

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**DIVISIONAL COURT**

BETWEEN:

KAWARTHA PINE RIDGE DISTRICT SCHOOL BOARD

Applicant

- and -

JEAN GRANT and CHILD AND FAMILY SERVICES REVIEW BOARD

Respondents

- and -

JUSTICE FOR CHILDREN AND YOUTH

Intervenor

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**FACTUM OF THE INTERVENOR, JUSTICE FOR CHILDREN AND YOUTH**

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**PART I –OVERVIEW OF INTERVENOR’S POSITION**

1. The Intervenor, Justice for Children and Youth (“JFCY”), makes submissions on two issues. The Intervenor submits that deference is owed to the Child and Family Services Review Board and therefore the standard of review is reasonableness. The Intervenor also submits that the potential basis for expulsion in s. 310(1) of the *Education Act* “in any other circumstances where engaging in the activity will have an impact on the school climate” must be interpreted narrowly in order to create predictability and certainty in the area of student discipline. Before suspending and expelling a student on this ground,

there must be clear and cogent evidence that the student engagement in the activity will substantially disrupt the education and discipline in the school.

## **PART II - STATEMENT OF FACTS**

2. The Intervenor takes no position on the facts.

## **PART III – STATEMENT OF THE ISSUES AND LAW**

### **The Child and Family Services Review Board hears appeals**

3. The Child and Family Services Review Board (“the Tribunal”) hears appeals of school board decisions regarding expulsions. The *Education Act* provides:

(a) Section 311.7(1): “designated tribunal” means a tribunal designated under the regulations to hear appeals of board decisions to expel pupils.”

(b)Section 311.7(3): “The designated Tribunal shall hear and determine an appeal under this section, and, for that purpose, it has the powers and duties set out in the regulations.”

(c) And Section 4 of Regulation 472/07: “The Child and Family Services Review Board is designated for the purposes of the definition of “designated tribunal” in subsection 311.7 (1) of the Act to hear appeals of board decisions to expel pupils.

***Education Act, R.S.O. 1990, c. E.2, as amended, ss. 311.7(1) and (3) [emphasis added];  
O. Reg. 472/07, Suspension and Expulsion of Pupils made pursuant to the Education Act,  
R.S.O. 1990, c. E.2, as amended at s.4 [emphasis added].***

4. The School Board, the parent(s) and sometimes the pupil are the statutory parties to Tribunal hearings of expulsion appeals. Parties are invited to adduce current evidence and to make submissions. The Tribunal hears all of the evidence and then determines the weight it will accord to it. The Tribunal did not err in performing its statutory duties to hear an appeal. It neither can nor should give deference to either party before it.

***Judicial Review Procedure Act R.S.O. 1990, c. J.1 ss. 1-2;  
Part V, Rule 85 of the Child and Family Services Review Board’s Rules of Procedure.***

5. Pursuant to the *Statutory Powers Procedure Act*, the Tribunal has established Rules of Procedure. The Rules provide that expulsion appeals proceed by way of a hearing *de*

*novo* in order to hear current information about the pupil, current information about the school (including any victim) and current programs available, in recognition of the developing and changing nature of children. A hearing *de novo* ensures that the decision of the Tribunal reflects the current reality and meets the goals of the *Education Act*.

**Part 5, Rule 92 of the Child and Family Services Board Rules of Procedure;  
Statutory Powers Procedure Act R.S.O. 1990, c. S.22, ss. 25.0.1, 25.01.**

### **Standard of review for this case**

6. The factors for determination are: a) existence of a privative clause; b) purpose of the tribunal and legislation; c) nature of the question; and d) expertise of the tribunal.

***Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII) “Dunsmuir”, Book of Authorities of the Applicant, TAB A, at para 34.**

### ***Privative Clause***

7. The *Education Act* contains a strong privative clause: “The decision of the designated Tribunal is final.” Thus, deference is owed to its decision.

***Education Act*, R.S.O. 1990, c. E.2, as amended, s. 311.7(5);  
*Dunsmuir*, *supra*, Book of Authorities of the Applicant, Tab A, at para 52.**

### ***Purpose of the Tribunal and Legislation***

8. Both the *Education Act* and *Child and Family Services Act* are the enabling statutes of the Tribunal. The *Education Act* provides that a designated tribunal will hear appeals of expulsions decisions of school boards and the regulations provide that the designated tribunal is the Child and Family Services Review Board. The purpose of the Tribunal in this instance is to hear appeals of expulsions under s.311.7 of the *Education Act*. The Tribunal has great expertise with respect to children and, since 2000, specifically students who are expelled.

