

APPEALS BYLAW

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

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. This Section 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. It also provides for decisions made by Boards under Section 11 to be appealed to Superintendents of Achievement.

The failure of an employee(s) to make a decision shall be deemed a decision for the purpose of initiating an appeal.

In the spirit of administrative fairness, the New Westminster Board of Education welcomes members of its educational community to express their questions, complaints or concerns to the appropriate authority.

It is the position of the New Westminster Board of Education that, in most cases, an appeal should be preceded by an appropriate consultative and problem-solving sequence, but that such procedures should in no way constitute a barrier to an appeal or a final recourse to the New Westminster Board of Education. The Board generally encourages complaints and disputes to be dealt with at the point closest to where the dispute first arises. 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.

1. The following decisions shall be deemed to significantly affect the education, health or safety of a student:
 - 1.1 Disciplinary suspension from school for a period in excess of five (5) consecutive days;
 - 1.2 Exclusion from school for a health condition;
 - 1.3 Placement in an educational program (this does not refer to classroom or teacher preference) or matters related to school transfer requests and placement in programs of choice. Families wishing to discuss school placement requests are encouraged to contact the Central Registration Office to discuss their specific situation);
 - 1.4 Grade promotion or graduation;
 - 1.5 Refusal to offer an educational program to a non-graduated student sixteen (16) years of age or older; and,
 - 1.6 Any other decision that significantly impacts the present or future educational program of the student.

If the Superintendent denies the appellant the right of appeal, reasons for the decision denying the right of appeal must be given to the appellant in writing. The Superintendent will inform the appellant of the role of the Ombudsperson.

2. Written Notice of Appeal

Every appeal to the New Westminster Board of Education (Step 6) must be initiated by a written *Notice of Appeal: Form P13-01*. This form is attached to the end of this Policy or may be obtained from the school or school board office or from the district website, www.newwestschools.ca. It must be completed in full and submitted to the Superintendent. Assistance required in filling out this form is available upon request from the Superintendent's office.

3. The Appeal Process

Upon receipt of the *Notice of Appeal* form (Step 6), the Superintendent will inform the appellant in writing of the steps in the appeal process within 48 hours.

All steps in the appeal process must proceed in a timely manner.

Throughout the appeals process, the appellant and the employee(s) whose decision is being appealed must receive all documentation and appropriate information generated at each step within a reasonable length of time and be informed of the progress of the appeal at each step.

NOTE: The appellant may choose to be accompanied by a support person of their choice throughout the entire appeals process and the employee(s) may choose to bring union representation where applicable. Where language may be a barrier, interpretation services may be provided upon request.

3.1 STEP ONE:

3.1.1 The appellant shall meet with the employee(s) involved with the decision.

If there is no resolution, go to STEP TWO.

3.2 STEP TWO:

3.2.1 The appellant shall meet with the principal or designate and the employee(s) whose decision is being appealed. This meeting shall include the following:

3.2.1.1 A report by the employee(s) indicating the decision and the rationale for the decision will be reviewed.

3.2.1.2 Other District personnel and/or outside agency personnel may be requested to attend the meeting for consultation purposes.

3.2.1.3 If there is no resolution, the principal or designate will notify the Assistant Superintendent or the Director of Instruction and will forward all available documentation

3.2.1.4 The principal or designate will review with the appellant all steps in the appeals process as set forth by this Bylaw.

3.2.1.5 The principal or designate will ensure the appellant receives a copy of all documentation and appropriate information that is being forwarded to the Assistant Superintendent or Director of Instruction.

3.3 **OPTIONAL STEP THREE - Appeal Sub-Committee:**

- 3.3.1 As an alternative to the Steps Four and Step Five in the appeals process, the Superintendent or designate, with agreement from the appellant, may refer the matter to an Appeal Sub-Committee consisting of: One (1) Assistant Superintendent or Director of Instruction and two (2) Principals and/or Vice-Principals
- 3.3.2 When an appeal is referred to the Appeal Sub-Committee, the Secretary-Treasurer shall set a time, date and place for this purpose and shall give notice in writing to the appellant and the employee(s) whose decision is being appealed. With this notice, the appellant and employee(s) whose decision is being appealed must receive copies of all documentation and appropriate information.
- 3.3.3 The Appeal Sub-Committee may invite oral or written submissions from the appellant and the employee(s) whose decision is being appealed. The appellant may choose to be accompanied by a support person of their choice and the employee(s) may choose to bring union representation where applicable. Where language may be a barrier, interpretation services may be provided upon request.
- 3.3.4 The Appeals Sub-Committee will recommend a decision on the appeal to the Superintendent.
- 3.3.5 The Superintendent shall promptly notify the appellant in writing of the Appeal Sub-Committee's recommendations and the reasons for the recommendations.
- 3.3.6 If the issue is not resolved by the Appeals Sub-Committee, then the issue may be taken to Step Six.

