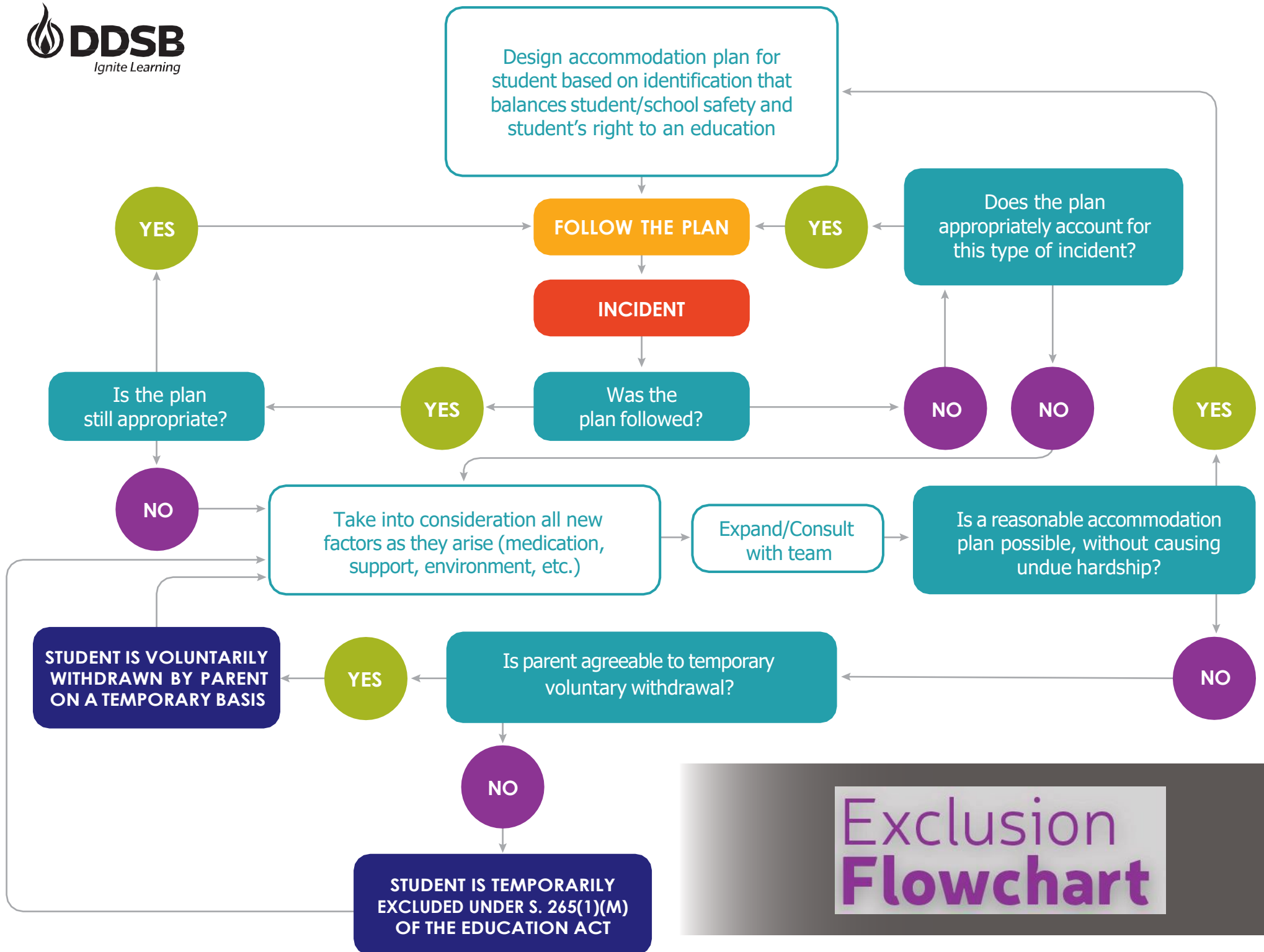




Exclusion
Flowchart

SAMPLE LETTER

Dear Parent/Guardian:

As you know, over the past several months, we have seen a significant and concerning increase in (Student's Name) behaviours, and in particular the threats (Student's Name) has been making to other students and staff, as well as comments which are of an aggressive and threatening nature. On a number of occasions, (Student's Name) has now threatened to harm other students. These comments are made in school during class time and during class breaks; (Student's Name)'s fellow students are finding these comments increasingly upsetting. I must indicate to you that in addition to our concerns about the other students, we are concerned about (Student's Name). You have advised that (Student's Name)'s psychiatrist has taken (Student's Name) off their medication in order to place (Student's Name) on another medication and that you believe that this is the cause of (Student's Name)'s behaviour.

