11 Legal Aspects of School Board Governance
PART A: QUASI-JUDICIAL DECISION MAKING

The Education Act requires that trustees make decisions regarding student discipline in a quasi-judicial manner. These decisions are the function of two committees and of the board as a whole.

- The Discipline Committee hears suspensions, appeals and recommendations for expulsions.

- An ad-hoc committee hears appeals from students who have been refused access to secondary school.

- The Board as a whole decides on recommendations for the termination of teachers, principals, supervisory officers and appeals of exclusion from a class or a school.

PROCEDURAL FAIRNESS

When it comes to discipline, the common law principle of Procedural Fairness must govern the decision making process. There are four components to Procedural Fairness. Understanding these and applying all of them will help ensure a fair outcome for all involved.

1. The Right to Know
All parties to a process must know what is at issue. They must understand the allegation, understand and have access to the information that will be used to make the decision, and understand the process to be used in deciding the outcome.

Example: If a teacher faces termination, he or she has a right to know that they may lose their job. The teacher must understand why they face termination (e.g. 3 poor performance appraisals) and they have a right to review the appraisals that will impact the termination decision.

2. The Right to be Heard
All parties have the right to be heard by the decision maker. This includes the opportunity to comment on the process being used, respond to the issues and allegations faced and comment on the appropriateness of the potential outcome.

Example: In a recommendation for student expulsion, a parent has a right to respond to each allegation of behaviour their child faces and can deny or provide an explanation for the behavior. The parent also has a right to indicate that the recommendation seems too harsh (the punishment didn't fit the crime).

Procedural Fairness continued...

3. The Right to a Decision free from Bias and Conflict of Interest

As a decision maker, you cannot be biased or even appear to be biased. You cannot hold a view about an outcome until you hear from both parties and you should have no prior involvement with the parties regarding the matter at issue.

Example: A trustee's child is in the same class where another child is being considered for expulsion after a violent assault. As a committee member, the trustee would be required to withdraw from the decision making process so there is no fear of bias.

Conflict of interest in quasi-judicial cases is broader than you may realize. Conflict of interest goes beyond financial interests and encompasses any interests that might bias a decision maker towards a particular decision. Even if you are not conflicted, an apparent conflict of interest must still be avoided.

Example: Personally knowing the victim of a violent assault may suggest you have a conflict of interest. Even if you have no interest and feel impartial, it may still appear you are not neutral and you must abstain from the decision making process.

4. The Right to a Decision free from Discrimination.

Discrimination must play no part in the decision making process. Discrimination is often embedded in unconscious attitudes, stereotypes, structures and systems. The decision maker cannot be influenced by personal pre-existing ideas regarding race, color, ethnicity, country of origin, creed, gender, gender identity, sexual orientation, disability or any other ground protected by the Ontario Human Rights Code.

To guide you in your hearings, you are advised to have an in depth conversation with the appropriate board official on strategies to ensure that discrimination is avoided in your decision making process.

For more detailed information on this topic, please consult your board legal counsel or the appropriate Board Superintendent