Nicola Similkameen School District

**Administrative Procedure 309**

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# APPEALS PROCESS

## Purpose

Employee decisions relating to individual students should be carried out in accordance with principles of fairness. The appeal process should encourage all parties of disputes to understand the concerns of the other parties and make good faith efforts to resolve disputes to mutual satisfaction.

The Board generally encourages complaints and disputes to be dealt with at the point closest to where the dispute first arises.

If an employee's decision is disputed or a complaint is made about an employee's decision, the dispute or complaint is not resolved to the satisfaction of the student or the parent of the student affected, and the decision significantly affects the education, health or safety of the student, the Board recognizes the right of a student and/or his or her parents (including guardians and persons acting in place of parents) to appeal to the Board. See By-law 5.23.

The Board also recognizes that employee decisions that do not significantly affect the education, health or safety of a student are within the final authority of the Superintendent as the Board's Chief Executive Officer.

"Decision" includes a failure to make a decision.

"Parent" is as defined in the School Act, and includes a guardian.

Appeals to the Board are to be carried out in accordance with principles of fairness, including:

1. The appeal process should be accessible to parents and students. Information about the appeal process and relevant policies should be readily accessible to all on the school district website, including employees, students and parents. Reasonable accommodation should be provided where necessary to allow parents or students to make use of the appeal process.

2. Appellants are entitled to receive the same written and oral information to be used in the appeal as is provided to the Board by administration and to have an opportunity to respond to it.

3. The Board accepts its responsibility to exercise its independent judgment when hearing appeals. In particular, a Board Officer who has participated in making the decision being appealed, who has attempted to mediate it or who has investigated it shall not assist the Board with its deliberations on the appeal.

4. A student or parent shall not be subjected to retribution by the Board, its officers or employees because an appeal has been made.

Appeal procedures are established by bylaw and shall be applied in accordance with the above principles.

The Board recognizes that whether a decision significantly affects a student's education, health, or safety is a matter for individual consideration. The following will normally be considered to be matters that significantly affect a student's education, health or safety:

- Suspension or exclusion of a student from a school for a period in excess of 10 consecutive school days, or that could prevent the student from fulfilling graduation requirements in a timely way;
- Decisions regarding placement in an educational program other than access to a specific course or class;
- Decisions regarding whether a student has met the requirements for promotion from one grade or course to the next, or has met the requirements for secondary school graduation;
- Denial of a request for an individual education plan; and,
- Failure to consult with regard to a student's individual education plan.

**Decisions made on appeals are not precedential and are not binding on future decision-makers.**

In considering appeals of employee decisions, the Board shall consider:

- Whether the decision appealed is in accordance with legislation, board policies and procedures;
- Whether the decision appealed was reached through a process that was fair to the student and after consideration of relevant information;
- Whether the evidence presented to the Board supports the decision or calls it into question;
- Whether the decision is reasonable in the circumstances; and,
- Whether there are special circumstances that would warrant making an exception to a Board policy.

## Procedure

Procedures for hearing appeals shall be applied in accordance with the guiding principles in the Board's Appeal Policy.

1. Pre-Appeal Dispute Resolution Process
    1. It is the Board's expectation that the student and/or parent/guardian will discuss the issue in dispute in a constructive manner with those responsible at the school or district level before an appeal will be considered. In this regard, at a minimum, the Board expects the following steps will be taken:

**STEP 1**

The person(s) will share their concern(s) with the individual involved in an attempt to resolve the concern(s).

**STEP 2**

The person(s) will meet with the principal/supervisor or designate to carry out an appropriate review in an attempt to resolve the concern(s).

**STEP 3**

The person(s) will submit to the Superintendent a written statement which outlines the concern(s) with their recommendation for resolution. The Superintendent, or designate, will review all relevant information including contacting the concerned person(s) in an attempt to resolve the concern(s). The Superintendent, or designate, may consider the option of mediation if appropriate and will include in writing any proposed action meant to resolve the concern.

If the applicable dispute resolution process does not resolve the concern, an appeal is normally based upon the decision of the highest supervisory officer who dealt with the matter in the dispute resolution process.

2. Starting an Appeal

    1. If the steps in Section 1 are not successful, a parent and/or student begins the board appeal process by presenting a written Notice of Appeal to the Secretary Treasurer within fifteen (15) school days after being informed of the decision that is being appealed, or from the date of completion of the dispute resolution steps referred to in 1.1, whichever is later.

    2. The Notice of Appeal must include:

        1. The name, address and school placement of the student (including, where appropriate, grade level and home room teacher);

        2. The name and address of the person(s) making the appeal;

        3. The decision that is being appealed;

        4. The date on which the student and/or parent/guardian bringing the appeal were informed of the decision;

        5. The name of the District employee(s) who made the decision being appealed;

        6. Particulars of the effect on the student's education, health or safety;

        7. The grounds for the appeal and the action requested or relief sought;

        8. A summary of the steps taken by the student and/or parent/guardian to resolve the matter;

9. Whether the person making an appeal is requesting an oral hearing;
10. Whether the person making an appeal requires any special accommodation in order to proceed with the appeal (such as interpretation services at the hearing of the appeal.).

