

Toronto District School Board

Operational Procedure PR594

Title: **SUSPENSIONS APPEAL MEETINGS**

Adopted: December 1999

Revised: January 30, 2008, **August 18, 2009 (replaced PR522)**

Authorization:

1.0 OBJECTIVE

To establish the process and requirements for conducting suspension appeal meetings

2.0 DEFINITIONS

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

School day a school day as defined under Regulation 304, as a day that is within a school year and is not a school holiday

Director Director of Education, or delegate

OSR Ontario Student Record

Party includes a student who is at least 18 years old; a parent of the student if the student is a minor; a principal whose decision is being appealed; and a student who is sixteen (16) or seventeen (17) years of age and has withdrawn from parental control

Meeting includes:

- a meeting to consider a suspension appeal filed by:

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- (ii) the pupil is 16 or 17 years old and has withdrawn from parental control.

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- (ii) the pupil is 16 or 17 years old and has withdrawn from parental control.

Such other persons as may be specified by Board policy.

3.0 RESPONSIBILITY

Associate Director

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4.0 PROCEDURE

Part 4A, General

4.1. Application of the Rules

- (a) The Discipline Committee may exercise any of its powers under the Procedure 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 the Procedure at any time, subject to considerations of procedural fairness, and consistency with the *Education Act*.
- (d) A suspension appeal is not invalid by reason only of a defect or other irregularity in form.
- (e) Where an issue arises that is not covered by the Procedure, it shall be resolved in a manner consistent with the Procedure, the purpose of the Procedure, and the *Education Act*.

4.2. Computation of Time

In the computation of time under this Procedure or in a decision or order of the Discipline Committee,

- (a) where the time for doing an act under this Procedure 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.

4.3. Waiver of Procedural Requirement

Subsequent to the Education Act any provision of this Procedure, 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.

4.4. Adding a Student as a Party

The Discipline Committee may add a student as a party to a suspension appeal meeting.

4.5. Pupil May Attend

A pupil who is not a party to a suspension appeal meeting under s. 311.3 (3) of the *Education Act*, has the right to be present at the suspension appeal meeting and to make a statement on his or her behalf.

4.6. Superintendent of Education May Attend

The Superintendent of Education for the school has the right to be present at the meeting.

4.7. Different Ways to Conduct a Suspension Appeal Meeting

The Discipline Committee may conduct a suspension appeal meeting by any combination of written, electronic and oral meeting.

4.8. Right to Representation

A party to a suspension appeal meeting 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.

4.9. Role of the Discipline Committee

- (a) The Board delegates its powers and duties to meet and determine a suspension appeal to a Discipline Committee of the Board.
- (b) The Discipline Committee shall meet and determine a suspension appeal and for that purpose, the Discipline Committee has powers and duties set out in this Procedure.
- (c) The Discipline Committee shall consist of at least three (3) members of the Board.
- (d) A Member of a Discipline Committee who has any direct involvement in a matter prior to the commencement of the suspension appeal meeting shall disqualify himself/herself and will not take part in the suspension appeal meeting, the deliberations, the decision and the reasons.
- (e) A Member of a Discipline Committee who has not been present through the whole of the meeting shall not take part in the deliberations, the decision or the reasons.
- (f) In reaching a decision, the Discipline Committee shall have regard only to the documents, reports and submissions made at the suspension appeal meeting 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 suspension appeal meeting itself.

4.10. Expiry of Term

If the term of office of a member of the Discipline Committee who has participated in a suspension appeal meeting 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.

4.11. Incapacity of Member

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

Part 4B: Decision Not to Process a Notice of Intention to Appeal a Suspension

4.12. Decision Not to Process a Notice of Intention to Appeal a Suspension

Subject to section 4.14, upon receiving documents relating to the appeal of a suspension, the Registrar may decide not to process the documents if,

- (a) the documents are incomplete;
- (b) the documents are received after the time required for filing a notice has elapsed.

4.13. Notice of Decision

The Registrar shall inform the parties notice of his/her decision under section 4.12 (a) and shall in the case of section 4.12 (a) shall state what is required to complete the documentation, and the time allowed for completion.

4.14. Resumption of Processing

The Register shall process the Appeal documents when they have been completed in accordance with the Registrar's notice and specified timeline under section 4.13.

The Discipline Committee may hold a meeting (oral, electronic or written) at the request of a party to consider an application to extend the time for filing a Suspension Appeal. If an extension is permitted, the panel is not seized.

Part 4C: Disclosure

4.15. Required Disclosure

Prior to the commencement of a suspension appeal meeting, each party shall provide to the other party (or parties if more than one) the following information:

- (a) a copy of the documents that the party intends to rely on at the Suspension Appeal Meeting.

4.16. 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 Suspension Appeal Meeting may make orders for,

- (a) the exchange of documents;
- (b) the provision of particulars; and
- (c) any other form of disclosure.

4.17. Exception to Disclosure

Section 4.14 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.