***Education Act*, S.O. 2000, c. E.2, as amended at s. 311.7;  
O. Reg. 472/07, *Suspension and Expulsion of Pupils made pursuant to the Education Act*,  
R.S.O. 1990, c. E.2, as amended at s.4;**

***Child and Family Services Act, R.S.O. 1990, c. C.11, s. 207.***

9. The paramount purpose of the Tribunal is to make its decisions in a manner that supports the purpose of the legislation which mandates it to hear appeals. Decisions made under the *Child and Family Services Act* and under the *Education Act* are to be made after considering the best interests of the affected children. The purpose of the *Child and Family Services Act* is “to promote the best interests, protection and well-being of children” which enhances the purpose of the Tribunal in hearing appeals of expulsions decisions.

***Child and Family Services Act, R.S.O. 1990, c. C.11, ss. 1 and 207;*  
*Education Act, S.O. 2000, c. E.2, as amended;*  
*Convention on the Rights of the Child, 20 November 1989, 3 U.N.T.S. 1577, Can. T.S. 1992/3, s. 3 [Convention].***

10. The purpose of the expulsion provisions of the *Education Act* is to provide a fair process of determining whether a student has committed an infraction for which discipline may be imposed and to mandate the appropriate disciplinary decision in all the circumstances, including the safety of others in the school. Part XIII of the Education Act, “Behaviour, Discipline and Safety” fleshes out the grounds, consequences and procedures to be followed in regulating behaviour in order to support the purposes of provincial and school boards’ codes of conduct which are outlined in s.301(2).<sup>1</sup>

***H.K. v. Durham Catholic District School Board, 2008 CFSRB 77 (CanLii), Book of Authorities of the Applicant, Tab D, at para 25;*  
*Education Act, R.S.O. 1990, c. E.2, as amended, s. 301(2).***

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<sup>1</sup> The following are the purposes of the code of conduct:

1. To ensure that all members of the school community, especially people in positions of authority, are treated with respect and dignity.
2. To promote responsible citizenship by encouraging appropriate participation in the civic life of the school community.
3. To maintain an environment where conflict and difference can be addressed in a manner characterized by respect and civility.
4. To encourage the use of non-violent means to resolve conflict.
5. To promote the safety of people in the schools.
6. To discourage the use of alcohol and illegal drugs. 2000, c. 12, s. 3.

11. Expulsion is the taking away of an important right: the right to attend school. An appeal from a potentially political decision made by elected school board members is essential, given the importance of the right to the student and the broader public.

***Nature of the Question***

12. The question of expulsion requires expertise in interpreting legislation and expertise in children and the systems that support them. The Tribunal has expertise, unlike elected school boards.

13. When a tribunal decision involves interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity, deference will usually result. This appeal involves questions of law and of mixed law and fact. The question of law, namely the interpretation of s. 310 of the *Education Act* is one in which the Tribunal has been answering since s. 310 was enacted. For expulsion appeals the Tribunal makes decisions by interpreting the *Education Act* and applying the facts before it. Thus, it has expertise in the expulsion provisions of the *Education Act* and its regulations, as well as the evidence before it.

***Dunsmuir, supra, Applicant's Book of Authorities, Tab A at para 54.***

***Expertise of the Tribunal***

14. In 2000, an appeal beyond a disciplinary decision of a school board was created. From 2000 to 2006, school principals had the authority to order a limited expulsion only; school boards could order a limited or full expulsion. School boards also heard appeals. Since 2007, principals only have the power merely to recommend an expulsion under s.

311.1 and it is the school board who hears and decides whether to order an expulsion under s. 311.3. The Tribunal hears appeals of school board decisions to expel.

***Education Act, S.O. 2001, c.E.2, ss. 309(7)(a), 309(7)(b) and 309(11);  
Education Act, R.S.O. 1990, c. E.2, as amended, s. 311.1 and 311.3.***

15. The Tribunal's area of expertise is children, specifically children's safety, children in need of protection or treatment, children who are in trouble and in the systems required to support them. The fact that the Tribunal, like others, has mandates from more than one statute increases its expertise in the appropriate placement of and consequences for children.

16. It is submitted that after examining all factors in the standard of review analysis, it is clear that the Tribunal is owed deference and decisions should be reviewed on a standard of reasonableness.

**Interpretation of s. 310(1) of the *Education Act***

17. Section 310 requires principals to suspend a student pending possible expulsion for specified activities at school, at a school-related activity or in other circumstances where engaging in the activity will have an impact on the school climate.

***Education Act, R.S.O. 1990, c. E.2, as amended, s. 310.***

18. The proper approach for statutory interpretation is to read provisions "*in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the act, the object of the act, and the intention of parliament.*"

***Bell ExpressVu Limited Partnership v. Rex, 2002 SCC 42 (CanLII), Brief of Authorities of the Applicant, at para 26, quoting Dreidger, Elmer, Construction of Statutes, 2<sup>nd</sup> ed. (1983) at page 87.***

19. It is submitted that "impact on school climate" must be interpreted narrowly, must require a significant nexus to education in the school, and must involve a substantial

disruption—caused by the student—to the education and discipline of students, based on clear and cogent evidence.

