



A User's Guide for

# The Appeal Process

As Provided for In  
*The New Brunswick Education Act*

Department of Education  
Student Services  
January 2004

## **Acknowledgements**

This document was prepared by the Department of Education with contribution from the New Brunswick School Superintendents' Association

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## INTRODUCTION

The *Education Act* gives parents, guardians and, in some cases, students the ability to appeal specific decisions made by educators in the public school system.

While the *Education Act* allows parents/guardians and students to appeal decisions made by educators, all concerned should make reasonable efforts to resolve issues as a first course of action. Initial steps may include continuing discussions between the parties involved, discussions with appropriate supervisory personnel, negotiations and mediation. These processes should be tried before formal appeals are filed.

Parents or guardians may contact a school administrator or district office personnel to seek a resolution or learn how to make a formal appeal. The appeal process is a final step after all other efforts have failed to resolve an issue; then a formal review of the evidence related to the situation is required.

The appeal process is designed to be open and fair. Appeals will be heard as quickly as possible, preferably within ten days of receiving notice. In addition, although not intended to be viewed as a legal procedure, the appeal process does allow for parents to consult with other individuals, advocates and lawyers. Expenses for such, if incurred, remain the responsibility of the parent.

Should parents, guardians or students believe that the appeal process was not conducted in a fair and proper manner, then further assistance may be sought from the Ombudsman's Office and/or the Court of Queen's Bench.

This document explains the procedures to be followed to ensure that the appeal process is fair and equitable to all parties concerned.

## SEEKING A RESOLUTION

The *Education Act* allows parents, guardians and students to appeal decisions made by educators, but all concerned should make reasonable efforts to resolve the issue prior to an appeal. The school principal or district office personnel may help resolve issues.

## SCHOOL APPEALS

### Purpose

The purpose of this guide is to help parents, guardians, students and educators understand and prepare for an appeal hearing under the *Education Act*.

### Scope

This guide relates to decisions made by educators that the student or parent/guardian may appeal. The decisions that may be appealed concern:

- Suspension from school;
- Suspension from transportation to school;
- Student placement;
- Access to student records

as described in the following table.

Action	Right to Appeal	Process
<p><b>(A)</b> <b>Suspension from school</b></p>	<p><i>Education Act</i>, paragraph 24(4)</p> <p>“the parent of a pupil or an independent pupil may, where the pupil is suspended for more than 5 school days in a school year, appeal the most recent suspension from attendance at school ...”</p> <p>There is no right to appeal when the suspensions add up to 5 days or less during a school year.</p>	<p>1. A request for a formal appeal is made within 10 days of notice of suspension.</p> <ul style="list-style-type: none"> <li>▪ When the suspension to be appealed was given under the authority of the principal (or designate), the appeal is initiated by notifying the principal. The appeal will be heard by the school appeals committee.</li> <li>▪ If the suspension was given under the authority of the superintendent, the appeal is initiated by notifying the superintendent. The superintendent decides whether the appeal will be heard by the school appeals committee <u>or</u> the district appeals committee.</li> </ul>
		<p>2. When an appeal is heard by the school appeals committee and a parent/guardian or student or the educator involved is dissatisfied with the outcome, a second appeal may be made. This will be heard by the district appeals committee.</p>

		The request for a hearing by the district appeals committee is made to the superintendent within 5 days of receiving the school appeals committee's decision.
		<b><i>The district appeals committee's decision is final.</i></b>

#### Appealing a suspension from school under s.24 of the *Education Act*

When can you appeal?	What can you appeal?	To whom do you appeal?
<p>The right to appeal begins as soon as suspensions add up to 6 or more days in a school year.</p> <p>(Suspensions totalling less than 6 days in a school year cannot be appealed.)</p>	<p>The <u>last</u> suspension that brought the total number of days suspended during the school year to 6 days or more can be appealed.</p> <p>It doesn't matter how many consecutive days this last suspension is (i.e. when a student has been suspended for 5 days during the school year and he/she receives one more suspension, even if it is only a one-day suspension, this last suspension can be appealed).</p>	<p>If the suspension was handed-out by the principal (or designate), notice of the intent to appeal should be directed to the principal within 10 teaching days.</p> <p>If the suspension was handed-out by the superintendent, notice of intent to appeal should be directed to the superintendent. He/she will decide whether the hearing will be before the school appeals committee or the district appeals committee.</p>

<b>(B) Suspension from school vehicle transportation</b>	Pupil Transportation Regulation 2001-51, subsection 6(4), under the <i>Education Act</i> . The parent of a pupil or an independent pupil may appeal a suspension from being conveyed for more than five school days in a school year. There is no right to appeal when the suspensions add up to 5 days or less during a school year.	<i>Same process as above for suspension from attendance at school.</i>
<b>(C) Placement</b>	<i>Education Act</i> , subsection 11(3) The parent of a pupil or an independent pupil may appeal a placement of pupils in classes, grades, programs, services and schools according to the needs of the pupil and the resources of the school district..  <i>Education Act</i> , Section 12: “Programs and Services for Exceptional Pupil”	1. Request is made to the superintendent within 10 days of receiving notice of the decision concerning placement.  (Superintendent decides whether to refer to school appeals committee or district appeals committee.)
<b>(D) Access to student records</b>	<i>Education Act</i> , subsection 54(5) “a person who has been denied access to a record may appeal”	<i>Same as placement appeals.</i>

The sections of the *Education Act* cited above are included as an appendix to this document.