Unfortunately, (Student's Name)'s behaviours have now reached the point where the negative impact on other students is such that I have become seriously concerned about the mental well-being of the students who are exposed to this language and threats – whether directed to them or others. I am also deeply concerned about the effect that all of this is having on (Student's Name)'s dignity in the social setting of the school and for (Student's Name)'s mental well-being.

It is important that schools be a safe environment for students, where they can feel secure and protected. It is increasingly difficult for us to maintain this atmosphere as a result of (Student's Name)'s behaviours. I understand that it will be some weeks before the new medication begins to take effect.

The *Education Act* permits a principal to exclude a person where, in the principal's judgment, the person's presence would be detrimental to the physical or mental well-being of the students. With much regret, I must advise you that we have reached that point with (Student's Name).

This letter will serve to advise you that (Student's Name) is now excluded from (School Name) Public School until the behaviours which have led to this situation are reasonably under control. We appreciate that a change in (Student's Name)'s medication will likely improve things, but we feel that it is critical that we be able to consult with (Student's Name)'s psychiatrist and anyone else working with (Student's Name) so that we are able to amend the behaviour plan to better

facilitate (Student's Name)'s re-entry back into school safely, for (Student's Name) and others.

While we work with you, (Student's Name)'s psychiatrist, and any other caregivers who may assist in better understanding and dealing with (Student's Name)'s behaviours, and determine what supports and interventions need to be put into place, the school board will provide (Student's Name) with Home Instruction. This allows us to maintain (Student's Name)'s education while we work towards transitioning (Student's Name) back to school in a safe manner. The start date will be determined in consultation with you shortly.

Please note that section 265(m) of the *Education Act* states, that subject to an appeal to the board, the principal has the right to refuse to admit to the school or classroom a person whose presence in the school or classroom would in the principal's judgement be detrimental to the physical or mental well-being of the pupils.

It is our sincere hope that with interventions and support in place, (Student's Name) will be able to make a successful return to the school setting. We look forward to working with you to make this happen.

