

STUDENT/PARENTS' GUIDELINES FOR SUSPENSION APPEALS

1. NOTICE OF INTENTION TO 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- 1.1 If a parent (or student if aged 18 or 16/17 and withdrawn from parental control) wishes to appeal a suspension, the Notice of Intention to Appeal must be received by the appropriate Board official within 10 school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 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 Intention to 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... disagreement with the decision to suspend, disagreement with the length of the suspension, or both);
 - (f) 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;
 - (g) Whether the person appealing the suspension intends to call any witnesses at the hearing of the appeal and, if so, the names and contact information of those witnesses.
- 1.3 **Co-ordinating Superintendent:** A Superintendent will be appointed by the Director of Education to co-ordinate the process in each case . This Superintendent is identified in the Principal's Notice of Suspension. The Notice of Appeal of the Suspension must be sent to this Superintendent.

- 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who is the subject of the recommendation to expel, or the student if aged 18 years or 16 or 17 years old and has withdrawn from parental control.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 Review:** A Superintendent other than the Co-ordinating Superintendent 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 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 may do so, if this would resolve the matter. The Superintendent 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 review to conclude.¹ This review may occur in the course of the Superintendent 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, the Co-ordinating Superintendent 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. A pre-hearing conference will be scheduled after disclosure from both parties as outlined in 1.7.
- 1.7 **Pre-Hearing Disclosure:** At least five days prior to the hearing, the appealing party will provide the principal with the information outlined below. The responding party will provide the information below at least three days prior to the hearing. Each party will be required to advise each other in writing the following items based on the timeline above:
- (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

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

- (c) Whether the party will be represented by an advocate or lawyer.

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 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 2-5 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, opportunities for witnesses to tell their own story and respond to questions from the Committee, 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, those witnesses should be allowed to tell their own story and respond to questions from the committee. No direct examination or cross-examination is allowed. Any questions from the principal of the parent/student or parent/student's witnesses, which would usually be for clarity purposes, must be directed through the Chair of the Committee. Following the completion of the parent/student's presentation, the principal will make his/her presentation, including calling witnesses. The same rules apply to the principal's witnesses. Each party may then 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 **Limit on Unduly Repetitious Evidence:** The Committee may exclude any evidence which is unduly repetitious.
- 2.4 **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.
- 2.5 **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.
- 2.6 **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.
- 2.7 **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.

- 2.8 **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.
- 2.9 **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.
- 2.10 **In Camera:** The hearing will be in camera unless both parties agree otherwise.

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.