Although the response will be different for each of the circumstances allowing for an appeal, the appeal process for each is similar. This guide outlines the steps one must follow in pursuing a student appeal.

## General Considerations

- 1) Under the *Education Act*, only a school principal (or vice-principal where so authorized) or the superintendent may suspend a student for disciplinary reasons.
- 2) A parent or guardian must make the appeal for a student less than 19 years of age. A younger student may appeal if he or she is living independently from parent(s)/guardian(s). Students who are 19 years or older may appeal on their own behalf.
- 3) *The Education Act*, subsections 24(4), 11(3), 54(5), and the *School Administration Regulation (97-150)*, sections 39-43 and the *Pupil Transportation Regulation (2001-51)*, section 6 outline the appeal rights and procedures.
- 4) The appeal process must be accessible, straightforward and fair.
- 5) Persons involved in an appeal process should be aware of the time limits prescribed by the *Education Act* and described in this guide.
- 6) A student, parent/guardian or educator may choose to talk to and get help from an advocate, a lawyer or other person.
- 7) Persons involved in an appeal must ensure that all relevant information and documents about the pupil's suspension and basis for appeal are provided to the appeals committee and to each other. [*School Administration Regulation (97-150)*, ss.43(4)]
- 8) A school appeals committee is made up of a parent chosen from a list of names submitted by the Parent School Support Committee, a teacher and one other person, all of whom are appointed by the superintendent.
- 9) Anyone involved in an appeal or a family associate must not be a member of the school appeals committee. [*School Administration Regulation (97-150)*, ss.40(5)]
- 10) A district appeals committee may consist of the District Education Council (DEC) as a whole, three or more DEC members, or 3 persons appointed by the DEC in accordance with section 42 of Regulation 97-150 of the *Education Act*.
- 11) A person who makes a decision at one level of the appeal process should not be directly involved in the appeal process at another level.
- 12) The school appeals committee or district appeals committee should promptly let the student, parent(s)/guardian(s), and educators know of each step in the process and also provide them with the information necessary to respond fully.



## SEEKING A RESOLUTION

The *Education Act* allows parents and students to appeal decisions made by educators but this does not preclude meaningful discussion occurring which is aimed at seeking a resolution. The school principal or a district supervisor of instruction, made available through the office of the superintendent, may be helpful with discussions that may lead to a resolution. These discussions should occur prior to an appeal being made.

## THE APPEAL PROCEDURE

STEP	ACTION	TIME LIMIT
<p>▶ STEP 1</p>	<p>The school principal (or vice-principal where so authorized) or the superintendent informs the student and the parent or guardian of the decision regarding bus suspensions and suspensions from school attendance. Either the principal or the superintendent must also outline the reasons for the decision, the right of appeal and the time limit for an appeal. A parent or independent pupil can only appeal suspensions from attendance at school, not suspensions from school-related activities or other such privileges.</p>	<p>When a pupil is suspended from attendance at school, the parent of the pupil or the independent pupil must, on the date of the decision, be notified, both verbally and in writing, of the suspension.</p>
<p>▶ STEP 2</p>	<p>The school appeals committee hears all first-level appeals respecting bus suspensions and suspensions from school attendance by the principal (or vice-principal where so authorized). <b>It should be noted that, in accordance with subsection 24(4) of the <i>Education Act</i> a pupil's suspension from school attendance may be appealed only if the pupil has been suspended from school attendance more than five days in the same school year. Additionally, in accordance with Regulation 2001-51 6(4), only bus suspensions of more than five school days in a school year may be appealed. Only the most recent bus suspension may be appealed.</b> At the request of the superintendent, the school appeals committee will also hear first-level appeals respecting placement, decisions restricting access to the pupil records and suspensions from school attendance for periods longer than five days given under the authority of the superintendent. The principal must inform all parties of the place, date and hour of the hearing. Prior to the hearing, each party must ensure that all relevant information and documents respecting the suspension of the pupil and the basis for the appeal are provided to the school appeals committee and to each other. Any decision of a school appeals committee may be appealed to the district appeals committee.</p>	<p>A person entitled to appeal the suspension of a pupil from school attendance by the principal (or vice-principal where so authorized) or the suspension of a pupil from school vehicle transportation must initiate the appeal by notifying the principal of the appeal, in writing, within ten teaching days after receiving the notice of suspension. (See <b>bold</b> print for eligibility requirements regarding appeals for suspension from school attendance and bus transportation.) The school appeals committee must hear the appeal as soon as is practicable. The school appeals committee must make a decision regarding the appeal and forward it to the concerned parties within five teaching days after the hearing. The decision must be in writing and must include the reasons which formed the basis of the judgment. If either party is dissatisfied with the decision of the school appeals committee, the decision may be appealed to the district appeals committee by giving notice to the superintendent, in writing, within five teaching days following receipt of the decision.</p>

