

## **APPEALS AND HEARINGS REGARDING STUDENT MATTERS**

### **Background**

The Board will hear appeals on administrative decisions or matters, after the dispute resolution process provided for in the administrative procedures has been completed, and the decision being appealed significantly affects the education of a student or of a child enrolled in an early childhood services program operated by the Board.

Section 43(1) of the *Education Act* provides that a parent or the student (over the age of 16) may request in writing that the Minister of Education review a Board's decision in the following matters:

- the provision of specialized supports and services to a student in accordance with section 11(4) or to a child enrolled in an early childhood services program;
- the expulsion of a student;
- a dispute as to which board is responsible for a student; or
- a dispute regarding access to or the accuracy or completeness of a student record.

An appeal to the Minister of Education regarding the provision of specialized supports or a student expulsion process must be made within 60 days of the date on which the parent or the student, if the student is 16 years of age or older, is informed of the decision

1. Prior to a decision being appealed to the Board and as required by section 41 of the *Education Act* a parent must first follow and complete the dispute resolution process provided in administrative procedure *AP 390 – Dispute Resolution Process, Request for Review and Appeals*.
2. Parents of students, and students sixteen (16) years of age or over, have the right to appeal to the Board, a decision of the Superintendent that significantly affects the education of a student. The Superintendent must advise parents and students of this right of appeal.
3. If a parent or student is not satisfied with a decision made by the Superintendent or designate, and if the decision significantly affects the education of a student or a child, the parent may appeal the decision in writing to the Board, within ten (10) school days of the communication to the parent or student of the request for review decision by the Superintendent or designate.
  - 3.1. The request for appeal shall be in writing and set out the nature of the complaint or concern being appealed.
  - 3.2. The Board of Trustees shall determine how it will address the appeal and respond to the parent or student in writing within fourteen (14) school days of receiving the written notice of appeal.
  - 3.3. Notwithstanding any timeline noted above the request for appeal must be made

to the Board of Trustees within sixty (60) calendar days after having completed the dispute resolution process.

4. Parents or students when appealing a decision to the Board or when attending an expulsion hearing, have the right to be assisted by legal counsel, or subject to any privacy concerns related to third party information may have an advocate or resource person of their choosing. The responsibility for engaging and paying for such assistance rests with the parents or students.
5. The hearing of the appeal will be scheduled so as to ensure that the person making the appeal and the Superintendent or designate, whose decision is being appealed, are able to attend and have sufficient notice and time to prepare for the presentation.
6. The appeal will be heard in-camera at a meeting of the Board, with only specified individuals in attendance including any required Division staff members, the parents or students, their legal counsel, and subject to any privacy concerns related to third party information an advocate or resource person of the parents or students choosing.
  - 6.1. The parent or student will be advised of the time and place of such a meeting.
  - 6.2. The parent or student will also be advised of their ability to:
    - 6.2.1.1. Attend the meeting of the Board at which the appeal will be heard; and
    - 6.2.1.2. Present any information pertaining to the appeal, including expert medical, psychological and educational testimony.
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. The information presented may include both written and verbal communications;
    - 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 Board can reach a fair and impartial decision.
  - 7.2. Notes of the proceedings will be recorded solely for the purpose of the Board's records and shall not be disclosed unless required by law.
  - 7.3. The Superintendent and/or staff will explain the decision and give reasons for the decision.
  - 7.4. The parent or student 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.
  - 7.5. The Superintendent and/or staff will have an opportunity to respond to information presented by the parent or student.
  - 7.6. Board members will have the opportunity to ask questions or seek clarification from both parties.
  - 7.7. No cross-examination of the parties shall be allowed.
  - 7.8. The Board will meet without the respective parties to the appeal in attendance to arrive at a decision regarding the appeal. 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 reasons for that decision will be communicated to the parent or student once a decision has been reached and confirmed in writing following the hearing.
  - 7.10.1. The parent or student shall be informed in writing of their right to request a review by the Minister of Education if the subject matter of the appeal is one of those provided for in section 43 of the *Education Act*.

### **Expulsion of a Student**

8. It is expected that all students will comply with the student responsibilities provided for at section 31 of the *Education Act*, in board policy and procedure and at their school.
  - 8.1. The Board delegates to the Student Expulsion Committee the power to make decisions with respect to the expulsion of students.
  - 8.2. If a student is not to be reinstated within five (5) school days of the date of suspension, the Principal shall immediately report in writing all the circumstances of the suspension to the parent and provide a recommendation of expulsion to the Student Expulsion Committee through the Office of the Superintendent.
  - 8.3. The Student Expulsion Committee will convene in an in-camera session upon the call of the Superintendent, but in no event shall the meeting occur later than ten (10) school days from the first day of suspension.
  - 8.4. The Student Expulsion Committee may have legal counsel in attendance.
  - 8.5. Notes of the proceedings will be recorded for the purpose of the Board's records. The expulsion hearing will be conducted in accordance with the following guidelines:
9. The Committee Chair will outline the purpose of the hearing, which is to:
  - 9.1. Provide an opportunity to hear representations relative to the recommendation from the Principal;
  - 9.2. Provide an opportunity for the student and/or the student's parents to make representations; and
  - 9.3. Render a decision to either reinstate or expel the student.
10. The Committee Chair will outline the procedure to be followed, which will be as follows:
  - 10.1. The Principal will present the report documenting the details of the case and the recommendation to expel the student;
  - 10.2. The student and the student's parents will be given an opportunity to respond to the information presented and to add any additional relevant information;
  - 10.3. The members of the Student Expulsion Committee will have the opportunity to ask questions of clarification from both the Principal and the student and the student's parents;
  - 10.4. The Student Expulsion Committee will meet, without either the administration or

the student and the student's parents present, to discuss the case and the recommendation. The recording secretary may remain in attendance. Legal counsel may also remain in attendance;

- 10.5. Should the Student Expulsion Committee require additional information, both parties will be requested to return in order to provide the requested information;
  - 10.6. The Student Expulsion Committee will then make a decision to either reinstate or expel the student and inform the parties on the day of the hearing. If the student and the student's parents are not present, the Superintendent's office shall inform them of the decision by telephone or email after a decision has been reached. A written letter summarizing the decision will be mailed to the parent or student following the decision.
  - 10.7. The Student Expulsion Committee's decision shall also be communicated in writing to the student and the student's parents within five (5) school days of the hearing, with copies being provided to the Principal and the Superintendent.
11. If the Student Expulsion Committee's decision is to expel the student, the following information must be included in the letter to the student and the student's parents:
- 11.1. The length of the expulsion which must be greater than ten (10) school days;
  - 11.2. 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 for enrollment;
  - 11.3. The rules or conditions for the student to re-enrol in the educational program from which they have been expelled, if applicable; and
  - 11.4. The right of the student and the student's parents to request a review of the decision by the Minister of Education.

Legal Reference: Relevant Legislation & Guidelines