

APPEALS AND HEARINGS REGARDING STUDENT MATTERS

Special Education Review

The Board recognizes the right of a student with exceptional needs or the parents/guardians of that student to request a review of a decision related to designation, placement and program in accordance with provisions outlined in the Education Act and the Regulations applicable thereto.

Specifically,

1. A student who has reached eighteen (18) years of age, or the parents/guardians of a student with a disability shall have access to a review process in the event he/she disagrees with:
 - 1.1 The designation of the student or the failure to designate the student as having a disability;
 - 1.2 The placement of the student; and/or
 - 1.3 The program provided to the student.
2. The right to a review is limited to decisions with educational or developmental implications for the student. The right for review does not apply where the disagreement with respect to the placement of the student is based on:
 - 2.1 Parental preference as to the location of the delivery of the program;
 - 2.2 Parental convenience;
 - 2.3 Other factors unrelated to the impact of the location of the educational instruction on the student's education and development;
 - 2.4 Location within an educational institution;
 - 2.5 Any other reason that relates to or is similar in nature to those listed in sections 2.1 to 2.4; and
 - 2.6 An allegation of discrimination pursuant to the Human Rights Code or the Canadian Charter of Rights and Freedoms.
3. At any stage of the review the student or the parents/ guardians of the student may choose to be accompanied by a friend, or other person of their choice.
4. The Director or designate may make any interim decision he/she considers necessary pending the decision of the review. During the appeal and review period, the parents have the right to either have their child exempted from school or have him/her remain in the initial placement until the dispute is settled.

5. The Division will attempt to make every effort to resolve a designation, placement and/or program decision in a manner amicable to the student, parents/guardians and the Division. The following steps outline the initial action that is required prior to requesting a formal review process:
 - 5.1 The student or parents/guardians shall discuss the decision in question with the teacher(s) and the in-school administration;
 - 5.2 If there is no resolution, the student or parents/guardians shall request that the Director review the designation, placement or program decision;
 - 5.3 If there is no resolution, prior to initiating a review, the Director will invite the Regional Superintendent of Special Education to facilitate a resolution; and
 - 5.4 If there is no resolution, prior to initiating a review, the Director shall inform the student or parents/guardians of the procedures necessary for initiating a formal review process.

6. The following steps outline the process required to initiate a formal review process:
 - 6.1 The request for a formal review shall be in writing directed to the Director, and shall set out the reasons for disagreement with a designation, placement or program decision.
 - 6.2 Within ten (10) school days of receiving the request for a formal review of a decision, the Director shall respond in writing to the individual(s) outlining:
 - 6.2.1 The steps in the formal review process;
 - 6.2.2 The procedure used to establish the neutral third party;
 - 6.2.3 The expenses the Board will cover; and
 - 6.2.4 The anticipated timeline of the formal review process.
 - 6.3 The Director shall notify the Division personnel involved in the decision of the request for review and shall provide them with information concerning the circumstances of the review, including a copy of the written request for review.

7. Selection of the Third Party

The following requirements must be met regarding the selection of the third party:

 - 7.1 The person selected must be one who has not had discussions regarding the disagreement or similar disagreements. The third party must maintain a neutral position until a decision can be made.
 - 7.2 The parent/guardian will nominate three (3) persons as possibilities for a third party and will present them to the Director. The Director will determine if one (1) of the three persons is acceptable, and will notify the parent/guardian of the selection within seven (7) days of the nomination.
 - 7.3 If none of the nominated persons are acceptable to the Director, s/he will suggest three (3) possible candidates to the parent/guardian. The parent/guardian will then determine which one (1) of the three candidates is acceptable.
 - 7.4 This process will continue until a third party is selected.

8. Third Party Reports Decision to the Director.
 - 8.1 The third party will receive submissions from the parent/guardian and the Division staff.
 - 8.2 The submissions may be supplemented by representations from other parties from either the parent/guardian or the Division staff.
 - 8.3 The third party will render a decision to the Director within twenty (20) days of the submission based on the information presented in accordance with the Education Act.
9. Director Reports Third Party Decision to the Board
 - 9.1 The recommendations of the third party following the review process will be made to the Board by the Director at the next Board meeting following the submission.
 - 9.2 The Board will review the recommendations at that time and make a decision.
 - 9.3 The decision, with reasons will be forwarded in writing to the individual requesting the review with copies to the Director and designate(s).
10. Cost of the Third Party Appeal Process
 - 10.1 Parents/guardians pay the cost for the representation of persons acting on their behalf and for one-half ($\frac{1}{2}$) of the costs of the third party.
 - 10.2 The Division pays for the representation of persons acting on their behalf and for one-half ($\frac{1}{2}$) of the costs of the third party.

