

**Practices and Procedures  
for Appeals under  
Section 11.1 of the *School Act***

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## Introduction

Section 11.1 of the *School Act*, R.S.B.C. 1996, c. 412 provides a parent or a student with the means to appeal the decision of a board of education on an appeal under section 11. The scope of decisions that may be appealed under section 11.1 is set out in the *Appeals Regulation* (B.C. Reg. 24/2008) issued under the *School Act*.

These practices and procedures apply to appeals under section 11.1 of the *School Act*. They set out the steps to be followed by appellants and respondents and are designed to ensure that the process followed is fair and efficient and takes into account the interests of all affected parties.

Although this document sets out practices and procedures to be followed for bringing an appeal, a superintendent of appeals or adjudicator has the authority, under subsections 11.2(4) and 11.4(3) of the *School Act* respectively, to establish practices and procedures for the hearing of an appeal. As a result, the actual procedures required in a particular appeal may depart from those set out here.

The following enactments are relevant to the section 11.1 appeal process and should be read along with these Practices and Procedures:

- Sections 11.1 through 11.8 of the *School Act*;
- Sections 29, 31, 34 (3) and 34 (4), 36, 38, 44, 45, 46.3, 58 and 61 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45;
- The *Appeals Regulation*; and,
- Guidelines and orders made by the Minister of Education, for example, the Individual Education Plan Order and the Special Needs Students Order.

## PART 1 GENERAL

### 1. Definitions

In these Practices and Procedures:

**“adjudicator”** means a person retained by the Minister of Education to adjudicate an appeal referred by a superintendent of appeals;

**“adjudication”** means the process under section 11.4 of the *School Act* for an adjudicator to hear and make a decision on an appeal of a board of education decision;

**“appeal application”** means the completed *Notice of Appeal* form and a copy of the board of education’s written decision under section 11 of the *School Act*;

**“appellant”** means a parent or a student who files an appeal;

**“BOE”** means a board of education;

**“business day”** means 8:30 A.M. through 4:30 P.M. Monday to Friday, excluding holidays;

**“in writing”** includes typed, printed or hand-written;

**“mediator”** means a person retained by the Minister of Education to conduct a mediation referred by a superintendent of appeals;

**“mediation”** means a non-binding process of dispute resolution in which a mediator assists the parties to negotiate a settlement of an appeal;

**“oral hearing”** means an appeal hearing where the parties appear in person or electronically, including by teleconference or video conference;

**“party”** means an appellant or respondent or any other person who is granted party status by a superintendent of appeals or adjudicator;

**“Registrar”** means the Registrar and staff of Student Appeals Branch, Ministry of Education;

**“respondent”** means the BOE whose decision is under appeal;

**“SOA”** means a superintendent of appeals appointed under section 171.4 of the *School Act*;

**“written hearing”** means an appeal hearing where the parties provide written submissions, including written evidence.

### 2. Communication through Registrar

- (1) All communications between a party and an SOA, mediator, or adjudicator will be transmitted through the Registrar. A party must not send documents directly to or attempt to communicate directly with an SOA, mediator, or adjudicator about any matter in relation to an appeal.
- (2) Subsection (1) does not apply at a mediation, a pre-hearing conference or a hearing.

### **3. Filing Documents**

- (1) When a party is required or wishes to file a document, the party must deliver the document to the Registrar by mail, fax, email, hand or courier to:

Registrar, Student Appeals Branch  
620 Superior St  
PO Box 9146 Stn Prov Govt  
Victoria BC V8W 9H1

Fax: 250-953-4908

Email: EDUC.StudentAppeals@gov.bc.ca

- (2) A communication received by the Registrar after the end of a business day is considered to be filed on the next business day.
- (3) The Registrar will provide each party with a copy of any document filed by another party.

