Procedural Fairness Policy

These guidelines explain in general terms the principles which are the basis of “procedural fairness” and provide guidance as to how Flex Academy can effectively address the requirements of “procedural fairness” when developing policies governing their day-to-day operations. Flex Academy should ensure it incorporates these principles and requirements when developing rules and procedures affecting students or staff.

Requirements of Procedural Fairness

Whenever the legal rights of an individual may be affected by officials exercising legal decision-making authority, there is an expectation that the decision will be made in accordance with the principles of “procedural fairness” and “natural justice.” These principles encompass the following elements:

1. If a decision-maker (e.g., a principal or authority) intends to consider a matter which may affect a person’s rights, that person should be informed of the matter;
2. The person should be given a reasonable opportunity to make oral or written submissions to the decision-maker on the matter being considered;
3. The person is entitled to know and answer the case against them, that is to say, be informed of and be given the opportunity to respond to all information submitted which might influence a decision prior to the decision being made;
4. The person should be told the reasons for the decision;
5. The decision-maker should act in an unbiased, fair and open-minded manner.

Procedural Fairness and Students

Basic elements of procedural fairness when dealing with student discipline include:

1. Students must be treated with respect and dignity and know what is expected of them. Flex Academy should enact codes of conduct and rules that are clear and well-communicated
2. In accordance with school policy, a student who is accused of breaching a rule should be notified of that of which he/she is accused, with the essential facts of what he/she is alleged to have done.

   > [NOTE: In more serious cases, notification should also be given to a student’s parents.]
3. An accused student should be given an opportunity to tell his/her side of the story. The right to be heard is a fundamental element of procedural fairness. When the stakes are minor, a director or teacher can satisfy this by asking the student to explain her/his actions. More serious matters require more formal investigation and documentation.

4. The student and parent should be informed of any appeal or review procedure in accordance with school policy. Some form of appeal, e.g., to the Principal, Head of Schools, Board's Discipline or Appeal Committee, or authority/school board, should be provided for in school policy, depending on the severity of the discipline.
5. There should be an assurance of no retribution for pursuing an appeal or review.

> From FISA:
> PROCEDURAL FAIRNESS BEST PRACTICE GUIDELINES FOR INDEPENDENT SCHOOLS DEVELOPED BY THE FEDERATION OF INDEPENDENT SCHOOL ASSOCIATIONS IN CONSULTATION WITH THE INSPECTOR OF INDEPENDENT SCHOOLS

I. PREAMBLE

School authorities formulate policies and procedures to deal with a variety of situations. It is recommended that schools formulate written policies, particularly for situations where the potential for disagreement in human relationships is high. This document is not a policy but, it is a general statement of principles that will help schools achieve procedural fairness in the policies and procedures they formulate.

II. INTRODUCTION

It is in the best interests of independent school authorities ("authorities") and school officials in their employ (e.g., principals and administrative teaching staff) that procedures followed in making decisions affecting students or staff are fair and are seen to be fair. This principle applies equally to any process for appeal involving decisions of authorities' school officials.

Fair procedures reassure students, parents and staff by providing integrity and consistency in respect to decisions made in the school setting which in turn will help to avoid misunderstandings and disputes.

Increasingly parents who feel they and their children have been unfairly treated as a result of a decision of a school official or authority, are seeking recourse to the court system or a statutory tribunal, e.g., the Human Rights Commission. To assist authorities and school officials, the Federation of Independent School Associations (FISA), in consultation with the Office of the Inspector of Independent Schools, has developed these best practice guidelines in the hope that their use will help independent school communities resolve matters internally and reduce the likelihood of judicial proceedings.

III. PURPOSE OF THESE GUIDELINES

These guidelines explain in general terms the principles which are the basis of "procedural fairness" and provide guidance as to how independent schools can effectively address the requirements of "procedural fairness" when developing policies governing their day to day operations. An independent school should ensure it incorporates these principles and requirements when developing rules and procedures affecting students or staff. When developing rules and procedures an independent school should refer any legal issues or concerns to its lawyers for

advice. Professional advice at an early stage may avoid problems and save expense later.