20. The relevant portion of section 310(1) of the *Education Act* is vague. As will be discussed below, it is submitted that s. 310(1) must be strictly construed to reflect:

- a) that it creates authority to take away a young person’s most important public and societal right, the right and duty to go to school by authorizing the harshest punishment under the Act: expulsion,
- b) the broad legislative purpose of promoting public education and Part XIII of *the Act* (“Behaviour, Discipline and Safety”) within that context,
- c) the entire context of the *Education Act* and the legislative intent in amending the relevant provisions, and
- d) international norms.

***a) Importance of the Right and Duty to Attend School***

21. Disciplinary provisions must be construed narrowly to ensure fairness, predictability and certainty. It is submitted that this is particularly true with respect to young people who, because of their developmental stage cannot be expected to accurately interpret vague legislative provisions. A narrow construction’s importance increases as the importance of the affected interest (education) increases. Furthermore, there must be clear evidence that the conduct breaches the provisions.

***K.B. (Litigation guardian of) v. Toronto District School Board [2008] O.J. No. 475 (Ont. Div. Ct.), Book of Authorities of the Intervenor at Tab A, at para 36 and 55;***  
***Congregation des temoins de Jehovah de St-Jerome-Lafontaine v. Lafontaine (Village) [2004] S.C.R. 650 (S.C.C.) Book of Authorities of the Intervenor at Tab B at para 5, 9;***  
***Baker v. Canada (Minister of Citizenship and Immigration) [1999] 2 S.C.R. 817 (S.C.C.) Book of Authorities of the Intervenor at Tab C at para 23-28.***

22. It is the right of every resident young person to go to school from kindergarten (or junior kindergarten, if offered) to the end of seven years of secondary school or graduation. It is the duty of Ontario students to attend school from age 6 to age 18.

***Education Act R.S.O. 1990, c. E.2, as amended, s. 21.***

***b) Purpose of Education***

23. The purpose of education is stated in s. 0.1(1) of the *Education Act*:

0.1(1) A strong public education system is the foundation of a prosperous, caring and civil society.

(2) The purpose of education is to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society<sup>2</sup>.

24. The purpose of Part XIII of the *Education Act*, as amended, is to reduce the number of suspensions and expulsions while using alternative approaches and progressive discipline, to ensure that there is a more careful consideration of the circumstances of the affected student and of the effect of the proposed suspension and possible expulsion on the student, while maintaining discipline and safety in the schools<sup>3</sup>.

*“In particular, these amendments address the zero tolerance approach that was introduced by the former government, which was seen by many as being ineffective and unfair.”*

**Official Reports of Debates (Hansard) L181A (4 June, 2007) at 1600 (Minister Kathleen Wynne), Book of Authorities of the Intervenor at Tab D p. 1 [speaking during third reading about the amendments to s. 310(1)].**

*Another change would include replacing mandatory suspensions and expulsions for students, **except in limited circumstances**, with the requirement that principals and school boards consider and respond to all infractions that occurred in the most appropriate way. For infractions which currently carry a mandatory suspension, consideration will now be given to suspension as one measure along a continuum of progressive discipline”*

**Official Reports of Debates (Hansard) L158A (17 April, 2007) at 1400 (Minister Kathleen Wynne), Book of Authorities of the Intervenor at Tab E at p. 3 [emphasis added]**

***c) Context and Intention***

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<sup>2</sup> *Student Achievement and School Board Governance Act*, 2009, S.O. 2009, c. 25 – Bill 177 (assented to December 15, 2009).

<sup>3</sup> *Education Act*, R.S.O. 1990, c. E.2, as amended, ss. 265(1)(a), 301.



25. Principals and school boards have long suspended or expelled students for off-school conduct that was so “refractory” that their presence was injurious to other pupils<sup>4</sup> or where the students’ conduct was “injurious to the moral tone or to the physical or mental well-being of others in the school.”<sup>5</sup> A new concern developed, after the 2000 “safe schools” legislation was enacted, about cyber-bullying, whether of students or of school staff, so s. 310 was amended to ensure that significant interference with the educational climate at school could be dealt with:

*“One of the issues that came up most often after I introduced this legislation in the House was cyberbullying, and the changes to the legislation would include the possibility for schools to respond to behaviours that may not technically take place in school but that would have an adverse effect on school climate. This is the reality our students are dealing with.”*

**Official Reports of Debates (Hansard) L163A (25 April, 2007) at 1600, (Minister Kathleen Wynne) Book of Authorities of the Intervenor, Tab F at p. 2.**

*“The existing act talks about the act applying in the school or at school events. We’re adding that the legislation applies in the event that an act has a negative influence on school climate, and that of course includes internet bullying, which although it happens off-site usually, has a very negative impact on the climate and what’s going on within the school. So that will allow principals to be quite clear that they do have the authority within the act to deal with internet bullying.”*

