
Policy 13

APPEALS PROCEDURE

Section 11 of the School Act reads in part:

Appeals:

- (1) In subsections (2) and (4), “decision” includes the failure of an employee to make a decision.
- (2) If a decision of an employee of a board significantly affects the education, health or safety of a student, the parent of the student or the student may, within a reasonable time from the date that the parent or student was informed of the decision, appeal that decision to the board.
- (3) For the purposes of hearing appeals under this section, a board must, by bylaw, establish an appeal procedure.

This policy sets out the procedure to be followed by parents and students who wish to appeal under section 11 of the School Act.

Statement of Principle

The purpose of the appeal process is to provide a fair and expeditious means by which parents and students can seek a review of decisions that significantly affect the education, health or safety of a student.

The Board strongly encourages parents and students to work together with their teachers and with school and Board administration to resolve disputes in an open and constructive manner both prior to and during the appeal process. All participants in the appeal process are expected to act as role models, and will at all times maintain an atmosphere of mutual respect, co-operation and respect for the dignity of the individual participants.

Policy

Confidentiality

1. Section 11 appeals are confidential. Information and documents about appeals may only be disclosed in accordance with the School Act, *Freedom of Information and Protection of Privacy Act*, and applicable Board policy (such as this policy or Policy JO-R - Student Records).

Decisions which can be Appealed under Section 11

2. Appeals may only be brought of decisions which “significantly” affect the education, health or safety of a student.
3. The determination of whether a decision “significantly” affects a student’s education, health or safety must be made on a case-by-case basis.

Examples of decisions that will be deemed to significantly affect the education, health or safety of a student include:

- 3.1 Disciplinary suspension from school for a period in excess of five (5) consecutive instructional days;
 - 3.2 The transfer of a student from one school to another for disciplinary reasons;
 - 3.3 The exclusion of a student from school for a health condition;
 - 3.4 Significant decisions regarding placement in an educational program (this does not include classroom or teacher preference issues, except in exceptional circumstances);
 - 3.5 Grade promotion or graduation;
 - 3.6 Refusal to offer an educational program to a non-graduated student sixteen (16) years of age or older;
4. Board and District policies are not appealable under section 11.
 5. Where a parent or student challenges a decision of a Board employee that significantly affects the education, health or safety of a student, the parent or student should be advised of this policy.

Appeal Process

6. A parent or student bringing an appeal may be accompanied by a person of their choosing at any meetings held in connection with the appeal. Where an appeal is launched by the parent, a student who is the subject of the appeal, may with the consent of their parent attend any appeal meetings.
7. Where the person whose decision is appealed is a teacher, the teacher may attend any meeting in connection with the appeal with their union representative pursuant to Article E.33 of the teacher's collective agreement and will be provided copies of any documents to be considered at the appeal seven days prior to that consideration. The teacher may respond to such material.
8. Where the person bringing the appeal requires assistance with communicating in English, the Board will make reasonable efforts to provide interpretive assistance at meetings under this policy through the use of Board employees conversant in the relevant language.

Notice of Appeal and Time Limits for Appeal

9. Appeals must be started within thirty (30) days of the time the decision was communicated to or known by the parent or student, unless good reasons are shown why the time should be extended.
10. An appeal is started by completing a Notice of Appeal form (Form 1) and by delivering it by mail, email or personal delivery to the office of the Associate Superintendent designated by the Superintendent to hear Level 1 appeals. The Notice of Appeal should provide all relevant information in relation to the appeal.

Appeal Procedure

11. If, in the opinion of the Associate Superintendent designated by the Superintendent to hear Level 1 appeals, the appeal
 - 11.1 Does not relate to a decision that significantly affects the education, health or safety of a student,
 - 11.2 Has not been commenced within 30 days from the date of the employee's decision to which the appeal relates, without reasonable explanation; or
 - 11.3 The student and/or parent has refused or neglected to discuss the decision under appeal as directed by the District;

The Associate Superintendent may refer the appeal to the Superintendent of Schools for a preliminary determination of that issue.

12. Prior to making a determination on that issue, the Superintendent may request a meeting with the person bringing the appeal, who must attend the meeting or the appeal will be dismissed.
13. If the Superintendent determines the appeal not to be of a decision that significantly affects the education, health or safety of a student, was commenced out of time without reasonable excuse, or the person bringing the appeal has refused or neglected to discuss the decision under appeal as directed by the District, the person bringing the appeal shall be advised by the Superintendent to follow the conflict resolution steps outlined in the *VBE Conflict Resolution Process for School Based Concerns*.
14. Where, in the opinion of the Associate Superintendent designated by the Superintendent to hear Level 1 appeals or the Superintendent, the decision does significantly affect the education, health or safety of a student, the appeal will be referred to a Level 1 meeting under this policy.
15. If the person bringing the appeal disagrees with the Superintendent's determination, that person may request the matter be referred to a quorum of the Board for a determination of that preliminary issue. The person requesting the Board determine this preliminary issue shall make that request in writing, delivered to the office of the Secretary Treasurer within 10 days of being advised of the Superintendent's decision.
16. Where the majority of the quorum of the Board determines that the decision in issue does not significantly affect the education, health or safety of a student, that the appeal was commenced out of time without reasonable excuse, or that the student and/or parent or guardian has refused or neglected to discuss the decision under appeal as directed by the District the appeal will be dismissed. That decision is final and may not be appealed. Where the quorum of the Board determines the appeal does involve a decision that significantly affects the education, health or safety of a student, was filed in time or with reasonable excuse, or that the person bringing the appeal did not fail to consult as directed by the District, the matter will be referred to a Level 1 meeting under this policy, unless the quorum of the Board determines to refer the matter directly to Level 2.

