WELCOME
Exclusion of Students
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Issues

• Exclusion vs. Expulsion
• Factors to consider
• Competing Rights
• Procedural Fairness
• Right of Appeal
Right to Attend School

*Education Act:*

- Students must attend school until the age of 18 unless excused or **authorized under the Act** (S.21)

- A person has the right to attend school in the district where they are qualified to be a resident pupil (S.32)

- right to attend school for the full instructional day of 300 minutes
Exceptions Authorized under the Act

Education Act, Part XIII “Behaviour, Discipline and Safety”

- S.306 list of infraction for which a Principal may suspend
- S.310 list of infractions for which Principal shall suspend and consider expulsion following investigation
- Right to appeal suspension
- Right to expulsion hearing
- Prescribed timelines
- PPM 142 Ministry approved program for students expelled from all schools of the Board
- Documentation kept in OSR
Regulation 472/07

Mitigating and Other Factors
• Mandates a contextual approach.

Mitigating:
• does the pupil have the ability to control and understand the foreseeable consequences of his or her behavior; and
• does the pupil’s continuing presence in the school create an unacceptable risk to the safety of any person.
Other Factors:

- the pupil’s history;
- progressive discipline;
- whether behaviour was related to any harassment of the pupil because of HRC protected grounds;
- the effect on the pupil’s ongoing education; age;
- a manifestation of an identified disability;
- whether appropriate accommodation provided;
- whether the suspension or expulsion is likely to result in an aggravation or worsening of the pupil’s behaviour or conduct.
PPM 145

PPM 145 “Progressive Discipline and Promoting Positive Student Behaviour”

• “progressive discipline”, “whole-school approach”, “continuum of strategies to build a positive school climate”

• Focus of progressive disciplinary measures is to correct negative behaviours, applying a continuum of interventions, supports, and consequences to address inappropriate behaviours of the student.
Authority to Exclude a Student

S.265(1) It is the duty of a principal of a school, in addition to the principal’s duties as a teacher,

(m) subject to an appeal to the board, to refuse to admit to the school or classroom a person whose presence in the school or classroom would in the principal’s judgment be detrimental to the physical or mental well-being of the pupils,
Exclusion

- A measure of last resort.
- Not on the progressive discipline continuum.
- Not to be used as a disciplinary measure (PPM 145).
- Modified day schedule pursuant to the student’s Individual Education Plan is not an exclusion.
- Mitigating and other factors do not apply.
- Solely an inquiry into whether the other pupils can be kept safe while the student in question is in attendance.
- A judgement call by Principal (in consultation with Superintendents).
Exclusion cont.

- Only for as long as necessary - As soon as the risk can be sufficiently mitigated, the student has the right to return.
- Still a duty to provide educational services
- PPM 145 – duty to notify the student’s parents as soon as possible, and to inform them of their right to appeal.
- Notify in writing, including reasons and request to discuss educational supports while excluded
- Develop re-entry plan
- Record of exclusion - doesn’t go in OSR
Due Diligence

• Review accommodations/IEP
• Alternative programming
• Alternative environment(s)
• Consider further psyche. ed. Assessment(s)
• Other available school, board community supports
• Risk assessment
• Student Safety Plan
  • Triggers
  • De-escalation
  • Emergency Response
Human Rights Code

Human Rights Code has primacy over other legislation, including Education Act.

S.1. Every person has a right to equal treatment with respect to services or disability.

S.10(1) “disability” means,
(a) any degree of physical disability, 
(b) a condition of mental impairment or a developmental disability,
(c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
(d) a mental disorder, or
(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act 1997

April 19, 2018
Human Rights Code

S.17. (2) No tribunal or court shall find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

Boards of Education have a duty to accommodate students with disabilities to the point of undue hardship – taking into account health and safety.
Duty to Accommodate Students

Substantive Accommodation: explore all legitimate options.

Procedural Accommodation: reasonable investigation into needs (IPRC, IEP)

Ontario Human Rights Commission: *Policy Accessible Education for Students with Disabilities*, 2018

Duty to Accommodate includes:
- Individualized accommodation
- Respect for Dignity
- Inclusion and Full Participation
- Maximization of Independence
Definition of Workplace Violence

Occupational Health and Safety Act (OHSA)

Workplace violence means,

• the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker;

• an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker;

• a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.
S. 43(3) Work Refusal

(3) A worker may refuse to work or do particular work where he or she has reason to believe that,

(b.1) workplace violence is likely to endanger himself or herself;

OEICTA Elementary v Toronto Catholic District School Board
Right to Appeal Exclusion

• Before the Board of Trustees (not Discipline Committee)

• Criteria on appeal: was Principal’s exercise of judgement regarding the risk to the safety and well-being of other pupils properly exercised under the circumstances.

• Board of Trustees have only two choices: uphold or overturn the decision of the Principal.

• Appeal is for student/parents’ benefit – must be procedurally fair
Procedural Fairness

• Right to Notice, including right to know reasons for decision (letter of decision)
• Right to be Heard, including right to be represented (hearing)
• Right evidence-based decision (submissions of the parties)
• Right to confidentiality (in camera)
• Right to an Impartial/Unbiased Decision-Maker (request for recusals)
• Note: Bias, or a perception of bias, can arise where a decision-maker has enough information to have formed an opinion before hearing the evidence of both parties to the appeal.
Summary

- Safety in schools a complex issue
- Competing rights/interests: staff, student, classmates, parents
- Exclusion allowable on sole grounds that it is necessary for physical and mental well-being of students
- Explore all other resources
- Maintain communication with parent/guardian
- Must be, and seen to be, for as limited a period as possible
- Right to due process
- Be prepared to present the rationale at an appeal