

Legal Guide to School Suspensions



Why you should care whether you get suspended?

The longest suspension can last up to 20 school days and can seriously affect your marks, especially in a semestered school. Suspensions are recorded in your Ontario Student Record, so even if you transfer to another school, the new school may know what happened and teachers may have a different attitude toward you. You should take a suspension seriously. If you think a suspension is unfair, you should ask to appeal it.

What conduct or acts can lead to suspension?

Teachers are required by law to report any serious student incidents to the Principal. It is then up to the Principal to decide whether to suspend the student(s) involved. To be suspended, the incident must have occurred:

- at school,
- at a school-related activity, or
- off school property and will have a negative impact on the school climate. For example, a fight on the weekend makes some students afraid to come to school on Monday.

a) Possible suspensions

A principal must consider suspending you if you:

- 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 a suspension.

Each school board can decide what other conduct will lead to a suspension. Most school boards have a *Code of Conduct* that lists the expectations for the behaviour of all persons in the school. You should ask the school for a copy of this *Code* if you did not receive one at the beginning of the school year.

Some school boards have said you can be suspended for skipping school, persistent opposition to authority, use of tobacco, theft or encouraging harmful behaviour (such as cheering on a fight between two students). These are only examples; you should consult the *Code of Conduct* for your school board.

b) Mandatory suspensions

The principal must suspend you and must conduct an investigation to decide whether to recommend expelling you if you:

- 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;
- do an activity listed above in “a) Possible Suspensions” and the activity was 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; or
- engage in any other activity that your school board has said would result in a mandatory suspension and therefore must conduct an investigation to determine whether to recommend an expulsion –your school should have a *Code of Conduct* that tells you what other actions would result in a mandatory suspension and a possible expulsion.

If the incident involves a criminal act, the principal 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 a suspension, there may also be criminal charges against you.

There are exceptions to the suspension rule, see “mitigating circumstances” on the page 5 for more information.

Why can I be suspended for something that happened away from the school property?

The Principal can suspend you for harmful misconduct that happened off the school property if it can be shown that the misconduct will affect the school climate in a negative way. Some examples of off-school misconduct that could lead to a suspension are: harming another student on the way home from school, or bullying another student or staff member on a social networking website.

The Principal must have evidence of a “nexus” (link) between your misconduct and the negative affect

at school. The Principal cannot just assume that your behaviour outside of the school will negatively affect the school climate.

Even if I did it, do I have to be suspended? (“Mitigating Circumstances”)

No. Your principal does not have to suspend 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”. Your school is required to take into account any special or mitigating circumstances when determining whether you should be suspended and for how long. They must also:

- make sure they have accommodated any disabilities you have,
- act fairly,
- tell you what they think you did wrong, and
- let you have a chance to give your side of the story.

If they do not take mitigating circumstances into account, or they do not act fairly, you should consult a lawyer.

What happens if I do something that can lead to a suspension?

If a teacher or someone else sees you do something that could result in a suspension, they will refer the matter to the principal. The principal must decide whether they should suspend you or not. The principal should try to talk to you before deciding. You can ask why the principal thinks you did something wrong (e.g., who saw the incident).

If you are suspended, the principal must tell you, your parents (unless you are 16 or 17 years old and have withdrawn from parental control, or if you are over 18 years old) and teachers as soon as possible. They must promptly follow this up with a notice of suspension in writing stating:

- why you are suspended;
- how long the suspension will last;
- what suspended students program you are assigned to (if the suspension is for over 5 days);
- Information about the right to appeal including a copy of the school board’s policies and guidelines for appeals;

- the name of the supervisory officer that you must send your notice of appeal to; and
- whether the principal is considering expulsion.

How long can suspensions last for?

A student will not be able to attend classes or participate in any school-related activities for anywhere between one and 20 days.

I feel I've been suspended unfairly, what can I do?

You (if you are 16 or 17 years old and have withdrawn from parental control, or you are over 18 years old) or your parents must write a letter to the supervisory officer named in your notice of suspension and ask for an appeal. You must give the supervisory officer notice of your intention to appeal within 10 school days of the start of the suspension. If you want to ask for an appeal but your parents refuse, consult a lawyer.

Suspension appeals must be held within 15 school days of receiving your written notice saying that you want to appeal the suspension unless all parties agree to an extension.

If you have received a suspension pending an expulsion investigation, you cannot appeal the suspension until after the principal has decided whether to recommend an expulsion.