STEP	ACTION	TIME LIMIT
<p>▶ STEP 3</p>	<ul style="list-style-type: none"> <li>• The district appeals committee hears appeals in circumstances where: a decision made in accordance with section 11 or 12 of the Act in respect of the placement of a pupil,</li> <li>• a pupil is suspended under subsection 24(2) of the Act, or</li> <li>• access to pupil records is denied under section 54 of the Education Act.</li> </ul> <p>The district appeals committee also hears, at the request of either party, second-level appeals on decisions made by school appeals committees. The superintendent must inform all parties of the place, date and hour of the appeal. Each party shall ensure that all relevant information and documents respecting the decision with regard to placement, suspension of the pupil or denial of access to pupil records and the basis for the appeal are provided to the district appeals committee and to each other prior to the hearing. <b>Decisions made by the district appeals committee are final.</b></p>	<p>Appeals regarding placement, suspension from school attendance of more than five days and denial of access to pupil records must be directed to the superintendent and must be made within ten teaching days after being notified of the decision. The superintendent may direct that the appeal be heard first by a school appeals committee, or the superintendent may convene a district appeals committee to hear the appeal. School appeals committee decisions may be appealed to the district appeals committee by giving notice to the superintendent, in writing, within five teaching days after receiving the decision. The district appeals committee must make a decision concerning the appeal and inform all persons involved in the appeal. This must be done within five teaching days after the hearing. <b>The district appeals committee's decision is final.</b></p>

## An Appeal Checklist for the Person Making the Appeal



### Pre-hearing Checklist

- \_\_\_\_\_ Contact the school or the district office to get copies of document(s) regarding your case, including documentation that applies to the decision being appealed. Gather any other documents that may help your case.
- \_\_\_\_\_ Review the appropriate section of the *Education Act* and Regulations in the appendices of this document.
- \_\_\_\_\_ Consider consulting another person for advice. This may include members of advocacy/support groups, a friend, or a lawyer. If you wish, you may arrange for that person to go with you to your hearing.
- \_\_\_\_\_ Speak to persons who may be able to help your case. Find out whether they will
  - be witnesses at the appeal hearing,
  - provide a statement in writing, or
  - do both.
 (*Note: anyone may refuse to be a witness.*)
- \_\_\_\_\_ Meet with any representative(s) that you have invited for support before the hearing.
- \_\_\_\_\_ Meet with your witness(es) before the hearing.
- \_\_\_\_\_ Review documents before the hearing.
- \_\_\_\_\_ Write a summary of the facts and issues of your appeal.  
Note the decision you believe the appeals committee should make.  
Describe the reasons for the desired outcome.
- \_\_\_\_\_ Be sure that you, your representative(s) and/or witness(es) know the time and location of the hearing.

NOTE: All parties are asked to sign a Declaration of Confidentiality of the appeal hearing.



### Hearing Checklist

- \_\_\_\_\_ Arrive at least 30 minutes prior to your hearing to allow both parties to discuss the documents.
- \_\_\_\_\_ Make your opening statements clearly and concisely. In point form, explain your reason(s) for appealing or responding. If you are presenting witnesses or documents, explain clearly how this evidence will help your case.
- \_\_\_\_\_ Present your documents and witness(es) in the same sequence as your arguments.
- \_\_\_\_\_ Be polite and clear when speaking and when questioning the other party or witness(es).
- \_\_\_\_\_ Summarize the points made in your opening statement and in your evidence (witness(es) and documents).

## **Complaints About the Appeal Process or Hearing**

Parents/guardians or independent students who disagree with the decision of the District Appeals Committee or think the process is unfair may seek further assistance.

### **Ombudsman's Office**

Parents/guardians or independent students who believe that the appeal process was not conducted in a fair and proper manner may file a complaint in writing with the New Brunswick Ombudsman's Office at the following address:

Office of the Ombudsman  
767 Brunswick Street  
P.O. Box 6000  
Fredericton, NB  
E3B 5H1

Telephone: (506) 453-2789  
Fax: (506) 453-5599  
Email: [nbombud@gnb.ca](mailto:nbombud@gnb.ca)

### **Judicial Review**

Parents/guardians or independent students who find the decision of the District Appeals Committee unacceptable may make an *Application for Judicial Review* to The Court of Queen's Bench of New Brunswick. A person seeking a judicial review in the courts will usually need the help of a lawyer to complete this step.

**APPENDIX I**

**APPEALS PROCESS  
(EXAMPLES OF FORMS)**

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**EDUCATION ACT**

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## APPEALS PROCESS - DOCUMENT A

**NOTICE OF DECISION**  
**Regarding suspension, placement, or access to student records**

1. You are hereby informed of the following decision pertaining to: \_\_\_\_\_  
 (name of student) which may be subject to appeal under the *Education Act*:

Date of decision \_\_\_\_\_ Decision made by:  superintendent  
 principal  
 other authorized educator

Details of decision: \_\_\_\_\_

\_\_\_\_\_

Reasons for decision: \_\_\_\_\_

\_\_\_\_\_

2. You are entitled to appeal this decision if you are:
- the parent/guardian of the pupil
  - the pupil, if you are 19 years old, or less than 19, but living independently of your parents, by writing to \_\_\_\_\_  
 superintendent / principal

3. Should you decide to appeal this decision, you have the right to consult with and be accompanied at the hearing by an advocate, friend, legal counsel or by another person. In your request for an appeal, please indicate your intentions in this regard.

