



BOARD GOVERNANCE POLICY NO. GOV-21	
Date Adopted	October 24, 2018
Last Revised	
Board Motion	5598-10-18

APPEALS AND HEARINGS REGARDING STUDENT DISCIPLINE

1. PURPOSE

The James Bay Lowlands Secondary School Board has developed this governance policy to affirm the Board's commitment to creating a school learning environment that is safe, nurturing, and respectful, and that enables all students to reach their full potential.

The Board is committed to the encouragement of appropriate behaviour by using a progressive discipline approach that uses a continuum of interventions, supports, and consequences to address student behaviour that is contrary to the provincial and school Codes of Conduct.

The Board recognizes that the principal is responsible for maintaining proper order and discipline in the school, and that students are responsible to the principal for their conduct. The Board also realizes that, in some circumstances, positive practices may not be effective or sufficient to address inappropriate student behaviour. In such cases, the Board supports the use of consequences. The consequences may include, where necessary, suspension and expulsion in accordance with the terms of the *Education Act* and Regulations.

The Board recognizes its duties and powers to decide upon appeals of student suspensions and the principal's recommendation to the Board for student expulsion. In exercising these duties and powers, the Board interprets the provisions of the *Education Act* and Regulations in a broad and liberal manner consistent with the *Canadian Charter of Rights and Freedoms* and the *Ontario Human Rights Code*.

This policy describes the processes to be followed for appeals and hearings regarding student discipline.

2. DEFINITIONS

Appeal: An appeal of a suspension does not stay the suspension. The appeal may result in orders by the Discipline Committee as set out in this policy.

Code of Conduct: The principal of Northern Lights Secondary School, in conjunction with members of the School Council, develops a School Code of Conduct clarifying acceptable and non-acceptable behaviour for students.

Daily Care: A person with daily care is an adult person who is not the custodial parent or guardian of a student who is less than 18 years old, but is a person who cares for the student on a daily basis and is known by the school to provide daily care; for example, a grandparent, aunt, uncle, older brother, or sister.

Discipline Committee of the Board: The Discipline Committee of the Board is a committee of three members of the Board designated to determine suspension appeals and recommendations for expulsion. The Board formally delegates to the Discipline Committee the powers set out in the *Education Act* and Regulations to implement any appropriate order and to make decisions on behalf of the Board.

Expulsion: Expelled students are removed from Northern Lights Secondary School and school activities for an indefinite time period. The Board offers a program for expelled students which must be completed before the student returns to school.

Mitigating and Other Factors: Mitigating and other factors must be taken into account when discipline is being considered. These factors are described in Ontario Regulation 472/07 Behaviour, Discipline and Safety of Pupils.

Parent: A reference to “parent” in this policy refers to both parents if applicable, or to a guardian or guardians. Parent means the custodial parent or guardian of a minor child who is not an adult student. An adult student is 18 or older or is 16 or 17 years of age, and has removed him/herself from parental control.

Progressive Discipline: Progressive discipline is a whole-school approach that uses a continuum of prevention programs, interventions, supports, and consequences to address inappropriate student behaviour and to build upon strategies that promote and foster positive behaviours.

Suspension: A suspension means a student is removed from school and school activities for a specific period of time ranging from one school day to 20 school days. A student who is suspended for more than five school days is considered to be on long-term suspension. The Board will encourage students on long-term suspension to participate in the Board’s program for suspended students and will provide homework packages for students suspended for less than six days. [Policy/Program Memorandum No. 141 School Board Programs for Students on Long-term Suspension]

3. GUIDING PRINCIPLES

- 3.1 The Board believes that every student has the right to an education without disruption, and a corresponding responsibility not to deny this right to any other student.
- 3.2 The Board values clear codes of behaviour, based upon individual rights and responsibilities.
- 3.3 No degree of violence, threat, or risk to the safety of students or adults is acceptable in the school system. Safety extends beyond freedom from violence and physical harm to emotional well-being, mutual respect, and a sense of security.

4. POLICY

- 4.1 It is the policy of the James Bay Lowlands Secondary School Board that any student whose behaviour does not comply with the provincial or school Codes of Conduct or the requirements of a student set out in the *Education Act* or its regulations may be suspended. For serious offences there may be expulsion.
- 4.2 The Board will deal with suspension and expulsion of students in accordance with Part XIII of the *Education Act*, related Regulations, this Board policy, and Board administrative procedures.
- 4.3 In considering whether to suspend a student or to recommend to the Board that a student be expelled, a principal shall take into account any mitigating or other factors prescribed in Ontario Regulation 472/07—Behaviour, Discipline and Safety of Pupils, and set out in the Board's administrative procedures.
- 4.4 All violent acts of which the school community is aware will result in some form of intervention which is designed to respond to the perpetrator and the victim. The level of intervention will be contingent upon the severity of the act and the established needs of the circumstance.
[See Administrative Procedure 385 Violence-Free School and Administrative Procedure 386 Student Assault on Staff/Volunteers.]
- 4.5 For any act of violence, however expressed, there will be an appropriate consequence, which could result in parallel but separate school and legal consequences.

