

Policy 13

APPEALS PROCEDURE BY-LAW

Bylaw No. 2

Whereas the School Act states that

“Where the decision of an employee of a Board significantly affects the education, health or safety of a student, the parent/guardian of the student or the student may, within a reasonable time from the date that the parent/guardian or student was informed of the decision, appeal that decision to the Board.”

And,

“For the purposes of hearing appeals under this section, a Board shall, by bylaw, establish an appeal procedure.”

And, further

“A Board may refuse to hear an appeal under this section unless the appellant discussed the decision under appeal with one or more persons as directed by the Board.”

Therefore the Board of Education, School District No. 79 (Cowichan Valley), enacts the following Bylaw prescribing procedures for the disposition of any appeals arising from the application of the provisions of the School Act.

Decisions Which May Be Appealed

1. The Board of Education recognizes the right of a student and/or parent/guardian of a student under Section 11 of the School Act to appeal a decision of an employee of the Board where such decision significantly affects the education, health or safety of the student.
2. The following decisions shall be deemed to significantly affect the education, health or safety of a student:
 - 2.1 Disciplinary suspension from school for a period in excess of five (5) consecutive days or one that could prevent a student from fulfilling graduation requirements;
 - 2.2 Refusal to offer an educational program to a student who is sixteen (16) years of age or older;
 - 2.3 Requirement to complete all or part of an educational program by distributed learning as a disciplinary measure, where space and facilities are available in a school;
 - 2.4 Exclusion from school for a health condition;
 - 2.5 Failure to provide an IEP to a student with special needs as defined per Ministerial Order No. M150/89;
 - 2.6 Failure to offer to consult with a parent/guardian regarding the placement or IEP of a student with special needs;

2.7 Denial of an educational program by failure to take action in respect of a complaint of bullying, intimidation, harassment, or threat or use of weapons or violence by one or more students against another student; and

any other decision that, in the opinion of the Board, significantly affects the education, health or safety of a student.

3. A “decision” for the purposes of this bylaw includes the failure of an employee to make a decision. “Parent/Guardian” is as defined in Section 1 of the School Act.

Refusal to Hear Appeals

4. The Board may refuse to hear an appeal where:
- 4.1 The appeal has not been initiated within a reasonable time of the decision being appealed;
 - 4.2 The student or parent/guardian appealing the decision has not first discussed the decision being appealed with any persons identified by the Board; or
 - 4.3 The Board determines that the decision does not significantly affect the student’s education, health or safety.

Appeal Procedure

5. An appeal must be submitted to the Board in accordance with this Bylaw.

Before filing an appeal

6. Before an appeal is filed, 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. In this regard, the Board expects, at a minimum, the following steps will be taken before an appeal is filed:

Step 1

The person(s) will express the concern(s) to the individual involved. Both parties may have an advocate and will attempt to resolve the concerns. In some circumstances, the principal may be asked to attend a meeting to assist the person(s) with Step 1.

Step 2

The person(s) will meet with the principal/supervisor or designate and may bring an advocate. The principal/supervisor shall carry out an appropriate review and report to all parties concerned and attempt to resolve the concern(s).

Step 3

The person(s) will submit to an Assistant Superintendent a written statement to outline the concern with recommendation(s) for resolution of the concern(s).

An Assistant Superintendent will review all information relevant to the matter:

- Contact the concerned person(s)
- Attempt to resolve the concern to the satisfaction of the person(s) with the complaint and inform the person(s) involved.
- Include in writing, the action which will take place to resolve the concern.

Time Limit for Filing Appeal

7. An appeal must be commenced within thirty (30) days of the date the student or parent/guardian was informed of the decision being appealed from, unless the student or parent/guardian initiating the appeal (the “Appellant”) can demonstrate that there are reasonable grounds to extend this time limit.