3.4 **STEP FOUR:**

- 3.4.1 The appellant shall meet with the Assistant Superintendent or Director of Instruction who will review all the information relevant to the decision on the matter. At this meeting, the Assistant Superintendent or Director of Instruction:
 - 3.4.1.1 May request the presence of other staff or outside personnel as consultants. The appellant must be notified in writing and in advance of the meeting of the names of the people to be in attendance at the meeting.
 - 3.4.1.2 Will strive for a resolution of the appeal based on the review of the information available.
 - 3.4.1.3 Will document the proceedings of the meeting.
 - 3.4.1.4 Communicate the resolution and the reasons for it in writing to the appellant and to the employee(s) whose decision is being appealed.

3.4.1.5 If there is no resolution, the Assistant Superintendent or Director of Instruction will forward all documentation to the Superintendent of Schools

3.4.1.6 The Assistant Superintendent or Director of Instruction will ensure that the appellant receives a copy of documentation and appropriate information that is being forwarded to the Superintendent of schools.

3.5 STEP FIVE:

3.5.1 The Superintendent of schools will gather all information relevant to the appeal and will meet with the appellant to resolve the appeal. If there is no resolution, the Superintendent of schools will notify the Board Chair that the appellant requests to take the appeal to the Board of Education.

3.6 STEP SIX:

- i. The Board of Education will receive and review information pertaining to the appeal as follows:
 1. The Superintendent shall provide the Board of Education with all documentation and appropriate information with an explanation of the steps in the appeals process undertaken.
 2. The Board of Education, after reviewing the pertinent information and documents surrounding the decision, shall decide if an appeal hearing is appropriate.
 3. If an appeal hearing is deemed not to be appropriate, the Board of Education or designate will notify in writing the appellant and the employee(s) whose decision is being appealed of the reasons for that decision.
 4. If an appeal hearing is granted, the Board of Education will notify in writing the appellant and the employee(s) whose decision is being appealed of the time and date that it is to take place. In the case of a hearing, reasonable time limits must be given to both the appellant and the employee(s) whose decision is being appealed. Opportunity must be given to the appellant to have his/her story heard and to ensure that all relevant information has been considered.
 5. As in all previous steps in the appeals process, the appellant may be accompanied by a support person of their choice and the employee(s) whose decision is being appealed may bring union representation where applicable. Where language may be a barrier, interpretation services may be provided upon request.
 6. The Board of Education must confine its deliberations to the decision being appealed.
 7. The Board of Education shall make a decision and that decision shall be deemed the final decision of the Board.

- ii. In considering appeals of employee decisions, the Board shall consider:
 1. Whether the decision appealed is in accordance with legislation, Board policies and procedures;
 2. Whether the decision appealed was reached through a process that was fair to the student and after consideration of relevant information;
 3. Whether the decision is reasonable in the circumstances in that the evidence presented is capable of supporting the decision; and
 4. Whether there are special circumstances that would warrant making an exception to a Board policy.
- iii. The Board of Education shall notify the appellant in writing of the decision. At the same time, the decision and reasons for the decision shall be communicated in writing to the appellant and the employee(s) whose decision led to the appeal.

4. Protection from Reprisals

The Board of Education will not tolerate any direct or indirect form of reprisal as a result of the initiation or outcome of an appeal. Where there is evidence of reprisal, the Superintendent shall take immediate steps to remedy the situation.

5. Review Process

Each appellant and each employee(s) whose decision has been appealed will be given the opportunity to provide feedback on their experience with the appeal process. This feedback will be used when reviewing this Bylaw and when developing new procedures to ensure that the appeals process remains balanced and fair.

6. Avenues Beyond the Appeals Process

If the appellant wishes to appeal the Board's decision, the appellant may contact the Superintendent of Achievement under Section 11.1 of the *School Act: Appeals to the Superintendent of Achievement*. Copies of Section 11 (including 11.1 to 11.7) of the *School Act* will be made available to the appellant upon request or may be found at <https://www2.gov.bc.ca/gov/content/education-training/k-12/support/student-disputes-and-appeals>

*Legal Reference: Sections 6, 11, 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 11.7, 11.8, 22, 26, 68, 85, 91 School Act
Regulation 24/08 – Appeals Regulation
Administrative Tribunals Act
Collective Agreement*

SD No. 40 (New Westminster)

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Modification to this document is not permitted without prior written consent from SD No. 40 (New Westminster)