

### **APPEALS BYLAW** **(A bylaw to establish the procedure for appeals under Section 11 of the School Act)**

Employee decisions relating to individual students are to be carried out in accordance with principles of fairness. The appeal process is intended to encourage all parties to disputes to understand the concerns of the other parties and make good faith efforts to resolve disputes to mutual satisfaction.

The Board generally encourages complaints and disputes to be dealt with at the point closest to where the dispute first arises, pursuant to the District's parent/guardian concern protocol. (See Administrative Procedure 151).

If an employee's decision is disputed or a complaint is made about an employee's decision, the dispute or complaint is not resolved to the satisfaction of the student or the parent of the student affected, and the decision significantly affects the education, health or safety of the student, the Board recognizes the right of a student and/or his or her parents (including guardians and persons acting in place of parents) to appeal to the Board.

The Board also 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 as the Board's chief educational officer.

"Decision" includes a failure to make a decision.

"Parent" is as defined in the School Act, and includes a guardian.

Appeals to the Board are to be carried out in accordance with principles of fairness, including:

- The appeal process is to be accessible to parents and students. Information about the appeal process and relevant policies are to be readily accessible to all, including employees, students and parents. Reasonable accommodation is to be provided where necessary to allow parents or students to make use of the appeal process.
- Appellants are entitled to receive the same written and oral information to be used in the appeal as is provided to the Board by the Superintendent and to have an opportunity to respond to it.
- The Board accepts its responsibility to exercise its independent judgment when hearing appeals. In particular, a Board officer who has participated in making the decision being appealed, who has attempted to mediate it or who has investigated it shall not assist the Board with its deliberations on the appeal.
- A student or parent shall not be subjected to retribution by the Board, its officers or employees because an appeal has been made.

Appeal procedures are established by bylaw and shall be applied in accordance with the above principles.

The Board recognizes that whether a decision significantly affects a student's education, health, or safety is a matter for individual consideration.

A decision or reconsideration of a Board may be appealed if the decision or reconsideration:

- Relates to the student's expulsion from an educational program
- Relates to the student's suspension from an educational program
- Relates to the student's suspension from an educational program, if no other educational program is provided by the Board,
- 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 District,
- Determines that it is not necessary to provide a student with an individual education plan because
  - The student is not a student with special needs, or
  - An exception under section 2(2) of the Individual Education Plan Order applies to the student,
- Relates to either of the following requirements:
  - 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;
  - 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,
- 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
- Relates to a removal or exclusion of the student under section 91(5)(b) of the Act.

Decisions made on appeals are not precedential and are not binding on future decision-makers.

In considering appeals of employee decisions, the Board shall consider:

- Whether the decision appealed is in accordance with legislation, Board policies and procedures;
- Whether the decision appealed was reached through a process that was fair to the student and after consideration of relevant information;

- Whether the evidence presented to the Board supports the decision or calls it into question;
- Whether the decision is reasonable in the circumstances; and
- Whether there are special circumstances that would warrant making an exception to a Board policy.

Procedures for hearing appeals shall be applied in accordance with the guiding principles in the Board's Appeal Policy.

## 1. Pre-Appeal Dispute Resolution Process

- 1.1 The student and/or parent shall take the dispute resolution steps outlined in Administrative Procedure 151 or other applicable procedure to try to resolve the concern before filing an appeal to the Board.

## 2. Starting an Appeal

- 2.1 If the steps in Section 1 are not successful, a parent and/or student initiates the Board Appeal Process by presenting a written Notice of Appeal to the Secretary Treasurer within fifteen (15) school days after being informed of the decision that is being appealed, or from the date of completion of the dispute resolution steps referred to in 1.1, whichever is later.

### 2.2 The Notice of Appeal must include:

- 2.2.1 The name, address and school placement of the student (including, where appropriate, grade level and home room teacher).
- 2.2.2 The name and address of the person(s) making the appeal
- 2.2.3 The decision that is being appealed.
- 2.2.4 The date on which the student and/or parent/guardian bringing the appeal were informed of the decision.
- 2.2.5 The name of the Board employee(s) who made the decision being appealed.
- 2.2.6 Particulars of the effect on the student's education, health or safety.
- 2.2.7 The grounds for the appeal and the action requested or relief sought.
- 2.2.8 A summary of the steps taken by the student and/or parent/guardian to resolve the matter.
- 2.2.9 Whether the person making an appeal is requesting an oral hearing.
- 2.2.10 Whether the person making an appeal requires any special accommodation in order to proceed with the appeal (such as interpretation services at the hearing of the appeal).

### 2.3 The Secretary Treasurer is responsible on behalf of the Board for:

- 2.3.1 Receiving Notices of Appeal

- 2.3.2 Reviewing Notices of Appeal for completeness and timeliness
- 2.3.3 Giving any notices required under collective agreements
- 2.3.4 Receiving and distributing documents relevant to an appeal
- 2.3.5 Communicating with the appellants and others on matters relating to an appeal hearing
- 2.3.6 Arranging for any accommodation required, and
- 2.3.7 Scheduling hearings.