5. BOARD EXPECTATIONS: SUSPENSION APPEALS

5.1 Effort to Resolve Dispute

- a) Although the *Education Act* makes provision for the appeal of a suspension to the Discipline Committee of the Board, every reasonable effort shall be made to resolve such a dispute before it is formalized in an appeal to the Board.
- b) Prior to the appeal of a suspension being heard by the Discipline Committee, an administrative review of the decision to suspend a student must be held, according to the terms outlined in Administrative Procedure 381 Student Suspension.

5.2 Notice of Suspension Appeal

- a) The parent who intends to appeal a suspension must give written notice of this intention within ten (10) school days of the commencement of the suspension. The appeal must be in writing to the Board's supervisory officer.
- b) The notice of appeal should include a written statement specifying why the parent disagrees with the decision of the principal. The statement will describe whether the parent disagrees with the suspension, or with the duration of the suspension.

- c) The Board shall not refuse to deal with the appeal on the ground that there is a deficiency in the notice of appeal.
- d) At the time of receiving notice of the intention to appeal the suspension, the supervisory officer will notify the principal and chair of the Board. The supervisory officer will set a date for the appeal hearing by the Discipline Committee of the Board within fifteen (15) school days of receiving the notice of intention to appeal, unless the parties agree to an extension.

5.3 Suspension Appeal Procedures

- a) The supervisory officer or designate will facilitate the exchange of documents between the parties and provide documents to the Discipline Committee, including copies of the suspension notice, the principal's report about the reasons for the suspension, and correspondence about the suspension review prior to the appeal to the Discipline Committee.
- b) The supervisory officer or designate will provide the parent with a copy of the documents that will be relied upon at the appeal hearing, and will inform the parent of the location, date, and time of the suspension appeal, using Board Form GOV-21-01 Notice of Suspension Appeal.
- c) The parties to the appeal shall be the parent and the principal or representative. The student upon whom the suspension was imposed is expected to be part of the proceedings, as appropriate.
- d) The Discipline Committee may grant a person with daily care, as defined in section 2 of this policy, authority to make submissions on behalf of the student, but this person is not a party to the appeal.
- e) The supervisory officer or designate will act as Secretary to the Discipline Committee and will act in an advisory capacity on procedural matters during the suspension appeal and the Committee's subsequent deliberation.
- f) Suspension appeals will be heard orally, in closed session, by the Discipline Committee of the Board. The appeal may be conducted electronically, unless one of the parties satisfies the Committee that holding an electronic appeal is likely to cause the party significant prejudice.
- g) The Discipline Committee shall hear the parties on an informal basis. Members of the Discipline Committee may question either party or the student, where appropriate, to seek clarification of matters relevant to the determination of the appeal. A party may address questions to the other party only through the chair of the Committee. The chair of the Committee may exclude any questions which are unduly repetitious.
- h) The Discipline Committee shall rule on any other matters of procedure that may arise during the course of the suspension appeal.
- i) Where a notice of an oral or electronic appeal has been given to a party to the proceedings in accordance with this policy, and the party fails to attend the appeal,

the Discipline Committee will wait for thirty (30) minutes. If the party has not attended by that time and notice has not been provided, the Discipline Committee may proceed with the appeal or dismiss the appeal in the absence of that party.

5.4 The Order of the Suspension Appeal

- a) The parent and/or the person with daily care will proceed first by making oral submissions and/or providing written submissions regarding the reason for the appeal and the result desired.
- b) The student will be asked to make a statement on his or her own behalf, as appropriate.
- c) The principal and/or representative will make oral submissions on behalf of the administration, including a response to any issues raised in the parent's submissions. The principal or representative may rely on the information report prepared for the Discipline Committee.
- d) The parent may make further submissions, addressing issues raised in the administration's presentation that were not previously addressed by the parent.
- e) Each party may make a closing statement, but not introduce new issues.

