

Board-Level Student Appeal Guidelines

November 2022

CONTEXT

PURPOSE

The purpose of this document is to set out best practices, and provide guidelines, for the development or refinement of board of education bylaws, policies and/or related district administrative procedures respecting appeals under section 11 of the [School Act](#).

This document is not intended as legal advice and should not be relied upon for that purpose. Boards of education are responsible for the application of section 11 within their respective districts. Boards are encouraged to seek independent legal advice and/or support from other sources, should circumstances warrant.

BACKGROUND

The *School Act* provides for two levels of appeal for students and their parents.

The first level of appeal is to a board of education. The *School Act* sets out high-level obligations for boards, including:

- Where a decision of an employee of a board significantly affects the health, education or safety of a student, the parent of the student, or the student, may (within a reasonable timeframe) appeal that decision to the board [section 11(2)].
- Every board of education is required to establish a bylaw outlining an appeal procedure [section 11(3)].
- A board may refuse to hear an appeal under this section unless the appellant discusses the decision under appeal with one or more persons as directed by the board (section 11(4))¹
- A board may establish one or more committees for the purpose of investigating appeals (11(5)²).
- A board may make any decision it considers appropriate in respect of an appeal a student or parent files. It must render a decision within 45 days of receiving an appeal [sections 11(6) and 11(7)].
- The failure of a board employee to make a decision is a form of decision that can be appealed [section 11(1)].

Boards are responsible for determining the content of their bylaws, policies, and administrative procedures, including the matters that boards consider to significantly affect the health, education or safety of a student, and the matters that students and parents can appeal to a board. Boards should clearly articulate their rationale for the content of their appeal documents.

A second level of appeal, for some decisions, is to the Superintendent of Appeals, a position appointed or designated by the Minister of Education (section 11.1). The matters that can be appealed to the SOA are set out in section 2(2) of the Appeals Regulation. Please note the grounds for appeal set out in the Appeals Regulation do not limit the content of board appeal bylaws, policies or administrative procedures.

Parents and students expect, and have a right to, appeal processes that are accessible and free from discrimination regardless of their personal characteristics as set out in the *Human Rights Code*, economic status, educational background, geographic location or familiarity with navigating the educational system and its processes. Appeals are statutory decision-making processes under administrative law and, as such, must adhere to the principles of procedural fairness, including:

¹ Boards are encouraged to consider how section 11(4) can enable parents and district staff to attempt to resolve concerns closest to the source.

² Likewise, boards are encouraged to consider whether section 11(5) of the *School Act* can assist them in achieving resolution close to the source of conflict or concern.

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- People have a right to be heard. They must have adequate notice, information about the decision-making process and a fair opportunity to present their case whenever their interests might be adversely affected by a decision.
- Decisions about an issue under appeal must be made by someone who is impartial and free of actual or perceived bias.
- Decisions must be made in a timely manner, be based on evidence and be communicated in a way that makes clear what information was used in making the decision.

It is expected that every board of education will have a clear, understandable, and easily accessible appeal bylaw (and supporting policy and procedures) for appeals. Appeal documents should be structured to reduce barriers and support appellants throughout the appeal process. Ideally, appeals processes will strive to build relationships and reduce adversarial interactions and integrate culturally relevant approaches.

The provincial Ombudsperson's Office has excellent resources to support boards in the modernization and updating of appeal bylaws. The [Fairness in Practice Guide](#) and the [Fairness by Design: An Administrative Fairness Self-Assessment Guide](#) can assist boards in proactively conducting a self-assessment to evaluate the fairness of their systems, bylaws, policies and practices. Board members must turn their minds to whether they can be an impartial and unbiased decision maker with respect to each appeal. The Ombudsperson's [Quick Tips on Bias](#) may be of assistance in this regard.

PRINCIPLES UNDERPINNING A QUALITY APPEAL BYLAW, POLICY & DOCUMENTS

The Ministry of Education and Child Care supports the following principles regarding appeal bylaws, policies, and related documents:

ACCESSIBILITY

An accessible appeal process is one that is easily located and understood. The information on the appeal process will be clearly written and presented, so as not to confuse and possibly discourage potential appellants. Interpretation and translation services as well as other accommodations should be provided as needed. The bylaw should be available on the school district's website and information about how to appeal decisions to the board should be provided to students and families as they enter the school system and whenever a decision that significantly impacts their child is made. Information should also be available to families to indicate where to direct further questions.

CLARITY

Clarity for appellants on appealable matters includes some guidance regarding the typical grounds for an appeal, the process that will be followed, and potential outcomes (recognizing that appeals should always be heard on a case-by-case basis).

