

**NIAGARA CATHOLIC DISTRICT SCHOOL BOARD
SUSPENSION/EXPULSION HEARING RULES**

Part I — General

s. 1 — Application

These Rules apply to all suspension and expulsion hearings before the Disciplinary Hearing Committee of the Board in accordance with the *Education Act*, Regulations, and the *Statutory Powers Procedure Act*.

s. 2 — Definitions

Act - means the Education Act and Regulation.

Adult student – is a student who is 18 years or older or 16 or 17 and has removed him/herself from parental control.

Chair – means the Disciplinary Hearing Committee Chair.

Committee – means the Disciplinary Hearing Committee of the Board established in accordance with s. 309(12) or s. 311.3 of the *Act* and amendments.

Day – means a school day.

Rules – means the Rules and their amendments as established by the Committee or the Board from time to time in accordance with the *Act*, Regulations and the *Statutory Powers Procedure Act*.

s. 3 — Interpretation

If required, these Rules should be interpreted and applied as board policy pursuant to s. 309 (7) and ss. 311.3(2) of the *Act*.

These Rules shall be liberally interpreted to ensure the most expeditious, least expensive and just determination of the proceeding on its merits.

s. 4 — Matters Not Dealt With

If these Rules do not provide for a matter of procedure the Committee may do anything necessary and permitted by law to effectively adjudicate the matter before it.

s. 5 — Substantial Compliance

Substantial compliance with the requirements of these Rules is sufficient.

s. 6 — Waiver of Rules

Any provision of these Rules not required by statute may be waived at the sole discretion of the Committee.

s. 7 — Waiver of Procedural Requirement

Any procedural requirement under these Rules may be waived on consent of all the parties and the Committee.

s. 8 — Extension or Reduction of Time

The Committee may extend or reduce any time required in these Rules or in a Committee order with any terms or conditions. A request for a change in time requirements may be made by bringing a motion, or the Committee may change the time requirements without a hearing, either before or after the time period expires.

s. 9 — Failure to Comply with Rules

If any Rule or part thereof is not complied with the Committee may decide whether any part or step in the proceeding, or any evidence is not valid as a result.

s. 10 — Incapacity of Committee Member

If a member of the Committee who has participated in a hearing becomes unable, for any reason, to complete the hearing or to participate in the decision, the remaining member or members may complete the hearing and give a decision.

s. 11 — Interim Matters

Any procedural or interlocutory matter in a proceeding may be heard and determined by a panel consisting of one or more members of the Committee as assigned by the Chair.

s. 12 — Parties

In accordance with s. 309 (8) and ss. 311.3(3) of the *Act*, the parties to a Suspension Hearing or an Expulsion Hearing shall be:

- (1) the Principal of the School;
- (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, 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;
- (4) such other persons as may be specified by Board policy;

In addition, the Committee may grant the opportunity to attend and make submissions to the Committee to a person with Daily Care.

s. 13 — Representation

- (1) A party to a proceeding may be represented by legal counsel or an agent. The Chair of the Committee must be notified of a party's representation by legal counsel or an agent as soon as possible and no later than three (3) school days prior to the date scheduled for the hearing.
- (2) Committee – The Committee may engage its own legal counsel as a resource for procedural matters.

s. 14 — Notice

Any notices required by these Rules shall be given in writing unless the Committee directs otherwise.

Any notice given to a representative is deemed to have been given to the party for whom the representative acts.

Part II — Hearings

s. 15 — Hearings

The Committee may hold hearings or any part thereof orally, electronically or in writing.

s. 16 — Hearing Closed

The Committee recognizes that intimate personal matters may be disclosed at the hearing and having regard to these circumstances it is desirable that all hearings be closed to the public and held in the strictest confidence, unless all parties and the Committee consent to the hearing being held in public.

s. 17 — Notice of Hearing

A notice of an oral hearing shall include the time, place and purpose of the hearing. Notice of an electronic hearing shall include the time, the telephone number and pass code for participation in the conference call.

s. 18 — English

The Committee shall conduct all proceedings in English.

s. 19 — Interpreter

If an interpreter is required for a witness whose language is not English, the party calling the witness must provide the competent interpreter.

s. 20 — Hearing

The hearing, in case of a suspension hearing pursuant to s. 309 of the Act shall be scheduled by the Committee for a set date within 15 school days of receiving a notice under s. 309(3) of the Act and within 20 school days of the date of suspension in the case of an expulsion hearing pursuant to s. 311.3 of the Act, unless the parties to the hearing agree on a later date.

