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Tips for School Administrators – Student Discipline Investigations

The following tips are meant to supplement the School Board's Policies and Procedures with respect to student discipline.

Preliminary Considerations

- ✓ Determine whether the situation is one for which a suspension should be considered or is mandatory with the potential of recommending an expulsion. Review your School Board's policy and/or procedure, particularly with respect to the Mitigating and Other Factors.
- ✓ Be mindful of the 20 school day timeline set out in the *Education Act* – if you are going to recommend an expulsion, the expulsion hearing must take place within 20 school days of the date of the suspension. Similarly, be mindful of the 15 school day timeline for convening a suspension appeal following the receipt of the Notice of Appeal. Both timelines are subject to extension with the consent of the parent(s)/guardian(s).
- ✓ Although it is always important to proceed as soon as possible, it may be appropriate to delay the decision to suspend pending possible expulsion through a voluntary withdrawal (document in writing) or by a denial of access under section 265(1)(m) of the *Education Act*. Consult with your Superintendent, as appropriate.
 - In both cases, ensure that the student is provided with school work at home.
- ✓ Evaluate whether the allegations necessitate reporting to the police - refer to Board policy and police/school board protocol.
- ✓ If a report is made to police and the police investigate the situation, the School must still conduct its own investigation, but may be required to wait for the police investigation to be completed and/or receive direction that the School can proceed without impeding the police investigation.
- ✓ If police are involved or if the police investigation leads to *Youth Criminal Justice Act* ("YCJA") charges, ensure compliance with YCJA confidentiality protections.
 - Police may share information as needed in order to "ensure the safety of staff, students or other persons," pursuant to section 125(6) of the YCJA.

- References to arrests, charges and/or any further *YCJA* proceedings should not be considered a factor in the school's investigation of the activity and/or impact upon the principal's decision regarding appropriate discipline. This information should not be shared with staff at the School, unless absolutely necessary and consistent with the safety exemption.
- Information regarding arrests, charges or any further *YCJA* proceedings should not be introduced in the discipline proceeding.
- ✓ Proceed with the Board investigation pursuant to the Board policy and procedure, which set out the required steps for suspensions and mandatory suspensions pending a possible recommendation for expulsion.

Communication Issues

- ✓ Some information regarding the incident may have to be disclosed to staff or student witnesses "as needed" to facilitate the investigation. Only the minimum information necessary to facilitate the investigation should be disclosed.
- ✓ In some extreme circumstances, for example, where rumours or online exchanges regarding the students involved persist, it may be necessary to facilitate a meeting with the students in a class to explain in general terms that rumours / discussions about other students are hurtful, inappropriate, may be defamatory, contrary to school and Board policy and procedures, and do not assist in the situation.

Considerations During the Investigation

Internal Investigation

- ✓ Conduct interviews of the complainant(s), the student facing allegations, and any witnesses who may have relevant information, including witnesses suggested by the parties.
 - Questions should be open-ended and not leading. Use the "5 W's": who, what, why, when, where.
 - Consider having two Board representatives present: one to conduct the interview and one to take notes. Confirm the reason for two people being present before/or when the interview commences.
 - Involvement of parents/guardians should be consistent with Board procedures.
 - Do follow-up interviews where necessary to obtain all relevant information.
 - Take steps to preserve confidentiality to the greatest extent possible. Only disclose limited information as necessary to further the investigation. Advise witnesses of confidentiality and request they respect confidentiality.

- Always interview witnesses individually. Avoid contact between witnesses prior to the interview in order to maintain objectivity.
- The student facing allegations is typically the last witness to be interviewed. A summary of key allegations should be presented to the student in order that he or she may provide his or her version of the events. If the student is not available to be interviewed, offer additional opportunities and/ or a written statement option. If the student does not wish to make a statement, on the advice of their legal counsel or for any other reason, proceed with investigation but avoid any adverse inferences or judgment about the student's decision not to participate in the investigation.
- Notes should be detailed and factual, without judgment or opinion.
- Inquire about any objective evidence the students may have, such as text messages, emails, photos, videos, etc. and obtain copies if possible.

Duties of Procedural Fairness and Natural Justice

- ✓ Remember your duty to afford procedural fairness and natural justice to the student who is the subject of the investigation:
 - The student is entitled to know the nature of the allegations.
 - The student is entitled to have the opportunity to respond to the allegations. If there are parallel YCJA proceedings, the student may refuse to respond to any allegations, or be interviewed at all. This decision cannot be held against the student.
 - The student must be presumed to be innocent and all students should be treated equitably, fairly, and without preferential treatment.
 - The decision regarding the student's conduct must be made by an impartial decision maker who acts objectively and without bias throughout the entire process.
 - When assessing the evidence, use an objective lens. The investigator should not be swayed by a highly emotional victim, or by parental pressure.
 - As best as possible, confidentiality with respect to the student facing allegations and the alleged victim(s) is to be maintained.

Determining the Appropriate Action

- ✓ At the conclusion of the investigation, carefully evaluate the findings to determine the appropriate action.
- ✓ When considering an appropriate disciplinary response, consider the following:
 - *the particular student and circumstances*

- *the nature and severity of the behaviour*
 - *the impact on the school climate, including the impact on students or other individuals in the school community (PPM 145).*
- ✓ Carefully consider the Mitigating and Other Factors (Reg. 472/07).
 - ✓ Determine whether discipline is appropriate, and, if so, the appropriate discipline.
 - ✓ If the student facing allegations has a disability, including mental health concerns, that may be related to the conduct, consult the Human Rights representatives in your Board and/or legal counsel through your Superintendent prior to considering discipline.

General Tips

- ✓ Be mindful of the implications of all relevant Board policies/ procedures / guidelines etc., all relevant Ministry of Education PPM's, the *Ontario Human Rights Code*, the *Municipal Freedom of Information and Protection of Privacy Act*, the *Youth Criminal Justice Act*, and the *Labour Relations Act*.
- ✓ Ensure that students are aware of and kept up to date with respect to Board policies regarding the School and/or Board Code of Conduct and consequences for misconduct.
- ✓ Present a balanced view of the evidence and indicate how the evidence supports your decision/recommendation in an objective manner.
- ✓ Always leave witness statements intact. Never remove information except personal information relating to a third party, or other information that cannot legally be disclosed.
- ✓ Make notes at all stages of your investigation. Keep the original notes, even if you type them after they are taken. Remember that if you recommend an expulsion to the School Board's Discipline Committee or if the suspension is appealed, your notes will be produced to the student and to the Discipline Committee.

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