

STUDENT/PARENTS' GUIDELINES FOR SUSPENSION APPEALS

1. NOTICE OF APPEAL:

- 1.1 If a parent (or student if aged 18 or 16/17 and withdrawn from parental control) wishes to appeal a suspension, the Notice of Appeal must be received by the appropriate Board official within 10 school days of the day the suspension began. It may be provided by personal delivery, mail, e-mail (if an e-mail address to the Superintendent/Supervising Principal has been provided) or by fax (if a fax number is available). If sent by mail, it will be deemed to be received on the 5th day after it is mailed. The date of receipt must be within the time limit set for making the appeal.
- 1.2 The Notice of Appeal must include the following information:
- (a) The name of the student,
 - (b) The grade of the student;
 - (c) The school attended by the student;
 - (d) The date the suspension commenced;
 - (e) The issue(s) being appealed (e.g. length of the suspension or whether the circumstances justify a suspension);
 - (f) The issue(s) being appealed (i.e. whether the student engaged in the activity which gave rise to the suspension, length of the suspension or whether the circumstances justify a suspension or any combination of these); and
 - (g) The name and contact information of the person making the appeal including an address and telephone number and, where possible, a fax number or e-mail address.
- 1.3 **Co-ordinating:** A Superintendent/Supervising Principal will be appointed by the Director of Education to co-ordinate the process in each case. This Superintendent/Supervising Principal is identified in the Principal's Notice of Suspension. The Notice of Appeal of the Suspension must be sent to this Superintendent/Supervising Principal of the school who will then consult with the Co-ordinating Superintendent/Supervising Principal.

- 1.4 **The “Parties”:** The Parties to the Suspension Appeal Hearing are the Principal and the parent(s) of the student who is the subject of the recommendation to expel, or the student if aged 18 years or 16 or 17 years old and has withdrawn from parental control.
- 1.5 **Superintendent/Supervising Principal Review:** The Superintendent/Supervising Principal who is the school supervisor may be appointed by the Director of Education to review the circumstances of the case and, in so doing may meet with the Principal and the parent(s)/student. If the Superintendent/Supervising Principal is of the view that it is appropriate in all of the circumstances to resolve the matter by shortening the suspension or expunging the suspension and substituting other strategies, the Superintendent/Supervising Principal may do so, if this would resolve the matter. The Superintendent/Supervising Principal shall have regard to all of the circumstances of the case in conducting his/her review including the applicable mitigating factors. The parties may agree to extend the deadline for hearing in determining the Principal’s recommendation to expel in order to permit the Superintendent’s/Supervising Principal’s review to conclude.¹ This review may occur in the course of the Superintendent/Supervising Principal conducting a Pre-Hearing Conference as set out below.
- 1.6 **Notice of Hearing and Pre-Hearing Conference:** Regardless of any review being conducted by another Superintendent/Supervising Principal, the Co-ordinating Superintendent/Supervising Principal for the case will promptly send to the parties to the hearing a Notice of Hearing and, at the same time, a Notice of Pre-Hearing Conference will be sent out to the parties.
- 1.7 **Pre-Hearing Disclosure:** Each party will be required to advise each other in writing, at least 5 school days before the hearing, of the following:
- (a) Copies of any documents which the party proposes to give to the Committee at the hearing;
 - (b) If the party proposes to call witnesses, a list of the witnesses whom the party intends to call at the hearing and a brief outline of what the witness(es) will say; and
 - (c) Whether the party will be represented by an advocate or lawyer.

¹ As in the case of a suspension appeal, we have similarly provided for a Superintendent’s/Supervising Principal’s Review in a recommendation to expel situation.

1.8 **Amending List of Witnesses:** Under the Board procedure, the parties are required to disclose certain information to each other, including the names of any witnesses to be called and an outline of the evidence to be given, at least 5 days in advance of the hearing. Either party, after receiving this information from the other, may amend his/her list of witnesses, if any, to be called by that party within one school day after receiving the other party's disclosure. If the change involves calling a witness not mentioned in the initial disclosure, a brief outline of what this witness will say must be provided to the other party. Thereafter, no other changes are permitted without the permission of the Committee. However, and in any event, notice should be given to the other party as soon as possible of any changes in the proposed witnesses and documents to be given to the Committee.

1.9 **Pre-hearing Conference:** The Pre-hearing Conference may be conducted by a Superintendent/Supervising Principal of the Board or a member of the Committee designated to conduct the suspension appeal hearing. Beyond conducting the Review noted above, the purpose of the pre-hearing conference is to ensure that the principal and parent/student have disclosed to each other the issues which they intend to raise at the hearing, the witnesses they intend to call, if any, the documents which they wish to give to the Committee if any, and whether either will be represented by counsel or an advocate. An effort will be made to set up a pre-hearing conference within 5 days prior to the hearing (ie, following the date by which the parties should have completed pre-hearing disclosure) or soon thereafter as possible, to deal with procedural issues or any other issues which may assist in the just and expeditious disposition of the proceeding. At this stage, the following procedures are followed:

- (a) Unless both parties or their advocates/legal representatives participate in the pre-hearing conference, it will not proceed.
- (b) The pre-hearing conference may be held by teleconference.
- (c) Any issue which either the principal or the student /parent has regarding disclosure, the length of time set for the hearing and how that time will be divided between the parties, the conduct of an electronic hearing, or any other procedural issue which the party may have must be disclosed at the pre-hearing conference. If appropriate, discussion of the issues may be facilitated to attempt to resolve the procedural issue prior to the hearing.

