

Policy 13

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, 1995 and the Regulations applicable thereto.

Specifically,

1. A student who has reached 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;
 - 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 clauses 2.1 to 2.4; or
 - 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 of Education 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 of Education review the designation, placement or program decision;
 - 5.3. If there is no resolution, prior to initiating a review, the Director of Education will invite the Stakeholder Relations Branch to facilitate a resolution;
 - 5.4. If there is no resolution, the Director of Education 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 of Education, and shall set out the reasons for disagreement with a designation, placement or program decision.
 - 6.2. Within five school days of receiving the request for a formal review of a decision, the Director of Education 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 Review Committee, and
 - 6.2.3 The anticipated timeline of the formal review process.
 - 6.3. The Director of Education 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. The Review Committee shall be composed of three members. The Director of Education shall name a member to the Review Committee. The student or parents/guardians may choose a member from a list provided by the Director of Education of at least four people who have not been involved in the original decision and who are external to the Division. In the event there exists a difficulty attaining a mutually acceptable individual, the student or parents/guardians must have the opportunity to name a person acceptable. The Director of Education and the student or parents/guardians must name a mutually acceptable Committee Chair. The process of bringing forward names will continue until the third person can be selected.

The members of the Review Committee shall have appropriate levels of expertise and experience in educational programming and administration of services for students with exceptional needs.
8. The appointment of the Review Committee representatives will be made within ten (10) days of the initiation of a formal review by the student or parents/guardians.

9. The Review Committee shall hold their initial meeting within four weeks of the formal review initiation. The student or parents/guardians and their representative(s) shall be invited to present their reason(s) for requesting a review. The representative(s) of the Division who participated in the educational planning/decision-making process may be called upon to provide information related to the review. The Committee may call upon other parties as witnesses or experts. The Committee may conduct on-site observations and may request written submissions and reports from those individuals involved in the review.
10. The Review Committee will submit a written report to the Board and the student or the parents/guardians requesting the review no later than two weeks of receiving the final submission. The report will outline the situation under review and identify recommendation(s) related to the situation. The recommendation(s) will be based on the information provided and will be consistent with The Education Act, 1995.
11. The Board will ratify, modify or deny the recommendation(s) at the next regular meeting of the Board. The Board will provide written notification to the student or parents/guardians that describe the Board's response to the recommendation(s) of the Review Committee. The decision of the Board is final.

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 of Education.
2. Parents of students, and students 18 years of age or over, have the right to appeal to the Board a decision of the Director of Education. The Director of Education must advise parents and students of this right of appeal.
3. The appeal to the Board must be made within 5 days from the date that the individual was informed of the Director of Education'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 of Education, 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 Board. 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;
 - 7.1.3. A process through which the Board 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 of Education 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 of Education and/or staff.
- 7.5. The Director of Education 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 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 of Education confirms or modifies a student suspension of 4 to 10 days duration, the Director of Education shall forthwith report such suspensions to the Board in writing.

2. The Board may investigate the circumstances of the suspension submitted to it and, where it does investigate, it shall conclude the investigation before the end of the period of suspension ordered.
3. Where the Director of Education recommends an extension of the suspension beyond ten days, the Director of Education 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 year;
 - 4.3. Give notice of every investigation to the student and his or her parent or guardian;
 - 4.4. Provide an opportunity for the student and his or her parent or guardian to appear and make representations before the Board.

Where the Board makes a decision to expel 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 year provided the decision is based on an investigation into the circumstances of the expulsion 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 year, the Board will review and reconsider the expulsion of the student; the Board may:
 - 6.1. Rescind the expulsion of the student;
 - 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 of Education shall be cognizant of the rights of the student and parent/guardian as provided for in legislation.

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

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