

QUESTIONS AND ANSWERS

Section 11.1 Appeals to a Superintendent of Achievement

1. Section 11.1 Student Appeals – What are they?

1.1 What is the new appeal process for parents and students in B.C.?

- Since 1992, the *School Act* has included a provision for a student or parent to appeal a decision of an employee of a Board. Section 11 (2) of the *School Act* provides that “if a decision of an employee of a board significantly affects the education, health or safety of a student, the parent or the student may, within a reasonable time from the date that the parent or student was informed of the decision, appeal to the board.”
- Until the Spring 2007, a decision of a Board made under Section 11 was final. Beyond this, parents could make a complaint to the Ombudsman, the Human Rights Tribunal or seek remedy in the courts.
- An amendment was introduced in the Spring of 2007 that allowed parents or students to appeal a decision of a Board of Education (made under Section 11) to a Superintendent of Achievement.
- This amendment - Bill 20, the *School (Student Achievement Enabling) Amendment Act, 2007* - provides parents and students with a further avenue of appeal of a Board of Education’s (BOEs) decision to a Superintendent of Achievement.

1.2 When will the legislation for the new appeal process come into effect?

The legislation comes into force on March 3, 2008.

That means there are approximately four weeks in which the BC Confederation of Parent Advisory Councils and the BC School Trustees Association will have an opportunity to work with their members and address implementation of the legislation in local school districts.

During this time, Ministry staff will be working with mediators, adjudicators and school district staff to build capacity in relation to Section 11.1 appeals by:

- Helping with implementation issues; and
- raising awareness on how the new appeal process will work.

1.3 When will parents and students be able to begin submitting their appeals to the Office of the Registrar?

The legislation comes into force on March 3, 2008. At this time, the Office of the Registrar will begin to accept appeal submissions from parents and students.

1.4 Are appeals retroactive to when the legislation was introduced in March 2007?

No. There is a transitional clause in the legislation that stipulates that the Office of the Registrar cannot accept appeals of Board decisions that were rendered prior to March 3, 2008.

That means that if a board of education delivers a decision to a parent or student on March 2, 2008, that decision cannot be appealed.

1.5 Why was a new appeal process necessary?

It is best for everyone involved when the concerns of parents and students can be addressed at the local school level. The Ministry of Education encourages parents and students to work with their school district to address these concerns. In fact, most matters are resolved between parents and teachers, sometimes with the involvement of the school principal and the district superintendent. It is only rarely that matters cannot be resolved at the school level, and result in an appeal to a Board of Education.

In almost all circumstances where an appeal is heard under Section 11, the Board of Education handles the matter fairly and even-handedly.

However, where a parent or student is not satisfied with the outcome of a Board of Education appeal decision, this legislation provides them with the opportunity to initiate a new appeal to a Superintendent of Achievement.

Superintendents of Achievement have a wealth of knowledge and experience. This legislation allows the Superintendents of Achievement to apply their expertise to decisions they will make when carrying out their duties as an independent decision-makers under the section 11.1 appeal process.

2. Student Appeals Branch

2.1 What is the Role of the Student Appeals Branch?

The Student Appeals Branch is a quasi-judicial body that was newly created to develop and facilitate appeal processes under section 11.1 of the *School Act*. The Branch operates as the administrative arm of the Section 11.1 appeals process and provides administrative support to the Superintendents of Achievement in their role as statutory decision-makers.

2.1 What is the Role of the Office of the Registrar?

The Office of the Registrar is contained within the Student Appeals Branch, and was created specifically to implement and support the new appeals process. Upon receiving an Appeal Application, the Office of the Registrar will start an appeal file, assign an appeal number, and notify the appellant that his/her appeal has been received.

The Office of the Registrar can provide general information on how the appeal process works and how to access forms and information online. However, the Office of the Registrar cannot assist either party (appellant or board of education) with the preparation of their documents or with their appeal case files.

3. Superintendents of Achievement

3.1 Why were Superintendents of Achievement introduced?

The position of Superintendent of Achievement was introduced in March 2007 to help boards of education reach their performance goals.

3.2 What is the role of a Superintendent of Achievement?

Superintendents of Achievement have a dual role to play - their mandate includes providing support to Boards of Education (to improve student achievement) and developing leadership at the district level. As well, they are responsible for reporting and making recommendations on improving student achievement, early learning and literacy programs within school districts.

