

APPEALS AND HEARINGS REGARDING STUDENT MATTERS

Under section 43 of the *Education Act* and regulations made under the Act, the only matters on which the Minister of Education will consider appeals are:

- Provision of Specialized Supports and Services to a student or to a child enrolled in an early childhood services program;
- Access to, or the accuracy or completeness of student records; or
- Board responsibility for a student;

The Board will hear appeals that address matters that are appealable to the Minister.

The Superintendent will hear appeals on all other administrative decisions, submitted in accordance with sections 41 and 42 of the *Education Act* that significantly affect the education of a student (See AP 380). Prior to appealing a decision to the Board, where a decision significantly impacts the education of a student or of a child, in an early childhood services program, the student or parent must have followed the school dispute or concern resolution process as outlined in AP 152 Dispute Resolution Process, Request for Review.

The Board expects that all students will be treated fairly with due respect to their needs, the needs of the school, and the Division.

The Board delegates to the Superintendent, the development and maintenance of a dispute resolution process and request for review protocol as outlined in Administrative Procedure 152.

The principles of natural justice will apply to all appeal processes in the Division.

The following processes will apply to appeals being heard by the board:

All Matters Other Than Expulsion of a Student

1. Prior to a decision being appealed to the Board, it must be appealed to the Superintendent or designate as identified by the Superintendent. After hearing the appeal, the person designated to hear the appeal may decide whether the subject matter of the appeal is a decision of a Board employee which significantly affects the education of the student.
2. Parents of students, and students 16 years of age or over, have the right to appeal to the Board a decision of the Superintendent. The Superintendent must advise parents and students of this right of appeal.

3. The appeal to the Board must be made within 10 days from the date that the individual was informed of the Superintendent'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. Appeals will be heard by the Board at a regular or special Board meeting. The hearing of the appeal must be scheduled so as to ensure that the person making the appeal and the Superintendent, or designate, whose decision is being appealed, has sufficient notice and time to prepare for the presentation.
6. The Board Chair will consider any requests for adjournments of hearings of appeals regarding student matters, and must consider the reason for the request and whether the person making the request has sufficient notice and time to prepare for the presentation.
7. The appeal will be heard at an in-camera meeting of the Board.
8. The Board reserves the right to make its decision at a subsequent Board meeting. The parties to the appeal will be advised when the decision will be made. The Board decision will be made in open session.
9. The appeal hearing will be conducted in accordance with the following guidelines:
 - 9.1. The Chair will outline the purpose of the hearing, which is to provide:
 - 9.1.1. An opportunity for the parties to make representation in support of their respective positions to the Board. This information may include expert medical, psychological and educational data and may be presented by witnesses;
 - 9.1.2. The Board with the means to receive information and to review the facts of the dispute;
 - 9.1.3. A process through which the Board can reach a fair and impartial decision.
 - 9.2. The Superintendent and/or staff will explain the decision and give reasons for the decision.
 - 9.3. The appellant will present the appeal and the reasons for the appeal and will have an opportunity to respond to information provided by the Superintendent and/or staff.
 - 9.4. The Superintendent and/or staff will have an opportunity to respond to information presented by the appellant.
 - 9.5. Board members will have the opportunity to ask questions or clarification from both parties.
 - 9.6. No cross-examination of the parties shall be allowed, unless the Board Chair deems it advisable under the circumstances.

- 9.7. 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.
- 9.8. 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 additional information.
- 9.9. The Board decision and the reasons for that decision will be communicated to the appellant by telephone and confirmed in writing following the hearing.

Expulsion of a Student

The Board will hear representations with respect to a recommendation for a student expulsion in accordance with sections 36 and 37 of the *Education Act*.

If a student is not to be reinstated within five school days of the date of suspension, the Principal shall immediately report in writing all the circumstances of the suspension and provide a recommendation to the Board through the Office of the Superintendent.

The Board will convene in a Committee of the Whole session (in-camera) upon the call of the Superintendent but, in no event shall the meeting occur later than ten school days from the first day of suspension.

The expulsion hearing will be conducted in accordance with the following guidelines:

1. The Chair will outline the purpose of the hearing, which is to:
 - 1.1. Provide an opportunity to hear representations relative to the recommendation from the Principal;
 - 1.2. Provide an opportunity for the student and/or the student's parent or guardian to make representation;
 - 1.3. Reinstate or expel the student.
2. The Chair will outline the procedure to be followed, which will be as follows:
 - 2.1. The Principal will present the report documenting the details of the case and the recommendation to expel the student;
 - 2.2. The student and the student's parents will be given an opportunity to respond to the information presented and to add any additional information that they feel is relevant;
 - 2.3. The members of the Board will have the opportunity to ask questions of clarification from both the Principal and the student and the student's parents;
 - 2.4. The Board will meet, without either the administration or the student and the student's parents present, to discuss the case and the recommendation;
 - 2.5. Should the Board require additional information, both parties will be requested to return in order to provide the requested information;

- 2.6. The Board will then make a decision in open session to either reinstate or expel the student; and
 - 2.7. The Board's decision shall be communicated in writing to the student and the student's parents with copies being provided to the Principal and the Superintendent. The Board shall provide reasons for its decision.
3. If the Board's decision is to expel the student; the following information must be included in the letter to the student and the student's parents
 - 3.1. The length of the expulsion which must be greater than 10 school days;
 - 3.2. The educational program to be provided to the student and the name of the individual to be contacted in order to make the necessary arrangements; and
 - 3.3. The right of the student and the student's parents to request a review of the decision by the Minister of Education.
4. Expulsion is at the discretion of the Board. The trustees, in making their decision shall take into account the circumstances under which the student committed the offence. The following offences may be considered by the Board as justification for expulsion; this is not to be considered an exhaustive list:
 - 4.1. The student has displayed an attitude of willful, blatant and repeated refusal to comply with section 37 of the *Education Act*;
 - 4.2. The student demonstrates open opposition to authority;
 - 4.3. The student uses improper or profane language;
 - 4.4. The student deliberately and wantonly destroys school property;
 - 4.5. The student violates the jurisdiction's smoking and use of illegal drugs policy or drug protocol;
 - 4.6. The student assaults, threatens, intimidates others;
 - 4.7. The student brings weapons to school;
 - 4.8. The student's conduct, misconduct or actions regardless of the place of occurrence, or the results thereof are injurious to the moral tone of the school or the physical or mental well-being of others in the school, or threaten the maintenance of a safe and caring school environment.
5. Where an expelled student is to be re-enrolled, the designated Assistant Superintendent shall set such conditions as are deemed reasonable respecting the re-enrollment of the student. For example, the student may be directed to counselling programs, risk assessment, etc. If additional information on the student is required for that student to be re-enrolled in a Division program, such condition(s) will be stated in the letter to the parent and the student (if 16 years of age or older), and a required date for the completion of such conditions will be included in that correspondence.
6. The term of an expulsion must be for eleven (11) school days or more, up to the end of that school year. The Division reserves the right to direct and re-enroll a student,

who has been expelled, to another school within the Division, in the following school year, based upon program reasons, or the safety and security of other students.

Legal Reference: Sections 14, 36, 37, 41, 42, 43, 45 *Education Act*