4. If you wish to appeal, a request for an appeal hearing must be received no later than:  
 \_\_\_\_\_  
 (10 teaching days after the decision)

5. Upon receipt of a request for an appeal hearing, all documentation relevant to the appeal shall be forwarded to you.

6. Signed \_\_\_\_\_ Name \_\_\_\_\_  
 (print/type)  
 Date \_\_\_\_\_ Position \_\_\_\_\_  
 (print/type)

Distribution: Parent/Guardian  
 Superintendent  
 Educator-Decision-Maker

**REQUEST FOR AN APPEAL TO THE SCHOOL APPEALS COMMITTEE**  
*(A request for an appeal should be made in writing by letter or completion of this form.)*

Date: \_\_\_\_\_

1. I, \_\_\_\_\_, request an appeal hearing by the School Appeals Committee.

2. I am the *(please check one)*  
 \_\_\_\_\_ parent/guardian of the pupil.  
 \_\_\_\_\_ pupil, and am 19 years old, or less than 19 but living independently of my parents.

3. My request is in reference to *(please check one)*  
 \_\_\_\_\_ suspension from school attendance by the principal (or vice-principal where so authorized). **It should be noted that, in accordance with subsection 24(4) of the Education Act, a pupil's suspension from school attendance may be appealed only if the pupil has already been suspended from school attendance for more than five days in the same school year.**

\_\_\_\_\_ bus suspension. **It should be noted that, in accordance with Regulation 2001-51, Section 6(4), the most recent bus suspension which is in excess of 5 days in one school year, may be appealed.**

4. Details of decision: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

5. Date of decision: \_\_\_\_\_

Name of Student: \_\_\_\_\_ Name of School: \_\_\_\_\_

Parent/Guardian \_\_\_\_\_  
 Independent Student                      Signature                      Print /Type

\_\_\_\_\_ Telephone                      E-Mail

**Request for an appeal must be received by the principal no later than ten teaching days after the decision.**

## APPEALS PROCESS - DOCUMENT C

<b>NOTICE OF SCHOOL APPEALS COMMITTEE HEARING</b>
---

1. You are hereby informed that the School Appeals Committee will meet on

\_\_\_\_\_ at \_\_\_\_\_ at  
(time)

\_\_\_\_\_  
(address and room number if applicable)

to consider your appeal concerning \_\_\_\_\_.  
(name of student)

2. Enclosed is the documentation relevant to the appeal:

- A User's Guide for THE APPEAL PROCESS As Described in the *Education Act*.
- Any documentation to be considered by the School Appeals Committee.

3. Please note:

- (a) At the hearing you will have the right to begin with a presentation or statement. You may call witnesses and submit evidence to support your appeal.
- (b) The person who made the decision giving rise to the appeal may also make an opening presentation or statement, call witnesses and submit evidence to support the dismissal of the appeal.
- (c) Both parties may offer an oral or written summary of the reasons the decision should or should not be changed.

4. Signed \_\_\_\_\_

Name \_\_\_\_\_  
(print/type)

Position \_\_\_\_\_  
(print/type)

Date \_\_\_\_\_

Distribution: Parent/Guardian  
Pupil  
School Appeals Committee Members  
Educator-Decision-Maker  
Superintendent



**SCHOOL APPEALS COMMITTEE'S DECISION**

1. You are hereby informed that the School Appeals Committee made the following decision regarding the appeal which was heard on \_\_\_\_\_ (date) regarding: \_\_\_\_\_ (name of student).

Details of decision: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reasons for Committee's decision: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Either party may appeal this matter to the District Appeals Committee by writing to the superintendent within five teaching days of receiving the decision.

\_\_\_\_\_  
(name and address of superintendent)

The party requesting an appeal should indicate if an advocate, friend, legal counsel, or another person will be present to assist at the District Appeals Committee hearing.

3. A request for an appeal by the District Appeals Committee must be received by the superintendent no later than \_\_\_\_\_  
(5 teaching days after receipt of the decision)

4. Signed \_\_\_\_\_  
Name \_\_\_\_\_  
(print/type)  
Position \_\_\_\_\_  
(print/type)  
Date \_\_\_\_\_

- Distribution: Parent/Guardian  
Pupil  
Educator-Decision-Maker  
School Appeals Committee Members  
Superintendent  
Principal

**REQUEST FOR AN APPEAL TO  
THE DISTRICT APPEALS COMMITTEE**

*(A request for an appeal should be made in writing by letter or completion of this form.)*

Date: \_\_\_\_\_

1. I, \_\_\_\_\_, request an appeal hearing by the District Appeals Committee. (Upon direction of the superintendent, the school level appeals committee may hear first appeals).

2. I am *(please check one)*

\_\_\_\_\_ the parent/guardian of the pupil.

\_\_\_\_\_ the pupil, and am 19 years of age (or less than 19 but living independently of my parents).

3. My request is in reference to *(please check one)*

\_\_\_\_\_ placement (refers to "the placement of pupils in classes, grades, programs, services and schools according to the needs of the pupils and the resources of the school district.")

\_\_\_\_\_ access to school records.

\_\_\_\_\_ suspension from school for a period of longer than five days given under the authority of the superintendent.