However, the Superintendents of Achievement, as statutory decision-makers, also play an important role in the section 11.1 appeal process. In this role, the SOAs have the same authority as an administrative tribunal. When appealing to a Superintendent of Achievement under section 11.1, parents and students can be confident that the issue under appeal will receive further consideration by someone whose expert knowledge and experience in the education system will be brought to bear on their case.

3.3 What Powers does a Superintendent of Achievement Have?

A Superintendent of Achievement, in his/her role as a statutory decision-maker may do one of three things upon receiving an appeal:

- Dismiss all or part of an appeal;
- Refer a matter to mediation; or
- Refer a matter for adjudication.

As well, a Superintendent of Achievement may suspend the operation of a board of education's decision for a specified length of time and may attach certain conditions to suspension.

3.4 Can a Superintendent of Achievement delegate his or her duties?

No. A person who has been delegated a duty by law cannot sub-delegate that duty, without the legislated authority to do so. A Superintendent of Achievement does not have that authority.

4. Grounds for Appeal

4.1 Under what circumstances can a parent or student appeal a board of education decision?

Not all appeal decisions made by a Board of Education can be appealed to a Superintendent of Achievement, under section 11.1 of the *School Act*. Before it can be appealed to a Superintendent of Achievement, a Board decision must:

- (a) have been made by an employee of a Board of Education;
- (b) significantly affect the education, health or safety of a student; and
- (c) fall within the allowable grounds as listed in the Regulation

4.2 What issues fall within the scope of the Regulation?

Issues that fall within the scope of the Regulation include decisions made by a Board of Education employee regarding:

- expulsion from an educational program;
- suspension from an educational program;
- suspension from an educational program where no program is made available;
- distributed learning requirement as part of disciplinary matter;
- consultation about placement in an IEP;
- assessment for purposes of obtaining an IEP;
- conduct (bullying, suspension, expulsion);
- exclusion due to medical condition that endangers others; and
- fees and deposits (hardship policy).

4.3 What issues fall *outside* the scope of the Regulation?

Issues that fall outside the scope of the Regulation include decisions made by Boards of Education regarding:

- language of instruction;
- parent volunteers;
- holiday celebrations;
- examination of student records;
- enrolment in an educational program;
- entry to an educational program;
- support services for schools;
- enrolment in a francophone educational program;
- priority of enrolment;
- provision of francophone educational programs;
- school personnel;
- teacher collective agreements;
- establishment of Boards of Education;
- trustee qualifications;
- elections;
- Boards of Education – corporate status and meetings;
- establishment and closure of schools;
- management of schools and property;
- catchment areas;
- school calendar;
- extended day and year round schooling;
- achievement contracts; and
- support services.

4.4 How were the grounds for appeal developed?

To develop the grounds for appeal, the Ministry of Education conducted cross-jurisdictional research to learn about appeals processes in other provinces.

As well, the Ministry consulted extensively with key stakeholders, including the Education Advisory Council, the BC School Trustees Association, the BC Confederation of Parent Advisory Councils and parent groups.

4.5 Do other jurisdictions have a similar appeal process in place?

Ontario has an appeal process in place.

New legislation in Ontario, which will be in force in February 2008, will introduce an appeal process that is similar, but somewhat more limited in scope, than B.C.'s.

4.6 How much will the new appeal process cost?

Although we cannot accurately predict the number of appeals that will be submitted from parents and students, general administrative and system costs are expected to fall within a typical government range for similar operations.

5. The Appeals Process

5.1 What is the process for submitting a section 11.1 appeal to a Superintendent of Achievement?

To initiate an appeal to a Superintendent of Achievement, a parent or student must file an Appeal Application (available online or through the Office of the Registrar) with the Office of the Registrar. The Appeal Application includes:

- *Notice of Appeal*
- Copy of BOE's decision (on the section 11 appeal)

The Appeal Application must be filed within 10 business days after receiving the BOE's decision.

5.2 What happens to an appeal if the Appeal Application is not filled out correctly?

The Office of the Registrar reviews all Appeal Applications to ensure they are complete. If an application is incomplete, the Office of the Registrar will contact the appellant for the missing information.

An application will not be considered by the Superintendent of Achievement unless it contains all the required information.