Filing an Appeal

8. An appeal shall be initiated by filing a notice of appeal with the Secretary-Treasurer to the Board.
9. The notice of appeal shall include the following information:
 - 9.1 The name, address, email address (if applicable), and telephone phone number of the Appellant, including the student’s name, school, grade level, and home room teacher;
 - 9.2 A description of the decision that is being appealed and its effect on the education, health or safety of the student;
 - 9.3 The name of the employee who made the decision;
 - 9.4 The date the Appellant was informed of the decision being appealed;
 - 9.5 The grounds of the appeal and the action requested; and
 - 9.6 The steps that the Appellant has taken to discuss the matter directly the person who made the decision or with other school or District employees.
10. Where the Appellant is a student under the age of nineteen (19) years, the Board shall provide a copy of the notice of appeal to the parent/guardian(s) of the student.
11. Upon receiving the notice of appeal, the Secretary-Treasurer will notify the Board, the appropriate Assistant Superintendent and the employee whose decision is being appealed, of the appeal.

Pre-Hearing Procedure

12. The Secretary-Treasurer or his/her designate is responsible for reviewing the notice of appeal and for communicating with the Appellant and others on matters related to the appeal.
13. Where, in the opinion of the Secretary-Treasurer, the appeal does not comply with the requirements for an appeal established under this Bylaw or Section 11 of the School Act (e.g. it is not a decision of an employee which significantly affects the student’s education, health or safety; the appeal was not filed in a timely manner), the Secretary-Treasurer shall refer the preliminary matter to the Board for a determination.
14. The Board may ask for written submissions from the Appellant and/or the appropriate Assistant Superintendent on the preliminary matter.
15. The Board shall notify the Appellant and the appropriate Assistant Superintendent of any preliminary decision it may make, including a refusal to hear the appeal.
16. Where, in the opinion of the Secretary-Treasurer, there is no preliminary matter to be determined, arrangements will be made for the hearing of the appeal by the Board.
17. Prior to the date established for the hearing of the appeal, the appropriate Assistant Superintendent will provide a report to the Board regarding the matter under appeal. The Appellants and the employee whose decision is being appealed shall be entitled to a copy of this report.
18. The Board may provide directions for the hearing of the appeal.

19. The Board may, prior to the Board hearing the appeal or at any other time, require the Appellant discuss the decision being appealed with persons directed by the Board.
20. The Board may establish a committee of one or more persons who have not been involved in the decision under appeal, for the purpose of investigating an appeal and the committee shall report to the Board as directed.

Board Hearing

21. The Board may hold an oral hearing in respect of the appeal and/or may decide the appeal based upon written submissions. Oral hearings will be held in a closed session and the Superintendent of Schools shall act as an advisor for the Board.
22. The Board may make any interim decision it considers necessary pending the disposition of the appeal.
23. The Board shall advise the Appellant, the appropriate Assistant Superintendent and the employee whose decision is being appealed, whether the appeal will be determined based upon written submissions and/or an oral hearing and on any directions established for the hearing of the appeal, including the time frame for oral and/or written submissions.
24. Where the Board decides to hold an oral hearing, the Appellant, the appropriate Assistant Superintendent and the employee whose decision is being appealed, shall be provided with written notice of the date, time and location of the hearing.
25. The Board may ask questions of any person appearing at the appeal hearing.
26. The Board may adjourn the hearing at any time to obtain additional information where it considers such information would assist the Board in determining the appeal.
27. During the appeal process, the Appellant may be accompanied by an advocate, support person and/or interpreter/translator.

Decision

28. The Board shall make any decision that it considers appropriate in respect of the matter that is being appealed and any preliminary matters.
29. The Board shall decide the appeal based on the oral and/or written submissions presented to it and any other information obtained by the Board in accordance with this Bylaw.
30. The Board must make a decision as expeditiously as possible and within 45 days from the date the notice of appeal was received in an acceptable form.
31. The Board shall promptly notify the Appellant, the Superintendent and the employee whose decision was appealed of the decision of the Board and shall provide written reasons for the decision as soon as practicable.*

*[*An Appellant may have a right to appeal a decision of the Board made under this Bylaw. For more information contact the Student Appeals Branch of the Ministry of Education.]*

READ A FIRST TIME this _____ day of _____, 2018.

READ FOR A SECOND TIME this ^t _____ day of _____, 2018.

READ FOR A THIRD TIME, passed, and adopted this _____ day of _____, 2018.

Chairperson of the Board

Secretary-Treasurer

I HEREBY CERTIFY this to be a true and original of School District No. 79 (Cowichan Valley) Appeals Procedures Bylaw No. 2 adopted by the Board the _____ day of _____, 2018.

Secretary-Treasurer

Legal Reference: School Act, Section 11