- (d) The parties will be asked whether there are any issues or facts which they are in agreement on. Agreed to issues will be recorded and signed off by the parties.
- (e) Each party shall have the opportunity to state his/her position on any issue which the other party raises at the pre-hearing conference. However, if the party is unable to state his/her position at the pre-hearing conference, he/she may request an opportunity to respond to the issue in writing within 1 school day following the pre-hearing conference to the issue.
- (f) The time limit for the hearing should be discussed, as well as how the time will be divided.
- (g) If either party declines to participate in the pre-hearing conference, that party will be deemed to have waived any procedural issues which the party might otherwise have raised at the pre-hearing conference regarding disclosure or any other procedural issue, unless the party can satisfy the committee hearing the matter that there was a reasonable excuse for the party's failure to participate in the pre-hearing conference.

2. CONDUCT OF THE HEARING

- 2.1 **Time Limits for Presentations at Hearing:** The maximum time allotted for each hearing will be two hours, with up to an hour allotted to each party. Opening statements, cross-examination of the other party's witnesses and closing comments are to be taken into account in the hour allotted to each party. Where either or both parties persuade the Committee that additional time is reasonably required in order to have a fair opportunity to present his/her/their cases in the particular circumstances, the Committee may extend the time lines for the presentation, including scheduling additional hearing dates so long as the parties agree to extend the time limit for the Committee's decision where such extension is necessary to permit any additional hearing date to be scheduled.
- 2.2 **Order of Presentation:** As appellant, the parent/student will proceed to make his/her presentation first, commencing with an opening statement. The principal will then be given an opportunity to make an opening statement at this point. If the parent/student calls any witnesses, the principal will be given an opportunity to cross-examine any these witnesses. The parent/student may ask questions in re-examination which are limited in scope to new issues raised by the

cross-examination. Re-examination should not be used to introduce new evidence which does not arise out of the cross-examination. Following the completion of the parent/student's presentation, the principal will make his/her presentation, including calling witnesses (in which case the parent/student may cross-examine and the principal may re-examine the witnesses. Each party may make a closing statement, commencing with the parent/student. After the principal makes his/her closing statement, the parent/student may Reply (if any time is left).

- 2.3 **Scope of Cross-Examination:** If witnesses are called by one party, the other party will be given an opportunity to ask questions of that witness, which is called "cross examination". Cross-examination of witnesses by the opposite party shall be as reasonably required for a full and fair disclosure of all matters relevant to the issues in the hearing. The *Statutory Powers Procedure Act* permits the Committee to restrict cross examination which is overly aggressive or which seeks information beyond what is reasonably relevant to the issues before it. Either party may object if the other party is acting abusively in cross examination.
- 2.4 **Protection for Witnesses:** A witness at the hearing is deemed by the *Statutory Powers Procedure Act* have objected to answer any question asked him or her upon the ground that the answer may tend to criminate 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 other proceeding against him or her thereafter taking place, other than a prosecution for perjury in giving such evidence. (*Statutory Power Procedure Act*, s. 14(1)).
- 2.5 **Limit on Unduly Repetitious Evidence:** The Committee may exclude any evidence which is unduly repetitious.
- 2.6 **Maintenance of Order at Hearing:** The Committee has the power under the *Statutory Powers Procedure Act* to make such orders or give such directions at a hearing as it considers necessary to maintain order at the hearing. Should any person disobey or fail to comply with any such order or direction, the Committee or a member may call for the assistance of a peace officer to enforce the order or direction.
- 2.7 **Record of Hearing:** The Committee shall compile a "record" of the hearing – that is, copies of the documents which initiated the hearing and which were given to the Committee during the hearing. The record will include the Notice of Suspension, The Notice of Appeal, the

Notice of Hearing, any order of the Committee on a preliminary issue, all documents filed with the Committee during the hearing, the Notice of Decision of the Committee, and where they are requested, reasons for the decision.

2.8 **Failure of Party to Attend Hearing After Due Notice:** Where a Notice of Hearing has been given to a party to the hearing in accordance with this procedure, and that party fails to attend the hearing, the Committee may proceed in the absence of the party and the party is not entitled to any further notice of the proceeding.

2.9 **Burden of Proof:** Where there is a conflict in the evidence presented by the parties on the issue of whether the student engaged in the activity in issue, the Committee will assess the evidence and determine, on the balance of probabilities, the evidence demonstrates that it is more probable than not that the student engaged in the activity as alleged by the principal.

2.10 **Decision:** The Committee may decide to confirm the suspension and the length of the suspension, confirm the suspension but shorten the length of the suspension, or quash the suspension and order that the record of the suspension be expunged. This decision is final. All parties will be notified of the Committee's decision in writing.

2.11 **Reasons for Decision:** The *Statutory Powers Procedure Act* provides that if requested by either party, the Committee must provide a brief statement of the reasons for its decision.

3. SENDING/DELIVERY OF NOTICES

3.1 Where notice is given to a student, parent or principal under these procedures, the *Education Act* provides that receipt of the notice is deemed to be as follows:

- (a) where an original document is sent by mail, or any other method of delivery where the original document is delivered to the recipient (e.g. courier), the document is deemed to be received by the person to whom it was sent on the 5th day after the day on which the notice was sent;
- (b) where the document is sent by fax or other electronic means (eg. e-mail), the notice is deemed to be received by the person to whom it was sent on the day following the day it was sent.