4.18. Materials for the Suspension Appeal Meeting

Each party to the suspension appeal meeting 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 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.

4.19. 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 meeting.

Part 4D: Notice of Suspension Appeal Meeting and Failure to Attend

4.20. Notice of Suspension Appeal Meeting

The parties to a Suspension Appeal Meeting shall be given reasonable notice of the Suspension Appeal Meeting by the Registrar on behalf of the Discipline Committee.

4.21. Oral Suspension Appeal Meeting

A notice of an oral Suspension Appeal Meeting shall include:

- (a) reference to the legislative authority under which the Suspension Appeal Meeting will be held (*Education Act*, s. 309.6);
- (b) a statement of the time, place and purpose of the Suspension Appeal Meeting; and
- (c) a statement that if the party notified does not attend at the Suspension Appeal Meeting, the Discipline Committee may proceed in the party's absence and the party will not be entitled to any further notice in the Suspension Appeal Meeting.

4.22. Effect of Non-Attendance at a Suspension Appeal Meeting After Due Notice

With respect to a Suspension Appeal Meeting, where notice of a Suspension Appeal Meeting has been given to a party in accordance with this Procedure, and the party does not attend at the Suspension Appeal Meeting, the Discipline Committee may proceed in the absence of the party, and the party is not entitled to any further notice in the Suspension Appeal Meeting.

Part 4E: Provisions for Both Oral and Electronic Suspension Appeal Meeting

4.23. Suspension Appeal Meeting to be held in-camera

The Discipline Committee may order that the Suspension Appeal Meeting be held *in camera* where matters involving public security may be disclosed or where intimate financial, personal or other matters may be disclosed.

4.24. Transcript of Suspension Appeal Meeting

There is no requirement that the Discipline Committee keep a transcript of the Suspension Appeal Meeting.

4.25. Maintenance of Order at the Suspension Appeal Meeting

The Discipline Committee may make such orders or give such directions at a suspension appeal meeting, as it considers necessary for the maintenance of order at the

Suspension Appeal Meeting. If any person disobeys or fails to comply with any order or direction given at the Suspension Appeal Meeting, a Discipline Committee member may call for the assistance of any peace officer to enforce the order or direction.

4.26. Time Limitations

The following guidelines apply to a Meeting:

- (a) Information to be provided by a witness shall be presented in the form of a written statement.
- (b) Five minutes for the introduction of the parties and the Discipline Committee;
- (c) Five minutes for a presentation by the principal on the background of the suspension;
- (d) Ten minutes for a presentation by the appellant/agent or counsel of documents, reports and submissions on behalf of the pupil, followed by questions (if any) from the Discipline Committee and the principal;
- (e) Ten minutes for a presentation by Legal Counsel on behalf of the principal of documents, reports and submissions on behalf of the school, followed by questions (if any) from the Discipline Committee and the appellant;
- (f) Five minutes for a response by the appellant/agent or counsel;
- (g) If the student is present, the Discipline Committee shall ask the student if he/she wishes to make a statement on his/her own behalf;
- (h) The Discipline Committee may recess in private at any stage of the Meeting, and in order to deliberate on its decision. The Discipline Committee may reserve its decision.
- (i) If translation or interpretation services are required, the time limit in each step may be adjusted.

4.27. Required Disclosure

Prior to the commencement of a suspension appeal meeting, each party shall provide to the other party (or parties if more than one) the following information:

- (a) a copy of the documents that the party intends to rely on at the Suspension Appeal Meeting (see Part 4E).

Part 4F: 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.

Part 4G: Order Of Presentation

At a suspension appeal meeting, presentation of documents, reports and submissions will be as set out as in this procedure, unless the parties agree otherwise.

Part 4H: Adjournments

Subject to the *Education Act* the Discipline Committee may adjourn the suspension appeal meeting 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 appeal to be held.

Part 4I: Deliberations and Decision of the Discipline Committee

- The Discipline Committee will consider, based on the documents, reports and submissions of both parties, including any mitigating and/or other factors, whether the decision to suspend and the suspension imposed was reasonable in the circumstances, and shall either:
 - (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.
- The decision of a majority of the members of the Discipline Committee is the Board decision. The decision is final.
- The Discipline Committee has the power to reserve its decision within the statutory timelines.
- The decision of the Discipline Committee shall be in writing and signed by the Chair of the Discipline Committee.
- Copies of the decision shall be sent to all parties to the proceedings who took part in the appeal at their respective addresses last known to the Board.

4.28. Consent Decision of the Discipline Committee

If the parties to the Suspension Appeal have resolved the matter prior to the Discipline Committee reaching a decision, the parties may request that the Chair of the Discipline Committee issue a decision reflecting the consent agreement of the parties to dispose of the Suspension Appeal. The Consent Decision of the Discipline Committee will be attached to any minutes of settlement and/or agreed statement of facts as executed by the parties, if available, and provided to the parties once issued by the Chair of the Discipline Committee.

Part 4J: Correcting Minor Errors

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.

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