The time allotted for a hearing will be 60 minutes in case of a suspension hearing pursuant to s. 309 of the Act and 90 minutes in case of an expulsion hearing pursuant to s. 311.3 of the Act. The Committee may expand the time allotted for the hearing upon motion of a party to the Committee.

s. 21 — Adjournment

If all parties agree, they may make a written request to postpone the hearing in accordance with Appendix A – Request for Adjournment. The request must include reasons and a suggested new date.

s. 22 — Powers of Chair Upon Adjournment Request

Upon request for adjournment the Chair may:

- (a) grant the request and in the case of an Expulsion Hearing order an extension of the suspension;
- (b) grant the request for a different date than that requested, or schedule a pre-hearing conference if appropriate and in the case of an expulsion hearing order an extension of the suspension;
- (c) grant a shorter adjournment than that requested and order an extension of the suspension and in case of an Expulsion Hearing order an extension of the suspension;
- (d) deny the request, even if all parties have consented;
- (e) grant an indefinite adjournment and in the case of an Expulsion Hearing order an extension of the suspension; or
- (f) make any other order it deems appropriate.

Provided that no request for an adjournment in the case of a suspension shall be granted to a date in excess of 15 days of the date of receiving a notice of appeal under s. 309(3) of the Act or in the case of an expulsion, in excess of 20 days from the date of suspension under s. 310 of the Act without the consent of the parties.

s. 23 — Hearing to Proceed

The Committee will not proceed for at least 30 minutes after the time given for the commencement of an oral hearing if a party or a representative has not yet appeared, unless they have given notice that they will not be in attendance.

After the Committee has waited 30 minutes the Committee may then proceed to hear the matter and decide the issues in the absence of any party.

In an electronic hearing the Committee will attempt to link all parties not linked until 30 minutes after the time given for commencement.

After the Committee has attempted to connect the parties for 30 minutes the Committee may then proceed to hear the matter and decide the issues in the absence of any party.

s. 24 — Proceedings with Similar Questions or Fact or Law

Where two or more procedures before the Committee involve the same or similar questions of fact or law the Committee may:

- (a) hear the proceedings one immediately after the other; or
- (b) stay one or more of the proceedings until after the determination of another one of them.

s. 25 — Director of Education

The Director of Education or his designate ("Director/Designate") will invite the parties into the Committee meeting room and will introduce the parties to the Committee. The Director/Designate will call the hearing to order and will outline the process to be followed during the hearing.

The Director's Designate will introduce the Disciplinary Hearing Committee and will indicate:

- a. that they have been appointed by the Board to hear the matter;
- b. that this matter will be heard in Camera(in private), unless otherwise agreed upon; and
- c. the process to be followed during the hearing

the matter being heard before the Disciplinary Hearing Committee, including the suspension/expulsion which was imposed.

s. 26 — Hearing Process

The hearing process, subject to the discretion of the Committee, shall be as follows:

- (1.) The Family of Schools Superintendent will distribute copies of the Principal's report and any documents submitted by or to be submitted by a party to the Disciplinary Hearing Committee. These documents should have been exchanged between the parties prior to the hearing. If additional documents not produced and exchanged before the hearing are intended to be submitted, they should be submitted at this time with an explanation as to why they have not been produced to the parties prior to the hearing. The Committee may choose to have a brief recess in order to read the reports and documents.
- (2.) The Principal will then make the presentation with his Family of Schools Superintendent. The presentation may reference documents, reports and may include oral evidence under oath or otherwise. The members of the Committee may ask questions of clarification through the Chair.
- (3.) The other parties to the hearing will then make their presentation. The presentation may reference documents, reports and may include oral evidence under oath or otherwise. The members of the Committee may ask questions of clarification through the Chair.
- (4.) The pupil will be specifically invited to make a statement on his/her own behalf to the Committee. The members of the Committee may ask questions of clarification through the Chair.
- (5.) The Family of School Superintendent and the Principal may respond, but only with respect to issues that they have not previously addressed and that have been raised by the other parties to the proceeding.
- (6.) At the conclusion of all presentations, the parties, in the order of presentation, will be invited to make summary statements but may not introduce new issues. The Committee may choose to have a brief recess prior to hearing the summary statements.
- (7.) After the summary statements, the Committee members may ask final questions for clarification through the Chair.

(8.) All persons with the exception of the Committee will then be asked to leave the room while the Trustees deliberate and make their decision.

(9.) The decision of the Committee will be relayed by the Director/Designate to the parties at the earliest opportunity. Any oral notification shall be followed up by written notice.