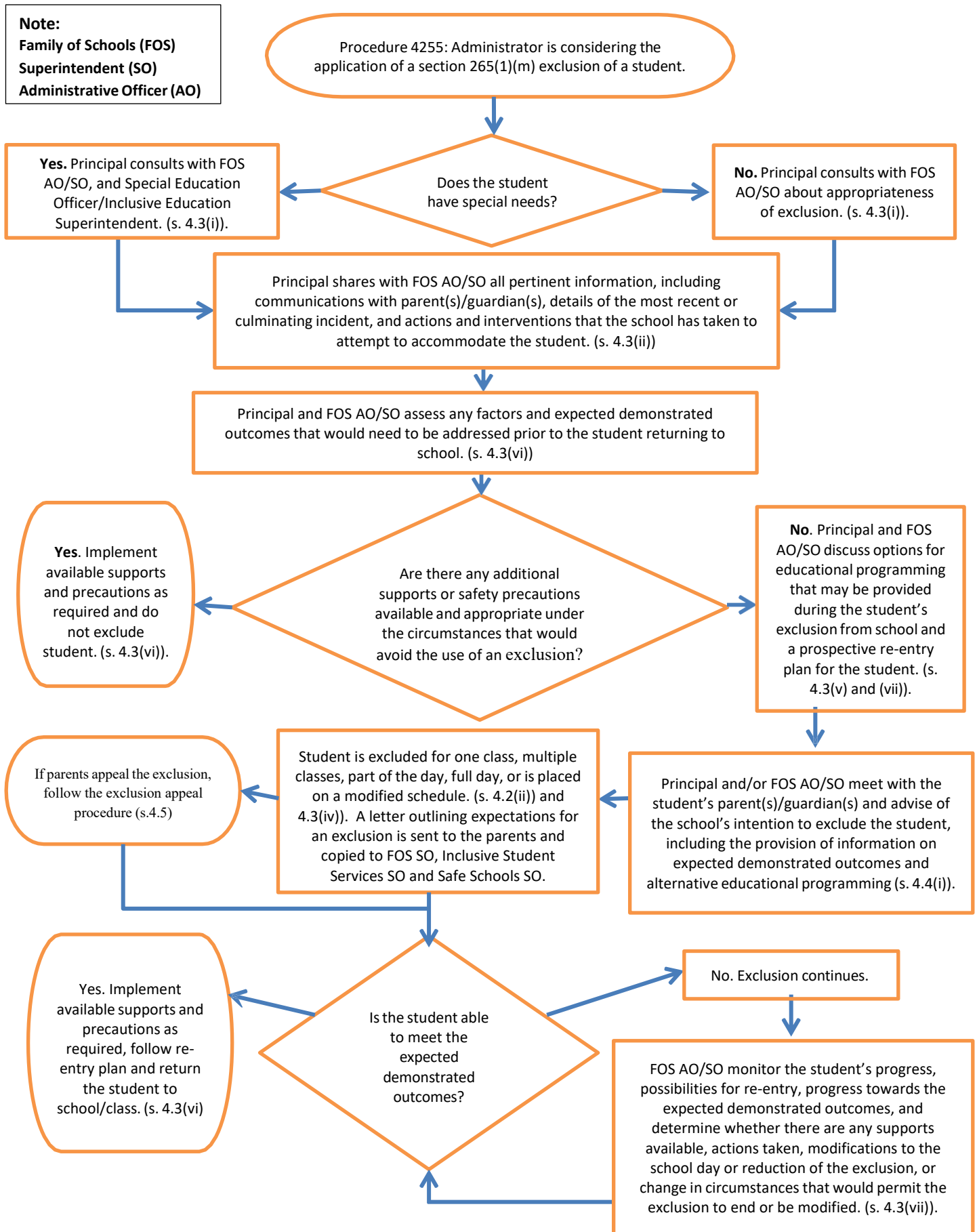
Sincerely,

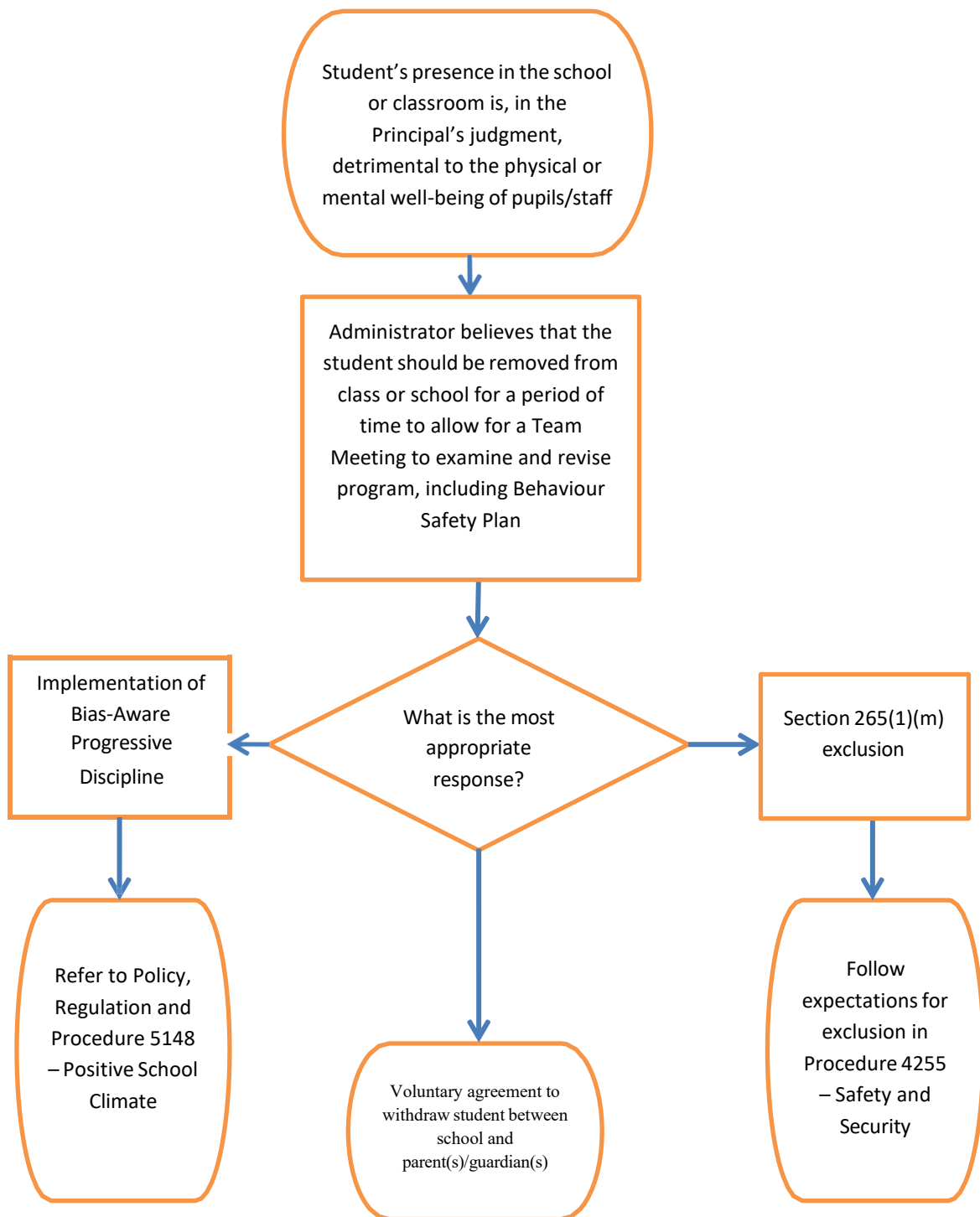
Principal

Superintendent

c.c.: Superintendent Family of Schools
Superintendent of Inclusive Student Services
Superintendent of Safe Schools

Exclusion Procedure





When exclusion enacted– reference to an ongoing review of student's needs and supports accessed as well as the provision of alternative educational programming (e.g., Home Instruction) during the exclusion.

Exclusions s. 265(1)(m): A Guide To Good Decision-Making

1.0 INTRODUCTION TO EXCLUSIONS

1.1 *Primary Obligations*

Always remember that school administrators have two primary obligations:

- To provide students with an education; and
- To ensure a safe and secure school environment for all students.

1.2 *Not Considered As An Exclusion*

The following are not deemed exclusions:

1. Voluntary withdrawal of a student by parent
2. Voluntary agreement to withdraw student between the Board and the family
3. Any refusal to admit or withdrawal by an institution other than the Board, e.g., conditions placed on a student by Durham Regional Police

1.3 *Where in Legislation an Exclusion Originates*

Duties of principal:

- 265(1)(m) It is the duty of a principal of a school, in addition to the principal's duties as a teacher, subject to an appeal to the board, to refuse to admit to the school or classroom a person whose presence in the school or classroom would in the principal's judgment be detrimental to the physical or mental well-being of the pupils;

1.4 *Interpretation of 265(1)(m)*

When analyzing s.265(1)(m), consider:

- (1) what the provision says; and
- (2) what the provision does not say.

2.0 ANALYSIS OF SECTION 265(1)(m)

2.1 *Analysis: s. 265(1)(m)*

“Duty of a principal... to refuse to admit... a person...”

- Consider the mandatory nature of this language. There exists a duty.

“...whose presence... would in the principal’s judgment be detrimental to the physical or mental well-being of the pupils”

- Consider the discretionary nature of this language. The principal’s judgment is the determining factor.

The provision could effectively be reorganized into an if-then statement:

- IF a principal’s judgment is that a person’s presence in the school is detrimental...,
- THEN the principal has a duty to refuse to admit.

That being said,

- A principal’s judgment must be sufficiently reasoned in order to withstand scrutiny. Accordingly, the decision must be carefully considered and balanced, and must involve the weighing of a number of factors. The decision to exclude should not be a snap judgment, but a last resort.

2.2 *The Main Exclusive Concern*

“detrimental to the physical or mental well-being of the pupils”

- Section 265(1)(m) is a provision dealing with safety. More specifically, it speaks to the safety of pupils. Note that s. 265(1)(m) does not include any mention of the safety of staff.