5.3 What process is followed after an Appeal Application is filed?

Upon receiving the Appeal Application, the Office of the Registrar will:

- Enter the information into the Appeal Information Management System (AIMS);
- Assign a case number to the appeal;
- If the application is incomplete, contact the appellant to obtain the missing information;
- Notify the respondent (board of education) that their decision is being appealed to a Superintendent of Achievement;
- Request that the respondent submit a Respondent Notice Form to the Office of the Registrar; and
- Ensure full disclosure – the Administrative Tribunals Act requires that each party in an appeal is provided with all materials the other party has submitted to the Superintendent of Achievement.

As soon as practicable after a request for an appeal is filed, the OOR will provide both parties to the appeal with a copy of the records respecting the matter under appeal. Natural justice dictates that both parties to an appeal are entitled to have a copy of the submissions the other party provides as the submissions and any supporting documents that form the evidence in the appeal process. Both parties have the right to prepare a case responsive to the other party's evidence. Submissions received from both parties and additional information obtained by the SOA in connection with the appeal, may also be disclosed in the course of the appeal.

5.4 What is the purpose of the Respondents Notice Form?

The Respondents Notice Form will provide a BOE that is a party to the appeal with an opportunity to respond to the appellant's Appeal Application.

5.5 What is the process for requesting that a Superintendent of Achievement suspend a board of education's decision

An appellant may request, in writing to the Office of the Registrar, that a Superintendent of Achievement suspend the decision of the board of education until the matter is heard.

A Superintendent of Achievement may ask the board of education to provide written reasons why the decision should not be suspended. After considering the parties' submissions the Superintendent of Achievement may:

- Refuse the appellant's request; or
- Order that all or part of the board of education's decision be suspended, pending the outcome of the appeal.

5.6 Can an appellant maintain communications with the BOE whose decision is under appeal?

Appellants and boards of education are encouraged to continue to communicate in an attempt to resolve their dispute independent of the formal appeal process.

Appellants may continue to negotiate and discuss the dispute with their board of education up to the point at which the Superintendent of Achievement or adjudicator has reached a decision.

5.7 Is an appellant entitled to an oral hearing under the new appeal process?

In order to minimize the cost for all parties, appeals may be heard based on the documents submitted by the parties involved.

In some cases, an adjudicator may determine that an oral hearing is necessary.

5.8 Can an appellant withdraw from an appeal?

At any point in the appeal process, an appellant may formally withdraw in writing or by filing a Notice to Withdraw Form with the Office of the Registrar.

5.9 Is the decision of the SOA and/or the Adjudicator eligible for further appeal?

Decisions reached by Superintendents of Achievement and adjudicators are final and binding, except in very rare circumstances where there has been an error in fact or law.

If this occurs, one or both of the parties may seek a judicial review of the decision.

6. Mediation and Adjudication

6.1 How are mediators and adjudicators chosen?

The Office of the Registrar will maintain a roster of mediators and adjudicators, from which cases will be assigned.

Mediators must be members of the BC Mediator Roster Society or be able to demonstrate that they have experience and training equivalent to the Society's membership requirements.

Adjudicators must have either:

- A background in the K-12 education system and training through the Office of the Registrar in legal processes and procedures; or
- A legal background and training through the Office of the Registrar in education issues related to the Section 11 appeal process.

6.2 What is the role of a mediator?

A Superintendent of Achievement may refer appeals to mediation or to adjudication. Mediation is an informal process for resolving disputes.

A mediator is a neutral person, appointed by the Office of the Registrar to assist the parties in reaching a resolution that is mutually acceptable. A Mediator facilitates the negotiation process by maintaining the channels of communication, articulating the interests of each party, identifying the issues where there is agreement and, where appropriate, making recommendations on disputed issues. The Mediator is trained to help people settle conflicts collaboratively and has no statutory decision-making authority.

6.3 What is the role of an adjudicator?

If a dispute is not settled through mediation, the Superintendent of Achievement will refer the appeal to adjudication.

An Adjudicator is a neutral person who is trained to weigh the evidence in a dispute and make a decision that is fair and based on the merits of the case. Adjudicators have statutory decision-making powers under s. 11.2 of the *School Act*, and their decision is final and binding on the parties to an appeal.

6.4 Will the Ministry of Education pay for mediation or adjudication?

The Ministry will cover the costs of mediation or adjudication, but will not cover travel, accommodation or legal costs.