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Safe Schools Transfers & Disability & Discipline

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Agenda

1. Statutory Overview
2. Safe School Transfers
3. Expulsion & Mitigating and Other Factors
4. Other Considerations



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Statutory Overview

PPM 145 Progressive Discipline

- **will imposing this consequence teach the student not to behave this way again?**
- progressive discipline identifies a continuum of measures that are used to teach about consequences of infractions
 - the more serious the infraction the higher on the continuum the disciplinary response
 - the more frequent the infraction the more serious the next disciplinary response
 - allows for creative methods of teaching students the consequences of their actions

Education Act

Suspension

- S.306(1) “if he or she **believes**”
- Rational, reasonable information upon which belief that student conducted the infraction
- Investigation does not need to be complete
- Up to 20 school days
- S.308(1)(b) parent notification
- Parent should be consulted

Expulsion

- S.310(1) “if he or she believes”
- Investigation following suspension
- Suggests that the investigation if leading to recommendation for expulsion must be more involved than suspension investigation
- S.311.3(8) up to 20 school days
- Must ensure sufficient opportunity to prepare and share report

Ont. Reg. 472/07 Behaviour, Discipline & Safety of Pupils

Mitigating Factors

2. For the purposes of subsections [suspension & expulsion] of the Act, the following mitigating factors shall be taken into account:
1. The pupil does not have the ability to control his or her behaviour.
 2. The pupil does not have the ability to understand the foreseeable consequences of his or her behaviour.
 3. The pupil's continuing presence in the school does not create an unacceptable risk to the safety of any person.

Ont. Reg. 472/07

Other factors

3. For the purposes of [suspension & expulsion], the following other factors shall be taken into account if they would mitigate the **seriousness of the activity** for which the pupil may be or is being suspended or expelled:

1. The pupil's history.
2. Whether a progressive discipline approach has been used with the pupil.
3. Whether the activity for which the pupil may be or is being suspended or expelled was related to any harassment of the pupil . . .
4. How the suspension or expulsion would affect the pupil's ongoing education.
5. The age of the pupil.
6. In the case of a pupil for whom an individual education plan has been developed,
 - i. whether the behaviour was a manifestation of a disability identified in the individual education plan, pupil's
 - ii. whether appropriate individualized accommodation has been provided, and
 - iii. whether the suspension or expulsion is likely to result in an aggravation or worsening of the pupil's behaviour or conduct.

K.W. v. Toronto Catholic District School Board, 2018 ONSC 2794 (CanLII)

- KW secondary school student;
- No discipline history
- No disability-related needs
- Involved in an assault of a student with two other students
- Two other students expelled
- KW suspended for 5 days
- KW transferred to another school (school in his catchment) pursuant to Victim's Rights Policy
- Transfer appealed to Superintendent
 - Denied
- KW sought judicial review of decision to transfer



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Safe School Transfer

K.W. v. Toronto Catholic District School Board, 2018 ONSC 2794 (CanLII)

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K.W. v. TCDSB

Divisional Court:

[33] “Notably, though, Policy/Program Memorandum No. 145 of the Ministry of Education (dated December 5, 2012) states that the “exclusion provision” in s. 265(1)(m) is not to be used as a form of discipline (p. 5). However, the Policy also contemplates non-disciplinary transfers to preserve school safety (at p. 10). The Policy states, “In cases where the transfer is necessary to protect a student, it is preferable that the student who has been harmed is not moved.”

...

[37] When the provisions of the Act are taken together with PPM 145, we conclude that the Board had the authority to adopt the *Fresh Start Policy* which, on its face, is designed to promote the safety and well-being of students and is not meant to be punitive in nature.”

L.K. v Upper Grand District Board (EA 311.7), 2019 CFSRB 2 (CanLII)

- Grade 2 student, FI class
- exhibiting significant dysregulation
- Diagnosis of ASD
- IPRC identification Communication – Autism
- IPRC placement regular classroom with resource assistance
- Assigned 2 primary EAs but 7 others were assigned over time due to illness, injuries and refusal to work with student



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Expulsion

L.K. v UGDSB

- Dysregulated behaviour included:
 - Kicking and throwing things (sticks, rocks and a chair)
 - Yelling obscenities
 - Threatening to kill students
 - Eloping
 - Hitting staff on the head, neck, chest
 - Punching
 - Parent was asked to pick up student because was in crisis – parent refused unless he was suspended
 - Principal issued suspension

L.K. v UGDSB

- Safety Plan
- Behaviour Management Plan
- Consultation with parent
 - Parent argued that school board was unable to meet the student's needs
- October 22, 2018 *“6 hours of continuous chaos and panic caused by the Pupil's extreme dysregulation”*
- Attempted to hit VP with stick, attacked VP
- Hit EA about the face, neck and shoulders causing swelling for several days and diagnosed with PTSD

L.K. v UGDSB

- Student suspended for 20 school days pursuant to s.310
- Expulsion pursuant to s.310(1)(3) for assault of EA who suffered physical and emotional harm requiring treatment from medical practitioners
- Student was expelled from the school only
- 3 programs were identified by the Board (all English-language)
 - Section 23 offered by another school board
 - Section 23 offered by UGDSB at home school
 - Self-contained class at home school
 - Parent refused all program options and appealed

L.K. v UGDSB – Mitigating Factors

- CFSRB found that the Education Act s.310 applied to all students regardless of age and mental culpability
- CFSRB found that the student did not have the ability to control his behaviour and did not have the ability to understand the foreseeable consequences of his behaviour
- “unacceptable risk to the safety of any person” is a high threshold
- CFSRB concluded that the student’s presence at the school does create an unacceptable risk to the safety of any person and therefore does not mitigate the decision to expulsion
- para. 126 “***the need for a safe school environment for all students and staff outweighs the impact of these mitigating factors***”

L.K. v UGDSB

- “other factors” did not mitigate the seriousness of the activity or appropriateness of the expulsion”
- Held that duty to accommodate to the point of undue hardship in the context of expulsion appeal is defined as “whether the accommodations that were made, or not made, by the school board led to the behaviour that led to the incident”
- Found that the evidence was inconclusive and could not find a causal nexus therefore did not mitigate the discipline
- Whether appropriate accommodation to point of undue hardship was decision of HRTO



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Other Considerations

Other Considerations

- Safe School Transfer?
 - Authority is routed in s.265(1)(m) and s.169.1
- IPRC pursuant to Ont. Reg. 181/98?
- *Bonnah v. Ottawa-Carleton District School Board*, 2003 CanLII 19087 (ON CA)
 - Cannot move if placement decision under appeal
 - Can exclude from school in the interim
- Exclusion pursuant to s.265(1)(m)



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