

## **Board of Education of School District No. 39 (Vancouver) Appeal Policy and Procedures Bylaw**

(Section 11 of the School Act)

### **Policy:**

The Board of Education of School District No. 39 (Vancouver) (the “Board”) believes that employee decisions relating to individual students should be carried out in accordance with principles of fairness. The appeal process should encourage all parties to disputes to understand the concerns of the other parties and make good faith efforts to resolve disputes to mutual satisfaction.

The Board encourages complaints and disputes to be dealt with at the point closest to where the dispute first arises, pursuant to the Board's Conflict Resolution Procedure. This process is designed to be supportive and solution focused.

If an employee's decision is disputed or a complaint is made about an employee's decision, if 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 of Education recognizes the right of a student and/or their parents (including guardians and persons acting in place of parents) to appeal to the Board.

### **Definitions:**

“Decision” includes a failure to make a decision.

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

"Appellant" is the student, parent or guardian initiating the appeal.

“Board of Education” is comprised of nine (9) trustees.

“Board Officer” means the Superintendent or the Secretary Treasurer.

“Administration” means the school district staff making a submission to the Board of Education as part of the appeal process.

### **1.0 Guiding Principles:**

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

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

- 1.2 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.
- 1.3 The Board accepts its responsibility to exercise its independent judgment when hearing appeals.
  - 1.3.1 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 be present for the Board's deliberations on the appeal.
  - 1.3.2 A trustee who identifies that they clearly have a bias or a conflict of interest that prevents them from objectively reviewing the decision being appealed shall not be involved in deciding on the outcome of the appeal and shall not be present at the Board's appeal hearing.
- 1.4 A student or parent shall not be subjected to retribution by the Board, its officers, or employees because an appeal has been made.
- 1.5 Appeal procedures shall be established by bylaw and shall be applied in accordance with the above principles.
- 1.6 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 typically be considered to be matters that significantly affect a student's education, health or safety:
  - 1.6.1 expulsion from an educational program;
  - 1.6.2 suspension from an educational program for more than five (5) school days;
  - 1.6.3 suspension from an educational program where no other educational program is made available;
  - 1.6.4 transfer of a student from one school to another for disciplinary reasons;
  - 1.6.5 distributed learning required as part of a disciplinary matter;
  - 1.6.6 a decision not to provide an Individual Education Plan (IEP) for a student with special needs;
  - 1.6.7 grade promotion or graduation;
  - 1.6.8 consultation about placement of a student with special needs and the provision of an IEP;
  - 1.6.9 being the recipient of bullying behaviours, including intimidation, harassment or threats of violence or acts of hate by a student against another student;
  - 1.6.10 exclusion due to a medical condition that endangers others.
- 1.7 Decisions made on appeals are not precedential and are not binding on future decision makers.
- 1.8 Board policies and administrative procedures are not appealable under Section 11 of the School Act or this Policy.

- 1.9 Where a parent or student challenges a decision of a Board employee that significantly affects the education, health or safety of a student, the parent or student should be advised of this Bylaw.
- 1.10 In considering appeals of employee decisions, the Board shall consider, but shall not be limited to:
- 1.10.1 whether the decision appealed is in accordance with legislation, board policies and procedures;
  - 1.10.2 whether the decision appealed was reached through a process that was fair to the student and after consideration of relevant information;
  - 1.10.3 whether the evidence presented to the Board supports the decision or calls it into question;
  - 1.10.4 whether the decision is reasonable in the circumstances; and
  - 1.10.5 whether there are special circumstances that would warrant making an exception to a board policy.
- 1.11 The appeal process is not intended to place the Board in the position of determining what is best educational practice or programming, which is the responsibility of professional education staff.

## **2.0 Appeal Procedures**

Procedures for hearing appeals shall be applied in accordance with the guiding principles in the Board's Appeal Policy. The Board may, in its absolute discretion, refuse to hear an appeal where the appellant has not first followed the conflict resolution process or discussed the decision with one or more persons as directed by the Board. The commencement date of an appeal is the date the notice of appeal is filed with the Office of the Secretary Treasurer following the completion of the conflict resolution process.

### **2.1 Pre-Appeal Procedure: Conflict Resolution Process**

- 2.1.1 The Appellant shall take the dispute resolution steps outlined in the District's Conflict Resolution Procedure for School-Based Concerns or other applicable policy or procedure to try to resolve the concern before filing an appeal to the Board. If the applicable dispute resolution process does not resolve the concern, an appeal is normally from the decision of the highest supervisory officer who dealt with the matter in the dispute resolution process.
- 2.1.2 The conflict resolution process will conclude with a decision by the Associate Superintendent assigned to resolve conflicts prior to appeal, making a determination (the "decision") on the matter in dispute, and will include the Associate Superintendent's decision whether the matter in dispute significantly affects the education, health or safety of a student.

### **3.0 Notice of Appeal and Time Limits for Appeal**

3.1 Appeals must be started within fifteen (15) business days of the completion of the Conflict Resolution Process, unless good reasons are shown why the time should be extended.

3.2 An appeal is started by completing a Notice of Appeal form and by delivering it by mail, email or personal delivery to the office of the Secretary Treasurer. The Notice of Appeal should provide all relevant information in relation to the appeal.