**Official Reports of Debates (Hansard) L166B (1 May, 2007) at 2110 (Mrs. Sandals, MPP, Parliamentary Assistant) Book of Authorities of the Intervenor, Tab G at p. 7.**

But, there was concern that the provisions not be interpreted too broadly to cover conduct that is more in the purview of parental responsibility:

*“Now what we’re doing is adding to the responsibilities in the school, having them take on more onus and responsibility. If you look at some of the sections, for example 310(1), where it speaks about how “A principal shall suspend a pupil if he or she believes that the pupil has engaged in any of the following...or in other circumstances where engaging in the activity will have an impact on the school climate.” –having an impact on the school climate. You’re talking about internet bullying, but there are so many other facts that, if I get a chance to debate later*

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<sup>4</sup> *Education Act*, S.O. 1993 s. 23(3) [repealed in 2000].

<sup>5</sup> *Education Act*, S.O. 1993 s. 23(1) [repealed in 2000].

*on, I'm going to try and bring forward. How much responsibility can you put on the schools and how are you going to police that? How are you going to look into those things? And what onus and responsibility do you then give to the school? Quite frankly, we pass on more to them and we remove some the responsibility from—It has to come back to the families, in some way, shape of form, in terms of what takes place in those particular situations.”*

**Official Reports of Debates (Hansard) L165B (30 April, 2007) at 2100 (Mr. Ouellette, MPP), Book of Authorities of the Intervenor, Tab H at p. 33.**

26. The context of the amended wording of s. 310(1) of the *Education Act* was to empower principals to respond to bullying and cyber-bulling and to discipline students whose conduct causes a significant negative effect on school climate, not to empower them to police all student conduct out of school.

**d) International Norms**

27. Canada is a proponent of, is a signatory to and has ratified the *United Nations Convention on the Rights of the Child*. The Supreme Court of Canada has held that Canadian law must be interpreted in a manner consistent with Canada's international human rights obligations. This is especially true for children.

***Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76 Book of Authorities of the Intervenor at Tab I, at para. 32; *Baker, supra*, Book of Authorities of the Intervenor at Tab C, at para. 70-71.**

28. Article 3 of the Convention provides:

1. In all actions concerning children...the best interests of the child shall be a primary consideration.
2. States parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents...

Article 16 provides:

1. No child shall be subjected to arbitrary or unlawful interference with his or her **privacy**, family, home or correspondence, nor to unlawful attacks on his or her honour or reputation. [emphasis added]

Article 28 recognizes the right to education. Article 28.2 provides:

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

**Convention, supra, Art. 3, 16, 28.**

### **Other Cases**

29. While the Tribunal has upheld an expulsion for off-school conduct (a gang stabbing of a student of a different school)<sup>6</sup>, this is the first instance in which it has overturned an expulsion on the basis that the impugned activity did not have enough connection to the education at school. Its decision is consistent with American jurisprudence which has held that school discipline should not be imposed where the conduct is not shown to “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.”

***Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969), Book of Authorities of the Intervenor Tab J, at pp. 9-11 [*Tinker*].**

30. Conduct “in class or out of it” that “materially disrupts class-work” or involves “substantial disorder on school premises” can attract discipline. Students whose conduct is off school property at a school-sanctioned and supervised event can be disciplined when their actions “materially and substantially disrupt the work and discipline of the school.”

***Morse v. Frederick*, 551 U.S. 393 (2007), Book of Authorities of the Intervenor, Tab K at p. 8, citing *Tinker*.**

31. It is, however, essential that there be evidence that the off-school conduct caused the material and substantial disruption.

***Layshock v. Hermitage Sch. Dist.*, 497 F. Supp. 2d 587 (W.D. Pa. 2007), Book of Authorities of the Intervenor, Tab L, at pp. 8-9.**

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<sup>6</sup> *Appellant v. TDSB*, 2008 CFSRB 96, Book of Authorities of the Intervenor, at Tab M.

**Summary**

32. Given the intention of the legislature, impact of the provision on students, the persuasive decisions of the Supreme Court of the United States, and international norms, it is submitted that s. 310(1) of the *Education Act* “in any other circumstances where engaging in the activity will have an impact on the school climate” must be interpreted narrowly in order to create predictability and certainty in the area of student discipline. Before suspending and expelling a student on this ground, there must be clear and cogent evidence that the student engagement in the activity will substantially disrupt the education and discipline in the school. Thus, there must be a significant nexus between the off-school conduct and the school’s educational climate. There must be sufficient certainty and specificity that students may understand how to comply.

33. Schools exist to educate students; school administrators are not responsible for raising children. Young people have a right to privacy in an area in their lives where school staff will not know what they are doing and will not interfere.

