

Legal Guide to School Expulsions



Why should you care whether you get expelled?

The shortest expulsion lasts more than 4 weeks and will disrupt your education. Other expulsions will last longer. You may fall behind in your classes and lose credits as a result. Expulsions are recorded in your Ontario Student Record. Teachers may have a different attitude towards you. You may not be able to return to the same school after being expelled, or may find it very hard to graduate at the same time as your peers.

If you might be expelled, you should take it seriously and think about how you want to respond. If you think an expulsion would be unfair you should attend your expulsion hearing, and should appeal if you are expelled.

What does it mean to be expelled?

Being expelled means that you are not allowed to go to your school and you may have to attend an expelled students program. As of February 1, 2008, there are two different kinds of expulsions: being expelled from the school you were attending only, or being expelled from every school in your school board. However, no matter what kind of expulsion you receive, you continue to belong to the same school board unless you move to another school board or your parents change their tax support.

What is an expulsion from my school?

This means that you are not allowed to go to your school or to participate in any of your school's related activities. Your principal will suspend you first, then investigate and then make a recommendation on whether you should be expelled or not. A recommendation to expel means that there will be a hearing before the school board trustees to determine if you will be expelled. *See page 9 for information on school board expulsion hearings.*

The expulsion from your school will last a minimum of 21 school days. During your suspension pending expulsion you will be assigned to a program for suspended students. If the board then decides to expel

you from your own school only, you must be assigned to another school in the school board. The principal will have input into which school would benefit you. At the end of the expulsion you can ask to return to your own school, however there is no guarantee you will be let back in.

The day the expulsion starts is the day you were suspended pending an expulsion. For example, if you are given a 90 day expulsion and you have already been suspended for 20 days while you waited to find out if you are expelled, then you only have 70 more days before the expulsion is over.

What is an expulsion from all schools in the board?

This means that you are not allowed to attend any school or school-related activities in your school board. An expulsion from all schools in your school board can only happen after you have had a hearing before the school board. *See page 6 for more information on school board expulsion hearings.*

If you receive this kind of expulsion you will be assigned to a program for expelled students. Once you have successfully completed the program or satisfied the objectives of those programs in another way, you can return to school. You can apply to another school board if you have received an expulsion from all the schools in your school board.

However, if you have not successfully completed the expelled students program, or satisfied the objectives of those programs in another way at your previous school board, the new school board can assign you to one of their expelled students programs. *See page 6 for more information on Expelled Student Programs.*

Conduct or acts that can lead to an expulsion:

The principal must consider expulsion if you engage in any of the following activities at school, during a school related activity, or in other circumstances where the activity will have a negative impact on the school climate:

- have a weapon, including a firearm;
- use a weapon to threaten or hurt another person;
- physically hurt another person so that person requires medical attention;
- sexually assault someone;
- traffic (sell) weapons or illegal drugs;
- rob someone;
- give alcohol to a person under 19 years old;
- have previously been suspended for bullying and present an unacceptable risk to the safety of another person by being at your school; or
- are motivated by bias, prejudice or hate based on race, national or ethnic color, religion, sex, age, mental or physical disability, sexual orientation, gender identity, gender expression, or any other similar factor **AND** do any of the following activities:
 - threaten to seriously hurt another person;
 - have alcohol or illegal drugs;
 - are under the influence of alcohol(drunk);
 - swear at a teacher, principal or another person in a position of authority;
 - vandalize the school or property such as cars, on school property;
 - bully someone; or

- any other action which your school's Code of Conduct tells you may result in suspension.

If you are expelled for any of the conduct above, the principal must not only consider expelling you, but may also have to notify the police. You do not have to answer any of their questions and can ask to have a parent or other adult with you when they question you.

Whatever you say to the principal about the incident can be passed on to the police. In addition to an expulsion, there may also be criminal charges against you. *There are exceptions to the expulsion rules, see "mitigating circumstances" on the next page for more information.*

Can I be expelled for something that happened away from the school property?

