the decision.
- (d) The person who appealed the decision to expel the student, if the decision was appealed by a person other than the student or the student’s parent or guardian.

When will the CFSRB hearing be convened?

The CFSRB will commence a hearing within 30 days after receiving a written notice of appeal. The CFSRB may extend the period of time for commencing the hearing, before or after the expiry of the period at the request of any party to the appeal.

Can the student attend the hearing even if he or she is not a party?

The student whose expulsion is being appealed has the right to be present at the hearing and to make a statement on his or her own behalf, whether or not the student is a party to the appeal.

What is the practice of the CFSRB in conducting its hearing?

The practice of the CFSRB is to conduct a *trial de novo*, effectively a full re-hearing of the case.

Following an appeal hearing, what is the authority of the CFSRB?

After hearing an appeal from a decision of a board, the CFSRB shall do one of the following:

- (a) Confirm the Board’s decision to expel the student;
- (b) If the Board’s decision was to expel the student from his or her school only, quash the expulsion and reinstate the student to the school; or
- (c) If the Board’s decision was to expel the student from all schools of the Board,
 - (iii) change the expulsion to an expulsion from the student’s school only, or
 - (iv) quash the expulsion and reinstate the student to his or her school.

Will the CFSRB issue a decision in writing?

The CFSRB will provide each party, or the party's counsel or agent, with,

- (a) its decision on the appeal within 10 days after completing the hearing; and
- (b) written reasons for its decision within 30 days after completing the hearing.

Does the CFSRB have the authority to order a record of the expulsion be expunged or amended?

If the CFSRB changes an expulsion from all schools of the Board to an expulsion from the student's school only, or quashes an expulsion and reinstates the student to his or her school, it may order that any record of the expulsion of the student be expunged or amended if the CFSRB considers it appropriate in the circumstances.

What You Need To Know About Suspension
Appeals And Expulsion Hearings

It is a fundamental principle of the common law that persons facing disciplinary consequences be treated fairly. Procedural fairness requires that the disciplinary consequences to a student be administered by a school administrator who is impartial with respect to the student and the incident. Depending on the circumstances, fairness may include:

- giving the student reasonable notice of the rule involved;
- the opportunity to be heard – to tell his/her side of the story; and
- the right to know the case against him/her.

The Toronto District School Board (the “Board”) has developed rules of procedure to ensure that parties to a proceeding receive procedural fairness and the principles of natural justice are observed. The rules of procedure are intended to assist the Board in providing a just, efficient, expeditious and accessible process to those involved in a proceeding before the Board.

The following represents a guideline regarding the rules of procedure for suspension appeals and expulsion hearings.

1. What types of proceedings can be convened regarding school discipline?
 - an appeal against a decision by a principal to impose a suspension; or
 - a referral by the principal of an expulsion of a student.

2. Who are the parties to the hearing?

The parties to the hearing are the parent/guardian of a student under the age of 18, an adult student or a student who is 16 or 17 years old and has withdrawn from parental control, and the school principal.

3. Can the Board add a student as a party to a hearing?

Yes. The Board may add a student as a party to a proceeding.

4. Can a student attend the hearing even if he or she is not a party?

Yes. A student who is not a party to a proceeding has the right to be present at the hearing and to make a statement on his or her behalf.

5. Does every party have a right to representation?

Yes. A party to a proceeding may be represented by counsel or an agent. Counsel is a lawyer. An agent may be a trusted family friend, a religious advisor or other person who can assist with the presentation of the case. In the event that that a parent/adult student re-

tains either counsel or an agent, the cost of such services will be incurred at the parent/adult student's own expense.

6. What is the role of the Committee of the Board?

The Committee of the Board will consist of at least three members of the Board. It will hear and determine an appeal. Members of the Committee who may have had any direct involvement in the matter prior to the commencement of the hearing will disqualify themselves and will not take part in the hearing, the deliberations, the decision or the reasons. Members of the Committee who have not been present through the whole of the hearing will not take part in the deliberations, the decision or the reasons.