**PART IV - ORDER SOUGHT**

34. The Application should be dismissed.

All of which is respectfully submitted.

Date: January 19, 2010

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**SCHEDULE “A”**  
**LIST OF AUTHORITIES – not relied on by Applicant or Respondent**

1. *K.B. (Litigation guardian of) v. Toronto District School Board* [2008] O.J. No. 475 (Ont. Div. Ct.).
2. *Congregation des temoins de Jehovah de St-Jerome-Lafontaine v. Lafontaine (Village)* [2004] S.C.R. 650 (S.C.C.).
3. *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 S.C.R. 817 (S.C.C.).
4. Official Reports of Debates (Hansard) L181A (4 June, 2007), at 1600 (Minister Kathleen Wynne).
5. Official Reports of Debates (Hansard) L158A (17 April, 2007), at 1400 (Minister Kathleen Wynne).
6. Official Reports of Debates (Hansard) L163A (25 April, 2007), at 1600 (Minister Kathleen Wynne).
7. Official Reports of Debates (Hansard), L166B (1 May, 2007) at 2110 (Mrs. Sandals, MPP, Parliamentary Assistant).
8. Official Reports of Debates (Hansard) L165B (30 April, 2007) at 2100 (Mr. Ouellette, MPP).
9. *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76 (S.C.C.).
10. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).
11. *Morse v. Frederick*, 551 U.S. 393 (2007).
12. *Layshock v. Hermitage Sch. Dist.*, 497 F. Supp. 2d 587 (W.D. Pa. 2007).
13. *Appellant v. TDSB*, 2008 CFSRB 96.

**SCHEDULE “B”**  
**RELEVANT STATUTES – (not relied on by Applicant or Respondent)**

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1. Part V, Rule 85 of the Child and Family Services Review Board’s Rules of Procedure	16
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3. <i>Statutory Powers Procedure Act</i> R.S.O. 1990, c. S.22, ss. 25.0.1, 25.01	18
4. <i>Child and Family Services Act</i> , R.S.O. 1990, c. C.11, ss. 1	19
5. <u>Convention on the Rights of the Child</u> , 20 November 1989, 3 U.N.T.S. 1577, Can. T.S. 1992/3, s. 3	20
6. <i>Education Act</i> , S.O. 2001, c.E.2, ss. 309(7)(a), 309(7)(b) and 309(11)	22
7. <i>Student Achievement and School Board Governance Act, 2009, S.O. 2009, c. 25 – Bill 177 (assented to December 15, 2009)</i>	25
8. <i>Education Act</i> , R.S.O. 1990, c. E.2, as amended, s. 265	26
9. <i>Education Act</i> , R.S.O. 1990, c. E.2, as amended, s. 301(2)	28
10. <i>Education Act</i> , S.O. 1993 s. 23 [repealed in 2000]	29

**Part V, Rule 85 of the Child and Family Services Review Board's Rules of Procedure**

85. The following persons are parties to an expulsion appeal before the Board:
  - a. The school board;
  - b. The pupil, if the pupil is at least 18 years old or is 16 or 17 years old and has withdrawn from parental control;
  - c. The pupil's parent or guardian, if the parent or guardian appealed the school board expulsion decision;
  - d. The person who appealed the school board expulsion decision, if the decision was appealed by a person other than the pupil or the pupil's parent or guardian.



**Part V, Rule 92 of the Child and Family Services Board Rules of Procedure**

92. The proceeding before the Board is a new (de novo) hearing where the Board must decide whether to:
- a. Confirm the school board's expulsion decision;
  - b. If the school board's decision was to expel the pupil from his or her school only, quash the expulsion decision and reinstate the pupil to the school;
  - c. If the school board's decision was to expel the pupil from all schools of the school board:
    - i. Change the expulsion decision to an expulsion from the pupil's school only; or
    - ii. Quash the expulsion and reinstate the pupil to his or her school; or
  - d. Order any record of the expulsion be expunged or amended.

***Statutory Powers Procedure Act R.S.O. 1990, c. S.22, ss. 25.0.1, 25.01***

**Control of process**

**25.0.1** A tribunal has the power to determine its own procedures and practices and may for that purpose,

- (a) make orders with respect to the procedures and practices that apply in any particular proceeding; and
- (b) establish rules under section 25.1. 1999, c. 12, Sched. B, s. 16 (8).

**Rules**

**25.1 (1)** A tribunal may make rules governing the practice and procedure before it. 1994, c. 27, s. 56 (38).

***Child and Family Services Act, R.S.O. 1990, c. C.11, ss. 1***

**Paramount purpose**

[1.\(1\)](#)The paramount purpose of this Act is to promote the best interests, protection and well being of children.