2.3 *The Scope of 265(1)(m)*

“to refuse to admit to the school or classroom”

- An exclusion is not always an exclusion from school for an entire school day. Exclusions may be for one class, multiple classes, for a part of the day, or for an entire day. An exclusion can result in a modified school day*.

*Note: the process for a modified school day that stems from an exclusion is specific and distinct, and should not be confused with any other form of modified school day as is contemplated under O. Reg. 298 or other regulations pursuant to the *Education Act*.

2.4 *Timelines*

What is the maximum length of time that exclusion may be applied?

- Indefinitely. The provision contains no restrictions on length.

Although exclusions CAN be applied indefinitely, it would take fairly extreme or specific circumstances in order for this to actually be the case.

- More commonly, an exclusion is a short-term temporary measure used to provide school administrators with time and space to find ways of allowing the student to return, e.g., through development of new safety plans, consideration of options and alternatives, etc.

3.0 BEST PRACTICES – STEPS TOWARDS EXCLUSION

- 1) Prior to excluding a student, a Principal must consult with the Family of Schools Administrative Officer/Superintendent and/or Special Education Officer/Superintendent of Inclusive Student Services.
- 2) The Principal must share with the FOS AO/SO all pertinent information, including communications with parents and/or guardians, details of the most recent or culminating incident (if such incident exists), and actions/interventions that the school has taken to date to attempt to accommodate the student.
- 3) The Principal in consultation with the FOS AO/SO must conduct a thorough analysis of any additional supports or safety precautions that may be immediately available and appropriate under the circumstances that could potentially avoid the use of an exclusion.

Where such options exist, they should be implemented instead of the exclusion. The exclusion should be as minimal as possible, i.e., do not exclude for a full day where a partial day would suffice, or exclude from school when a classroom exclusion would suffice.

- 4) Where the Principal, after consulting with the FOS AO/SO, is satisfied that an exclusion is the appropriate course of action, the Principal and the FOS AO/SO. shall discuss options for educational programming that may be provided during the student's exclusion from school (e.g., home instruction, homework, tutoring).
- 5) The Principal and the FOS AO/SO should also conduct an assessment of any factors that would need to be addressed prior to the student being permitted to return to school in order to maintain a safe and secure learning environment. (e.g., change in medication, availability of additional support personnel, medical or psychological assessment/treatment, development or revision of a Behaviour Success Plan for the child, referral by the parent to a community agency, completion of a Comprehensive Learning Assessment, completion of a behaviour assessment, assessment by an outside agency).
- 6) The Principal and FOS AO/SO have an ongoing responsibility, once an exclusion is underway, to monitor the student's progress, possibilities for re-entry, progress towards the expected demonstrated outcomes, and determine whether there are any supports available, actions taken, modifications to the school day or reduction of the

exclusion, or change in circumstances that would allow for a safe and secure learning environment and permit the exclusion to end or be modified.

The reasoning of why a student was excluded, for any given day throughout the exclusion, must always be properly supported and able to withstand scrutiny.

4.0 BEST PRACTICES – INFORMING THE PARENT(S)

4.1 *Communicating with Parent(s)/Guardian(s)*

The Principal and the FOS AO/SO shall meet with the student's parent(s)/guardian(s) and advise of the school's intention to exclude the child. The parent(s)/guardian(s) may be informed of the following:

- 1) The reasons for the exclusion.
- 2) Notice that the exclusion will continue pending the achievement of the expected demonstrated outcomes, with explanations or clarification of the outcomes themselves and why the Board deems them to be a requirement.
- 3) Assurance that once the required outcomes have been completed, the student will be transitioned back to the school.
- 4) An Outline by the Principal of the plans for educational programming or homework that will be provided to the child during the period of exclusion.
- 5) Information that a subsequent meeting day will be set within a reasonable time-frame at which the Principal and parent(s) will review progress and discuss a re-entry plan for the student.
- 6) All of the preceding points should also be provided to the parent in writing in the form of a letter from the Principal. Both the Principal and the FOS SO should sign the letter.

Sample letter available in Appendix I of Procedure #4255

4.2 *Best Practices: Alternatives to Exclusion*

Explore All Alternatives

- For example, calming rooms, sensory rooms, physical rooms, time outs, additional supervision, academic and emotional support, behaviour safety plans, individual educational plans, companion and/or service animals, etc.