(10.) When making the determination the Disciplinary Hearing Committee shall consider:

- a. the Principal's report and submissions;
- b. the submissions and any other information provided by the Appellant; and
- c. the analysis and application of the mitigating and other factors, which may or may not be applicable in the circumstances.

s. 27 — Maintenance of Order

The Committee may make such orders or give such directions at a hearing as is considered necessary for the maintenance of order at the hearing. Should any person disobey or fail to comply with any such order, the Committee chair may call for the assistance of a police officer to enforce any such order.

s. 28 — Electronic Hearings

The Committee may hold a hearing by telephone conference or videoconference or other automated means for the determination of any or all issues, in the same manner as an oral hearing.

The Committee shall not hold an electronic hearing if a party satisfies the Committee that holding an electronic rather than oral hearing is likely to cause the party significant prejudice.

s. 26 — Arrangements for Electronic Hearings

The Committee, at its sole discretion, may direct the arrangements for the electronic hearing to protect the integrity of the hearing process, including the confidentiality of evidence.

s. 27 — Written Hearings

The Committee may hold a written hearing, where the facts are not an issue, for the determination of any or all issues.

The Committee shall refer a matter to an oral or electronic hearing where there are facts in issue between the parties. The Committee shall not hold a written hearing if a party satisfies the Committee that holding a written rather than oral hearing is likely to cause the party significant prejudice.

s. 28 — Procedure for Written Hearings

If no objection to a written hearing is received the Board Administration shall provide the Committee and the other party copies of its submissions within 5 days after the date of the Committee's notice of the written hearing. The submissions shall confirm the facts not in issue and shall include the reasons for the recommendation for suspension or expulsion, the order requested and any law relied on.

The other party may respond to the submissions within 7 days of the date that the Board Administration's submissions were served. The reply shall include submissions and state that the party has no submissions or evidence on any of the issues raised, if this is the case.

The Board Administration may reply to the other party's response with a copy to the Committee within 5 days after the date for service of the responses, and the reply shall be limited to any new evidence in the responses.

The Committee shall have the authority to change such dates in order to comply with the requirement that the hearing take place, and the case of a suspension within 15 days of receiving notice of the appeal under s. 309(3) of the Act and in the case of an expulsion within 20 school days from the date of the suspension under s. 310 of the Act, unless the parties have agreed to an extension of time.

The Committee may permit submissions to be filed in electronic form as approved by the Committee.

Where the Committee is not satisfied with the written representations of the parties it may order that an oral or an electronic hearing take place in the case of a suspension, within 15 school days from the receipt of the Notice of Appeal and in the case of an expulsion within 20 school days from the date of suspension, unless a longer period is agreed to by all of the parties and the Committee.

s. 29 — Objection to Electronic or Written Hearings

A party who objects to an electronic or written hearing shall file with the Committee Chair, a written objection providing details of its claim that there is a good reason for not holding the hearing in written form, within 3 days of receiving the notice of written hearing.

The Committee may consider any relevant factors in deciding to hold an electronic or written hearing, such as:

- (a) the convenience to the parties and Committee;
- (b) the likelihood of the process being less costly, faster and more efficient;
- (c) whether it is a fair and accessible process for the parties;
- (d) whether the evidence or legal issues are suitable for a written or electronic hearing;
- (e) whether credibility may be an issue
- (f) the desirability of hearing viva voce evidence and submissions from persons in attendance before the committee.

Part III — Preliminary Matters

s. 30 — Motions

Motions may be made orally or electronically, in the Committee's discretion, at a pre-hearing conference or at the beginning of the scheduled hearing.

A notice of motion, in the form of Appendix B, and any materials must be served on the other party and filed with the Chair 4 days before the scheduled pre-hearing conference or hearing, if the pre-hearing conference has been cancelled or the party is out of time. The responding party must serve and file any materials in response 1 day before the scheduled pre-hearing conference or hearing.

s. 31 — Motions

A motion may be made during an oral or electronic hearing only if the need for the motion arises out of events in the hearing. The motion will be heard or decided in accordance with any procedures ordered by the Chair.

s. 32 — Summonses

A party who wishes to require a witness in Ontario to attend an oral or electronic hearing may serve a summons in accordance with Appendix C, available from the Chair. The party should obtain a Request for Summons Form from the Chair and return the completed Form. The summons will be signed by the Chair.

s. 33 — Chair May Refuse Summons

The Chair may refuse to issue a summons unless an affidavit is provided indicating how the witness' evidence is relevant to the matter. If the Chair is not satisfied from the affidavit that the evidence is relevant the Chair or Committee member will hold a motion to determine this question. A summons may be refused if, after hearing a motion, the Chair decides that the witness' testimony is not material to the matter, or admissible in evidence at a hearing.