## **Convention on the Rights of the Child**

**Adopted and opened for signature, ratification and accession by  
General Assembly resolution 44/25 of 20 November 1989**

**Entry into force 2 September 1990, in accordance with article  
49**

### ***Article 3***

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

### ***Article 16***

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

### ***Article 28***

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Current to December 12, 2009  
R.S.O. 1990, c. E.2, s. 309  
[eff September 1, 2001 to January 31, 2008](Past Version)

**Education Act**  
**R.S.O. 1990, c. E.2**  
**PART XIII**  
**BEHAVIOUR, DISCIPLINE AND SAFETY**

**SECTION 309**

*Mandatory expulsion of a student*

309. (1) It is mandatory that a pupil be expelled if the pupil commits any of the following infractions while he or she is at school or is engaged in a school-related activity:

1. Possessing a weapon, including possessing a firearm.
2. Using a weapon to cause or to threaten bodily harm to another person.
3. Committing physical assault on another person that causes bodily harm requiring treatment by a medical practitioner.
4. Committing sexual assault.
5. Trafficking in weapons or in illegal drugs.
6. Committing robbery.
7. Giving alcohol to a minor.
8. Engaging in another activity that, under a policy of the board, is one for which expulsion is mandatory.

*Duty to suspend pending expulsion, principal*

(2) The principal shall suspend a pupil who the principal believes may have committed an infraction for which expulsion is mandatory.

*Mitigating factors*

(3) Despite subsection (1), expulsion of a pupil is not mandatory in such circumstances as may be prescribed by regulation.

*Action following suspension*

(4) If the principal suspends a pupil under subsection (2), the principal shall promptly refer the matter to the board or conduct an inquiry to determine whether the pupil has committed an infraction for which expulsion is mandatory.

*Notice of suspension*

(5) The principal shall ensure that written notice of the suspension under subsection (2) is given promptly to the pupil and, if the pupil is a minor, to the pupil's parent or guardian.

*Conduct of inquiry*

(6) The principal's inquiry shall be conducted in accordance with the requirements established by a policy of the board and the powers and duties of the principal are as specified by board policy.

*Action following inquiry*

(7) If, after the inquiry, the principal is satisfied that the pupil committed an infraction for which expulsion is mandatory, the principal shall,

- (a) impose a limited expulsion as described in subsection (14) on the pupil; or
- (b) refer the matter to the board for its determination.

*Restriction on expulsion by principal*

(8) The principal cannot expel a pupil if more than 20 school days have expired since the principal suspended the student under subsection (2), unless the parties to the inquiry agree upon a later deadline.

*Hearing by board*

(9) When a matter is referred to the board under subsection (4) or clause (7) (b), the board shall hold an expulsion hearing and, for that purpose, the board has the powers and duties specified by board policy.

*Conduct of hearing*

(10) The expulsion hearing shall be conducted in accordance with the requirements established by board policy.

*Duty to expel, board*

(11) If, after the expulsion hearing, the board is satisfied that the pupil committed an infraction for which expulsion is mandatory, the board shall impose a limited expulsion as described in subsection (14) or a full expulsion as described in subsection (16) on the pupil.

*Restriction on expulsion by board*

(12) The board cannot expel a pupil if more than 20 school days have expired since the principal suspended the pupil under subsection (2), unless the parties to the expulsion hearing agree upon a later deadline.

*Delegation*

(13) The board may delegate its duty to hold an expulsion hearing and its powers and duties under subsection (11) to a committee of the board, and may impose conditions and restrictions on the committee.

*Limited expulsion*

(14) A pupil who is subject to a limited expulsion is not entitled to attend the school the pupil was attending when he or she committed the infraction and is not entitled to engage in school-related activities of that school until the later of,

(a) the date specified by the principal or the board when expelling the pupil, which date cannot be more than one year after the date on which the principal suspended the pupil under subsection (2); and

(b) the date on which the pupil meets such requirements as may be established by the board for returning to school after being expelled.

*Same*

(15) A regulation may vary the limit described in clause (14) (a) and may specify a different limit for different circumstances or different classes of persons.

*Full expulsion*

(16) A pupil who is subject to a full expulsion is not entitled to attend any school in the province or to engage in school-related activities of any school in the province until he or she meets such requirements as may be established by regulation for returning to school after being expelled.

*Effect on other rights*

(17) A pupil's rights under sections 33, 36, 42 and 43 are inoperative during a full expulsion.

*Minimum duration of mandatory expulsion*

(18) The minimum duration of a mandatory expulsion is 21 school days and, for the purposes of this subsection, the period of a pupil's suspension under subsection (2) shall be deemed to be a period of expulsion. The minimum duration may be varied by regulation, and a different standard may be established for different circumstances or different classes of persons.

*Factors affecting type and duration of expulsion*

(19) When considering the type and duration of expulsion that may be appropriate in particular

circumstances, the principal or board shall consider the pupil's history and such other factors as may be prescribed by regulation and may consider such other matters as he, she or it considers appropriate.