Yes. The principal can expel you for harmful misconduct that happened off the school property if the misconduct will affect the school climate in a negative way. For example, you could be expelled for threatening another student with a weapon on the way home from school or on the weekend but not for selling drugs to a non-student in March break.

The principal must have evidence of a link between your misconduct and the negative effect at school. The principal cannot just assume that your behaviour outside of the school will negatively affect the school climate.

What are other reasons for expulsions?

Each school board can decide what other conduct will lead to an expulsion. Most schools have a Code of Conduct that sets out the expected behaviour of all persons in the school. You should ask the school for a copy of this Code if you have not been given one at the beginning of the school year.

Here is some behaviour that could lead to an expulsion in many school boards:

- threatening to seriously hurt another person;
- vandalizing the school or property on the school;
- physically assault someone;
- hate-motivated violence; or
- inciting harmful behaviour (such as encouraging a fight).

Remember these are just a few examples. Your school board may have other conduct that can result in an expulsion.

If you are suspended pending expulsion for off-school activities, the responsibility is on the school board to show that the activities will have a negative impact on the school climate at some point in the future. The school board must show a direct and causal link between your behaviour and a definite impact on school climate.

Even if I did it, do they HAVE to expel me? ("Mitigating Circumstances")

No. Your principal does not have to recommend expulsion and the school board does not have to expel you. Some of the things they must take into account are whether:

- you are unable to control your behaviour;
- you are unable to understand the "foreseeable consequences," or what was likely to happen, because of your behaviour; or

- your being at school does not create an unacceptable risk to the safety of any other person at school.

They should also consider:

- your history at the school (such as any problems you have had with teachers or other students, or the fact that you have had no problems before);
- whether you have been identified as an exceptional student or have a disability;
- whether you understood what might happen because of your conduct (for example if you understood that throwing something at another student could hurt them); and
- whether letting you stay at school would put other students' or teachers' safety at risk.

These factors are called “mitigating circumstances” or “other factors”. Your principal (for the suspension), and the school board (who listen at your expulsion hearing and make the decision about whether or not you should be expelled) are required to take into account any special or mitigating circumstances you may have when determining whether you should be expelled and the type of expulsion. They must act fairly. The principal must say what you are accused of doing wrong and they must let you tell your side of the story. They must make sure they have accommodated any disabilities you may have.

If the school has not accommodated you and you believe you were expelled because of discrimination, you can file a complaint with the Human Rights Tribunal of Ontario. For advice and assistance in filing your application, you can contact the Human Rights Legal Support Centre.

What happens when the principal thinks I should be expelled?

First, the principal will suspend you from school and all extra-curricular activity for 20 days pending an investigation. The principal must tell you, your teachers, your parents or legal guardians (unless you are 16 or 17 years old and have withdrawn from parental control, or you are over 18 years old) that you have been suspended. You must also receive written notice of the suspension. The letter must say why you are suspended, for how long, and if the principal is carrying out an investigation for a possible expulsion.

If you are suspended pending a possible expulsion, the letter will also tell you which suspended students program you are being referred to while the investigation is taking place. You should attend the program to keep up with your school work while you are waiting.

If the principal is investigating for a possible expulsion you cannot appeal the suspension until after the principal has decided whether or not to recommend an expulsion. During the period of suspension the principal will:

- conduct an investigation to determine if you should be expelled; and
- if the principal does not recommend expulsion and tells you that you can appeal the suspension, the principal must give you written notice of the decision and you can return to school once the suspension period is over; or
- if after the investigation the principal recommends expulsion, he or she will prepare a report and the matter will be referred to the school board for a hearing and to decide if you should be expelled. You can and should attend the hearing.

Before the hearing, you will be given notice of the recommendation to expel as well as a copy of the

principal's report, a copy of the school board's policies, procedures, and possible outcomes of an expulsion hearing. You will also be told you have a right to respond to the principal's report.

What is a principal's investigation?

The principal must conduct the investigation in accordance with the school board's policy. As part of the investigation, the principal must make all reasonable efforts to speak with you and your parents (unless you are 16 or 17 years old and have withdrawn from parental control, or over 18 years old) and any other person who may have relevant information, such as witnesses.