TIMELINESS

Boards are required, under the *School Act*, to render a decision about an appeal within 45 days of receiving it. Ideally boards, in considering the potential impact on a student's education, will wherever possible strive to address appeals in a shorter timeframe.

IMPARTIALITY

Boards must be impartial to the appellant and the issue to be decided. They must approach each decision with an open mind and be open to persuasion. They must not prejudge or form an opinion about the person or case before hearing from the appellant.

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FREE FROM DISCRIMINATION

Boards' decisions must be free of discrimination. Specifically, boards should consider their obligations under the [BC Human Rights Code](#)³ and the [United Nations Declaration on the Rights of Indigenous People](#)⁴.

PARTICIPATION

The right to participate in processes that affect a person's rights, interests or privileges is integral to procedural fairness. Participation rights include: reasonable notice of a future decision; proper disclosure of the decision-making process; and an opportunity to respond to information that may adversely affect a person.

SUPPORTIVE PROCEDURES

The appeal process must be considerate of the relationship between the student, their parent, and the board. The process should be respectful, accommodating, non-adversarial, and satisfactory to all parties regardless of the outcome. Appellants must not be subjected to reprisal.

PROMPTLY DELIVERED REASONS FOR DECISIONS

Procedural fairness requires that all decisions impacting a person's rights, privileges or interests – whether preliminary, interim or final – are to be communicated promptly, along with clearly set out reasons for the decision.

FURTHER APPEAL/REVIEW OPTIONS

Written information about further review options available must be provided to an appellant at the conclusion of the board appeal process. These options include any further appeal that may be available through the Superintendent of Appeals or seeking legal advice about other possible options. In certain circumstances and depending on the nature of the issues and persons involved, an appellant may also be able to file a complaint with the Teacher Regulation Branch of the Ministry of Education and Child Care, or the Office of the BC Ombudsperson.

GUIDELINES FOR BOARD APPEAL BYLAWS/POLICIES

To support the principles underpinning quality appeal processes, and to promote consistency in the application of section 11 of the *School Act* across the province, the Ministry of Education and Child Care expects all boards to review their bylaws, policies and administrative procedures in accordance with these guidelines.

The *School Act* expressly requires boards to adopt bylaws specific to appeal processes, rather than policies.

ELEMENTS TO INCLUDE WITHIN AN APPEAL BYLAW/POLICY

Every appeal bylaw should contain the following elements:

A. Preamble

- Statements on any dispute resolution processes available prior to making an appeal.
- Reference to the legislative framework for student appeals, specifically, section 11 of the *School Act*.

³ BC Human Rights Code [section 8\(1\)](#): A person must not, without a bona fide and reasonable justification, (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or (b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public because of the Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or class of persons.

⁴ United Nations Declaration on the Rights of Indigenous Peoples [Article 14\(2\)](#): Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

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- A statement committing to ensuring that appellants are not subjected to reprisal to help ensure the integrity of the process.
- A statement indicating that appeals will be heard by the board, at a duly constituted meeting of the board.

B. Statements on the types of decisions that may be appealed under the *School Act*

- A statement that incorporates the test under s. 11(2) of the *School Act*: “if a decision of an employee of a board significantly affects the education, health or safety of a student, the parent of the student or the student may, within a reasonable time from the date the parent or student was informed of the decision, appeal that decision to the board.”
- Descriptions or examples of matters that will be considered for appeal. Bylaws should not include limitations on appealable matters, as the board must decide whether a matter is appealable or not based on the test set out in s. 11(2) of the *School Act*. Boards are encouraged to use flexible language such as “...examples of grounds for appeal include but are not confined...” versus more closed language such as “the following decisions shall be deemed to significantly affect the education, health and safety of a student”.
- Recognition that an employee’s failure to make a decision is grounds for an appeal.

C. Statements on how a parent or student can commence an appeal.

- Identification of documentation required, including specific forms.
- Details regarding to whom the appeal submission is to be made.
- Identification of Indigenous staff who may be contacted to provide support to Indigenous appellants”
- Provision of, as warranted, interpreters and other accommodations.

D. Statements about the steps that will be taken by the board once an appeal is received.

- One or more statements about the use of committees in the appeal process, if relevant.
- Description of the authority of, and terms of reference for, any committees established by the board to investigate an appeal as authorized by section 11(5) of the *School Act*. As examples: explain the composition of such a committee; identify ways in which the committee may ask for more information; describe how the committee will report on its investigation and make recommendations; and be clear about how the committee will report to the board.
- Details regarding decisions, including how appellants will be involved in board decision making processes, how information – including notes and materials used to inform a decision - will be shared, and how and when appellants will be advised of a decision (with reasons). Including a timeframe to deliver any preliminary decisions helps to avoid delays in scheduling and hearing appeals.