\_\_\_\_\_ a decision by the School Appeals Committee. **NOTE: Request for an appeal must be received by the superintendent no later than 5 teaching days after the decision of the School Appeals Committee.**

4. Details of decision: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Date of decision: \_\_\_\_\_

Name of Student: \_\_\_\_\_ School: \_\_\_\_\_

Parent/Guardian \_\_\_\_\_  
Independent Student      Signature

\_\_\_\_\_  
Print /Type

\_\_\_\_\_ Telephone

\_\_\_\_\_ E-Mail



**DISTRICT APPEALS COMMITTEE'S DECISION**

1. You are hereby informed that the District Appeals Committee has made the following decision regarding the appeal which was heard on \_\_\_\_\_ (date) concerning \_\_\_\_\_ (student).

Details of decision: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reasons for decision: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. **Decisions made by the District Appeals Committee are final.**

3. Signed \_\_\_\_\_  
Name \_\_\_\_\_ (print/type)  
Position \_\_\_\_\_ (print/type)  
Date \_\_\_\_\_

Distribution: Parent/Guardian  
Pupil  
Educator-Decision-Maker  
District Appeals Committee Members  
Superintendent  
Principal

## Responsibilities of the School Appeals Committee and the Principal

### General

The school appeals committee is made up of three persons appointed by the superintendent: a parent chosen from a list of names submitted by the Parent School Support Committee, a teacher (a principal, a vice-principal, a teacher, or a supervisor of instruction) and one other person. The principal must make sure that the school appeals committee hears the appeal. The designated chair, chosen by the superintendent from among the school appeals committee members, must ensure that proper procedures are followed to allow members to make a prompt, fair and unbiased decision.

#### **A) Prior to the hearing, the principal should:**

- 1) inform all parties of the place, date and time of the hearing;
- 2) provide those involved with all available information relevant to the appeal, preferably 24 hours before;
- 3) inform those involved of their right to representation;
- 4) inform those involved of any such representation.

#### **B) At the hearing, the school appeals committee chair should:**

- 1) introduce all participants;
- 2) outline the issue(s) and the legislation or policy which is the basis of the appeal;
- 3) inform those involved that the hearing will continue as follows:
  - (a) the person making the appeal (called the appellant) may open with a presentation or statement;
  - (b) the appellant may call witnesses and present evidence to support the appeal; the person defending the decision (called the respondent) may make an opening presentation or statement;
  - (c) the respondent may call witnesses and present evidence to support a dismissal of the appeal;
  - (d) the appellant may offer an oral or written summary of the reasons why the appeal should succeed;
  - (e) the respondent may offer an oral or written summary of the reasons why the decision should stand;
  - (f) the appellant, the respondent and their witness(es) may tell their "story" without undue interference and interruption.
- 4) explain his or her role in the appeal, the roles of other representatives and the extent to which each side may question one another and the witnesses;

- 5) conduct the appeal and ensure that all parties are treated with respect and that a confrontational atmosphere is avoided;
- 6) ensure that all participants sign the Declaration of Confidentiality form.

**C) After the hearing, the chair should:**

- 1) provide in writing, the appeals committee's decision within five teaching days. The decision should give clear reasons and include the facts of the case as well as any relevant legislation and policy. All decisions may be appealed to the district appeals committee;
- 2) forward the Declaration of Confidentiality, with a copy of the appeal committee decision, to the superintendent.

## Responsibilities of the District Appeals Committee and the Superintendent

### General

The district appeals committee may be made up of the District Education Council (DEC) as a whole, a minimum of 3 members of the DEC, or 3 persons appointed by the District Education Council by regulation. In the latter case, these are: a teacher (a superintendent, a director of education, a district supervisor of instruction or other teacher), a parent of a pupil enrolled in the school district, and one member of the District Education Council. The superintendent must make sure that the district appeals committee hears the appeal. The superintendent must appoint a chair from among the district appeals committee members who will ensure that proper procedures are followed to allow members to make a prompt, fair and unbiased decision.

#### **A) Prior to the hearing, the superintendent should:**

- 1) inform all parties of the place, date and time of the hearing;
- 2) provide those involved with all available information relevant to the appeal;
- 3) inform those involved of their right to representation;
- 4) inform those involved of any such representation.

#### **B) At the hearing, the district appeals committee chair should:**

- 1) introduce all participants;
- 2) outline the issue(s) and the legislation or policy which is the basis of the appeal;
- 3) inform those involved that the hearing will continue as follows:
  - (a) the person making the appeal (called the appellant) may open with a presentation or statement;
  - (b) the appellant may call witnesses and present evidence to support the appeal;
  - (c) the person defending the decision (called the respondent) may make an opening presentation or statement;
  - (d) the respondent may call witnesses and present evidence to support a dismissal of the appeal;
  - (e) the appellant may offer an oral or written summary of the reasons why the appeal should succeed;
  - (f) the respondent may offer an oral or written summary of the reasons why the decision should stand;
  - (g) the appellant, the respondent and their witness(es) may tell their "story" without undue interference and interruption.
- 4) explain his or her role in the appeal, the roles of other representatives and the extent to which each side may question one another and other witnesses;

- 5) conduct the appeal and ensure that all parties are treated with respect and that a confrontational atmosphere is avoided;
- 6) ensure that all participants sign the Declaration of Confidentiality form.