After the investigation, the principal can:

- decide not to recommend an expulsion; or
- prepare a report recommending an expulsion and refer your case to the school board for a hearing.

What is the principal's report?

If the principal decides to recommend that the student should be expelled after investigating the incident, he or she must prepare a report containing:

- a summary of the principal's findings;
- whether the principal recommends expelling you from your school only or all the schools in the school board;
- recommend the type of school that will benefit you if you are expelled from one school only; and
- recommend the type of program for expelled students that might benefit you if you are expelled from all schools in the school board.

A copy of this report must be given to you, your parents or guardians (unless you are 16 or 17 years old and have withdrawn from parental control, or you are over 18 years old), and any other persons specified by school board policy (for example, safe schools personnel). You are entitled to know what witnesses the principal questioned. If the report does not include the names of the witnesses and a summary of what they said, you should ask for this information.

What is a School Board Expulsion Hearing?

The school board can have all of its trustees or a committee of at least 3 trustees who will act as judges and hold a hearing. A hearing is like a trial where they will make a decision about whether to expel you. The hearing must be held within 20 school days of the original suspension unless everyone agrees to an extension.

If more than 20 school days have passed without a hearing or an agreement to extend the deadline, you can return to school, so you should not agree to an extension unless you have talked to a lawyer.

At the hearing, both the principal and the school board trustees may have a lawyer. The principal will present evidence to the trustees as to why you should be expelled. You can also be represented by a lawyer and can question the principal's evidence and present your own evidence.

Each school board can decide its own process, but they must provide you with a copy of their

procedures and provide you with information on the process. If the process in your school board does not give you a chance to fully explain your side, to discuss your “mitigating circumstances” (see page 4), and present your evidence, you should consult with a lawyer.

Generally, the school board trustees will listen to any evidence you provide about why an expulsion would be unfair and will listen to the principal about why you should be expelled. You and your parents have rights during this process which include:

- having a lawyer with you (and it would be helpful to have a lawyer with you);
- calling witnesses and present your side of the story;
- cross-examining or questioning all witnesses; and
- explaining why there are mitigating circumstances or to explaining your disabilities and how the school board should accommodate them.

The principal must provide evidence and should not just summarize what the principal thinks happened without saying what evidence the principal considered, for example, what was found in your locker, how the principal knows it was an illegal drug (i.e. marijuana) you had in school, what mitigating circumstances the principal considered and why the principal thinks expulsion is the right answer.

The trustees may or may not accept the evidence as valid, depending on whether the principal’s investigation was conducted properly and fairly and not based exclusively on hearsay (information passed on by word of mouth).

The school board trustees can decide one of four things:

- give you an expulsion from all the schools in the school board;
- give you an expulsion from your own school only;
- not expel you at all and let you return to school (this decision is final and cannot be appealed by the school); or
- they can confirm, shorten or remove your 20 day suspension pending expulsion.

The decision of the school board trustees must be in writing and must be given to you, your parents (unless you are 16 or 17 years old and have withdrawn from parental control, or you are over 18 years old) and other parties to the expulsion hearing. It must give reasons for an expulsion. If you are expelled from your school only, it must state which school you will now be attending. If you were expelled from all the schools in the school board it must state the name and location of the expelled students program you will be attending. It must also give you information on how to appeal the decision if you are being expelled.

Minutes of Settlement

Prior to the expulsion a representative of the school board may ask whether or not you want to “settle” your disagreement with the board and may propose a “Minutes of Settlement” to you. This is an agreement between you and the school board.

If you and your parents can agree about what should happen to you and do not want to have a hearing, school board staff may ask you or your parents to sign the “Minutes of Settlement”. This document will likely set out what the principal says are the facts.

Be aware that the Minutes of Settlement may also contain a release, meaning you cannot make any future claims against the school board, including Human Rights complaints, against them by you. Be

sure you agree with all of the terms including the “facts” of the document before signing. If you have criminal charges, consult your criminal lawyer before signing.