### **4. Delivery of Documents**

- (1) Subject to subsection (2), a party's address for purposes of delivery of a document will be the address and/or email address indicated by the appellant in the *Notice of Appeal* form, and by the respondent in the *Notice of Response* form.
- (2) A party must notify the Registrar in writing of any change to the contact information provided in the *Notice of Appeal* form or the *Notice of Response* form. Until such notice is given, any document sent by the Registrar to the address originally provided will be considered to have been delivered to that party.

### **5. How Parties May Be Represented**

- (1) A party does not require representation to conduct an appeal but may be represented by a lawyer or, subject to the discretion of the SOA or adjudicator, by an agent, at the party's own expense.
- (2) In order for the Registrar to communicate with a party's agent or lawyer, the party must provide written authorization to the Registrar in advance.
- (3) A party is responsible for notifying the Registrar in writing immediately if that agent or lawyer no longer represents the party.

### **6. Use of Interpreters**

When a party or a party's witness has difficulty speaking or understanding the language in which the appeal is to proceed, that party may, at that party's own expense, bring an interpreter with them after notifying the Registrar in advance. Notice is required as more time may be needed to schedule the hearing.

## PART 2 APPEAL PROCESS

### 7. *Initiating an Appeal*

- (1) Subject to subsection (2), to initiate an appeal, an appellant must file a completed appeal application, which includes the *Notice of Appeal* form and a copy of the BOE's written decision, with the Registrar within 30 days after receiving the BOE's decision.
- (2) If the appellant files an appeal application more than 30 days after receiving the BOE's decision, the appellant must include a written explanation of the reason for the delay in filing the appeal application.
- (3) If the appeal application is incomplete, the Registrar may request that the appellant provide the missing information.
- (4) When a completed appeal application is filed, the Registrar will send a copy to the respondent.

### 8. *Combining Appeals*

- (1) If two or more appeals relate to the same issue or circumstances, or involve the same parties, the SOA may combine the appeals or any part of them.
- (2) If two or more appeals relate to the same issue or circumstances, or involve the same parties, the adjudicator may:
  - a. combine the appeals or any part of them;
  - b. hear the appeals at the same time; or
  - c. hear the appeals one immediately after the other.
- (3) An adjudicator or SOA who decides to combine appeals may also give further directions concerning the conduct of the appeals.

### 9. *Withdrawing an Appeal*

- (1) An appellant who no longer wishes to pursue an appeal must notify the Registrar in writing.
- (2) A written request to withdraw must be signed by the appellant and include:
  - a. the appeal file number;
  - b. the appellant's name; and
  - c. a statement indicating that the appellant understands that the withdrawal is permanent, and that the appeal will not be heard now or in the future and that the Registrar will close the appeal file.

### 10. *Responding to an Appeal*

- (1) The respondent may file a *Notice of Response* form upon receiving a copy of the *Notice of Appeal* form from the Registrar within the time specified by the SOA.
- (2) The respondent may submit a written request for an extension of the time specified under subsection (1) prior to that deadline explaining the reasons for the request.

## **PART 3     ROLE OF SUPERINTENDENT OF APPEALS**

### **11. Decisions of the SOA**

On receipt of an appeal, an SOA may:

- a. refer the matter for mediation;
- b. refer the matter for adjudication; or
- c. summarily dismiss all or part of the appeal.

*School Act, section 11.2 (1)*

### **12. Summary Dismissal**

- (1) At any time after an appeal application is filed and before the appeal is referred for adjudication or mediation, the SOA may dismiss all or part of the appeal if the SOA determines that any of the following apply:
  - a. the appeal is not within the jurisdiction of the SOA;
  - b. the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
  - c. the appeal is made in bad faith or filed for an improper purpose or motive;
  - d. the appellant failed to diligently pursue the appeal or failed to comply with an order of the SOA;
  - e. There is no reasonable prospect that the appeal will succeed;
  - f. the substance of the appeal has been appropriately dealt with in another proceeding.
- (2) Before dismissing all or part of an appeal under subsection (1), the SOA will give the appellant an opportunity to make submissions with respect to the proposed dismissal.
- (3) If the SOA dismisses all or part of an appeal under subsection (1), the SOA will inform the parties of his or her decision in writing and give reasons for that decision.