3.3 The Notice of Appeal must include:

- 3.3.1 the name, address and school placement of the student (including, where appropriate, grade level and home room teacher);
- 3.3.2 the name and address of the person(s) making the appeal;
- 3.3.3 the decision that is being appealed;
- 3.3.4 the date on which the student and/or parent/guardian bringing the appeal were informed of the decision;
- 3.3.5 the name of the Board employee(s) who made the decision being appealed;
- 3.3.6 particulars of the effect on the student's education, health or safety;
- 3.3.7 the grounds for the appeal and the action requested or relief sought;
- 3.3.8 a summary of the steps taken by the student and/or parent/guardian to resolve the matter to date, including steps taken as part of the Conflict Resolution Process;
- 3.3.9 whether the person making an appeal is requesting an oral hearing; and
- 3.3.10 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.)

3.4 The Secretary Treasurer, or designate, is responsible on behalf of the Board for:

- 3.4.1 receiving Notices of Appeal;
- 3.4.2 reviewing Notices of Appeal for completeness and timeliness;
- 3.4.3 referring Notices of Appeal to the Superintendent for a preliminary determination of the matter of significance, as required;
- 3.4.4 giving any notices required under collective agreements;
- 3.4.5 receiving and distributing documents relevant to an appeal;
- 3.4.6 communicating with the appellants, the Board, and others on matters relating to an appeal hearing;
- 3.4.7 arranging for any accommodation required; and
- 3.4.8 scheduling hearings if a hearing is granted.

#### **4.0 Referral to Quorum of the Board**

- 4.1 If the Superintendent, or designate, is of the view that the matter did not significantly affect the education, health or safety of the student, the student and/or parent will be advised. If the student and/or parent disagrees with the Superintendent's determination of significance, the Secretary Treasurer may refer the appeal to a quorum of the Board for a determination of that preliminary issue, recognizing the 45-day time constraint on making a decision on the appeal.
- 4.2 Appellants shall be notified of the preliminary hearing and provided with the opportunity to make additional written submissions on the preliminary issue to be determined.
- 4.3 If an appeal is referred to a quorum of the Board, and the majority of the quorum of the Board determines that the decision in issue does not significantly affect the education, health or safety of a student, that the appeal was commenced out of time without reasonable excuse, or that the student and/or parent has refused or neglected to discuss the decision under appeal as directed by the Board, the appeal will be dismissed. That decision is final and may not be appealed.
- 4.4 If an appeal is referred to a quorum of the Board, and the majority of the quorum of the Board determines the appeal does involve a decision that significantly affects the education, health or safety of a student, was filed in time or with reasonable excuse, or that the person bringing the appeal did not fail to engage in conflict resolution with staff, the matter will proceed to consideration by the Board as outlined in this procedure.

#### **5.0 Hearing Procedure**

- 5.1 The Board may, in its absolute discretion, determine whether an appeal shall be considered on the basis of written submissions or an oral hearing. The Board may determine rules of procedure, including imposing limits on time for presentations, the ability to call or question witnesses, and the receipt of evidence, whether sworn or unsworn, to facilitate the disposition of the appeal, and may adjourn the proceeding at the request of any party where there are reasonable grounds to do so.
- 5.2 The Board may establish a schedule for the exchange of documents or written submissions. 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, school district staff and the appellant must provide each other with any documents or information they intend to rely on for the appeal.
- 5.3 The Board may be advised in camera by legal counsel and by the Secretary Treasurer or designates in relation to the appeal provided they have not had prior involvement in the matter under appeal.
- 5.4 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.

- 5.5 The Board may make any interim decision it considers necessary pending the disposition of the appeal.
- 5.6 The Board may hear an appeal despite any defects in form or technical irregularities and may relieve against time limits.
- 5.7 Section 11 appeals are confidential. Appeals and decisions on appeals will be held in closed session. Information and documents about appeals may only be disclosed in accordance with the School Act, Freedom of Information and Protection of Privacy Act, and applicable Board policy.
- 5.8 The Board will ensure that each party has received all documentation provided by the other party prior to the hearing.
- 5.9 The Board may invite submissions from any person whose interests may be affected by the Board's decision on the appeal.
- 5.10 At the end of each party's submission, trustees may ask questions.
- 5.11 When questioning by trustees is complete, the parties leave, and the Board meets to decide how it will dispose of the appeal.
- 5.12 The Board must make a decision within 45 days from receiving the Notice of Appeal.
- 5.13 The Board's decision is final, subject to any rights to appeal under the School Act.
- 5.14 The Board may reconsider its decision only:
- 5.14.1 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;
  - 5.14.2 the decision contravenes law;
  - 5.14.3 a reconsideration is directed or requested in connection with an appeal of the board's decision under School Act s.11.1.
- 5.15 The parties will be promptly notified of the Board's decision. Written reasons will be provided as soon as practicable.
- 5.16 Appellants who have appeal rights under School Act s.11.1 will be advised of those rights when or before they are notified of the board's reasons for decision.

## **6 REPEAL**

School District No. 39 (Vancouver) Board of Education By-law No. 2 - Section 11 Appeal Procedure and School District No. 39 (Vancouver) Board of Education Policy 13 Appeals Procedure are repealed.

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Adopted:                      October 30, 2023