

APPEALS

The Board of Education recognizes the right of a student and/or parent of a student under Section 11 of the *School Act* to appeal a decision of an employee of the Board where such decision significantly affects the education, health, or safety of the student.

This policy deals with employee decisions, which are disputed by a student and/or a parent of the student. The Board believes that addressing such disputes closest to the point where they originate, provides the best likelihood that a satisfactory resolution can be achieved. Hence, the Board encourages informal good-faith efforts by all involved to resolve such matters. However, if the student or parent believes informal consultation isn't working, and if the decision in dispute is one that could significantly affect the student's health, education, or safety, it may be appealed to the School Board.

The Board recognizes that employee decisions that do not significantly affect the education, health, or safety of a student, are within the final authority of the Superintendent.

The following decisions will normally be considered to be matters that significantly affect the education, health, or safety of a student:

- Suspension from school for a period in excess of ten consecutive days;
- expulsion from an educational program;
- suspension from school for a health condition;
- placement in an educational program;
- grade promotion and graduation;
- a student is not provided with an individual education plan;
- transfer of a student from one school to another for disciplinary reasons;
- refusal to offer an educational program to a student 16 years of age or older; and
- any decision that, in the opinion of the Board, significantly affects the education, health, or safety of a student.

1. Interpretation

For the purposes of this policy, the following interpretations apply:

- 1.1. "Appeal" means a request, to a higher authority, made by a student or parent, that the decision of a Board employee be altered or revoked.
- 1.2. "Appellant" means a student or parent bringing an appeal.
- 1.3. "Board" means the Board of Education.
- 1.4. "Consultation" means a process whereby communication is undertaken, by all the parties concerned, to satisfactorily resolve parent/student/employee concerns without resorting to appeal procedures. Consultation includes the sharing of information, advice, feelings, and interests with respect to resolving the issue(s) at hand.

Adopted: May 18, 2022

Reviewed:

Revised:

- 1.5. "Decision" in addition to its normal meaning also includes the failure to make a decision.
- 1.6. "Notice of Appeal" is a District form, which is completed by the appellant to inform the Superintendent that the appellant would like the Board to consider an appeal. See Appendix "A".
- 1.7. "Parent" means in respect of a student or of a child registered under Section 13 of the *School Act*:
 - 1.7.1. the guardian of the person of the student or child;
 - 1.7.2. the person legally entitled to custody of the student or child, or;
 - 1.7.3. the person who usually has the care and control of the student or child.
- 1.8. "Significantly affect" refers to a decision which:
 - 1.8.1. with respect to a student's education, jeopardizes the student's long-term educational progress, and/or contravenes Board Policy and Procedures;
 - 1.8.2. with respect to a student's health, exposes the student to undue health risks normally avoided by a kind, firm, and judicious parent and/or contravenes Board Policy and Procedures relative to student health;
 - 1.8.3. with respect to a student's safety, exposes the student to undue danger normally avoided by a kind, firm, and judicious parent and/or contravenes Board Policy and Procedures relative to student safety.

2. Levels of Consultation

The Board expects that, before appealing the decision of a Board employee or a decision of the Board, a student and/or parent, will have consulted about the decision, with the following personnel, in the following order:

- 2.1. Any employee involved in the decision;
- 2.2. School Principal or Vice-Principal;
- 2.3. the Superintendent of Schools (regarding educational decisions); or
- 2.4. the Secretary-Treasurer (regarding operational decisions).

3. Levels of Appeal

If, in the view of a student or parent, the issue has not been resolved by consultation, the following levels of appeal are available:

- 3.1. Appeal to Board of School Trustees, and,
- 3.2. appeal to the Ministry of Education, Superintendent of Achievement (Section 11.1 – 11.8, *School Act*).