5.5 Decision of the Discipline Committee

- a) When making its determination, the Discipline Committee shall consider the submissions and the analysis and application of the mitigating and other factors as set out in Ontario Regulation 472/07, which may or may not be applicable in the circumstances.
- b) The Committee shall determine whether the decision to suspend and the suspension imposed were reasonable. Where there is a conflict in the evidence presented by the parties on the issue of whether the student committed a suspension infraction, the Committee shall assess the evidence and determine whether, on the balance of probabilities, it is more probable than not that the student committed the infraction.
- c) After hearing the parties, the Committee shall withdraw to deliberate in private, and make a written report including its decision, and the reasons for its decision.
- d) The Discipline Committee of the Board shall either:
 - confirm the suspension and its duration;
 - confirm the suspension but shorten its duration, even if the suspension has already been served, and order that the record of the suspension be amended accordingly; or
 - quash the suspension and order that the record be expunged, even if the suspension has already been served.

- e) The Board will inform the parent of the decision using Board Form GOV-21-02 Board Suspension Appeal Decision.
- f) The decision of the Discipline Committee is final.

6. BOARD EXPECTATIONS: EXPULSION HEARINGS

6.1 Recommendation for an Expulsion Hearing

- a) If a principal, in consultation with the supervisory officer, determines that a recommendation for expulsion is warranted, the supervisory officer will inform the chair of the Board and set a date for the expulsion hearing by the Discipline Committee. The hearing must be conducted within twenty (20) school days from the date the principal suspended the student under section 310 of the *Education Act*, unless the parties to the expulsion hearing agree upon a later date.
- b) The principal's recommendation and information report will be sent to the Discipline Committee. The information report shall include:
 - a description of the infraction and a report of the findings the principal made in the investigation;
 - a copy of the notice of expulsion sent to the parent or adult student;
 - an analysis of which, if any, mitigating or other factors might be applicable; and
 - a recommendation regarding the type of program that might benefit the student if the student is subject to an expulsion from the Board.

6.2 Expulsion Hearing Procedures

- a) The parent and the principal must each provide the other with copies of any documents that the party proposes to submit at the hearing. The principal will provide a copy of the information report described above to the parent prior to the expulsion hearing.
- b) The principal will also provide to the parent:
 - written notice of the decision to recommend expulsion to the Discipline Committee, and notice of the location, time and date of the expulsion hearing;
 - information that the parent has the right to respond to the principal's report in writing and to make a presentation to the Discipline Committee;
 - a copy of this board Policy as a guide to the process for the hearing; and
 - information about the possible outcomes of the hearing.
- c) The supervisory officer or designate will act as Secretary to the Discipline Committee, ensuring that all documents relevant to the hearing are submitted to the Committee, and serving in an advisory role to the Committee on procedural matters during the expulsion hearing and the Committee's subsequent deliberation.
- d) The parties to the hearing shall be the parent and the principal or representative. The student has the right to be present at the expulsion hearing and to make submissions on his or her own behalf. The Discipline Committee may grant a

-
- person with daily care the authority to make submissions on behalf of the student. This person is not a party to the hearing.
- e) The parent may be represented by a lawyer or agent. Prior notice of a lawyer's or an agent's attendance must be provided to the supervisory officer. If prior notice is not provided, the expulsion hearing may be rescheduled.
 - f) The Discipline Committee and/or the principal may also exercise the right to legal counsel.
 - g) The parties to the hearing may call witnesses to address the Discipline Committee. In most circumstances where witness statements are considered helpful, the parties will provide a transcript of what witness have said, rather than having the witness appear before the Committee.
 - h) In no case shall the names of students who are not adult students be revealed as witnesses at an expulsion hearing. If such witness statements are included, the students shall be referenced as "Witness A"; "Witness B", and so on.
 - i) Expulsion hearings will be heard orally, in closed session, by the Discipline Committee of the Board. The hearing may be conducted electronically, unless one of the parties satisfies the committee that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.
 - j) The maximum time allotted for each hearing will be two (2) hours, with up to an hour allotted to each party.
 - k) The Discipline Committee shall rule on any matter of procedure that may arise during the course of the expulsion hearing.
 - l) Where a notice of an oral or electronic expulsion hearing has been given to a party to the proceedings and that party fails to attend the hearing, the Discipline Committee will wait for thirty (30) minutes. If the parent has not attended by that time and notice has not been provided, the Discipline Committee may proceed with the hearing in the absence of the parent.

6.3 The Order of the Hearing

- a) The parent and/or the person with daily care will proceed first by making oral submissions and/or providing written submissions.
- b) The student will be asked to make a statement on his or her own behalf.
- c) The principal or supervisory officer will make oral submissions on behalf of the administration, including a response to any issues raised in the submissions made by the parent.
- d) The parent may make further submissions, addressing issues raised in the administration's presentation that were not previously addressed by the parent.
- e) The administration shall have a right of reply.