**C) After the hearing, the chair should:**

- 1) provide in writing, the appeals committee's decision within five teaching days. The decision should give clear reasons and include the facts of the case as well as any relevant legislation and policy;
- 2) The Declaration of Confidentiality shall be forwarded, with a copy of the appeal committee decision to the superintendent. **All decisions are final.**





DECLARATION OF CONFIDENTIALITY

For Appeals under the Education Act

Name of Appellant \_\_\_\_\_

District No. \_\_\_\_\_

Type of Appeal (check one):

- Four checkboxes with corresponding text: Pupil suspension - ss.24(4), Pupil suspension from school vehicle transportation - reg. 2001-51 ss.6(4), Placement - ss.11(3), Access to student records - ss.54(5)

I understand the sensitive nature of the matters discussed and the right to privacy. I therefore affirm that I will not disclose any information that comes to my knowledge as a result of my involvement with the appeals process, unless I am given due authority to do so.

Table with 4 columns: Name (please print), Signature, Witness, Date (y/m/d). Multiple rows of horizontal lines for input.

## APPENDIX II

### EDUCATION ACT REFERENCES PERTAINING TO PUPIL APPEALS

1. DEFINITIONS ..... *Education Act*, Section 1
2. DUTIES OF PUPILS..... *Education Act*, Section 14
3. DUTIES OF TEACHERS ..... *Education Act*, Section 27
4. DUTIES OF PRINCIPALS ..... *Education Act*, Section 28
5. ROLES OF PARENTS ..... *Education Act*, Section 13
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8. ACCESS TO PUPIL RECORDS..... *Education Act*, Section 54
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## EDUCATION ACT SECTIONS PERTAINING TO PUPIL APPEALS

### ***Education Act, Section 1 - Definitions***

1 In this Act

**"guardian"** includes a person who has received into the person's home and has had placed under the person's care and control another person's child but does not, for the purpose of subsection 9(1), include a person who, in the opinion of the superintendent concerned, has done so solely for the purpose of allowing that child to attend school in another school district;

**"independent pupil"** means a pupil who has attained the age of nineteen years or is living independently of the parent of the pupil;

**"parent"** includes guardian;

**"special education program"** means an education program for an exceptional pupil that is based on the results of continuous assessment and evaluation and which includes a plan containing specific objectives and recommendations for education services that meet the needs of the pupil;

### ***Education Act, Section 14 - Duties of Pupils***

14(1) It is the duty of a pupil to

- (a) participate in learning opportunities to his or her potential,
- (b) accept increasing responsibility for his or her learning as he or she progresses through his or her schooling,
- (c) attend to assigned homework,
- (d) attend school regularly and punctually,
- (e) contribute to a safe and positive learning environment,
- (f) be responsible for his or her conduct at school and while on the way to and from school,
- (g) respect the rights of others, and
- (h) comply with all school policies.

14(2) It is the right of a pupil to be informed of his or her educational progress on a regular basis.

### ***Education Act, Section 27 - Duties of Teachers***

27(1) The duties of a teacher employed in a school include

- (a) implementing the prescribed curriculum,

- (b) identifying and implementing learning and evaluation strategies that foster a positive learning environment aimed at helping each pupil achieve prescribed learning outcomes,
  - (c) maintaining a deportment consistent with his or her position of trust and influence over young people,
  - (d) exemplifying and encouraging in each pupil the values of truth, justice, compassion and respect for all persons,
  - (e) attending to the health and well-being of each pupil,
  - (f) maintaining his or her professional competence, and
  - (g) assisting in the development and implementation of the school improvement plan and cooperating in the preparation of the school performance report.
- 27(2)** A teacher employed in a school is accountable to the superintendent of the school district through the principal of the school for the performance of the teacher's duties and the overall educational progress of the pupils under the teacher's instruction.

### ***Education Act, Section 28 - Duties of Principals***

- 28(1)** The principal of a school
- (a) is the educational leader and administrator of the school and has overall responsibility for the school and for the teachers and other school personnel employed at the school, and
  - (b) is accountable to the superintendent of the school district for the performance of the principal's duties and the overall educational progress of the pupils enrolled in the school.
- 28(2)** The duties of a principal include
- (a) preparing, in consultation with the Parent School Support Committee and the school personnel, a school improvement plan and coordinating its implementation,
  - (b) preparing, for parents of the pupils enrolled in the school, an annual school performance report, and ensuring that that report is communicated to those parents and the school community,
  - (b.1) submitting annually to the District Education Council concerned, through the superintendent of the school district, a copy of the school improvement plan and a copy of the annual school performance report,
  - (c) ensuring that reasonable steps are taken to create and maintain a safe, positive and effective learning environment,
  - (d) participating in the selection of school personnel for the school,
  - (e) encouraging and facilitating the professional development of teachers and other school personnel employed at the school,
  - (f) evaluating the performance of teachers and other school personnel employed at the school,

- (g) being accountable and responsible for funds provided to and raised for the school,
- (h) ensuring that provincial, school district and school policies are followed, and
- (i) ensuring the establishment of and participating in the operation of a Parent School Support Committee at the school.