4. Points to Consider Before Bringing an Appeal to the Board

Appeals to the Board are subject to the process that follows and will be heard, provided that:

- 4.1. Every attempt to consult with the employee(s) concerned has taken place, prior to the appeal;
- 4.2. the appellant has brought the matter for consideration to the Superintendent (or Secretary-Treasurer if the dispute is operational) after trying to resolve the dispute with the employee(s) concerned;
- 4.3. an appeal is made no later than 30 days after the disputed decision was made;
- 4.4. the appellant(s) has/ have adhered to the procedures of this policy;
- 4.5. the decision being appealed is that of the Superintendent or the Secretary-Treasurer. In such instances, the individual whose decision is under appeal, i.e. the Superintendent or the Secretary-Treasurer shall not take part in the deliberations by the Board.

The Board may consider an appeal for extenuating circumstances.

5. Appeals Procedure

- 5.1. The appeal to the Board shall be initiated by completing the 'Notice of Appeal' form.

The Notice of Appeal form must be:

- 5.1.1. obtained at the School or School District Administration Office;
- 5.1.2. completed in full and submitted to the Principal of the school in which the student is registered or enrolled; or submitted to the School District Administration Office if the decision under appeal was made by central office employees; and,
- 5.1.3. submitted no later than thirty calendar days after the decision under appeal was made.
- 5.2. Upon receiving a Notice of Appeal form, the Superintendent or the Secretary-Treasurer shall:
 - 5.2.1. review the particulars of the appeal;
 - 5.2.2. decide whether the decision under appeal "significantly affects" the student's health, education, or safety according to the definitions under this policy;
 - 5.2.3. decide whether the appellant has complied with the provisions of the appeal process procedures; and,
 - 5.2.4. notify the appellant within 10 days that the appeal is invalid because it fails to meet the conditions in 5.2.2) and 5.2.3) above; or,
 - 5.2.5. notify the appellant within 10 days that the appeal will be considered by the

Adopted: May 18, 2022

Reviewed:

Revised:

School Board, and the date and time of the appeal.

- 5.2.6. The appeal will be held within 20 days of the appeal submission.
- 5.3. The Superintendent may submit a written report regarding the matter, which is the subject of the appeal. Copies of this report and the other documentation shall be made available to the appellant, except for information, which the Superintendent has reason to believe, may present a significant risk of harm to third parties. Personal information about others will be protected in accordance with the *Freedom of Information and Protection of Privacy Act*.
- 5.4. The Board may decide the appeal based on written submissions, or it may hold a hearing meeting.
- 5.5. If there is to be an oral hearing, the Secretary-Treasurer shall:
 - 5.5.1. convene a meeting of the Board as soon as practicable;
 - 5.5.2. provide the Board with copies of the Notice of Appeal and information as deemed relevant to the appeal prior to the meeting;
 - 5.5.3. provide to the appellant non-confidential copies of reports and documentation; and,
 - 5.5.4. invite to the meeting, the appellant(s) and such resource persons as may aid the Board in its deliberations. At this meeting, the appellants may bring with them a representative or be assisted by a person of their choosing. Any costs associated with exercising this right will be the responsibility of the appellant.
- 5.6. Any oral hearings shall be conducted in accordance with these guidelines:
 - 5.6.1. The Chair will outline the purpose of the hearing which is to provide:
 - 5.6.1.1. an opportunity for the parties to make representations in support of their respective positions to the Board. This information may include medical, psychological, and educational data and may be presented by witnesses. The information may be both written and verbal;
 - 5.6.1.2. the Board with the means to receive information and to review the facts of the dispute; and,
 - 5.6.1.3. a process through which the Board can reach a fair and impartial decision.
 - 5.6.2. Notes of the proceedings, excluding Board deliberations, will be recorded for the purpose of the Board's records.
 - 5.6.3. The Superintendent will have an opportunity to explain the decision, the reasons for the decision and to respond to information presented by the appellant.
 - 5.6.4. The appellant will have an opportunity to respond to the information presented by the Superintendent.