7. What is the role of the Safe Schools Administrator?

The appropriate safe schools administrator will:

- where appropriate, to attempt to resolve the issues surrounding the hearing through mediation with the parties;
- inform the parent/adult student and their agent or counsel about the process intended to be followed at the hearing and the rights of the parties under the *Statutory Powers Procedure Act*;
- inform the principal and his/her agent or counsel about the process intended to be followed at the hearing and the rights of the parties under the SPPA;
- where appropriate, arrange for a pre-hearing conference with the parties;
- where appropriate, speak with the parties about agreeing on a later deadline for a suspension or expulsion hearing;
- arrange for the principal, when required to be represented at the hearing by an agent or counsel. Consult with Board Legal Services when pupil is represented by counsel;
- arrange the date, time and place of the hearing;
- arrange for a Committee of the Board to hear the proceeding;
- confirm the hearing date, time and location with the parties to the hearing, the Committee and counsel to the Committee;
- prepare a notice of hearing, provide for service of the notice, and arrange for an affidavit of service to the parties;
- make arrangements to accommodate any special needs for the hearing (e.g. interpreter);
- make physical arrangements for the hearing;
- send the decision and order (signed by the Chair of the Board) together with a covering letter to the parties; and
- retain a file of all relevant documents relating to the hearing, including the reasons for the decision.

8. What is the role of Counsel to the Committee?

Counsel to the Committee (if any) will assist in procedural matters that must be decided during the course of the hearing. If so invited by the Committee, counsel may:

- meet privately with members of the Committee prior to the commencement of the hearing to explain the quasi-judicial role that the Committee exercises in accordance with the rules of natural justice;
- explain the Committee's role;
- offer procedural suggestions and guidance to the Committee during the hearing;
- meet privately with the Committee after the conclusion of evidence, argument and submissions to advise on legal issues that arise during the course of deliberations; and
- assist the Committee in the preparation of the text of the decision and reasons for the decision.

9. What is a pre-hearing conference?

The Board, at the request of a party or on its own motion, may direct the parties to participate in a pre-hearing conference to consider,

- the settlement of any or all of the issues;
- the simplification of the issues;
- facts or evidence that may be agreed upon;
- the dates by which any steps in the proceeding are to be taken or begun;
- the estimated duration of the hearing; and
- any other matter that may assist in the just and most expeditious disposition of the proceeding.

The Chair of the Board may designate a Trustee or any other person to preside at the pre-hearing conference.

10. Is there a requirement to provide disclosure?

Yes. Unless otherwise ordered by the Board, prior to the commencement of the suspension hearing, each party will provide to the other party and to the Board the following information:

- a copy of the document that each party intends to rely on at the proceeding.
- Prior to the commencement of an expulsion hearing, each party will also provide to the other party and to the Board the following information:
- a list of the witnesses that the party intends to call to give evidence in the proceedings.

11. Can the Board order disclosure?

Yes. The Board, 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,

- the exchange of documents;
- the oral or written examination of a party;
- the exchange of witness statements and report of expert witnesses;
- the provision of particulars; and/or
- any other form of disclosure.

12. Are there any exceptions to disclosure?

The Board's rules of procedure do not authorize the making of an order requiring:

- disclosure of privileged information;
- production of another student's OSR, such as the OSR of an alleged victim or witness; or
- any other disclosure that is contrary to law.

13. What materials should be disclosed?

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

14. What type of notice of hearing is required?

Parties to the proceeding are required to be given reasonable notice of the hearing by the Board. This notice must include:

- reference to the statutory authority under the hearing will be held (i.e. section 309 or 311.3 of the *Education Act*);
- a statement of the time, place and purpose of the hearing; and
- a statement that if the party notified does not attend at the hearing, the Committee may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding.

15. Will the hearing be held in private?

The Committee may order that the hearing will be held *in camera* where matters involving public security may be disclosed or where intimate financial, personal, or other matters may be disclosed.

16. Is there a requirement that the Committee keep a transcript of the proceeding?

No. There is no requirement that the Committee keep a transcript of the oral testimony given at the hearing. However, in the event that further proceedings are taken as a result of the hearing, the Committee may find it useful to record the evidence given in a manner that will ensure an accurate reproduction. If necessary, a transcript can be made from this recording.