The Secretary Treasurer may designate another staff member to carry out these responsibilities. If the Secretary Treasurer has participated in the dispute resolution steps or is the employee whose decision is being appealed, another staff member shall be designated.

- 2.4 If the Secretary Treasurer is of the opinion that:
  - 2.4.1 An appeal is not timely;
  - 2.4.2 An appellant has refused to participate in the dispute resolution steps;
  - 2.4.3 An appeal is not an appeal of a decision of a board employee or the decision does not significantly affect the student's education, health or safety; or
  - 2.4.4 There is any other preliminary matter that should be settled before a hearing of an appeal on its merits;

The Secretary Treasurer may schedule a preliminary hearing before the Board for purposes of a decision on that matter, without first complying with all requirements of section 3.

- 2.5 Appellants are notified of a preliminary hearing and provided with the opportunity to make written submissions on the preliminary issue to be determined.

### 3. Pre-Hearing Responsibilities

- 3.1 Upon receipt of the Notice of Appeal, the Superintendent shall be notified. The Superintendent or a person designated by the Superintendent to be responsible for the investigation and presentation of the appeal will prepare a report for the Board concerning the matter under appeal and will be responsible for gathering the information to be presented to the Board, other than the information to be presented by the appellant.
- 3.2 If the appellant is a student under the age of nineteen (19) and no parent is named as an appellant, a parent will be notified.
- 3.3 If the appellant has not met with the Superintendent during the dispute resolution process, at the Superintendent's request the appellant is required to meet with the Superintendent or a person designated by the Superintendent. A report of this meeting shall be included in the report prepared under 3.1.

- 3.4 Any notices required under relevant collective agreements will be provided.
  - 3.5 Instead of an oral hearing, the Board may determine that an appeal will be decided on the basis of written submissions only.
  - 3.6 The appellant will be notified of the date, time and place for hearing of the appeal and of the requirement to provide any documents in advance.
  - 3.7 A copy of the report prepared under 3.1 will be provided to the appellant no later than forty-eight (48) hours before the time set for hearing.
  - 3.8 The appellant is required to provide copies of any documents on which he or she intends to rely, or copies of written submissions, no later than twenty-four (24) hours before the date set for hearing.
4. Hearing and Decision
- 4.1 The Board will decide the appeal based on the oral and/or written submissions presented to it and, for an oral hearing, will determine the order of, and time allotted for, submissions.
  - 4.2 At any time the Board may request further information from the appellant or the Superintendent or designate and may adjourn in order that such information may be obtained.
  - 4.3 The Board may make any interim decision it considers necessary pending the disposition of the appeal.
  - 4.4 The Board may invite submissions from any person whose interests may be affected by the Board's decision on the appeal.
  - 4.5 The Board may refuse to hear an appeal where
    - 4.5.1 The appeal has not been commenced within the time set out under 2.1
    - 4.5.2 The student and/or parent or guardian has refused or neglected to discuss the decision under appeal with the person(s) specified in the applicable dispute resolution process or the Superintendent or designate, or such other person as directed by the Board; or
    - 4.5.3 The decision does not in the Board's opinion significantly affect the education, health or safety of the student.
  - 4.6 The Board may hear an appeal despite any defects in form or technical irregularities and may relieve against time limits.
  - 4.7 Appeals and decisions on appeals will be held in closed session.
  - 4.8 The Board will ensure that each party has received all documentation provided by the other party prior to the hearing.
  - 4.9 At the end of each party's submission, trustees may ask questions.
  - 4.10 When questioning by trustees is complete, the parties will leave and the Board will meet to decide how it will dispose of the appeal.

- 4.11 The Board must make a decision as soon as practicable and within forty-five (45) days from receiving the Notice of Appeal.
- 4.12 The Board's decision is final, subject to any rights to appeal under the School Act. The Board may reconsider its decision only
  - 4.12.1 If it is satisfied that new evidence or information would have a material effect on the decision and the failure to present that evidence or information at the original hearing is satisfactorily explained;
  - 4.12.2 The decision contravenes law; or
  - 4.12.3 A reconsideration is directed or requested in connection with an appeal of the Board's decision under School Act Section 11.1. (Appeals to a Superintendent of Achievement.)
- 4.13 The parties will be promptly notified of the Board's decision. Written reasons will be provided as soon as practicable.
- 4.14 Appellants who have appeal rights under School Act Section 11.1 will be advised of those rights when or before they are notified of the Board's reasons for decision.

Legal Reference: *Sections 6, 11, 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 11.7, 11.8, 22, 26, 85, 91 School Act*  
*Regulation 24/08 – Appeals Regulation*  
*Administrative Tribunals Act*  
*Collective Agreement*