If your principal recommends an expulsion there will be a hearing before the school board to decide whether to expel you, and if not, whether to confirm, shorten or overturn your suspension and remove the suspension from your school record.

Expulsion appeals must be held within 20 school days of the beginning of the suspension unless all parties agree to an extension. *Please see our expulsion pamphlet for more information on expulsions.*

When can I go to back to school?

You will not be allowed to attend your school until the appeal is heard or your suspension period is over. For example, if your suspension period ends on May 1st, and your appeal is heard on May 4th, you may return to school on May 1st.

Suspension Appeal Hearing

Generally the school board trustees or a committee of the school board trustees (made up of at least 3 trustees) will listen to any evidence you provide about why the suspension is unfair and will listen to the principal about why you should be suspended.

You and your parents have rights at the suspension appeal hearing which include:

- to be represented by a lawyer;
- to call witnesses and present your side of the story;
- to cross-examine witnesses; and
- to explain why there are mitigating circumstances or to explain your disabilities and how the board could accommodate them.

The trustees will decide one of three things:

- to maintain or uphold your suspension;
- to modify the type and length of the suspension; or
- to end the suspension, remove it from your record, and send you back to school.

The decision of the trustees is final and must be in writing.

What if my suspension was over by the time the appeal was done and they said I shouldn't have been suspended?

The suspension will be removed from your record.

What if I do not agree with the appeal decision?

The decision of the trustees or committee on suspensions is final. There is no further appeal. You and the principal have to follow it.

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

If you believe your suspension is discriminatory, 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.

How can my parents be involved? Can they help?

It is very important that you talk to your parents or guardians if you have been suspended. The principal is required to tell 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. Only your parent or guardian can request that the suspension decision be appealed, unless you are 16 or 17 years old and have withdrawn from parental control, or you are over 18 years old. 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.

I am the parent – what should I do if my child is at risk of being suspended or has been suspended?

Being suspended from school is a serious matter. If your child is at risk of being suspended, 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.

If the suspension lasts more than 5 days, make sure your child is admitted to a program for suspended students so he or she does not get too far behind. Even for short suspensions, ask the school to provide homework. Your child needs your support and active involvement to ensure that he or she is treated fairly.

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 do not follow these rules, the school may not let you onto school property.

If your child has already been suspended, he or she needs your help to access the necessary resources for continuing his or her education. Even for fairly short suspensions you should ask the school to provide homework and assignments and to make arrangements for your child to write any missed tests or exams. Longer suspensions (over 5 days) require placement in a suspended students program. You should talk with the principal about the special programs available for students on suspensions.

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 a suspended student or their parents.

If you think your child may have special education needs that have not been addressed, you should ask for an IPRC or IPRC review (Identification Placement Review Committee) – *for more information, please see our pamphlet on Special Education*. If you think your child needs counselling or treatment but you're having difficulty accessing it, ask the school to help.

Depending on why your child is being suspended, there may be other issues that need to be addressed. These could include addictions to alcohol or drugs, emotional trauma or association with gangs. If you have any questions on how to deal with any of these subjects, you can ask the school to help.

Resources:

Kids Help Phone - www.kidshelpphone.ca
416-973-4444 / Elsewhere in Ontario 1-800-668-6868

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
GTA: 416-326-1312 / Elsewhere in Ontario: 1-800-598-0322

Human Rights Legal Support Centre - www.hrlsc.on.ca
GTA: 416-314-6266 / Elsewhere in Ontario: 1-800-625-5179

Contact Information to consult a lawyer:

Justice for Children and Youth - www.jfcy.org
GTA: 416-920-1633 / Elsewhere in Ontario: 1-866-999-JFCY (5329)

Pro Bono Law Ontario – Child Advocacy Project - www.probononet.on.ca

GTA: 416-977 4448 ext 226 / Elsewhere in Ontario: 1-866-466-PBLO (7256)

Community & Legal Aid Services Programme - representation is available, in Toronto only, by law students attending Osgoode Hall Law School at York University

Tel: 416-736-5029 / www.osgoode.yorku.ca/clasp

Lawyer Referral Service - FREE

GTA: 416-947-3330 / Elsewhere in Ontario: 1-800-268-8326

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

This pamphlet is intended for parents and students of the publicly funded school system in the Province of Ontario. Its purpose is to give general information about suspensions. Speak to a lawyer or legal worker about specific questions.

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