Lastly, this is an agreement between you and the school board. It is not binding on anyone else, namely the trustees. There will still be an expulsion hearing, at the hearing the trustees will have a choice as to whether or not they wish to accept the Minutes of Settlement or make different conclusions. Signing the Minutes of Settlement does not mean that the expulsion process is over. It only means that you and the board are in agreement about the items detailed in the Minutes of Settlement.

Am I allowed to have a lawyer represent me in the appeal?

Yes. You should have a lawyer when you appeal to the Child and Family Services Review Board, as the process is complicated. If you cannot afford a lawyer you can call Justice for Children and Youth, your local legal clinic, or Pro Bono Law Ontario to see whether they can help find a lawyer for you - see the end of this pamphlet for contact information.

How do I appeal an expulsion?

All expulsions can be appealed to the Child and Family Services Review Board. Your parents or guardian, or you (if you are 16 or 17 years old and have withdrawn from parental control, or you are over 18 years old) must submit an “Application to Appeal a School Board Expulsion Decision” form within 30 days after the trustees’ decision to expel you. This form that can be downloaded from their website:

www.sjto.gov.on.ca/cfsrb/forms-filing/

What is the Child and Family Services Review Board?

The Child and Family Services Review Board (“Review Board”) is independent of school boards. The members are appointed by the Government of Ontario. When the Review Board receives an Application for an Appeal from you or your parents, it has 30 days to start a hearing.

The contact information for the Review Board is:

Child And Family Services Review Board
2 Bloor Street West, 24th Floor
Toronto ON M4W 3V5
Tel: 1-888-728-8823 (toll-free)
Fax: 416-327-4379

I feel I’ve been expelled unfairly, what can I do?

You have the right to appeal to the Review Board if you feel:

- you have been expelled unfairly, or
- that the expulsion is too long, or
- that the school board imposed conditions on you that are unfair or you can’t meet them.

Occasionally, it is possible for you to have the decision reviewed by a court. This can happen, for example, if the panel was biased against you or the process was unfair. Consult a lawyer about this.

At the hearing, the school board will probably have a lawyer. The school board will tell the Review Board why you have been expelled. You will have the chance to tell why you think the school board was wrong. Keep in mind that the Review Board is fairly formal. If you can, you should bring a lawyer with you. In addition, you should:

- listen quietly to the Review Board proceedings;
- remove non-religious headwear;
- not use or wear headphones;
- not chew gum or bring food and drinks;
- turn off cell phones and pagers; and
- dress neatly and avoid t-shirts with offensive slogans or language.

This is also good advice for the school board expulsion hearing.

The Review Board has the power to:

- confirm the school board's decision, which means you are still expelled;
- change how long the expulsion will be or change the type of expulsion – this could include making you go to an expulsion program or saying you don't have to go to one and can go to another school; or
- allow you to return to your school - in this case, the Review Board may also decide to remove the expulsion from your school record.

Am I allowed to have a lawyer represent me at the Review Board?

Yes. You should have a lawyer when you go to the Child and Family Services Review Board as the process is complicated. If you cannot afford a lawyer you can apply for Legal Aid. You can also call Justice for Children and Youth, your local legal clinic, or Pro Bono Law Ontario to see whether they can help find a lawyer for you - see *the end of this pamphlet for contact information*.

What if I do not agree with the decision of the Review Board?

The decision of the Review Board is final. The decision should be in writing with reasons. You, the school board and the principal must follow it.

Occasionally, you can ask a court to review the decision if, for example, the panel was biased or the process was unfair. Consult a lawyer about this possibility.

Can I go to school while waiting for my appeal to the Review Board?

No. You will be attending a different school or an expelled students program.

What do schools have to provide if I am expelled?

An expulsion from your school only means that the school board has to admit you to another school. You do not get to choose the other school. The school board will do that with input from your principal.

If you receive an expulsion from all the schools in your school board then you must be assigned to an expelled students program. Each school board must have at least one of these programs. Ask the

school board where the nearest program for you is. You do not have to go to one of these programs, however, if you have not satisfied the objectives of the program in some other acceptable way you can not return to school.