Level 1 – Associate Superintendent - Dispute Resolution

17. At Level 1 – Dispute Resolution, the Associate Superintendent designated by the Superintendent to hear Level 1 appeals will make a determination whether the decision under appeal should be upheld, reversed or varied.
18. Where the decision under appeal is a decision of the Associate Superintendent designated by the Superintendent to hear level 1 appeals, references to the Associate Superintendent designated by the Superintendent to hear Level 1 appeals shall be deemed to be replaced by "the Superintendent".
19. Upon a matter being referred to Level 1 the Associate Superintendent designated by the Superintendent to hear Level 1 appeals will, as soon as practicable, arrange a meeting which will be attended by:
 - 19.1 the person bringing the appeal, who may bring a representative if they so choose;
 - 19.2 the employee whose decision is being appealed; including if applicable, their union representative; and
 - 19.3 any other person the Associate Superintendent designated by the Superintendent to hear Level 1 appeals considers appropriate or necessary, including other District employees who have had prior involvement in making the decision being appealed, or who have special expertise in the subject matter of the appeal area being discussed. The Associate Superintendent will advise the person bringing the appeal who will be in attendance at the meeting, and the person bringing the appeal will advise the Associate Superintendent designated by the Superintendent to hear Level 1 appeals if they are being accompanied at the meeting and if so by whom.
20. The person bringing the appeal shall provide the Associate Superintendent designated by the Superintendent to hear Level 1 appeals with all documents relevant to the appeal not less than seven days prior to the Level 1 meeting.
21. The Associate Superintendent will determine the appeal and will provide reasons for the decision to the person bringing the appeal and the person whose decision is under appeal.
22. If the person bringing the appeal does not accept the decision of the Associate Superintendent designated by the Superintendent to hear Level 1 appeals they may refer the matter to Level 2 by notifying the Office of the Secretary-Treasurer in writing that they wish to pursue the appeal to Level 2 within seven days of receiving the decision of the Associate Superintendent designated by the Superintendent to hear Level 1 appeals.

Level 2 - Board of Education

23. The Secretary-Treasurer shall forward the following materials to the Board for consideration:
 - 23.1 The Notice of Appeal.
 - 23.2 Any documents provided by any party to the appeal at the Level 1 meeting.
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- 23.3 Copies of any relevant VSB, Ministry or other policies or statutory requirements which bear on the issue raised in the appeal.
- 23.4 The decision of the Associate Superintendent designated by the Superintendent to hear Level 1 appeals.

Appeal Level 2 - Hearing Procedure, Board of Education

- 24. Upon receipt of an appeal at Level 2, the Board shall establish a date for considering the appeal, which will be communicated to the parties by the Secretary-Treasurer.
- 25. The Board may be advised in private session by legal counsel and by the Secretary Treasurer in relation to the appeal provided they have not had prior involvement in the matter under appeal.
- 26. The Board may, in its absolute discretion, determine whether an appeal shall be considered on the basis of written submissions or an oral hearing. The Board may determine rules of procedure, including imposing limits on time for presentations, the ability to call or question witnesses, and the receipt of evidence, whether sworn or unsworn, to facilitate the disposition of the appeal, and may adjourn the proceeding at the request of any party where there are reasonable grounds to do so.
- 27. The Board may establish a schedule for the exchange of documents or written submissions. At least seven (7) days prior to the date scheduled for the hearing of the appeal, or the exchange of initial written submissions in the cases of a written appeal, VSB staff and the appellant must provide each other with any documents or information they intend to rely on for the appeal, and which have not previously been exchanged.
- 28. The person bringing the appeal and the School District administration may make submissions in relation to the appeal.
- 29. The Board may make any interim decision it considers necessary pending the disposition of the appeal.
- 30. The Board may invite submissions from any person whose interests may be affected by the Board's decision on the appeal.
- 31. The parties will be promptly notified of the Board's decision. Written reasons will be provided to the parties as soon as practicable. In considering appeals of an employee's decision, the Board shall consider:
 - 31.1 Whether the decision significantly affects the education, health or safety of a student;
 - 31.2 Whether the decision appealed was reached through a process that was fair to the student;
 - 31.3 The evidence presented to the Board;
 - 31.4 Whether the decision is reasonable in circumstances; and
 - 31.5 Any special circumstances.

32. The Board's decision is final, subject to any rights to appeal under the School Act. The Board may reconsider its decision only:
- 32.1 If it is satisfied that new evidence or information would have a material effect on the decision and that the failure to present that evidence or information at the original hearing is satisfactorily explained;
 - 32.2 The decision contravenes law; or
 - 32.3 A reconsideration is directed or requested in connection with an appeal of the Board's decision under School Act section 11.1.
33. Persons bringing appeals will be advised of the possibility of an appeal under School Act section 11.1 when 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, 68, 85, 91
School Act Regulation 24/08 – Appeals Regulation
Administrative Tribunals Act
Collective Agreement

Adopted: Sept 24, 2018