Adopted: May 18, 2022

Reviewed:

Revised:

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- 5.6.5. The Board will have the opportunity to ask questions or request clarification from both parties.
 - 5.6.6. The Chair shall consider any requests for adjournments in relation to the hearing of appeals, including the reason for the request, and whether the person making the request has sufficient notice and time to prepare for the appeal submission. The Chair will notify the parties in writing of their decision regarding the adjournment.
 - 5.6.7. No cross examination of the parties shall be allowed unless the Chair deems it advisable under the circumstances.
 - 5.6.8. If the Board requires additional information or clarification in order to make its decision, both parties to the appeal will be requested to return to the hearing for the required information.
 - 5.7. In considering the appeals of employee decisions, the Board shall consider whether:
 - 5.7.1. the decision significantly affects the education, health, or safety of the student;
 - 5.7.2. the decision appealed is in accordance with legislation, Board Policies;
 - 5.7.3. the decision appealed was reached through a process that was fair to the student, and after consideration of relevant information;
 - 5.7.4. the evidence presented to the Board supports the decision or calls it into question;
 - 5.7.5. the decision is reasonable in the circumstances; and,
 - 5.7.6. there are special circumstances that would warrant making an exception to a Board Policy.
 - 5.8. After considering the decision criteria outlined in section 8 of the Procedures, the Board shall uphold, alter, or revoke the decision under appeal. The Superintendent shall report in writing, as soon as practicable, the Board's decision to the appellant with copies to the employee(s) whose decision was appealed, and to the Supervisor of the employee(s).
 - 5.9. Decisions made on appeals are not precedential and are not binding on future decision-makers.
6. Appeals to the Ministry of Education, Superintendent of Achievement
- 6.1. Effective March 3, 2008, if the appellant wishes to appeal the decision of the Board of Education, he/she may do so under Section 11.1-11.8 of the *School Act*.
7. Grounds for Appeal
- 7.1. The following information is from the *British Columbia Ministry of Education Appeals Regulation* (BC Reg. 24/08), starting with Section 2 of the Regulation.

Adopted: May 18, 2022
Reviewed:
Revised:

- 2.1 *Subject to section 3, a student or parent of a student may appeal the following:*
- a) *A decision made by a Board of Education under section 11 (6) of the Act only if the decision is a decision of an employee of the Board that significantly affects the education, health, or safety of a student and relates to a matter set out in subsection (2).*
 - b) *A reconsideration made by a Board of Education under section 11.5 of the Act, only if the reconsideration relates to a matter set out in subsection (2).*
- 2.2 *A decision or reconsideration of a Board of Education may be appealed if the decision or reconsideration:*
- a) *Relates to the student's expulsion from an educational program.*
 - b) *Relates to the student's suspension from an educational program.*
 - c) *Relates to the student's suspension from an educational program if no other educational program is provided by the Board.*
 - d) *Requires the student, as a disciplinary measure, to complete all or part of an educational program by Distributed Learning, despite the fact that all or part of the educational program and space and facilities for the student are available in a school, other than a Distributed Learning School, in the Board's School District.*
 - e) *Determines that it is not necessary to provide a student with an Individual Education Plan because:*
 - i. *the student is not a student with special needs, or,*
 - ii. *an exception under section 2 (2) of the Individual Education Plan Order applies to the student.*
 - f) *Relates to either of the following requirements:*
 - i) *under the Special Needs Students Order, to offer to consult with a parent of a student with special needs regarding the placement of the student in an educational program; or,*
 - ii) *under the Individual Education Plan Order, to offer to consult with a parent of the student, and if appropriate, with the student, about the preparation of the student's Individual Education Plan,*

- g) relates to a complaint by the student or the parent of the student, against another student, respecting intimidation, bullying, harassment of or use or threat of use of weapons, or other forms of violence against the student by that other student, or,*
- h) relates to a removal or exclusion of the student under section 91 (5) (b) of the Act.*

2.3 Limitation - Allocation of Resources

- c) A student or parent may appeal a decision or reconsideration respecting the allocation of resources to the student's educational program only to the extent that the decision or reconsideration relates to the application of the Board's Financial Hardship Policy, established under Section 82.4 of the Act, to the student.*

Legal References: *School Act* Sections 6, 11, 26, 85, 91; BC Regulation 24/08
School District 47 Policy 15, Freedom of Information

Adopted: May 18, 2022
Reviewed:
Revised: