

NIPISSING-PARRY SOUND CATHOLIC DISTRICT SCHOOL BOARD

SUSPENSION APPEAL PROCEDURES

AS 29.0
Section E
June 2014

Under subsection 309 (1) the following persons may appeal, to the Board, a principal's decision to suspend a pupil under section 306:

1. The pupil's parent or guardian, unless,
 - (i) the pupil is at least 18 years old, or
 - (ii) the pupil is 16 or 17 years old and has withdrawn from parental control.
2. The pupil, if,
 - (i) the pupil is at least 18 years old, or
 - (ii) the pupil is 16 or 17 years old and has withdrawn from parental control.
3. Such other persons as may be specified by Board policy.

NOTICE OF APPEAL

A person who is entitled to appeal a suspension under subsection 309 (1) must give written notice of his or her intention to appeal to the Superintendent of Education within 10 school days of the commencement of the suspension.

BOARD TO INFORM ALL PARTIES

After receiving a notice of intention to appeal, the Superintendent of Education will promptly contact every person entitled to appeal the suspension under subsection 309 (1) and inform him or her that it has received the notice of intention to appeal.

PARTY MAY CONTACT SUPERINTENDENT OF EDUCATION

A person who has been given notice of intention to appeal as set out above may contact the Superintendent of Education responsible for the relevant school to discuss any matter respecting the appeal of the suspension.

Where a person who has been given notice of intention to appeal contacts the Superintendent of Education to discuss a matter respecting the appeal of the suspension, the Superintendent of Education may:

1. Review the incident with the principal. The Superintendent of Education may discuss with the principal the possibility of modifying the duration of the suspension.
2. May discuss with the principal prior progressive discipline interventions used with the student.

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3. Consider the steps taken in conducting the investigation including the discussions with the parent/guardian/adult student.
4. Examine any pertinent documentation and/or other physical evidence.
5. Review any witness statements and/or interview witnesses.
6. Provide the parent/guardian/adult student with an opportunity to respond to all allegations and supporting facts.
7. Determine if mitigating factors and/or other factors exist in the case of a suspension (*refer to Section B*).

The Superintendent of Education will respond verbally or by letter to the parent about the outcome of their review.

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Parties to the Appeal

The parties to the appeal are:

1. The principal who suspended the pupil.
2. The pupil, if,
 - (i) the pupil is at least 18 years old, or
 - (ii) the pupil is 16 or 17 years old and has withdrawn from parental control.
3. The pupil's parent or guardian, if the pupil's parent or guardian appealed the decision to suspend the pupil.
4. The person who appealed the decision to suspend the pupil, if the decision was appealed by a person other than the pupil or the pupil's parent or guardian.
5. The Superintendent of Education.
6. The Director of Education.
7. Active or retired staff of the Board who have relevant knowledge of the student's conduct leading to suspension.
8. Other persons called by the parent or staff, including law enforcement, who have relevant knowledge of the student's conduct leading to suspension.

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Hearing of the Appeal

The Board will hear and determine the appeal within 15 school days of receiving notice of suspension, unless the parties agree on a later deadline, and will not refuse to deal with the appeal on the ground that there is a deficiency in the notice of appeal.

Content of Notice of Appeal

An appeal of the decision to suspend a student will be in writing, and the notice of appeal will include the specific reasons for the appeal, including why the party believes that the suspension should not have been imposed, or why the length of the suspension should be altered.

Receipt of Notice

Where notice is given, it shall be considered to have been received in accordance with the following rules:

1. If the notice is sent by mail or another method in which an original document is sent, the notice shall be considered to have been received by the person to whom it was sent on the fifth school day after the day on which it was sent.
2. If the notice is sent by fax or another method of electronic transmission, the notice shall be considered to have been received by the person to whom it was sent on the first school day after the day on which it was sent.

Timing of the Appeal

- a) Written notification of the appeal of the decision to suspend a student shall be delivered to the Superintendent Education within 10 school days of the commencement of the suspension. This notification must be delivered in one of the following ways: hand delivery, courier, facsimile transmission or any other way agreed upon by the parties.
- b) The Superintendent of Education will send a return letter which acknowledges receipt of the notice of appeal with a copy of this letter to the Director of Education and the Principal.

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<p>Role of the Principal</p> <p>1. Under subsection 306 (1) of the <i>Education Act</i>, a principal shall consider whether to suspend a pupil if he or she believes that the pupil has engaged in any of the following activities while at school, at a school-related activity or in other circumstances where engaging in the activity will have an impact on the school climate:</p> <p style="padding-left: 40px;">Uttering a threat to inflict serious bodily harm on another person.</p> <p style="padding-left: 40px;">Possessing alcohol or illegal drugs.</p> <p style="padding-left: 40px;">Being under the influence of alcohol.</p> <p style="padding-left: 40px;">Swearing at a teacher or at another person in a position of authority.</p> <p style="padding-left: 40px;">Committing an act of vandalism that causes extensive damages to school property at the pupil's school or to property located on the premises of the pupil's school.</p> <p style="padding-left: 40px;">Bullying.</p> <p style="padding-left: 40px;">Any other activity that is an activity for which a principal may suspend a pupil under the policy of the Board.</p> <p>2. If a principal decides to suspend a pupil for engaging in an activity described in subsection 306 (1), the principal will suspend the pupil from his or her school and from engaging in all school-related activities.</p> <p>3. In considering how long the suspension should be, a principal will take into account any mitigating and/or other factors prescribed by the regulations.</p> <p>4. With respect to serious infractions, the principal will consult with the appropriate superintendent of education.</p> <p>5. When it becomes necessary to suspend a student, a principal/designate should contact the student's parent/guardian/adult student in order to discuss reasons for the suspension and engage them in becoming part of the plan to change behaviour.</p> <p>6. The principal/designate will complete a Suspension Report Form. In completing the Form, the principal/designate will set out the process used in considering and documenting his/her decision to suspend (<i>refer to Section J</i>).</p> <p>7. Where there is a serious violent incident leading to a suspension or expulsion or a call to the police, the principal will complete a Violent Incident Form (<i>refer to Section J</i>).</p>	

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8. A suspension shall be for a fixed period, not exceeding 20 school days. The minimum period of suspension is *one* school day.
9. A principal who suspends a pupil will:
 - a) inform the pupil's teacher of the suspension; and
 - b) make all reasonable efforts to inform the pupil's parent or guardian of the suspension within 24 hours of the suspension being imposed, unless,
 - i) the pupil is at least 18 years old, or
 - ii) the pupil is 16 or 17 years old and has withdrawn from parental control.
10. A principal who suspends a pupil will ensure that written notice of the suspension is given promptly to the following persons:
 1. The pupil.
 2. The pupil's parent or guardian, unless,
 - i) the pupil is at least 18 years old, or
 - ii) the pupil is 16 or 17 years old and has withdrawn from parental control.
11. The notice of the suspension will include the following:
 1. The reasons for the suspension.
 2. The duration of the suspension.
 3. Information about any program for suspended pupils to which the pupil is assigned.
 4. Information about the right to appeal the suspension under section 309, including,
 - i) a copy of the board policies and guidelines governing the appeal established by the board under subsection 302 (6), and
 - ii) the name and contact information of the superintendent of education to whom notice of the appeal must be given under subsection 309 (2).
12. In the event that a parent/adult student/student who is 16 or 17 and has withdrawn from parental control appeals a suspension, the principal will be promptly contacted by the school board.

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13. The principal who suspended the pupil will be a party to the appeal.
14. The principal, with the assistance of the appropriate Supervisory Officer, will prepare for the suspension appeal hearing. The appropriate Supervisory Officer will determine if legal counsel is required to further assist with the Appeal.
15. Following the hearing, if the Committee of the Board decides to shorten the duration of the suspension or quash the suspension and order that the record of the suspension be expunged, the principal will revise, replace or remove the relevant documentation.