What is an Expelled Students Program?

An expelled students program is a program that is designed to help you make academic progress and help you with any behaviour problems that may have led to your expulsion. This could include anger-management, dispute resolution or other non-academic programs.

The program should be tailored to your academic needs. If you have special education needs and an Individual Education Plan (IEP), the program must conform to the IEP. If it does not, you should speak to the school board staff person in charge.

Before you can return to school after an expulsion, the Ministry of Education says (in Policy 130), you will be expected to show:

- respect for yourself, for others and for authority;
- that you understand and can accept the consequences of your actions;
- the ability to participate in a school without compromising the safety of yourself or others; and
- that you can follow the standards set out in the Provincial Code of Conduct.

If you are required to attend an expelled students program then you have to satisfy the program staff that you have successfully completed the program before you can return to school.

How can my Parents be involved?

It is very important that you talk to your parents or guardians if you have been expelled. The principal is required to notify your parents in writing that this has happened (unless you are 16 or 17 years old and have withdrawn from parental control, or you are over 18 years old). Unless you are an adult, only your parent or guardian can request that the expulsion decision be appealed. It may also be easier for your parent or guardian to access outside help, such as legal services, for you. If your parents refuse to help, consult a lawyer, Justice for Children and Youth, or Legal Aid Ontario.

I am a parent and my child is at risk of being expelled or has been expelled – what can I do?

Being expelled from school is a serious matter that may affect your child's future success in school. If your child is at risk of being expelled, it is important that you read and keep the letters that your child brings home from school. It is also important that you establish regular contact with the principal. You should work to ensure that your child is treated fairly, that the principal investigates thoroughly and that the principal properly considers the mitigating circumstances.

The Ministry of Education in Ontario created a Code of Conduct for all people involved in the school system, *including parents and legal guardians* of students. Schools are also allowed to add their own rules. If you don't follow these rules, the school may not let you onto school property.

As soon as your child has been suspended, you should ask how to access the necessary resources for continuing his or her education. Including how to access the program for suspended students.

You should talk to the principal about the special programs that schools are required to provide for students who have been expelled from all schools in the board, as well as the requirements that have been set for your child to return to school. If your child is expelled from their school only, make sure your child is registered in the new school as soon as possible.

If you wish to discuss your child's situation with a school staff member it is best to make an appointment before going to the school. Schools have the authority, under Ontario's *Trespass to Property Act*, to prevent entry of any person who is loitering or considered uncooperative, unreasonable or disruptive. This can include parents or a student who has been expelled.

Resources:

Kids Help Phone - www.kidshelpphone.ca
416-973-4444 or 1-800-668-6868 (outside Toronto)

Parent's Help Line - www.parenthelpline.ca

FindHelp211:

A community resource for information about community, government, social and health issues in Toronto.

Dial 211 from inside the 416 and 647 area codes
or visit: www.211Toronto.ca

Outside those areas check the local Blue Book
or visit: www.211Ontario.ca

Human Rights Tribunal of Ontario - www.hrto.ca
416-326-1312 or 1-800-598-0322 (outside Toronto)

Human Rights Legal Support Centre - www.hrlsc.on.ca
416-314-6266 or 1-800-625-5179 (outside Toronto)

Contact Information to find a lawyer:

Justice for Children and Youth:

1-866-999-JFCY (5329) / www.jfcy.org

Pro Bono Law Ontario – Child Advocacy Project

1-866-466-PBLO (7256) / www.probononet.on.ca

Lawyer Referral Service - FREE

416-947-3330 OR 1-800-268-8326

Referrals to lawyers in various areas of practice; 30 minutes of free legal consultation.

*This pamphlet is intended for students and parents
of the publicly funded school system in the Province of Ontario.
Its purpose is to give general information about expulsions.*

~~Speak to a lawyer or legal worker about specific questions.~~
JUSTICE FOR CHILDREN AND YOUTH – EXPULSION PAMPHLET (PURPLE)

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