E. Statements about timelines.

- Details regarding reasonable time limits for filing an appeal, including the process to request an extension on reasonable grounds, as allowed.
- Stipulation that, on receiving the notice of appeal, staff will immediately forward the notice to the board and promptly notify the parent that they have done so. This ensures the board is aware of the start date of the legislated 45 calendar day timeframe for delivering a decision on appeal, inclusive of any informal attempts to resolve a concern.
- Details regarding any time limits within the appeal process, such as when an individual must submit all evidence to be considered or the time limits for a response to a request for additional information.

F. Statements about the board hearing.

- Confirmation that hearings will be held in closed sessions.
- Provision for appellants to be heard and to have their views considered in the hearing. Decisions based solely on written submissions are to be avoided unless the appellant has specifically requested written submissions.
- Details about the hearing processes, within the bylaw, or specific to an individual hearing, such as: who will chair the hearing; which party will present first; opportunities for clarification of information presented; whether questions will be through the chair or directly to/between involved parties; how deliberations will occur, etc.

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- Description of both the hearing's confidentiality and the extent of information to be shared about it, including minutes.
- Confirmation that an appellant has a right to an advocate or an individual to support them through the appeal process, so they have a fair opportunity to be heard.

G. Statements about how decisions will be communicated.

- Confirmation that an appellant will receive the board decision promptly; that is, within one or two working days of the decision. The board should provide this decision to the appellant directly,
- Statements committing to the provision of transparent, understandable, and meaningful reasons for the decision. The statement should commit to provide reasons that explain how and why the decision was made. This generally includes explaining what rules the board used to decide the appeal (these may be appeal criteria set out in the appeal bylaw, school district policies or some other rules), and how the board applied the rules to the information and evidence presented during the appeal, to make its appeal decision.

H. Statements regarding further appeal options.

- Information about the further review options available to an appellant at the conclusion of the board appeal process. These options could include any further appeal that may be available through the Superintendent of Appeals.

PRACTICES IN SUPPORT OF QUALITY APPEAL PROCESSES

In considering the development of a new bylaw or revising an existing bylaw, boards may wish to consider these key practices.

Related to accessibility:

- Present information in clear, understandable language.
- Make information on the appeal process publicly available, e.g., posted clearly on the district website and accessible as a link from individual school websites.
- Make a printable or online-fillable appeal form available.
- Set up a dispute resolution webpage that gives appellants an overview of the process and describes what a parent can expect as they navigate the appeal process.
- Provide pamphlets and/or flowcharts summarizing the process to enhance accessibility.
- Communicate to appellants what resources and services are available to support accessibility.
- Where appropriate, translate appeal documentation.
- Consider reviewing bylaws and procedures regularly to identify and remove accessibility barriers and ensure cultural safety.

Related to process:

- Incorporate culturally safe and trauma-informed practices and language within the appeal bylaw and any administrative procedures. (As background, BC Mental Health & Substance Use Services offers a guide to [trauma-informed practices](#)⁵).
- Assign appellants a neutral contact person.
- Ensure appellants are aware of hearing processes prior to commencement of the hearing.
- Original decision-makers are not to attend or participate in appeal deliberations.
- Clearly describe the decisions.
- Reasons for the decision must also be clear, stating the evidence considered and how it was evaluated. Providing adequate reasons helps the appellant to understand the decision.
- Put in place processes to track issues and complaints regarding appeals processes. Take action to address concerns raised. Boards may wish to develop a system to keep data on appeals to

⁵ Broadly speaking, trauma-informed practice is about applying principles: awareness, safety, trustworthiness, choice, collaboration, and being strengths-based). In each setting, these principles will play out differently, and will need to be tailored for diverse groups (by age, gender, culture).

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- track trends and issues, to enable continuous improvement (while bearing in mind privacy obligations).
- Boards should regularly review appeal bylaws to ensure that they are up to date and reflect the needs of the student populations and communities they serve.

POSTSCRIPT – DISTINCTION BETWEEN APPEALS VERSUS COMPLAINTS

It is important to make a distinction, in policy and in practice, between appeals of a decision made by an “employee of a board” (i.e. section 11(2) of the *School Act*) and complaints made about a board. There is a formal appeal process for decisions that fall within the scope of section 11 of the *School Act*. But a board will also benefit from having its own complaint process, available to students and parents (also formalized by policy), to handle complaints and address concerns about other matters. Such matters could include concerns about staff conduct or other service quality issues.

The Ombudsperson’s Office has recently developed [Complaint Handling Guide](#), an excellent resource in this regard. A further resource, [Quick Tips on Apologies](#), supports public servants when errors or mistakes happen.