s. 34 — Issued Summons

Once issued, the summons will require the witness to attend the hearing at the time and place stated in the summons, or as arranged with the person issuing the summons, and may require the witness to bring relevant documents and other things stated in the summons. The Chair may cancel any summons for valid reasons.

s. 35 — Service of Summons

A summons must be served on the witness personally at least 3 days before the time for attendance together with the necessary attendance fee.

s. 36 — Commission Evidence

The Chair or Committee member may, where appropriate, order that evidence be taken by way of commission evidence rather than be heard orally or electronically.

s. 37 — Pre-Hearing Conference

The Committee may schedule a pre-hearing conference, to be conducted in person or electronically with the Chair or a single Committee member presiding and which may include motions or preliminary hearing matters in order to:

- (a) identify and simplify the issues;
- (b) identify facts or evidence the parties may agree upon or on which the Committee may make a binding decision;
- (c) obtain admissions that may simplify the hearing;

- (d) identify witnesses to be called;
- (e) provide directions for further disclosure;
- (f) deal with any other matter that may assist in a fair and quick resolution.

s. 38 — Pre-Hearing Conference Order

The Committee may provide the parties with a sample Pre-hearing Conference Order in accordance with Appendix D – Pre-hearing Conference Order, before the pre-hearing conference. The parties should consider the issues listed in the Pre-hearing Conference Order and attempt to resolve as many issues as possible before attendance at the pre-hearing conference.

s. 39 — Failure to Attend Pre-Hearing Conference

If a party fails to attend the pre-hearing conference the Chair may proceed without that party.

s. 40 — Cancellation of Pre-Hearing Conference

The Chair or member, may with the consent of both parties, cancel a scheduled pre-hearing conference where such conference is not necessary.

s. 41 — Order

The Chair or member conducting the Pre-Hearing Conference will issue a Pre-Hearing Conference Order which may decide any of the matters considered at the Pre-Hearing Conference, as well as provide procedural directions for any proceedings to follow.

Part IV — Corrections

s. 42 — Correcting Minor Errors

The 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.

s. 43 — Reviews of Decisions

The Committee may consider a party's request to review all or part of a decision. The request for review shall not stay the original decision. The Committee shall not consider a request where the party has appealed to the Child and Family Services Review Board or has made an application for judicial review. The party making the request must submit the following information:

- (a) the name, address, telephone, fax and email address of the requester and the requester's representative, if any;
- (b) reasons for the request;
- (c) the desired result;
- (d) documents that support the request, including copies of new evidence unavailable at the hearing;

- (e) whether the requester or has or will submit an appeal to the Child and Family Services Review Board or has or will make an application for judicial review.

s. 44 — Reason for Review

The Committee will hear a motion to review a decision only if the reasons provided in the request raise an arguable case that the Committee,

- (a) acted outside its jurisdiction;
- (b) violated the Rules of natural justice or procedural fairness;
- (c) made an error of law or fact such that the Committee would likely have reached a different decision;
- (d) heard false or misleading evidence from a party or witness, which was discovered only after the hearing and could have affected the result; or
- (e) should consider evidence which was not available at the time of the hearing, but that is credible and could have affected the result.

s. 45 — Refusal of Review

The Committee will refuse to hear a motion to review a decision if:

- (a) the request is made by a non-party;
- (b) the request is not filed in a timely manner;
- (c) the requester does not provide particulars if requested by the Committee in the time frame requested;
- (d) it is the second request by the same party raising the same or similar issues.

s. 46 — Procedure on Review

The Committee will determine initially whether the requestor has met one or more of the eligible grounds for review, without providing notice to the other party. The Committee may grant a motion to review without submissions from the other party, if it is satisfied that the motion for review should be heard.

If satisfied that the motion to review should be heard, the Committee may schedule the motion to review and provide notice to all parties setting out the date of the motion, whether the motion will be heard electronically or in person, the time for filing and serving materials.

At the hearing of the motion, the parties will be expected to make submissions on whether the request meets the Committee's reasons for review.

s. 47 — Power of Committee on Motion

On hearing the motion the Committee may:

- (a) deny the request;
- (b) order a review;
- (c) order a rehearing; or
- (d) make any other order it deems appropriate.