*Notice*

(20) The principal or board that expels a pupil under this section shall ensure that written notice of the mandatory expulsion is given promptly to the pupil and, if the pupil is a minor, to the pupil's parent or guardian.

*Policies and guidelines*

(21) The Minister may issue policies and guidelines to boards to assist boards and principals in interpreting and administering this section.

*School-related activities*

(22) A pupil who is expelled is not considered to be engaged in school-related activities by virtue of using services to assist such pupils or taking a course or participating in a program that prepares the pupil to return to school.

*Commencement*

(23) This section comes into force on a day to be named by proclamation of the Lieutenant Governor.

*R.S.O. 1990, c. E.2, s. 309; S.O. 1993, c. 11, s. 42; S.O. 1993, c. 27, Sched.; S.O. 1997, c. 31, s. 129; S.O. 2000, c. 12, s. 3; S.O. 2006, c. 10, s. 49.*



CHAPTER 25

**An Act to amend the Education Act with respect to student achievement,  
school board governance and certain other matters**

*Assented to December 15, 2009*

Note: This Act amends the *Education Act*. For the legislative history of the Act, see the Table of Consolidated Public Statutes – Detailed Legislative History at [www.e-Laws.gov.on.ca](http://www.e-Laws.gov.on.ca).

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. The *Education Act* is amended by adding the following section:**

PURPOSE

**Strong public education system**

**0.1** (1) A strong public education system is the foundation of a prosperous, caring and civil society.

**Purpose of education**

(2) The purpose of education is to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society.

***Education Act, R.S.O. 1990, c. E.2, as amended, s. 265*****Duties of principal**

**265. (1)** It is the duty of a principal of a school, in addition to the principal's duties as a teacher,

**discipline**

(a) to maintain proper order and discipline in the school;

**co-operation**

(b) to develop co-operation and co-ordination of effort among the members of the staff of the school;

**register pupils and record attendance**

(c) to register the pupils and to ensure that the attendance of pupils for every school day is recorded either in the register supplied by the Minister in accordance with the instructions contained therein or in such other manner as is approved by the Minister;

**pupil records**

(d) in accordance with this Act, the regulations and the guidelines issued by the Minister, to collect information for inclusion in a record in respect of each pupil enrolled in the school and to establish, maintain, retain, transfer and dispose of the record;

**timetable**

(e) to prepare a timetable, to conduct the school according to such timetable and the school year calendar or calendars applicable thereto, to make the calendar or calendars and the timetable accessible to the pupils, teachers and supervisory officers and to assign classes and subjects to the teachers;

**examinations and reports**

(f) to hold, subject to the approval of the appropriate supervisory officer, such examinations as the principal considers necessary for the promotion of pupils or for any other purpose and report as required by the board the progress of the pupil to his or her parent or guardian where the pupil is a minor and otherwise to the pupil;

**promote pupils**

(g) subject to revision by the appropriate supervisory officer, to promote such pupils as the principal considers proper and to issue to each such pupil a statement thereof;

**textbooks**

(h) to ensure that all textbooks used by pupils are those approved by the board and, in the case of subject areas for which the Minister approves textbooks, those approved by the Minister;

**reports**

(i) to furnish to the Ministry and to the appropriate supervisory officer any information that it may be in the principal's power to give respecting the condition of the school premises, the discipline of the school, the progress of

the pupils and any other matter affecting the interests of the school, and to prepare such reports for the board as are required by the board;

**care of pupils and property**

- (j) to give assiduous attention to the health and comfort of the pupils, to the cleanliness, temperature and ventilation of the school, to the care of all teaching materials and other school property, and to the condition and appearance of the school buildings and grounds;

**report to M.O.H.**

- (k) to report promptly to the board and to the medical officer of health when the principal has reason to suspect the existence of any communicable disease in the school, and of the unsanitary condition of any part of the school building or the school grounds;

**persons with communicable diseases**

- (l) to refuse admission to the school of any person who the principal believes is infected with or exposed to communicable diseases requiring an order under section 22 of the *Health Protection and Promotion Act* until furnished with a certificate of a medical officer of health or of a legally qualified medical practitioner approved by the medical officer of health that all danger from exposure to contact with such person has passed;

**access to school or class**

- (m) subject to an appeal to the board, to refuse to admit to the school or classroom a person whose presence in the school or classroom would in the principal's judgment be detrimental to the physical or mental well-being of the pupils; and

**visitor's book**

- (n) to maintain a visitor's book in the school when so determined by the board.  
R.S.O. 1990, c. E.2, s. 265; 1991, c. 10, s. 6.

**Co-instructional activities**

(2) In addition, it is the duty of a principal, in accordance with the board plan to provide for co-instructional activities under subsection 170 (1), to develop and implement a school plan providing for co-instructional activities. 2001, c. 14, Sched. A, s. 8.

