

APPEALS PROCEDURE

This By-Law sets out the procedure to be followed by parents/guardians and students who wish to commence an appeal under Section 11 of the *School Act*.

Preamble: The Board of Education strongly encourages parents, guardians, and students to work together with their teachers and district administration to resolve disputes in an open and constructive manner both prior to and during the appeal process.

The Board's expectation is that prior to utilizing this By-Law, students and their parents/guardians will have tried to resolve the concerns in dispute in a constructive and respectful manner with those responsible at the school or program level through ***Regulation #9052 Process for Resolution of Concerns***

Section 11 of the *School Act* reads in part as:

Appeals (to the Board)

- (1) In subsections (2) and (4), "decision" includes the failure of an employee to make a decision.
- (2) 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 that the parent or student was informed of the decision, appeal that decision to the board.
- (3) For the purposes of hearing appeals under this section, a board must, by By-Law, establish an appeal procedure.
- (4) 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.

Records and information relating to specific Section 11 appeals are confidential and must not be disclosed except in accordance with the *School Act* or the *Freedom of Information and Protection of Privacy Act*.

**NORTH OKANAGAN-SHUSWAP
SCHOOL DISTRICT NO. 83**

BY-LAW No. 2008-1

Adopted: 2008-12-09
Amended: 2016-11-16

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Decisions which can be Appealed under Section 11

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 following decisions shall be deemed to “significantly” affect the education, healthy or safety of a student:
 - a) Disciplinary suspension from school for a period in excess of fifteen consecutive days;
 - b) Suspension from school for a health condition;
 - c) Placement in an educational program;
 - d) Grade promotion and graduation;
 - e) Refusal to offer an educational program to a student 16 years of age or older;
 - f) Any other decision that in the opinion of the Board “significantly” affects the education, health or safety of a student.

2. The Board may refuse to hear an appeal where:
 - a) The appeal has not been commenced within 30 days from the date the decision significantly affecting the student’s education, health or safety was made; or
 - b) The student and/or parent/guardian has refused or neglected to discuss the decision under appeal with the person(s) directed by the Board or its designate; or
 - c) The decision does not significantly affect the education, health or safety of the student.

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Procedures for Appealing a Decision (or Failure to Make a Decision) of a Board Employee

1. The purpose of this process is to provide a fair and expeditious means by which parents and students can exercise their right of appeal under Section 11. The Board's expectation is that participants in meetings held under this policy will act as role models for students, and will at all times maintain an atmosphere of mutual respect, co-operation, and respect for the dignity of individual participants.
2. Appellants under this policy have the right to be accompanied by a person or persons of their choosing at any of the meetings provided for below. Where an appeal is initiated by the parent/guardian of a student who is the subject of the appeal, that student also has the right, with the consent of their parent/guardian, to attend meetings held pursuant to this policy.
3. Where the decision-maker whose decision is being appealed is a member of a union, articles under respective Collective Agreements will be adhered to.

Initiating the Appeal Process

1. In order to commence an appeal, a student and/or his/her parent/guardian must complete a Notice of Appeal form. The purpose of the Notice is to expedite and clarify the nature of the appeal by ensuring that all relevant information is presented at the earliest possible stage of the appeal;
2. When the form is completed, the appellant commences the appeal by delivering (by mail, fax, e-mail or by personal delivery to the Board Office) the Notice to the attention of the Secretary-Treasurer and attaches any relevant correspondence or information;
3. The Secretary-Treasurer shall forward the following materials to the Board for consideration:
 - a) The Notice of Appeal;
 - b) Copies of all previous correspondence between the parties to the appeal; and
 - c) Copies of any relevant District, Ministry or other policies or statutory requirements which bear on the issue raised in the appeal.

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4. At any time prior to making its decision regarding the appeal, the Board may request that the appellant and/or district staff provide the Board with more information pertaining to the appeal. Any information received will be shared with both parties to the appeal.

Appeal Hearing Procedure

1. Upon receiving the appeal materials from the Secretary-Treasurer, the Board shall, without delay, establish a date for the hearing of the appeal, which will be communicated to the parties. The Board may adjourn the proceeding at the request of either party, or on its own motion, where there are reasonable grounds to do so.
2. The appellant will have the right to be present during the appeal hearing process. They may wish to make representation regarding the appeal and to ask relevant questions through the chair of the Board. The affected student, with the consent of their parent/guardian, shall also have the right to make representation directly to the Board at this hearing. The employee(s) whose decision is being appealed will also have the right to appear before the Board to make representation regarding the appeal. Reasonable time limits will be imposed to govern presentations of all parties.
3. As an alternative to appearing in person before the Board, the appellant may elect to have the hearing conducted by way of written submissions. In this event, the parties will be provided with a schedule of the delivery of initial and reply submissions to the Board.

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4. At least seven (7) days prior to the date scheduled for the hearing of the appeal, or the exchange of initial written submissions in the cases of a written appeal, district staff and the appellant must provide each other with any documents or information they intend to rely on at the hearing of the appeal, and which have not previously been exchanged.
5. The Board's deliberations will take place in private, and its decision (together with a statement of the reason(s) for the decision) be communicated in writing to the appellant and to the employee whose decision is being appealed, no later than 45 days from the date the appeal is filed.
6. A decision of the Board is final, subject to any rights to appeal under the *School Act*. The Board may reconsider its decision only:
 - a) 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;
 - b) the decision contravenes law; or
 - c) a reconsideration is directed or requested in connection with an appeal of the board's decision under *School Act* section 11.1.
7. 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 reason(s) for decision.