

Policy 13

COMPLAINTS AND APPEALS

Background

The Board recognizes that from time to time concerns regarding the operation of the District will arise. The Board further believes that constructive criticism can assist in improving the quality of the program, and in meeting individual student needs more effectively. The Board also places trust in its employees, and desires to support their actions in a manner which frees them from unnecessary or unwarranted criticism and complaints.

Complaints

Procedures for dealing with complaints concerning personnel, programs, or practices are to be governed by the following principles:

- Where action/investigation is desired by the complainant, or where it seems appropriate, the matter is to be handled as near the source as possible.
- Complaints are to both be investigated and, if possible, resolved expeditiously.
- Complaints are to be dealt with courteously and in a constructive manner.
- Personnel against whom complaints are made are to have an opportunity to respond.
- The Board expects that complainants will exhaust all avenues of resolving complaints prior to initiating the appeal of a decision.

Appeals

Complaints not resolved through the complaints process outlined above may be addressed through Policy 13 Appendix – Appeals Bylaw.

The Board, consistent with its broad policy-making role, shall deal with appeals concerning specific schools, personnel, programs, or procedures only after the usual channels have been exhausted. Therefore, when an appeal requiring attention is received by the Board as a whole, or by an individual trustee, it shall be referred to the Superintendent for consideration and/or action and report to the trustee and/or Board.

Under Section 11 of the School Act, appeals may first be made to the Delta Board of Education in regard to a decision made by an employee of the Board which significantly affects the education, health or safety of a student. If a matter remains unresolved after such an appeal process, an appellant may make an application of appeal to the Superintendent of Achievement, under Section 11.1 of the Act.

Legal Reference: Sections 6, 11, 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 11.7, 11.8, 22, 26, 85, 91 School Act
Appeals Regulation 24/08
Administrative Tribunals Act
Collective Agreement

Policy 13 – Appendix A LINK TO THE INTERNET

APPEALS BYLAW

(A Bylaw to establish the procedure for appeals under Section 11 of the School Act)

1. Decisions which can be appealed under Section 11
 - 1.1 The right of appeal under Section 11 of the School Act extends to decisions, which significantly affect the education, health or safety of a student.

The School Act (Section 11) requires that Boards establish a procedure, which, by law, enables a student and/or parents or guardians of a student to appeal a decision made by an employee of the Board which significantly affects the education, health or safety of a student.

The Act (Section 11.1) also provides for decisions made by Boards under Section 11 to be appealed to Superintendents of Achievement.
 - 1.2 The determination of whether a decision or a failure to make a decision significantly affects a student's education, health or safety must be made on a case-by-case basis. However, without limiting a student, parent, or guardian's right to appeal, the following decisions will always be appealable under this bylaw:
 - 1.2.1 Disciplinary suspension from school of a period in excess of five (5) consecutive instructional days.
 - 1.2.2 Transfer of a student from one school to another for disciplinary reasons.
 - 1.2.3 The exclusion of a student from school for a health condition.
 - 1.2.4 Significant decisions regarding placement in an educational program. Classroom or teacher preference issues would be included in this category only in exceptional circumstances.
 - 1.2.5 Grade promotion or graduation.
 - 1.2.6 Refusal to offer an educational program to a non-graduated student sixteen (16) years of age or older.
 - 1.3 Where a decision is made by a Board employee which would be appealable under this bylaw, the affected student and their parent/guardian(s), shall be notified of their right of appeal, and the time limits governing the initiation of an appeal.
 - 1.4 Board policies and District administrative procedures are not appealable under Section 11. Appeals of Board policies or administrative procedures shall be made to the Board outside of the Section 11 process.

2. Complaint Procedure for a Decision by an Employee of the Board

When no procedure is provided in legislation for complaints concerning personnel, programs or practices, those complaints shall be handled in the following manner:

- 2.1 Where action/investigation is desired by the complainant, or where it seems appropriate, the normal channel shall be from complainant to employee to the employee's immediate supervisor, to the appropriate District Office administrator, and thence through the Superintendent to the Board. Every effort is to be made to resolve the concern at the earliest possible stage.
- 2.2 Persons receiving or hearing complaints are to encourage the complainant to follow the channel outlined above.
- 2.3 In the event that a complaint concerning personnel, program or procedure cannot be handled successfully at another level of the District operation, it may be referred for consideration by the Board. In such a case:
 - 2.3.1 The complaint must be made in writing and submitted to the Superintendent;
 - 2.3.2 The Superintendent or designate will investigate the complaint;
 - 2.3.3 If necessary, the Superintendent or designate will provide the Board with a report which details the results of an investigation/action;
 - 2.3.4 Where the issue or decision involved significantly affects the education, health or safety of a student, and the complaint has been initiated within a reasonable time, the Board will provide both the complainant and the affected personnel an opportunity to be heard by the Board, or by a committee of the Board;
 - 2.3.5 The matter shall normally be discussed at a closed (in-camera) session;
 - 2.3.6 The affected employee will be informed at each stage of investigation/action.
- 2.4 Procedure for Appealing a Decision (or Failure to Make a Decision) of a Board Employee:
 - 2.4.1 To provide a fair and expeditious means by which parents and students can exercise their right of appeal under Section 11, participants must maintain an atmosphere of mutual respect, co-operation, and dignity.
 - 2.4.2 Appellants have the right to be accompanied by a person or persons of their choosing. The student involved also has the right to attend.
 - 2.4.3 The employee whose decision is under appeal is permitted to be accompanied by a support person (e.g. a union representative). The DTA or CUPE Local 1091 is also entitled to receive information.
 - 2.4.4 The appeal process must remain open and provide equal access. Interpreters for parents who have difficulty communicating in English are also to be provided.