Request for Adjournment

Between:

Niagara Catholic District School Board

-and-

[Student Name]

The parties request that the Disciplinary Hearing Committee adjourn the hearing scheduled for

_____.
[date and time the hearing has been scheduled]

The parties request that the Disciplinary Hearing Committee proceed to hear the matter on

_____.
[the new date and time requested for the hearing]

The parties request this adjournment for the following reasons:

Order for Adjournment

Between:

Niagara Catholic District School Board

-and-

[Student Name]

On reviewing the request for adjournment and reasons of the party the Disciplinary Hearing Committee Orders:

1. the request for adjournment and the new hearing date be granted ____
2. the adjournment be granted with the hearing rescheduled to

[new hearing date]

3. the request be denied ____
 4. an indefinite adjournment be granted ____
 5. the extension of the suspension of the student until such time as the expulsion matter is completed
 5. any other order deemed appropriate:
-
-

Notice of Motion

Between:

Niagara Catholic District School Board

-and-

[Student Name]

_____ will make a motion to the Disciplinary Hearing Committee on _____
[party making the motion] [date]

at _____.
[time]

Please note that motions will be scheduled to be heard at the pre-hearing conference of hearing in accordance with the Rules. Motions may also be heard in writing at the discretion of the Disciplinary Hearing Committee.

The motion is for _____.
[state order desired]

The grounds for the motion are _____

[state the reasons for the request for a motion, including any sections of statutes or regulations that will be referred to.]

Please find attached copies of the documents that will be used at the motion.
[documents to be relied on should be attached in sequence.]

Response to Notice of Motion

Between:

Niagara Catholic District School Board

-and-

[Student Name]

_____ will respond to the motion on _____
[party responding to the motion] [date]

at _____.
[time]

Please note that motions will be scheduled to be heard at the pre-hearing conference of hearing in accordance with the Rules. Motions may also be heard in writing at the discretion of the Disciplinary Hearing Committee.

The responding party requests

[state order desired]

The grounds of the responding party are

[state the reasons for the request for a motion, including any sections of statutes or regulations that will be referred to.]

Please find attached copies of the documents that will be used at the motion.
[documents to be relied on should be attached in sequence.]

Request for Summons to Witness

Between:

Niagara Catholic District School Board

-and-

[Student Name]

_____ requests that the following people be summonsed to
[name of party making the request]

appear at the hearing of this matter scheduled for _____
[date and time of hearing]

1. _____
2. _____
3. _____
4. _____
5. _____

[include the name and address of the parties to be summonsed]

Attached please find an affidavit setting out how the evidence of witnesses requested to be summonsed is relevant to the matter.

Please note that if the Chair is not satisfied from the affidavit that the evidence is relevant it will hold a motion to determine this question.

Please note that the Chair may order that evidence be taken by way of commission evidence.

Summons to Witness

Between:

Niagara Catholic District School Board

-and-

[Student Name]

To:

[name of witness]

[address of witness]

You are hereby summoned and required to attend before the Niagara Catholic District School Board Disciplinary Hearing Committee at a hearing to be held at [427 Rice Road, Welland, ON]

on _____ at _____
[date of the hearing] [time of the hearing]

until the hearing is concluded or the Disciplinary Hearing Committee otherwise orders, to give evidence on oath or affirmation touching on the matters in question in the proceedings and to bring with you and produce at such time and place,

Dated _____

If you fail to attend and give evidence at the hearing, or to produce the documents or things specified, at the time and place specified, without lawful excuse, you are liable to punishment by the Superior Court of Justice in the same manner as if for contempt of that court for disobedience to a subpoena.

Pre-hearing Conference Order

Between:

Niagara Catholic District School Board
-and-
[Student Name]

The Following parties participated in the pre-hearing conference

[name of the parties in attendance]

Motions

After hearing the motion of _____
[party brining motion]

for _____
[reason for motion, order being requested]

The Disciplinary Hearing Committee orders _____
[order of the Disciplinary Hearing Committee resulting from motion]

Issues

The following issues to be determined at the hearing have been identified by the parties:

[list of issues]

The parties agree that these are the only issues which will be heard at the hearing between the parties.

Facts in Agreement

The parties agree to the following facts:

Mode of Hearing

The Commission orders that the hearing in this matter be held

electronically ___

orally ___

in writing ___

Witnesses

It is ordered that commission evidence will be taken from the following witnesses:

1. _____
2. _____
3. _____
4. _____
5. _____

[include the name and address of the witnesses to be heard]

It is ordered that the Disciplinary Hearing Committee shall hear oral evidence from the following witnesses during the hearing:

1. _____
2. _____
3. _____
4. _____
5. _____

[include the name and address of the witnesses to be heard]