IV. REQUIREMENTS OF “PROCEDURAL FAIRNESS”

Whenever the legal rights of an individual may be affected by officials exercising legal decision-making authority, there is an expectation that the decision will be made in accordance with the principles of “procedural fairness” and “natural justice”. These principles encompass the following elements:

- If a decision-maker (e.g., a principal or authority) intends to consider a matter which may affect a person’s rights, that person should be informed of the matter;
- The person should be given a reasonable opportunity to make oral or written submissions to the decision-maker on the matter being considered;
- The person is entitled to know and answer the case against them, that is to say, be informed of and be given the opportunity to respond to all information submitted which might influence a decision prior to the decision being made;
- The person should be told the reasons for the decision;
- The decision-maker should act in a manner which is unbiased, fair and open-minded.

V. PROCEDURAL FAIRNESS AND STUDENTS

The following paragraphs A and B are adapted from Keeping Students Safe: A Practical Guide for Principals and Vice-Principals (June 1999)

A. Basic elements of procedural fairness when dealing with student discipline include:

1. Students need to be treated with respect and dignity and to know what is expected of them. The school authority/board and the school should enact codes of conduct and rules that are clear and well communicated.

> [NOTE: A practice which an independent school may wish to consider is to have students and parents provide written acknowledgment that they have received a copy of and agree to comply with the school’s rules of student conduct. This will avoid possible future claims by students and parents that they were not aware of or disagreed with the rules.]

2. In accordance with school policy, a student who is accused of breaching a rule should be notified of that of which he/she is accused, with the essential facts of what he/she is alleged to have done.

> [NOTE: In more serious cases, notification should also be given to a student’s parents.]

3. An accused student should be given an opportunity to tell his/her side of the story. The right to be heard is a fundamental element of procedural fairness. Where the stakes are minor, this can be satisfied by the principal or teacher asking the student to explain her/his actions. More serious matters require more formal investigation and

documentation.
4. The student and parent should be informed of any appeal or review procedure in accordance with school policy. Some form of appeal, e.g., to the principal, superintendent, principal's or board's discipline or appeal committee, or authority/school board, should be provided for in school policy, depending on the severity of the discipline.
5. There should be an assurance of no retribution for pursuing an appeal or review.

B. How can school authorities/boards ensure that they are unbiased?

"Bias" may occur when the mind of the decision-maker is in some way pre-disposed to a particular result, or is closed with respect to particular issues and as a result the decision-maker lacks impartiality or neutrality. The British Columbia Court of Appeal in a case commented as follows:

> "to charge such persons with bias is not merely to say that they would be likely to decide a particular matter in a particular way, but to say that they would do so improperly. The charge implies that the (decision-maker) would not decide the case independently, and on the basis of the evidence, but would do so under improper influence, and with a view to achieving an extraneous or otherwise improper purpose."

Authorities and board members should follow the following guidelines to avoid bias or the appearance of bias:

1. Don't prejudge the evidence of the particular circumstances of the student's case, or give the appearance (e.g., in public statements) of having done so, even if you have strong convictions on such matters.
2. When selecting persons to hear a case or an appeal of a decision, avoid those who have a close out-of-school relationship, family ties or adversarial relationship with the student or student's family, or a staff member who is closely involved in the incident.

> [NOTE: In small communities it may be difficult to find persons who do not have an appearance of bias regarding a particular case or an appeal of a decision. In such situations, it is advisable that the school's procedures allow for the appointment of a person(s) from outside the school community to handle the case or appeal.]

3. If a person (e.g., principal, staff member or committee member) has made a previous decision, or has been a member of a committee that has made a previous decision, that now is under appeal, such a person should only participate in the appeal for the purpose of providing testimony. Such a person should not participate in decision-making at appeal levels.
4. An appeal-hearing committee should not hear or receive evidence that will not be shared with the other party in the dispute. Do not receive evidence or representations from administrators or staff in the absence of the person appealing, and avoid the appearance

of doing so.

C. What are appropriate procedural protections?

The requirements of procedural fairness will depend on the seriousness of the matter being decided. At the low end of the scale, a minor infraction may be appropriately dealt with by an informal meeting between the principal or teacher and the student.