Assistance for the Principal

The appropriate Supervisory Officer who supervises the principal will provide assistance for the principal throughout the suspension appeal hearing. The appropriate Supervisory Officer will:

1. Meet with the principal to review preliminary and procedural matters and to determine substantive legal issues surrounding the suspension appeal.
2. Speak with the principal about the process intended to be followed at the hearing and the rights of the parties under the *Statutory Powers Procedure Act* ("SPPA"). The appropriate Superintendent of Education will determine if legal counsel is required and secure such counsel as necessary.
3. Prepare the principal and relevant witnesses for the hearing.
4. Prepare a relevant brief of documents for the hearing. The documents that may be included in the principal's brief of documents are set out in the Appendix to this section.
5. Address preliminary and/or procedural issues, make opening statement, call relevant witnesses and summarize evidence.
6. Ensure that the principal is prepared to present and speak to relevant matters will at the hearing.
7. Make final submission to the Committee of the Board on behalf of the principal.
8. Review the decision of the Committee with the principal.
9. Where appropriate, request that the Committee provide written reasons.
10. Where appropriate, advise the principal about the process and procedures regarding a judicial review of the Committee's determination.

<p style="text-align: center;">SUSPENSION APPEAL PROCEDURES</p>	<p style="text-align: center;">AS 29.0 Section E June 2014</p>
<p>Role of the Superintendent of Education</p> <ol style="list-style-type: none"> 1. The Board designates the Superintendent of Education responsible for the purpose of receiving notices of intention to appeal a suspension. The Superintendent of Education will promptly notify the Director of Education of all appeal requests. 2. A person who is entitled to appeal a suspension under subsection 309 (1) must give written notice of his or her intention to appeal to the Superintendent of Education with 10 school days of the commencement of the suspension. 3. After receiving a notice of intention to appeal, the Superintendent of Education will promptly contact every person entitled to appeal the suspension under subsection 309 (1) and inform him or her that it has received the notice of intention to appeal. 4. The Superintendent of Education informs the parent/adult student and their agent or counsel about the process intended to be followed at the hearing. 5. The Superintendent of Education informs the principal about the process intended to be followed at the hearing. 6. The Superintendent of Education, where appropriate, speaks with other parties about agreeing on a later deadline for a suspension hearing; 7. The Superintendent of Education arranges for a Committee of the Board to hear the appeal. 8. The Superintendent of Education arranges and confirms the date, time and place of the hearing including any special needs; and issues a written notice. 9. The Superintendent of Education makes physical arrangements for the hearing and arranges for the recording of Minutes. 10. The Superintendent of Education sends the decision and order (signed by the Chair of the Appeal Committee) together with a covering letter to the parties and retains a file of all relevant documents relating to the hearing, including the reasons for the decision. <p>Role of the Committee of the Board</p> <ol style="list-style-type: none"> 1. The Board will hear and determine an appeal, and for that purpose, the Board has powers and duties set out in the Rules of Procedures for Suspension Appeals and Expulsion Hearings (<i>refer to Section I</i>). 2. The Board may delegate its powers and duties to hear and determine a suspension appeal or expulsion proceeding to a Committee of the Board. 	

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3. The Committee of the Board will consist of at least three members of the Board.
4. The three trustees will select a Chair for the Appeal Committee. Failing selection by mutual agreement, the trustees will select straws. The short straw will be the Chair.
5. A member of a 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.
6. A member of a Committee who has not been present through the whole of the hearing shall not take part in the deliberations, the decision or the reasons.
7. Under section 16.2 of the SPPA, a tribunal shall establish guidelines setting out the usual time frame for completing proceedings that come before the tribunal and for completing the procedural steps within those proceedings. In hearing and determining a suspension appeal, the following guidelines will apply for completing proceedings:
 - (a) Five minute introduction of the parties and the Committee of the Board, with discussion on the issue or issues to be addressed by the Committee;
 - (b) Ten minute presentation by the parent or adult student in presenting evidence and submissions on behalf of the pupil;
 - (c) Ten minute presentation by the principal in presenting evidence and submissions on behalf of the School; and
 - (d) Five minute question session by the Committee. Caucus, deliberations and decision by the Committee. The Committee has the power to reserve its decision.
8. In reaching a decision, the 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.