All Other Student Matters Aside from Suspensions and Expulsions

The Board will hear appeals on other administrative decisions that significantly affect the education of a student.

The principles of natural justice shall apply to the entire appeal process.

1. Prior to a decision being appealed to the Board, it must be appealed to the Director.
2. Parents of students and students eighteen (18) years of age or over, have the right to appeal to the Board a decision of the Director. The Director must advise parents and students of this right of appeal.
3. The appeal to the Board must be made within five (5) days from the date that the individual was informed of the Director's decision. The appeal must be filed in writing and must contain the name of the party filing the appeal, the date, the matter at hand and the reason for the appeal.
4. Parents, or students as above, when appealing a decision to the Board, have the right to be assisted by a resource person(s) of their choosing. The responsibility for engaging and paying for such assistance rests with the parents or students.

5. The hearing of the appeal must be scheduled so as to ensure that the person making the appeal and the Director, or designate, whose decision is being appealed, has sufficient notice and time to prepare for the presentation.
6. The appeal will be heard in closed session, with specified individuals in attendance.
7. The appeal hearing will be conducted in accordance with the following guidelines:
 - 7.1 The Board Chair will outline the purpose of the hearing, which is to provide:
 - 7.1.1 An opportunity for the parties to make representation in support of their respective positions to the Appeal Committee. This information may include expert medical, psychological and educational data and may be presented by witnesses;
 - 7.1.2 The Board with the means to receive information and to review the facts of the dispute; and
 - 7.1.3 A process through which the Committee can reach a fair and impartial decision.
 - 7.2 Notes of the proceedings will be recorded for the purpose of the Board's records.
 - 7.3 The Director and/or staff will explain the decision and give reasons for the decision.
 - 7.4 The appellant will present the appeal and the reasons for the appeal and will have an opportunity to respond to information provided by the Director and/or staff.
 - 7.5 The Director and/or staff will have an opportunity to respond to information presented by the appellant.
 - 7.6 Trustees will have the opportunity to ask questions or clarification from both parties.
 - 7.7 No cross-examination of the parties shall be allowed, unless the Board Chair deems it advisable under the circumstances.
 - 7.8 The Board will meet without the respective parties to the appeal in attendance to arrive at a decision regarding the appeal. The recording secretary will remain in attendance. The Board may have legal counsel in attendance.
 - 7.9 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 additional information.
 - 7.10 The Board decision and the rationale for that decision will be communicated to the appellant by telephone and by double-registered letter within three (3) days of the hearing.

Suspension and Expulsion of a Student

The Board makes provisions under which disciplinary actions ensure expeditious investigation and treatment of problems.
Specifically,

1. Where the Director or designate confirms, reduces or renews a student suspension of four (4) to ten (10) school days duration, the Director shall forthwith report such suspensions to the Board in writing.
2. The Board may investigate the circumstances of the suspension submitted to it through its own involvement, and where it does investigate, the investigation shall conclude before the end of the period of suspension ordered.
3. Where the Director recommends an extension of the suspension beyond ten (10) days, the Director will refer the matter to the Board.
4. The Board shall:
 - 4.1 Investigate the suspension;
 - 4.2 Be authorized to suspend a student for up to one (1) year;
 - 4.3 Give notice of every investigation to the student and his or her parent or guardian; and
 - 4.4 Provide an opportunity for the student and his/her parent or guardian to appear and make representations before the Board.

Where the Board makes a decision to extend the suspension of a student, that decision shall be made before the expiration of the suspension.

5. Further to Section 4, the Board, where it deems necessary, may by resolution expel a student from any or all of the schools in the Division for a period greater than one (1) year provided the decision is based on an investigation into the circumstances of the suspension conducted by the Board and approved by a majority vote.
6. On the request of either the student or his or her parent(s)/guardian(s) pursuant to Section 4, at the expiration of one (1) year, the Board will review and reconsider the expulsion of the student; the Board may:
 - 6.1 Rescind the expulsion of the student; and/or
 - 6.2 Admit the student to a school on those terms and conditions that the Board considers appropriate.
7. Throughout the above steps, the Director and designates shall be cognizant of the rights of the student and parent/guardian as provided for in legislation.

Reference: Sections 5, 141, 142, 148, 150, 151, 152, 153, 154, 155, 158, 175, 186, 186.1, 231 Education Act
Regulations 48, 49, 50, 50.1, 52
Human Rights Code
Canadian Charter of Rights and Freedoms