

Toronto District School Board

Operational Procedure PR595

Title: **EXPULSION HEARINGS**
Adopted: December 1999
Revised: January 30, 2008, **August 18, 2009 (replaced PR522)**
Authorization:

1.0 OBJECTIVE

To establish the process and requirements for conducting expulsion appeal meetings

2.0 DEFINITIONS

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

Hearing means, in respect of expulsions:

- an oral hearing before a Discipline Committee
- a written hearing in which evidence and submissions are provided by way of an exchange of documents
- an electronic hearing in which evidence and submissions are given by parties and witnesses through teleconferencing or video conferencing

OSR is the Ontario Student Record

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

3.0 RESPONSIBILITY

Associate Director

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4.0 PROCEDURE

Part 4: General

4.1. General Purpose

These Rules are made pursuant to s. 25.1 of the *Statutory Powers Procedure Act*.
The Rules apply in respect of expulsion hearings conduct pursuant to the *Education Act*.

4.2. Application of the Rules

- (a) The Discipline Committee may exercise any of its powers under these Rules on its own initiative or at the request of a party.
- (b) The Discipline Committee may control its own processes.
- (c) The Discipline Committee may waive application of or vary any of the Rules at any time, subject to limitations or restrictions in the *Education Act*.
- (d) No Proceeding is invalid by reason only of a defect or other irregularity in form. Substantial compliance with a form, notice or document required under the *SPPA*, the *Education Act*, or these Rules, is sufficient to establish the validity of the form, notice or document.

- (e) Where an issue arises which is not covered by these Rules, it shall be resolved in a manner consistent with the Rules, the purpose of the Rules, the *SPPA*, and the *Education Act*.

4.3. 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.

4.4. Computation of Time

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

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

4.5. Waiver of Procedural Requirement

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

4.6. Adding a Student as a Party

The Discipline Committee may add a student as a party to a proceeding at the request of the student.

4.7. Pupil May Attend

A pupil who is not a party to a Hearing under section 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 own behalf.

4.8. Superintendent of Education May Attend

The Superintendent of Education has a right to be present at the hearing.

4.9. Different Kinds of Hearing in one Proceeding

The Discipline Committee may hold an oral, written, or electronic hearings, or any combination thereof.

4.10. Right to Representation

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

Part 4B: Provisions Respecting the Board

4.11. The Role of the Discipline Committee

- (a) The Board delegates its powers and duties to hear and determine a- recommendation for expulsion to a Discipline Committee.
- (b) The Discipline Committee shall consist of at least three (3) members of the Board.
- (c) A Member of a Discipline Committee who has any direct involvement in a matter prior to the commencement of the Hearing shall disqualify himself/herself and will not take part in the Hearing, the deliberations, the decision and the reasons.
- (d) A Member of a Discipline Committee who has not been present through the whole of the hearing shall not take part in the deliberations, the decision or the reasons.
- (e) In reaching a decision, the Discipline Committee shall have regard only to the evidence, argument and submissions made at the hearing and the debate during the deliberations, and not to any information that may have come into its possession prior to or outside the course of the hearing itself.

4.12. Expiry of Term

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

4.13. Incapacity of Member

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

Part 4C: Disclosure

4.14. Required Disclosure

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

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

4.15. Chair of the Discipline Committee May Order Disclosure

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

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

4.16. Exception to Disclosure

Section 4.32 does not authorize the making of an order requiring

- (a) disclosure of privileged information;
- (b) production of another student's OSR, such as the OSR of an alleged victim or witness; or
- (c) any other disclosure that is contrary to law or that could jeopardize the safety of any individual.

4.17. Materials for the Hearing

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

4.18. 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.
- (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 3.5(a).

4.19. Alibi Defence

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.

Part 4D: Notice Of Hearing And Failure To Attend

4.20. Notice of Hearing

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

4.21. Oral Hearing

A notice of an oral hearing shall include:

- (a) reference to the statutory authority under which the Hearing will be held (section 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 Discipline Committee may proceed in the party's absence and the party will not be entitled to any further notice in the Proceeding.

4.22. Written Hearing

A notice of a written hearing shall include:

- (a) reference to the statutory authority under which the Hearing will be held (section 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 Discipline Committee that there is good reason for not holding a written hearing (in which case the Discipline Committee 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 4.3(c) nor participates in the Hearing in accordance with the notice, the Discipline may proceed without the party's participation and the party will not be entitled to any further notice in the Proceeding.

4.23. Electronic Hearing

A notice of electronic hearing shall include:

- (a) reference to the statutory authority under which the Hearing will be held (section 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 4.4(c) does not apply, a statement that the party notified may, by satisfying the Discipline Committee 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 4.4(d), if applicable, nor participates in the Hearing in accordance with the notice, the Discipline Committee may proceed without the party's participation and the party will not be entitled to any further notice in the Proceeding.

4.24. Effect of Non-Attendance at a Hearing After Due Notice

- (f) **Onparty** will not be entitled to any further notice in the Proceeding.

Part 4E: Written Hearings Generally

4.25. Discipline Committee May Hold a Written Hearing

The Discipline Committee, at the request of a party, or on its own motion, may hold a written hearing.

4.26. Exception

The Discipline Committee shall not hold a hearing in writing if a party satisfies the Discipline Committee that there is good reason for not doing so.

4.27. Exception Not Applicable Where Procedural Only

Section 4.48 does not apply if the only purpose of the hearing is to deal with procedural matters.