Procedural Requirements for Board Hearings

Suspension appeal hearings are governed by the SPPA. This Act imposes a number of procedural requirements on the conduct of the hearing. Those requirements include:

- A party has a right to be represented by counsel or an agent;
- Any party may call and examine witnesses and present arguments and submissions;
- Any party may cross-examine witnesses; and
- Any witness at the hearing is entitled to be advised by 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 Committee of the Board.

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Appellant Bears Onus of Proof

In an appeal of the decision to suspend a student, the appellant (parent or adult student) shall bear the onus of proof.

Order of Presentation

Where the Committee hears an appeal of the decision to suspend a student either electronically or orally, the appellant shall proceed first in the presentation of evidence and submissions, and the principal shall be the second to do so, unless the parties agree otherwise.

Adjournments

The Committee may adjourn the appeal from time to time on its own motion or on request by either party where it is satisfied that the adjournment is required to permit an adequate hearing to be held.

Pupil May Attend

The pupil who is not a party to the appeal has the right to be present at the appeal and to make a statement on his or her own behalf.

Deliberations and Decision of the Board

1. The 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 commit the infraction.
2. Where the Committee determines that the student committed the infraction, the Committee will determine whether the principal considered the mitigating factors and/or other factors set out by regulation and Board policy. If the principal failed to consider the mitigating factors and/or other factors then the Committee shall do so.
3. Following the hearing, the Committee will decide to:
 - (a) confirm the suspension and the duration of the suspension;
 - (b) 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
 - (c) 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.

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<ol style="list-style-type: none"><li data-bbox="250 342 1377 405">4. The decision of a majority of the members of a committee, is the Board's decision. The decision of the Board is final.<li data-bbox="250 443 987 474">5. The Committee has the power to reserve its decision.<li data-bbox="250 512 1377 575">6. The decision of the Committee shall be in writing and signed by the Chair of the Committee. When requested by a party, the Committee shall give written reasons.<li data-bbox="250 613 1377 707">7. 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.	

Documents in the Principal's Brief of Documents may include:

1. Signed Suspension or Suspension Pending Expulsion letter and Suspension Form.
2. Signed Ministry of Education Violent Incident Form (if applicable).
3. Signed copy of the Principal's Report.
4. Signed copy of the Principal's "Referral to Board for Expulsion Hearing" letter.
5. Signed copy of the Principal's Denial of Access letter or Exclusion letter.
6. Copy of "Undertaking Given to a Peace Officer" (bail conditions).
7. All investigative notes about the incident signed by school administrators and dated.
8. Signed and dated copies of all statements by the victim(s) or taken from the victim(s).
9. Signed and dated copies of all statements by the witnesses or taken from the witnesses.
10. Signed and dated copies of all statements by the accused student(s) or taken from the accused student(s).
11. Signed and dated copies of notes taken by investigating police officers.
12. Photographs of injuries sustained by the victim(s).
13. Photographs of weapons used or contraband seized from the alleged offending student(s).
14. Copies of the suspension/expulsion appeal letter(s).
15. Copies of all other correspondence related to the incident including e-mails.
16. Copy of the school's video surveillance recording related to the incident.
17. Copy of the latest "Student Progress Inquiry".
18. Copy of the student's "Credit Counselling Summary".
19. Copy of the student's "Ontario Student Transcript".
20. Copy of the student's latest "Provincial Report Card".
21. Copy of the student's "Attendance Profile" for the current school year.
22. Copy of "Ontario Student Record" of schools attended (back cover of OSR folder).
23. Copies of the "Office Index Card – Short Version" for the accused student, victim(s) and witnesses.

24. Copies of all suspension letters and suspension forms recorded for the accused student.
25. Copies of documentation related to any previous expulsions.
26. Copies of documentation related to any previous "Safe Schools Transfers" or "Administrative Transfers".
27. Copies of "Support Services Referral Forms".
28. Copies of correspondence and reports from any medical or mental health professionals.
29. Copies of all IPRC reports.
30. Copies of all IEP documentation.
31. Copies of reports from any alternative programs.
32. Copy of the School's Code of Conduct.
33. Copy of proof that the accused student received information regarding the School's Code of Conduct and the Board's "Consequences of Inappropriate Student Behaviour".
34. Copy of the Student Action Plan.