**School council**

(3) The principal shall consult the school council at least once in each school year respecting the school plan providing for co-instructional activities. 2001, c. 14, Sched. A, s. 8.

(4) Repealed: 2001, c. 14, Sched. A, s. 8.

***Education Act, R.S.O. 1990, c. E.2, as amended, s. 301(2)***

**Purposes**

[\(2\)](#) The following are the purposes of the code of conduct:

1. To ensure that all members of the school community, especially people in positions of authority, are treated with respect and dignity.
2. To promote responsible citizenship by encouraging appropriate participation in the civic life of the school community.
3. To maintain an environment where conflict and difference can be addressed in a manner characterized by respect and civility.
4. To encourage the use of non-violent means to resolve conflict.
5. To promote the safety of people in the schools.
6. To discourage the use of alcohol and illegal drugs. 2000, c. 12, s. 3.

Current to December 12, 2009

R.S.O. 1990, c. E.2, s. 23

[eff September 1, 1993 to August 31, 2001](Past Version)

## **Education Act**

### **R.S.O. 1990, c. E.2**

#### **PART II**

#### **SCHOOL ATTENDANCE**

#### **SECTION 23**

##### *Suspension of pupil*

23.--(1) A principal may suspend a pupil because of persistent truancy, persistent opposition to authority, habitual neglect of duty, the wilful destruction of school property, the use of profane or improper language, or conduct injurious to the moral tone of the school or to the physical or mental well-being of others in the school.

##### *Period of suspension*

(1.1) A suspension under subsection (1) shall be for a period fixed by the principal, not exceeding twenty school days or such shorter period as may be established by the board as the maximum period for suspensions under subsection (1).

##### *Notice*

(1.2) When a pupil is suspended under subsection (1), the principal shall,

(a) notify forthwith in writing the pupil, the pupil's parent or guardian, the pupil's teachers, the board, the appropriate school attendance counsellor and the appropriate supervisory officer of the suspension and the reasons for the suspension; and

(b) notify forthwith in writing the pupil and the pupil's parent or guardian of the right of appeal under subsection (2).

S.O. 1993, c. 11, s. 12 (1).

##### *Appeal against suspension*

(2) The parent or guardian of a pupil who has been suspended or the pupil, where the pupil is an adult, may, within seven days of the commencement of the suspension, appeal to the board against the suspension and the board, after hearing the appeal or where no appeal is made, may remove, confirm or modify the suspension and, where the board considers it appropriate, may order that any record of the suspension be expunged.

##### *Effect of appeal*

(2.1) An appeal under subsection (2) does not stay the suspension and, if the suspension expires before the appeal is determined, the board shall determine whether the suspension should be confirmed or whether the record of the suspension should be removed or modified.

##### *Review of suspensions*

(2.2) If the pupil is suspended for the maximum period allowed under subsection (1.1) or is suspended more than once during a school year, the board shall ensure that a guidance counsellor or other appropriate resource person employed by the board,  
(a) reviews the circumstances of the suspension or suspensions, as the case may be; and  
(b) where appropriate, informs the pupil and, if the pupil is not an adult, the pupil's parent or guardian, of services that are available from the board or elsewhere in the community to assist the pupil.

*S.O. 1993, c. 11, s. 12 (2).*

*Expulsion of pupil*

(3) A board may expel a pupil from its schools on the ground that the pupil's conduct is so refractory that the pupil's presence is injurious to other pupils or persons, if,  
(a) the principal and the appropriate supervisory officer so recommend;  
(b) the pupil and the pupil's parent or guardian have been notified in writing of,  
    (i) the recommendation of the principal and the supervisory officer, and  
    (ii) the right of the pupil where the pupil is an adult and otherwise of the pupil's parent or guardian to make representations at a hearing to be conducted by the board;  
(c) the teacher or teachers of the pupil have been notified; and  
(d) such hearing has been conducted.

*R.S.O. 1990, c. E.2, s. 23 (3); S.O. 1993, c. 11, s. 12 (3).*

*Parties to hearing*

(4) The parties to a hearing under this section shall be the parent or guardian of the pupil or the pupil, where the pupil is an adult, the principal of the school that the pupil attends and, in the case of an expulsion, the appropriate supervisory officer.

*Readmission of pupil*

(5) A board may at its discretion readmit to school a pupil who has been expelled.

*R.S.O. 1990, c. E.2, s. 23 (4, 5).*

*Committee to perform board functions*

(6) The board, by resolution, may direct that the powers and duties of the board under subsections (2) to (5) shall be exercised and performed by a committee of at least three members of the board named in the resolution or designated from time to time in accordance with the resolution.

*S.O. 1993, c. 11, s. 12 (4).*

*R.S.O. 1990, c. E.2, s. 23; S.O. 1993, c. 11, s. 12.*