4.28. Time Limit for Seeking Electronic or Oral Hearing

A party who wishes to satisfy the Discipline Committee that there is good reason for not holding a hearing in writing shall provide such reason to the Discipline Committee in writing within five (5) days after receipt of the notice of hearing.

4.29. Determination by the Discipline Committee

The Discipline Committee shall determine whether a party has satisfied the Discipline Committee that there is good reason for not holding a written hearing.

4.30. Documents

In a written hearing, all the parties are entitled to receive every document that the Discipline Committee receives in the Proceeding.

Part 4F: Electronic Hearings Generally

4.31. Discipline Committee May Hold an Electronic Hearing

The Discipline Committee may hold a hearing by telephone conference or videoconference or other automated means for the determination of any or all issues, in the same manner as an oral hearing.

The Discipline Committee, at its sole discretion, may direct the arrangements for the electronic hearing to protect the integrity of the hearing process, including the confidentiality of evidence.

4.32. Exception

The Discipline Committee shall not hold an electronic hearing if a party satisfies the Discipline Committee that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.

4.33. Exception Not Applicable Where Procedural Only

Part 4I (b) does not apply if the only purpose of the hearing is to deal with procedural matters.

4.34. Determination by the Discipline Committee

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

4.35. Procedure at Electronic Hearing

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

- (a) the Chair of the Discipline Committee shall ascertain who is present electronically;

- (b) the Chair of the Discipline Committee shall require each participant to prohibit any person other than:
- a party, and such party's counsel or agent, and
 - witnesses while giving evidence,
- from listening to anything disclosed at the Hearing without the express prior approval of the Chair of the Discipline Committee;
- (c) the Chair of the Discipline Committee shall require all participants to notify the Chair of the Discipline Committee 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
- (d) the procedure shall, as far as is feasible and practical, otherwise follow the same process as would be followed in the case of an oral hearing.

Part 4G: Provisions For Both Oral And Electronic Hearings

4.36. The Hearing Will Be Held In-Camera

The Discipline 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.

4.37. Transcript of Proceeding

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

4.38. Maintenance of Order at Hearings

The Discipline Committee 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 Discipline Committee member may call for the assistance of any peace officer to enforce the order or direction.

4.39. Time Limitations

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

4.40. Documents to be Relied Upon During the Hearing

- (a) In a hearing, all parties are entitled to receive every document a party intends to rely on.
- (b) Such documents shall be provided to all parties prior to the commencement of the proceeding.
- (c) Each party shall provide sufficient copies to the Discipline Committee at the hearing

4.41. Summoning Witnesses

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

4.42. Examination of Witnesses

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

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

4.43. Questions in Redirect and From the Board

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

4.44. Limitation on Examination and Cross-examination

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

4.45. Limitation of Evidence

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

4.46. Right of a Witness to Counsel

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

4.47. 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.

Part 4H: Corrections

4.48. Correcting Minor Errors

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

Part 4I: Deliberations and Decision of the Discipline Committee

- (a) The Discipline Committee will assess the evidence as provided by the parties, and determine whether, on a balance of probabilities, it is more probable than not that the student did engage in the prohibited activity or prohibited activities alleged by the Principal.
- (b) In making a determination, the Discipline Committee will take into account:
 - (i) the relevant evidence
 - (ii) all submissions and views of the parties, including their views as to whether the pupil, if expelled, should be expelled from his or her school only or from all schools of the Board;
 - (iii) any mitigating or other factors prescribed by the regulations; and
 - (iv) any written response to the principal's report recommending expulsion that a person gave to the Board before the completion of the hearing.
- (c) At the hearing, the Discipline Committee will:
 - (i) consider the submissions of each party in whatever form the party chooses to deliver his or her submissions, whether orally, in writing or both;

- (ii) b) solicit the views of all the parties as to whether the pupil, if he or she is expelled, should be expelled from his or her school only or from all schools of the Board; and
- (iii) solicit the views of all the parties as to whether, if the pupil is not expelled, the Discipline Committee should confirm the suspension originally imposed under section 310 of the *Education Act*, confirm the suspension but reduce its duration or withdraw the suspension.
- (d) After completing the hearing, the Discipline Committee will decide:
 - (i) whether to expel the pupil; and
 - (ii) if the pupil is to be expelled, whether the pupil is expelled from his or her school only or from all schools of the Board.
- (e) If the Discipline Committee expels a pupil, the Discipline Committee will assign the pupil to,
 - (i) in the case of a pupil expelled from his or her school only, another school of the Board; and
 - (ii) in the case of a pupil expelled from all schools of the Board, a program for expelled pupils.
- (f) If the Discipline Committee does not expel a pupil, it will, with respect to the suspension originally imposed under section 310 of the *Education Act*:
 - (i) confirm the suspension and the duration of the suspension;
 - (ii) confirm the suspension, but shorten its duration, even if the suspension that is under appeal has already been served, and order that the record of the suspension be amended accordingly; or
 - (iii) quash the suspension and order that the record of the suspension be expunged, even if the suspension that is under appeal has already been served.
- (g) In determining which action to take under item 6 above, the Discipline Committee will take into account:
 - (i) any submissions made by the parties as to whether the suspension and its duration should be confirmed, the suspension should be confirmed but its duration reduced or the suspension should be withdrawn;
 - (ii) any mitigating or other factors prescribed by the regulations.
- (h) The decision of a majority of the members of the Discipline Committee is the decision of the Board.

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

5.0 REFERENCE DOCUMENTS

Board documents

Policy P051, Safe Schools

Policy P044, 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