*Administrative Tribunals Act, section 31*

### **13. Suspension of the BOE's Decision**

- (1) The SOA may, on his or her own initiative or at the request of an appellant, suspend the operation of the decision under appeal for the period and on the conditions the SOA considers to be appropriate.

*School Act, section 11.3*

- (2) A request by an appellant under subsection (1) must be made in writing.
- (3) The respondent will be provided with an opportunity to file, within the time specified by the SOA, a response to the appellant's request.
- (4) If the SOA intends to suspend the BOE's decision on his or her own initiative, the parties will be given an opportunity to make submissions on the proposed suspension within the time specified by the SOA.



- (5) In considering whether to suspend the BOE's decision, the SOA may consider:
  - a. any risk of harm to the student if the request were to be denied;
  - b. the estimated time required before the appeal will be heard and a final decision issued;
  - c. the impact on the appellant (student) if the decision is not suspended;
  - d. the impact on the BOE and other students if the decision is suspended; and
  - e. any other relevant considerations.
- (6) The SOA will provide reasons for a decision made under this section to the parties.

## **PART 4 MEDIATION**

### **14. Referral to Mediation**

- (1) If the SOA refers the matter to mediation, the Registrar will contact the parties to determine the schedule for mediation.
- (2) The Registrar will coordinate the details of the mediation including scheduling and location. Mediation may take place by any means including in person or by telephone.

### **15. Outcome of Mediation**

- (1) If the parties successfully mediate the appeal, the mediator will assist the parties to record and document the terms of their agreement.
- (2) If the parties have resolved some of the issues raised in the appeal or agree on any factual information, the mediator will prepare a report of the agreed upon facts and identify outstanding issues for purposes of adjudication.
- (3) If mediation is unsuccessful, the mediator will complete and return a report to the SOA.
- (4) If an SOA has referred a matter for mediation, the SOA may refer the matter to an adjudicator for determination if
  - a. mediation is unsuccessful in bringing about agreement between the parties; or
  - b. a party so requests.

*School Act, section 11.2 (3)*

## **PART 5 ADJUDICATION**

### **16. Adjudicator's Decisions**

- (1) In an appeal referred by an SOA, an adjudicator may:
  - a. confirm, vary or revoke the decision under appeal;
  - b. refer the matter back to the BOE for reconsideration, with or without directions; or,
  - c. dismiss all or part of the appeal.

*School Act, section 11.4 (1)*

- (2) If the adjudicator refers a matter back to a BOE, the adjudicator may:
  - a. request that the BOE review specific issues in its reconsideration; and
  - b. require the BOE to complete its reconsideration by a certain date.

*School Act, section 11.5*

### **17. Summary Dismissal**

- (1) At any time after an appeal is referred to an adjudicator, the adjudicator may dismiss all or part of the appeal if the adjudicator determines that any of the following apply:
  - a. the appeal is not within the jurisdiction of the adjudicator;
  - b. the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
  - c. the appeal is made in bad faith or filed for an improper purpose or motive;
  - d. the appellant failed to diligently pursue the appeal or failed to comply with an order of the adjudicator;
  - e. there is no reasonable prospect that the appeal will succeed;
  - f. the substance of the appeal has been appropriately dealt with in another proceeding.
- (2) Before dismissing all or part of an appeal under subsection (1), the adjudicator will give the appellant an opportunity to make submissions with respect to the proposed dismissal.
- (3) If the adjudicator dismisses all or part of an appeal under subsection (1), the adjudicator will inform the parties of his or her decision in writing and give reasons for that decision.