2.5 Time Limits for Appeal

- 2.5.1 Appeals must be initiated within a reasonable time from the time the decision was communicated to the parent/guardian or student. The Board's expectations are that appeals will be initiated within thirty (30) days of the date that the parent or student was informed of the decision.

2.6 Steps for Appeals

2.6.1 Step 1: Appeal

- 2.6.1.1 Complete notice of Appeal form (Form BP 13-1).
- 2.6.1.2 Completed form delivered to Principal of the school where the student is enrolled.
- 2.6.1.3 Principal will arrange a meeting attended by:
- 2.6.1.3.1 Parent/student.
 - 2.6.1.3.2 Employee whose decision is being appealed.
 - 2.6.1.3.3 The employee's supervisor.
 - 2.6.1.3.4 The Zone Assistant Superintendent. If the zone assistant superintendent has already been involved in the complaint process, an alternate Assistant Superintendent will attend.
 - 2.6.1.3.5 Others with expertise or who were involved in the decision.
- 2.6.1.4 The intent of the meeting will be to reach a mutually acceptable resolution.
- 2.6.1.4.1 The facts and circumstances relevant to the appeal will be reviewed and the Assistant Superintendent will provide a determination of the appeal.
 - 2.6.1.4.2 A record of the meeting will be kept and a summary provided to all parties.
- 2.6.1.5 If no agreement is reached, a summary will include the nature of issues in dispute, the positions taken, and the rationale for the position taken by the District.
- 2.6.1.5.1 The appellant may request changes to the summary to better reflect proceedings. Appellant may append a written statement explaining reasons for concern.
 - 2.6.1.5.2 The official record will include the summary report by the Assistant Superintendent together with any rebuttal documents prepared by the appellant.

- 2.6.1.6 If no agreement is reached, other attempts at resolution, such as mediation, may be made with the agreement of the appellant and staff.
- 2.6.1.7 Third parties may be used with agreement of both parties at any point in the process.
- 2.6.2 Step 2: Appeals to the Board
 - 2.6.2.1 After being informed of a decision at Step 1, the appellant may notify (by phone, fax or email) the Office of the Superintendent that they wish to pursue the appeal to Step 2.
 - 2.6.2.2 If the matter is appealed to the Board for consideration, the Superintendent will inform the Board Chair who will either refer the matter to an independent mediator or refer the matter for consideration by the Board.
 - 2.6.2.3 The Superintendent shall forward the following materials to the Board for consideration:
 - 2.6.2.3.1 The notice of appeal.
 - 2.6.2.3.2 Copies of all previous correspondence between the parties to the appeal.
 - 2.6.2.3.3 Copies of any relevant District, Ministry or other policies or statutory requirements, which pertain to the issues raised in the appeal.
 - 2.6.2.3.4 A joint statement of agreed upon facts may be submitted.
 - 2.6.2.4 The Board will consider an appeal only if the Board determines that the decision is a decision of an employee of the Board and significantly affects the education, health or safety of a student. Examples include but are not limited to, those listed in the Appeals Regulation 24/08 that governs appeals beyond the Board to Superintendents of Achievement.
 - 2.6.2.5 If the Board determines a decision of an employee is not appealable, the student or parent (or guardian) will be informed of that decision and the reasons for it.
 - 2.6.2.6 The Board may refuse to hear the appeal unless the appellant discusses the decision (or lack thereof) under appeal with one (1) or more persons as directed by the Board.
 - 2.6.2.7 Should mediation be unsuccessful and /or should the matter be referred to the Board, the Board will first determine whether or not the decision significantly affects the education, health and safety of the student.

- 2.6.2.8 If the Board decides that a decision made by an employee significantly affects the education, health or safety of a student, the Board may establish a committee to investigate the matter under appeal and will schedule a meeting of the Board to consider the appeal.
- 2.6.2.9 Both the appellant and the parties whose decision is being appealed shall have the right to see the information that is presented to the Board and to be heard by the Board at the time the Board is considering the information.
- 2.6.2.10 The appellant shall have the right to be accompanied by an advocate when meeting with the Board.
- 2.6.2.11 Upon receipt of the Notice of Appeal, and after having reviewed the relevant submissions both parties shall be informed orally of the Board's decision and the reasons for the decision within twenty-four (24) hours and in writing within seven (7) days of the decision being made. The Board's decision must be made within forty-five (45) days of receiving the Notice of Appeal.
- 2.6.2.12 Trustees are expected to exclude themselves from a hearing of an appeal if they have direct first-hand knowledge of the circumstances that led to the appeal, or the trustee believes that by remaining at the hearing there would be a reasonable perception of bias on the part of the trustee.
- 2.6.2.13 The Board's decision is final, subject to any rights to appeal under the School Act.

3. Appeal to the Superintendent of Achievement

- 3.1 In accordance with the Act and Regulations (Section 11.1), a student and/or parent (guardian) may appeal a decision made by the Board under this bylaw to a Superintendent of Achievement who has responsibility for receiving such appeals on behalf of the Ministry of Education.
- 3.2 Such notice of appeal must be made within fifteen days (15) from the time the parent or guardian is made aware of the decision. For the purposes of the Act and this bylaw, the failure to make a decision is considered to be a decision that can be appealed.
- 3.3 The opportunity for the student to access the appeal process outlined in the Act (Section 11) must be communicated to the appellant.

Legal Reference: Sections 6, 11, 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 11.7, 11.8, 22, 26, 85, 91 School Act
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