17. What is the order of presentation at the hearing?

When the Committee hears an appeal of the decision to suspend a student, the appellant will proceed first in the calling and examination of witnesses and presentation of evidence and submissions, and the principal will be the second to do so, unless the parties agree otherwise.

Where the Committee hears an expulsion referral, the principal will proceed first in the calling and examination of witnesses and presentation of evidence and submissions, and the parent or guardian of a minor student or the adult student will be the second to do so, unless the parties agree otherwise.

18. What will the Committee consider in making a decision?

The 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 committed the infraction. Where the Committee determines that the student committed the infraction, the Committee will determine whether the principal considered the mitigating factors or other factors prescribed by the regulations. If the principal failed to consider the mitigating factors or other factors, then the Committee will do so.

19. What types of decisions can the Committee make?

Following the suspension appeal hearing, the Committee will decide to:

- confirm the suspension and the duration of the suspension;
- confirm the suspension, but shorten its duration and order that the record of suspension be amended accordingly; or
- quash the suspension and order that the record of suspension be expunged.

20. Can the Committee reserve its decision?

Yes. The Committee has the power to reserve its decision, that is, require further time for its deliberations and conclusions.

21. Will the Committee issue a decision in writing?

Yes. The decision of the Committee will be in writing and signed by the chair of the Committee. When requested by a party, the Committee will give written reasons. Copies of the decision and order, along with its reasons, if requested, will be sent to all parties to

the proceedings who took part in the hearing at their respective addresses last know to the Board.

22. When will an expulsion be referred to the Board?

Following an investigation, if the principal is satisfied that the student committed an infraction for which an expulsion is warranted, the principal will,

- notify the appropriate superintendent of education and safe schools administrator of the decision to refer the matter to the Board for a hearing; and
- notify the parent/adult student/student who is 16 or 17 and has withdrawn from parental control in writing of the decision to refer the matter to the Board for a hearing.

A principal who refers a matter under section 311.3 of the Act, will do so as soon as practicable after suspending the student pending expulsion.

23. What steps does a principal need to take in referring an expulsion to the Board?

A principal who refers a matter under section 311.3 of the Act will deliver the following to the appropriate superintendent of education and safe schools administrator:

- a copy of the Notice of the Suspension Pending Possible Expulsion that is the subject to the referral;
- a copy of the completed principal's report; and
- a copy of the letter notifying the parent/adult student/student who is 16 or 17 and has withdrawn from parental control of the principal's recommendation.

24. When will an expulsion hearing take place?

A hearing will be held by the Committee within 20 school days since the student was suspended, unless the parties to the hearing agree to a later deadline.

25. Where there is an adjournment, will the suspension remain in effect?

Yes. In all adjournments, the suspension pending possible expulsion will continue in effect until the conclusion of the hearing and the decision of the Board.

26. Who can appeal a decision of the Board to expel a student?

The following persons may appeal a decision of the Board to expel a student (whether the expulsion is either mandatory or discretionary), and the type and duration of the expulsion:

the parent or guardian of the student if the student is a minor;

(g) the adult student;

(h) a student who is 16 years or 17 years of age, if he/she has withdrawn from parental control; and

(i) such other persons as may be specified by a policy of the Board.

27. To what review board is this appeal made?

The appeal is to the Child and Family Services Review Board (the “CFSRB”) in accordance with the procedures set out by the Rules of Procedure of CFSRB, Regulation 472/07 under the *Education Act* and Regulation 303/01 of the *Child and Family Services Act*. Written notice of the intention to appeal the decision must be given to the Review Board within 30 days after the date on which he or she is considered to have received notice. The written notice to the Review Board must set out the following:

- date of the decision being appealed;
- the name of the school board that made the decision;
- state whether the decision expels the pupil from his or her school only or from all schools of the board; and
- be in a form acceptable to the CFSRB.

The practice of the CFSRB is to conduct a *trial de novo*, effectively a full re-hearing of the case. The decision of the CFSRB is final.