*Administrative Tribunals Act, section 31*

### **18. Pre-Hearing Conference**

- (1) At a pre-hearing conference the adjudicator may discuss with the parties and may decide any or all of the following:
  - a. identification or clarification of the issues being raised in an appeal;
  - b. the method of hearing the appeal;
  - c. the estimated time needed to hear the appeal;

- d. timelines for hearing the appeal, including deadlines for receipt and disclosure of evidence, filing of written submissions, identification of witnesses and setting the date for the hearing;
  - e. whether to admit expert evidence;
  - f. timelines for disclosure of expert evidence which may be determined at the discretion of the adjudicator;
  - g. the possibility of the parties agreeing to a statement of facts;
  - h. any necessary orders to compel the attendance of a witness or the production of documents or records that are required by either party to prepare and present their case;
  - i. whether the hearing or a portion of it is to be closed to the public; and
  - j. any other matter which may assist in the fair and most expeditious conduct of the appeal.
- (2) Despite section 3 of these Practices and Procedures, an adjudicator may directly accept documents for filing at an in person pre-hearing conference at his or her discretion. The Registrar shall be promptly provided with copies of all documents filed.

## **19. Adjournments**

- (1) In the course of a pre-hearing conference or a hearing, the adjudicator may, at the request of a party or on his or her own initiative, adjourn a pre-hearing conference or hearing if the adjudicator determines an adjournment is necessary for a full and fair hearing of the appeal. The adjudicator will give each party an opportunity to make submissions regarding the proposed adjournment. If the hearing is adjourned, it will be reconvened at the earliest convenient opportunity.
- (2) Prior to a pre-hearing conference or hearing, either party may request, by written application, that the adjudicator adjourn the pre-hearing conference or hearing to another date. The application must state:
  - a. the reasons an adjournment is required; and
  - b. whether all parties agree to the adjournment (if known).

## **20. Consent Orders**

- (1) On the request of the parties to an appeal, the adjudicator may make a consent order if the adjudicator is satisfied that the order is consistent with the applicable legislation, including but not limited to the *School Act* and Regulations, and the bylaws of the appropriate School District.
- (2) If the adjudicator declines to make a consent order under subsection (1), the adjudicator must provide the parties with reasons for doing so.

## **PART 6 HEARINGS - GENERAL**

### **21. Method of Hearing**

- (1) In an appeal an adjudicator may hold any combination of written, electronic and oral hearings.

*Administrative Tribunals Act, section 36*

- (2) In deciding which method of hearing will be used for an appeal, the adjudicator may consider any relevant factors, including:
  - a. the convenience of the parties;
  - b. cost and efficiency;
  - c. the fairness and accessibility of each method for the parties;
  - d. whether the parties are able to agree on the factual basis for the appeal;
  - e. the estimated duration of the hearing;
  - f. whether most of the issues are legal issues;
  - g. whether oral testimony is likely to be needed; and
  - h. whether the credibility of a witness is in dispute.
- (3) The adjudicator may issue written directions to the parties regarding the conduct of the hearing.

### **22. Evidence**

- (1) The adjudicator is not bound by the rules of evidence that apply in a court of law. The adjudicator may, in his or her discretion, determine the relevance and admissibility of evidence and the weight to be given to it.
- (2) If a party objects to the hearing of testimony or admission of evidence, the adjudicator may consider the submissions of the parties on the objection and make a decision on that objection immediately, or may reserve decision, complete the hearing and rule on the objection in the course of making his or her decision on the appeal.

### **23. Powers to Compel Witnesses and Evidence**

- (1) At any time before or during a hearing, but before making his or her decision, the adjudicator may make an order requiring a person:
  - a. to attend an oral hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an appeal; or
  - b. to produce for the adjudicator or party a document or other thing in the person's possession or control, as specified by the adjudicator, that is admissible and relevant to an issue in an appeal.

*Administrative Tribunals Act, section 34 (3)*

- (2) A party may request that an adjudicator make an order requiring a person to attend an oral hearing as a witness or requiring a person to produce documents in that person's possession or control.

