WELCOME
Morning Recess

Principals’ 101
Suspension & Expulsion
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Agenda

• Suspension or Expulsion Infraction
• Notice of Suspension pending Expulsion
• Decision to Recommend Expulsion
• Principal’s Report
• Suspension Appeal Process
• Expulsion Hearing Process
• Expulsion Appeals
Type of Infraction?

Suspension

1. Uttering a threat to inflict serious bodily harm on another person.
2. Possessing alcohol or illegal drugs.
3. Being under the influence of alcohol.
4. Swearing at a teacher or at another person in a position of authority.
5. Committing an act of vandalism that causes extensive damage to school property at the pupil’s school or to property located on the premises of the pupil’s school.
6. Bullying.
7. Any other activity that is an activity for which a principal may suspend a pupil under a policy of the board.

Expulsion

1. Possessing a weapon, including possessing a firearm.
2. Using a weapon to cause or to threaten bodily harm to another person.
3. Committing physical assault on another person that causes bodily harm requiring treatment by a medical practitioner.
4. Committing sexual assault.
5. Trafficking in weapons or in illegal drugs.
6. Committing robbery.
7. Giving alcohol to a minor.
7.1 Bullying, if, the pupil has previously been suspended for engaging in bullying, and the pupil's continuing presence in the school creates an unacceptable risk to the safety of another person.
7.2 Any activity listed in subsection 306 (1) that is motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, gender identity, gender expression, or any other similar factor.
8. Any other activity that, under a policy of a board, is an activity for which a principal must suspend a pupil and, therefore in accordance with this Part, conduct an investigation to determine whether to recommend to the board that the pupil be expelled.
Standard for Suspension

Suspension

- S.306(1) “if he or she believes”
- Rational, reasonable information upon which belief that student conducted the infraction
- Investigation does not need to be complete
- Up to 20 school days
- S.308(1)(b) parent notification
- Parent should be consulted

Expulsion

- S.310(1) “if he or she believes”
- Investigation following suspension
- Suggests that the investigation if leading to recommendation for expulsion must be more extensive than suspension investigation
- S.311.3(8) up to 20 school days
- Must ensure sufficient opportunity to prepare and share report
- Parent must be consulted
Expulsion Report

S. 311.1(7) If, on concluding the investigation, the principal decides to recommend to the board that the pupil be expelled, he or she shall prepare a report that contains the following:

1. A summary of the principal’s findings.
2. The principal’s recommendation as to whether the pupil should be expelled from his or her school only or from all schools of the board.
3. The principal’s recommendation as to,
   i. the type of school that might benefit the pupil, if the pupil is expelled from his or her school only, or
   ii. the type of program for expelled pupils that might benefit the pupil, if the pupil is expelled from all schools of the board.

S. 311.1(10) A person who is entitled to receive the principal’s report under subsection (8) and written notice under subsection (9) may respond, in writing, to the principal and the board.
Suspension Appeal

S. 311.2 (1) If the principal does not recommend to the board that the pupil be expelled and does not withdraw the suspension, the suspension may be appealed and section 309 applies for that purpose, with necessary modifications, subject to the following:

1. A person who is entitled to appeal must give written notice of his or her intention to appeal within five school days of the date on which he or she is considered, in accordance with the rules set out in subsection 300 (3), to have received the notice given under subsection 311.1 (9).

2. If the principal confirmed the suspension but reduced its duration under subsection 311.1 (8), the appeal is from the reduced suspension and not the original suspension.

(2) The principal may extend the deadline mentioned in paragraph 1 of subsection (1) if the person requests an extension to accommodate his or her disability. (recently added)
Expulsion Hearing

Standard for decision of the Discipline Committee is Balance of Probabilities

S. 311.3 (2) Subject to the requirements set out in this section, the expulsion hearing shall be conducted in accordance with the requirements established by board policy.

(4) A pupil who is not a party to the expulsion hearing under subsection (3) has the right to be present at the hearing and to make a statement on his or her own behalf.

(5) At the hearing, the board shall,

(a) consider the submissions of each party in whatever form the party chooses to deliver his or her submissions, whether orally, in writing or both;

(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

(c) 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.
Regulation 472/07

Mitigating Factors:
1. The pupil does not have the ability to control his or her behaviour.
2. The pupil does not have the ability to understand the foreseeable consequences of his or her behaviour.
3. The pupil’s continuing presence in the school does not create an unacceptable risk to safety.

Other Factors:
• 1. The pupil’s history.
• 2. Whether a progressive discipline approach has been used with the pupil.
• 3. Whether infraction was related to any harassment.
• 4. How the suspension or expulsion would affect the pupil’s ongoing education.
• 5. The age of the pupil.
• 6. (i) whether the behaviour was a manifestation of a disability; (ii) whether appropriate individualized accommodation has been provided, and (iii) whether the suspension or expulsion is likely to result in an aggravation or worsening of the pupil’s behaviour or conduct.
Expulsion Appeal

311.7 (1) In this section, "designated tribunal" means a tribunal designated under the regulations to hear appeals of board decisions to expel pupils.

*Reg. 474/07 s.4* designates the Child & Family Services Review Board:

- 30 day timeline to give notice of appeal
- 30 day timeline to commence hearing of the appeal
- Mediation
- Hearing *de Novo*
- Witness examination & cross examination
- Prior decisions are not required as precedent but inform the Tribunal
Cases

Appellant v. Respondent School Board, [2016] CFSRB 34 (CanLII)

• Expulsion of appellant from school only for “an act injurious to the moral tone of the school and/or to the physical or mental well-being of others”; specifically distributing and selling naked pictures of female student of the school;
• Motion by Respondent for recusal on basis of apprehension of bias denied
• Motion to proceed to the Court for release of YCJA records granted but request to adduce evidence before the CFSRB for YCJA Order denied
• Court refused to grant Order to permit use of YCJA records for Appeal
• CFSRB found information collected during interviews by VP not reliable because:
  • Some Principal’s Report details found to be based on unrecorded memory
  • Principal’s Report inconsistent with testimony before the CFSRB
  • VP communicated that appellant could be charged with criminal offence child pornography
• Only appellant expelled from school others in possession of same pictures suspended
• CFSRB found that no evidence that appellant ‘sold’ the pictures
Cases

Appellants v. Toronto District School Board, [2014] CFSRB 28 (CanLII)

- Two pupils (brothers) expelled for committing physical assault causing bodily harm requiring treatment
  - Appellants were robbed of mother’s cell phone and assaulted victim who was friends with individuals who had robbed the appellants
- CFSRB found that victim was assaulted by appellants causing bodily harm requiring treatment by a medical practitioner, but expunged expulsion and upheld 20 day suspension
- CFSRB found that appellants were told that would have to fight to get phone returned
- CFSRB found that there was no evidence of discrimination as alleged by Appellants
- CFSRB considered mitigating and other factors and found as follows:
  - Appellants’ presence did not create an unacceptable risk because assault was committed as a result of belief that they were facing threat to their safety
  - No other evidence of appellants being involved in violent activities
  - Threat was sufficient to mitigate the discipline
  - Progressive discipline not used in previous incidents resulting in suspensions for disrespecting authority therefore Appellants did not benefit from learning opportunity, which mitigated the discipline
Conclusions

- Appropriate investigation techniques
- Principal’s Report supported by evidence
- Is the discipline consistent with application in other situations?
- Consider Mitigating Factors
  - Does the student create a risk to safety?
- Consider Other Factors
  - Has progressive discipline been used?
  - Has the student benefited from interventions to provide pro-social behaviour and problem solving skills?