### **Education Act, Section 13 - Roles of Parents**

- 13(1) In support of the learning success of his or her child and the learning environment at the school, a parent is expected to
  - (a) encourage his or her child to attend to assigned homework,
  - (b) communicate reasonably with school personnel employed at the school his or her child attends as required in the best interests of the child,
  - (c) cause his or her child to attend school as required by this Act,
  - (d) ensure the basic needs of his or her child are met, and
  - (e) have due care for the conduct of his or her child at school and while on the way to and from school.
- 13(2) The parent of a pupil has a right to reasonable consultation with the pupil's teacher or the principal of the school the pupil attends with respect to the education of the pupil.
- 13(3) It is the responsibility of the parent of a pupil and of school personnel to conduct themselves in a respectful manner and to follow established procedures when involved in communications concerning the pupil.

### **Education Act, Section 11 - Placement of Pupils**

- 11(1) The superintendent concerned shall determine the placement of pupils in classes, grades, programs, services and schools according to the needs of the pupils and the resources of the school district.
- 11(2) For the purposes of placement, kindergarten shall be considered the first year of public education.
- 11(3) The parent of a pupil or an independent pupil may, in accordance with the regulations, appeal a decision made under subsection (1) or section 12 in respect of the placement of the pupil.
- 11(4) A decision made by a superintendent under subsection (1) shall be made
  - (a) subject to any policies or directives of the District Education Council concerned, and
  - (b) only with respect to pupils who are enrolled in a school in the school district or who reside in the school district for which the superintendent is appointed or reappointed.

### **Education Act, Section 12 - Programs and Services for Exceptional Pupils**

- 12(1) Where the superintendent concerned, after consulting with qualified persons, determines that the behavioural, communicational, intellectual, physical, perceptual or multiple exceptionalities of a person are contributing to delayed educational development such that a special education program is considered by the superintendent to be necessary for the person, that person shall be an exceptional pupil for the purposes of this Act.
- 12(2) The superintendent concerned shall ensure that the parent of a pupil is consulted during the process of the determination referred to in subsection (1), and in the process of developing special education programs and services for the pupil.
- 12(3) The superintendent concerned shall place exceptional pupils such that they receive special education programs and services in circumstances where exceptional pupils can participate with pupils who are not exceptional pupils within regular classroom settings to the extent that is considered practicable by the superintendent having due regard for the educational needs of all pupils.
- 12(4) Where an exceptional pupil is not able to receive a special education program or service in a school due to
- (a) fragile health, hospitalization or convalescence, or
  - (b) a condition or need which requires a level of care that cannot be provided effectively in a school setting, the superintendent concerned may deliver the program or service in the pupil's home or other alternative setting.
- 12(5) The Minister may issue policies to District Education Councils for the declaration of exceptional pupils under subsection (1) and the placement of exceptional pupils under subsection (3).
- 12(6) A decision made by a superintendent under subsection (1) or (3) shall be made
- (a) subject to any policies or directives of the District Education Council concerned,
  - (b) subject to any policies issued by the Minister under subsection (5), and
  - (c) only with respect to pupils who are enrolled in a school in the school district or who reside in the school district for which the superintendent is appointed or reappointed.

### **Education Act, Section 54 - Pupil Records**

2000, c.52, s.57.

- 54(0.1) A record shall be maintained in respect of each pupil.
- 54(1) Subject to subsections (1.1) and (3), the parent of a pupil or a pupil is entitled to access to pupil records maintained in respect of the pupil.
- 54(1.1) Where a pupil has attained the age of nineteen years, a parent of the pupil is not entitled to access any record maintained in respect of the pupil without the consent of the pupil.
- 54(2) Where a person is given access to a record in accordance with subsection (1), the superintendent concerned shall, where the superintendent believes it is necessary, explain or interpret the information disclosed on the record.

- 54(3)** Where the superintendent concerned believes that access to a record maintained in respect of a pupil would be detrimental to the well-being or future development of or the educational opportunities for the pupil, the superintendent may
- (a) deny access to the record, and
  - (b) where the superintendent believes it is appropriate, describe or interpret such of the content of the record the knowledge of which, in the opinion of the superintendent, would not be detrimental to the well-being or future development of or the educational opportunities for the pupil.
- 54(4)** Where the superintendent concerned, having denied a person access to a record in accordance with paragraph (3)(a), believes it is not appropriate to describe or interpret any of the contents of the record in accordance with paragraph (3)(b), the superintendent shall make known to that person, at the time of such denial, the existence and general nature of the record.
- 54(5)** A person who has been denied access to any record in accordance with paragraph (3)(a) may, in accordance with the regulations, appeal the denial.
- 54(6)** The parent of a pupil who has been denied access to any record in accordance with paragraph (3)(a) is, notwithstanding such denial, entitled to make inquiries to the superintendent concerned and to be given general verbal information by the superintendent in relation to the educational progress of the pupil.
- 54(7)** A decision made by a superintendent under this section shall be made on behalf of and subject to any policies or directives of the District Education Council concerned.