4.3 *Prior to implementing an Exculsion, consider:*

- Are there any supports that can create a safe and secure learning environment for other students? For staff? For the student?
- Is discipline, such as suspension, warranted or suitable as an alternative? Consider all the mitigating and other factors, for example in the case of a student with special needs. Also enact Progressive Discipline, and within consider the merits of the discipline implemented. Would it actually solve the safety concern?
- Is the parent/guardian receptive to a voluntary withdrawal? In other words, is the parent willing to keep the student home, thus avoiding the need for a formal exclusion? In this case, interaction and support from the school is still required.

5.0 **PART V: EXCLUSION APPEAL DECONSTRUCTED**

“...subject to an appeal to the board...”

- This language is the full extent of the guidance that the Education Act gives with respect to an exclusion appeal.

5.1 *Timelines*

The Suspension and Expulsion provisions of the *Education Act* contain specific details pertaining to appeal timelines, e.g., investigations, filing dates, and the scheduling of hearings. There are no such timelines present with respect to exclusion appeals.

- Investigations: The investigation process should be conducted as promptly as possible. A student should not be excluded out of school any longer than necessary.
- Filing times: A request to have exclusions appealed may be filed by the parent/student (depending on age and capacity) at any time. Where a request for an appeal has been filed, the School Administration should prepare their report/position, and provide a copy to the family within a reasonable period. A reasonable period is a sufficient amount of time for the parents to be able to review, understand, obtain clarification and/or legal advice on the report in advance of the hearing. Remember that it is essential that you consult with the appropriate FOS AO/SO prior to creating or distributing the report.
- Scheduling of the hearing: Unlike suspension and expulsion hearings, there is no requirement for a hearing to be held within 20 days from the start of the exclusion. Accordingly, hearings should be scheduled as soon as is reasonably practicable.

5.2 *The Format of the Hearing*

- Exclusion hearings will closely resemble suspension and exclusion hearings in terms of process and format. However, the Trustees are awarded a greater amount of flexibility with respect to expanding and limiting the scope of the hearing.

5.3 *What must be filed?*

- A similar report as would be required for a suspension or expulsion hearing should be completed. However, there may be additional components that School Administrators should consider including in the report.
- These additional components may include supports, both implemented and contemplated, evidence of efforts to return the student to school, medical or other health information (where disclosure is appropriate), and details of the dialogue that the school has, and continues to have, with the parent(s)/guardian(s).

5.4 *Who Hears the Appeal?*

Sections 309(12) (Suspensions) and 311.3(9) (Expulsions) states that:

Committee – The board may authorize a committee of at least three members of the board to exercise and perform powers and duties on behalf of the board under this section, and may impose conditions and restrictions on the committee.

- A single Trustee, by definition, does not have any individual power. The Board of Trustees holds the decision-making powers. Accordingly, for suspension and expulsion hearings, the Education Act permits the Board of Trustees to authorize a panel of three Trustees to exercise and perform powers and duties. This is why we have three Trustees presiding over hearings and not the whole Board.
- There is no similar provision that authorizes a panel of three Trustees to exercise and perform powers and duties with respect to exclusion appeal hearings. The supposition is therefore that an exclusion appeal must be heard by the entire Board.

5.5 *The Trustee's Jurisdiction*

- The Board of Trustees have a very limited jurisdiction with respect to exclusion appeal hearings. In fact, they only have two options: (1) confirm the exclusion, (2) end the exclusion.

6.0 **FINAL THINGS TO REMEMBER**

Although s. 265(1)(m) is not crafted with staff in mind, we must still be very mindful and properly consider the safety of staff.

- Some risks in failing to consider the safety of staff include injuries (including physical and mental, minor and severe/permanent), work refusals, complaints, grievances, staff turnover, inconsistent and/or intermittent support of students with special needs, absences and lowered morale.

In situations where staff are being put at risk, consider whether s. 265(1)(m) has any application (e.g., is there a threat to other students or the student?).

These obligations are critical: “Provide students with an education, and ensure a safe and secure school environment.”

“...safe and secure school environment.” applies to both students and staff alike. As such, when there is a concern with respect to students with special needs that creates unmanageable safety risks, it is imperative that Principals consider the availability of s. 265(1)(m) where an exclusion would be the appropriate measure.