A decision respecting the possible suspension or expulsion of a student would be at the high end of the scale because of the serious implications for the student. These cases call for careful observance of all elements of procedural fairness and a full hearing involving the following:

- An impartial (unbiased) decision-maker;
- Reasonable notice of the proposed suspension or expulsion which clearly sets out the grounds being relied on; this gives the student and his/her parents an opportunity to prepare a response;
- A hearing at which the student has an opportunity to present reasons why the proposed action should not be taken. Oral and/or written submissions will usually be appropriate with respect to expulsions or lengthy suspensions;
- The opportunity for the student to present witnesses;
- A fair and unbiased decision based upon the evidence presented;
- A timely decision with written reasons.

> [NOTE: In a particular case a student may request to be represented by legal counsel at the hearing. The decision-maker should give careful consideration to such request, having particular regard to the seriousness and/or complexity of the matter, and permit representation in appropriate situations.]

D. Mediation

For some types of disputes, a mediation process may be a more appropriate and less confrontational way of resolving a dispute.

An authority should consider if it wishes to adopt a mediation process and the types of cases to which mediation would apply. Some associations of independent schools have a mediation policy in place. Also, the Dispute Resolution Office of the Ministry of Attorney General maintains a roster of BC mediators, and as a public service, will provide applicants with information respecting suitable, qualified mediators (250-356-8147 or toll-free 1-800-713-0433).

E. Summary of Key Points

1. Authorities and independent school principals should:
   - establish rules of conduct for students attending educational programs at an independent school;
   - ensure students and parents are aware of the rules of conduct and agree to abide by them.

- ensure that the principles of procedural fairness and natural justice are followed when decisions are made affecting the rights of a student whether the decision relates to a matter of discipline, e.g., suspension or expulsion from school, or to an important facet of the student's educational program, e.g., admission into a class or a mark assigned by a teacher;
- at least in more serious matters provide an appeal process which gives the student and/or parent an opportunity for a fair and unbiased review of the original decision.

2. Establishing proper rules and procedures helps promote fairness and consistency in dealings with students and in the decision-making process and minimizes the possibility of successful legal challenges and the imposition of court imposed remedies.
3. The level of procedural protections will depend on the seriousness of the matter. Minor matters may only require an informal and summary process. Serious matters such as student suspension or expulsion will justify a full hearing. Establish appeal or review procedures (e.g., to principal, discipline committee and the board of the authority) depending on the seriousness of the matter. When developing review or appeal procedures, independent schools should consider the breadth of the appeals committee's mandate. For example, will it be limited to a review of the procedures followed by the original decision-maker to ensure fairness and correctness, or will the appeal tribunal have wider powers, such as, reviewing and modifying the disciplinary actions taken, or reviewing all the evidence to determine guilt or innocence, i.e., a total rehearing of the case.
4. A mediation process may be an appropriate option in resolving certain matters.

VI. PROCEDURAL FAIRNESS AND TEACHERS/EMPLOYEES

The terms and conditions of employment of teachers and other employees at an independent school will be governed by the contract of employment between the employee and the school authority.

1. **Collective Agreements**
   If the employee is part of a bargaining unit represented by a bargaining agent (e.g., association or union) under the Labour Relations Code, the employee's terms of employment will be governed by the collective agreement negotiated by the bargaining agent with the school authority. A collective agreement will usually contain comprehensive provisions respecting procedural fairness in matters such as discipline, work assignment and promotions. Grievance, appeal and arbitration procedures would generally be included in the collective agreement.
2. **Individual Agreements**
   If an employee is not covered by a collective agreement, terms of employment will be governed by the individual contract of employment between the employee and the school authority. It is important that a contract of employment clearly sets out the duties and responsibilities of the teacher or other employee as well as those of the school authority. There should be procedurally fair provisions dealing with discipline, appeals and grievances. Clear and fair employment arrangements helps to promote an atmosphere of mutual trust in the school setting. This can minimize difficult and time consuming employee disputes and possible court actions. Because of the importance of the contract of employment it is recommended that school authorities, with the assistance of their

legal advisors, develop clear and comprehensive formats for their employment contracts.

3. **Employment Standards Act**
   The Provincial Employment Standards Act contains important basic requirements respecting the conditions of employment of employees. In dealings with its employees, authorities and independent school officials should ensure compliance with the statutory requirements.

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