- f) Members of the Discipline Committee may question any party, witness, or the student, where appropriate, to seek clarification of matters relevant to the determination of the expulsion hearing. A party may address questions to the other party or a witness only through the chair of the Committee.
- g) Each party may make a closing statement, but may not introduce new issues.
- h) The Discipline Committee may make such orders or give such directions at a hearing as it considers necessary for the maintenance of order at the hearing.

6.4 Discipline Committee Deliberation

- a) After hearing the parties, the Discipline Committee shall withdraw to deliberate in private.
- b) The Committee shall consider whether the principal considered all relevant criteria and information, including mitigating or other factors as described in Ontario Regulation 472/07 Behaviour, Discipline and Safety of Pupils, in reaching the decision to expel the student.
- c) The Discipline Committee shall review the submissions and views of the parties and shall consider whether the principal's decision to expel was reasonable in the circumstances.

6.5 Decision Not to Expel the Student

- a) If the Discipline Committee considers that the student should not be expelled, the Committee shall take the submissions of the parties into account, including mitigating and other factors, in determining whether to:
 - decide that alternative discipline is appropriate in the circumstances;
 - confirm the suspension and its duration;
 - confirm the suspension and shorten its duration, even if the suspension has already been served, and order that the record of suspension be amended accordingly;
 - quash the suspension and order that the record of the suspension be expunged, even if the suspension has already been served; or
 - make such other orders as the Discipline Committee considers appropriate.
- b) The Discipline Committee shall give written notice to both parties of the decision not to impose an expulsion and the decision with respect to the suspension. The parent shall be notified using Board Form GOV-21-03 Board Expulsion Decision.
- c) The Discipline Committee's decision with respect to the suspension is final.

6.6 Decision to Expel the Student

- a) If the Discipline Committee decides to recommend expulsion, then the Committee must assign the student to a program for expelled students.

- b) The Discipline Committee shall promptly provide written notice of the decision to expel the student to both parties. This written notice shall include: the reason for the expulsion; information about the program to which the student has been assigned; and information about the right to appeal the expulsion. The notice to the parent will be provided using Board Form GOV-21-03 Board Expulsion Decision.

6.7 Appeal of the Board Decision to Expel

- a) The parent may appeal a Board decision to expel the student to the Child and Family Services Review Board in accordance with procedures set out in Regulation 472/07. The Child and Family Services Review Board is designated to hear and determine appeals of school Board decisions to expel students.
- b) The decision of the Child and Family Services Review Board is final.

REFERENCE DOCUMENTS

Legal:

Education Act, Part XIII Behaviour, Discipline and Safety

Education Act: 265 (1) (a) Duties of Principal: Maintain Proper Order and Discipline

Ontario Regulation 298, 23 (4) Requirements for Pupils: Responsible to principal for conduct

Ontario Regulation 472/07 Behaviour, Discipline and Safety of Pupils [mitigating factors]

Ontario Regulation 474/00 Access to School Premises

Ontario Student Record Guideline

Policy/Program Memorandum 119 Developing and Implementing Equity and Inclusive Education Policies 2013

Policy/Program Memorandum 120 Reporting Violent Incidents to the Ministry of Education

Policy/Program Memorandum 128 The Provincial Code of Conduct and School Board Codes of Conduct

Policy/Program Memorandum 141 School Board Programs for Students on Long-term Suspension

Policy/Program Memorandum 142 School Board Programs for Expelled Students

Policy/Program Memorandum 144 Bullying Prevention and Intervention

Policy/Program Memorandum 145 Progressive Discipline and Promoting Positive Student Behaviour

Ontario Ministry of Education Guideline—The Provincial Code of Conduct and School Board Codes of Conduct

Canadian Charter of Rights and Freedoms

Ontario Human Rights Code

Youth Criminal Justice Act

Board:

Board Policy GOV-01 Values, Vision, and Mission
Board Policy GOV-02 Role of the Corporate Board
Board Policy GOV-03 Role of the Supervisory Officer
Board Policy GOV-11 Board Code of Conduct
Board Policy GOV-13 Equity and Inclusion
Board Policy GOV-19 Special Education
Board Policy GOV-20 Safe School Environment
Administrative Procedure 379 Progressive Discipline
Administrative Procedure 381 Student Suspension
Administrative Procedure 382 Student Expulsion
Administrative Procedure 385 Violence-Free School
Administrative Procedure 386 Student Assault of Staff/Volunteers
Board Form GOV-21-01 Notice of Suspension Appeal
Board Form GOV-21-02 Board Suspension Appeal Decision
Board Form GOV-21-03 Board Expulsion Decision