3. The Secretary Treasurer is responsible on behalf of the Board for:
    1. Receiving Notices of Appeal;
    2. Reviewing Notices of Appeal for completeness and timeliness;
    3. Giving any notices required under Collective Agreements;
    4. Receiving and distributing documents relevant to an appeal;
    5. Communicating with the appellants and others on matters relating to an appeal hearing;
    6. Arranging for any accommodation required; and,
    7. Scheduling hearings.
    8. The Secretary Treasurer may designate another staff member to carry out these responsibilities. If the Secretary Treasurer has participated in the dispute resolution steps or is the employee whose decision is being appealed, another staff member shall be designated.
4. If the Secretary Treasurer is of the opinion that:
    1. An appeal is not timely;
    2. An appellant has refused to participate in the dispute resolution steps;
    3. An appeal is not an appeal of a decision of a Board employee, or the decision does not significantly affect the student's education, health or safety; or
    4. There is any other preliminary matter that should be settled before a hearing of an appeal on its merits;
    5. The Secretary Treasurer may schedule a preliminary hearing before the Board for purposes of a decision on that matter, without first complying with all requirements of section 3.
5. Appellants are notified of a preliminary hearing and provided with the opportunity to make written submissions on the preliminary issue to be determined.

3. Pre-Hearing Responsibilities
    1. Upon receipt of the Notice of Appeal, the Superintendent shall be notified. The Superintendent, or a person designated by the Superintendent to be responsible for

investigation and presentation on the appeal, will prepare a report for the Board concerning the matter under appeal and is responsible for gathering the information to be presented to the Board, other than the information to be presented by the appellant.

2. If the appellant is a student under the age of 19 and no parent is named as an appellant, a parent will be notified as soon as practicable by the Superintendent or designate.

3. If the appellant has not met with the Superintendent during the dispute resolution process the appellant is required to meet with the Superintendent or a person designated by the Superintendent. A report of this meeting shall be included in the report prepared under 3.1. The report may include the Superintendent's recommendations as to whether the dispute should be referred to an outside mediator.

4. Any notices required under relevant collective agreements are given.

5. Instead of an oral hearing, the Board may determine that an appeal will be decided on the basis of written submissions only.

6. The appellant shall be notified of the date, time and place for hearing of the appeal and of the requirement to provide any documents in advance.

7. A copy of the report prepared under 3.1 will be provided to the appellant no later than 48 hours before the time set for hearing.

8. The appellant is required to provide copies of any documents on which they intend to rely, or copies of written submissions, no later than 48 hours before the date set for hearing.

4. Hearing and Decision

    1. The Board will decide the appeal based on the oral and/or written submissions presented to it and, for an oral hearing, will determine the order of, and time allotted for, submissions.

    2. At any time the Board may request further information from the appellant or the Superintendent or designate and may adjourn in order that such information may be obtained.

    3. The Board may make any interim decision it considers necessary pending the disposition of the appeal.

    4. The Board may invite submissions from any person whose interests may be affected by the Board's decision on the appeal.

    5. The Board may refuse to hear an appeal where:

        1. The appeal has not been commenced within the time set out under 2.1;

2. The student and/or parent or guardian has refused or neglected to discuss the decision under appeal with the person(s) specified in the applicable dispute resolution process or the Superintendent or delegate, or such other person as directed by the Board; or

3. The decision does not, in the Board's opinion, significantly affect the education, health or safety of the student.

6. The Board may hear an appeal despite any defects in form or technical irregularities and may relieve against time limits.

7. Appeals and decisions on appeals will be held in a closed session.

8. The Board will ensure that each party has received all documentation provided by the other party prior to the hearing.

9. At the end of each party's submission, trustees may ask questions.

10. When questioning by trustees is complete, the parties leave and the Board meets to decide how it will dispose of the appeal.

11. The Board must make a decision within 45 days from receiving the Notice of Appeal.

12. The Board's decision is final, subject to any rights to appeal under the School Act. The Board may reconsider its decision only:

    1. If it is satisfied that new evidence or information would have a material effect on the decision and the failure to present that evidence or information at the original hearing is satisfactorily explained;

    2. The decision contravenes law; or

    3. A reconsideration is directed or requested in connection with an appeal of the board's decision under School Act Section 11.1.

13. The parties will be promptly notified of the Board's decision. Written reasons will be provided as soon as practicable.

5. Appellants who have appeal rights under School Act Section 11.1 will be advised of those rights when or before they are notified of the Board's reasons for decision.

**Reference:** *School Act Section 11.1*

**Date of Original Superintendent Approval:**

**Date Amended:**