- (3) If an adjudicator makes an order requiring a person to attend an oral hearing as a witness or requiring a person to produce documents in that person's possession or control, the adjudicator will prepare the order and the Registrar will deliver it to the person who is the subject of the order.
- (4) The adjudicator may apply to the Supreme Court of British Columbia for an order:
  - a. directing a person to comply with an order described in subsection (1); or
  - b. directing any directors and officers of a person to cause the person to comply with an order described in subsection (1).

*Administrative Tribunals Act, section 34 (4)*

## **24. Maintaining Order**

The adjudicator may make orders or give directions that the adjudicator considers necessary for the maintenance of order at the hearing.

## **PART 7 WRITTEN HEARINGS**

### **25. *Written Submissions***

In a written hearing, each party will be given an opportunity to provide written submissions to support their case.

### **26. *Directions for Conduct of Written Hearing***

If the adjudicator determines that the appeal will be heard by way of a written hearing, the adjudicator will provide directions to the parties regarding the deadlines for submissions and any other matters that the adjudicator determines to be appropriate.

### **27. *Failure to File Submissions by Deadline***

If a party does not file a written submission by the deadline set by the adjudicator, the adjudicator may infer that the party declined the opportunity to provide a submission.

### **28. *Extension of Deadlines***

If a party cannot comply with a deadline for written submissions, that party may submit a written request for an extension prior to the deadline explaining the reasons for the request.

## **PART 8 ORAL HEARINGS**

### **29. Notice of Hearing**

If the adjudicator determines that the appeal should be heard by way of an oral hearing, written notice of the date, time, and location of the hearing will be provided to the parties.

### **30. Open or Closed Hearing**

- (1) Subject to subsection (2), an oral hearing is open to the public.
- (2) An adjudicator may decide that a hearing or a portion of a hearing should be closed to the public and must consider, but is not limited to considering, whether:
  - a. the need for privacy of the appellant student or other students involved in the appeal or their families warrants confidentiality;
  - b. the nature of the personal information to be introduced warrants confidentiality.

### **31. Recording**

- (1) An oral hearing may not be recorded unless a party records the hearing at their own expense, after obtaining the consent of the adjudicator and all parties, and agreeing to provide a copy of the recording to the adjudicator, all parties, and the Registrar.
- (2) A recording made under subsection (1) is not an official record of the hearing unless made by an official reporter for the Supreme Court of British Columbia.

### **32. Failure to Attend a Hearing**

- (1) If the appellant fails to attend an oral hearing, the adjudicator may hear the appeal in the absence of the appellant or dismiss the appeal.
- (2) If the respondent fails to attend an oral hearing, the adjudicator may hear the appeal in the absence of the respondent.

### **33. Evidence and Examination of Witnesses**

- (1) Subject to subsection (2), in an oral hearing a party may call and examine witnesses, present evidence and submissions, and conduct cross-examination of witnesses as reasonably required by the adjudicator for a full and fair disclosure of all matters relevant to the issues in the appeal.
- (2) The adjudicator may reasonably limit further examination or cross-examination of a witness if he or she is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the appeal.
- (3) The adjudicator may question any witness who gives oral evidence in an oral hearing.

*Administrative Tribunals Act, section 38*



### **34. Oral Hearing by Teleconference**

- (1) In the event of a delay of a start of an oral hearing by teleconference, each party must remain available for the hearing for up to forty-five (45) minutes after the time scheduled for the start of the hearing.
- (2) In a teleconference hearing, each participant must identify all people who are present at that participant's location or who attend that location while a hearing is in progress.

## **PART 9 POST-HEARING MATTERS**

### **35. Issuance and Publication of Decisions**

- (1) Within 10 business days following completion of the hearing, the adjudicator will provide the Registrar with a written decision.
- (2) If the adjudicator requires more time to issue the decision, the adjudicator must advise the Registrar of the date on which the decision will be issued and provide written reasons for issuing the decision at a later date.
- (3) The Registrar will mail a copy of the adjudicator's decision to the parties within 5 business days of receipt of the adjudicator's decision.