### ***Education Act, Section 24 - Suspension of Pupils***

- 24(1)** A principal may for cause suspend
- (a) a pupil from attendance at school
    - (i) for a fixed period of time not exceeding five consecutive school days, or
    - (ii) pending a review of the matter and decision under subsection (2) by the superintendent concerned, or
  - (b) any other school privilege of a pupil
    - (i) for such period of time as is determined by the principal, or
    - (ii) pending a review of the matter and decision under subsection (2) by the superintendent concerned.
- 24(2)** The superintendent concerned may for cause suspend any or all school privileges of a pupil for such period of time as is determined by the superintendent.
- 24(3)** Where a principal suspends a pupil under paragraph (1)(a), the principal shall immediately report the matter in writing to the superintendent concerned.
- 24(4)** In accordance with the regulations, the parent of a pupil or an independent pupil may, where the pupil is suspended from attendance at school under this section for more than five school days in a school year, appeal the most recent suspension from attendance at school.

- 24(5)** Where a pupil's school privileges are suspended under this section and not reinstated on an appeal of the suspension under subsection (4), the pupil's school privileges shall not be reinstated, despite the expiry of the period of time of the suspension, unless assurance of the pupil's reform is received from the pupil.
- 24(6)** A principal may, for the purposes of this section, designate a vice-principal of the school to act on behalf of the principal.
- 24(7)** Where any or all of the school privileges of a pupil are suspended under this section, and the pupil transfers to another school district before the expiry of the period of time of the suspension, the superintendent of the school district to which the pupil has transferred may, on a review of the circumstances, uphold, shorten the period of time of or waive the suspension.

***Pupil Transportation Regulation (2001-51), Section 6 - Suspension of conveyance privileges***

- 6(1)** Where, after investigation, a principal or a teacher designated by the principal has reason to believe that the misconduct of a pupil during conveyance could endanger the safety of any occupant of a school vehicle or cause damage to the school vehicle, the principal or the teacher, as the case may be, may suspend the pupil from being conveyed.
- 6(2)** Where a pupil has been suspended under subsection (1), the principal or the teacher designated by the principal shall
- (a) report the matter immediately to a parent of the pupil or, in the case of an independent pupil, to the independent pupil and to the superintendent concerned and the driver of the school vehicle concerned, and
- (b) forward immediately to the parent of the pupil or, in the case of an independent pupil, to the independent pupil a notice of such suspension including the length of such suspension.
- 6(3)** The superintendent concerned may review the length of the suspension period and may vary or confirm it, and notice of such decision shall be forwarded to the principal and the driver of the school vehicle concerned.
- 6(4)** Whether or not a review occurs under subsection (3), the parent of a pupil suspended under subsection (1) or, in the case of an independent pupil, the independent pupil may, where the pupil is suspended from being conveyed for more than five school days in a school year, appeal the most recent suspension to a school appeals committee by giving notice of the appeal to the principal of the school in accordance with section 40 of the *School Administration Regulation - Education Act*.
- 6(5)** The parent of a pupil suspended under subsection (1) or, in the case of an independent pupil, the independent pupil is responsible for the conveyance of the pupil during the period of suspension.



**School Administration Regulation (97-150), Section 39 - Notice of suspension and right of appeal**

- 39** Where a pupil is suspended from attendance at school under section 24 of the Act, the parent of the pupil or, in the case of an independent pupil, the independent pupil shall, on the date the decision is made, be notified, both verbally and in writing, of the suspension and, where applicable, of the right to appeal the suspension under subsection 24(4) of the Act.

**School Administration Regulation (97-150), Section 40 - School appeal process**

- 40(1)** A person who is entitled to appeal

(a) the suspension of a pupil under paragraph 24(1)(a) of the Act, or

(b) the suspension of a pupil's conveyance privileges under section 6 of the *Pupil Transportation Regulation - Education Act*,

may initiate an appeal by giving notice of the appeal, in writing, to the principal of the school within ten teaching days after being notified of the suspension.

- 40(2)** On receipt of notice of an appeal under subsection (1), or at the direction of the superintendent of the school district under paragraph 41(2)(a), the principal shall convene, as soon as is practicable, a school appeals committee, appointed under subsection (3), to hear the appeal.

- 40(3)** Subject to subsection (5), a school appeals committee shall consist of three persons, appointed by the superintendent of the school district, of which

(a) one member shall be a principal, a vice-principal, a guidance counsellor, a district supervisor of instruction or other teacher,

(b) at least one member shall be a parent of a pupil enrolled in the school, appointed from a list of between three and twenty persons submitted annually to the superintendent by the Parent School Support Committee for the school, and

(c) one member shall be a person chosen at the discretion of the superintendent.

- 40(4)** If, for the purpose of appointing a member of a school appeals committee under paragraph (3)(b), the superintendent is unable, after all reasonable attempts to contact and arrange for the appointment of a parent from the list submitted by the Parent School Support Committee, or if the Parent School Support Committee does not submit a list in accordance with paragraph (3)(b), the superintendent may, at his or her discretion, appoint any parent of a pupil enrolled in the school in order that a school appeals committee hearing can be held as soon as is practicable.

- 40(5)** A person referred to in subsection (8) shall not be a member of the school appeals committee, and no member of the school appeals committee shall be a family associate of a person referred to in subsection (8) or be a person who participated in the making of the decision being appealed.

- 40(6)** The school appeals committee shall hold a hearing, as soon as is practicable, to consider the appeal.
- 40(7)** The principal shall determine the date, time and place of the hearing, notify the parties to the appeal and the members of the school appeals committee of such date, time and place at least twenty-four hours before the date of the hearing and make any other necessary arrangement for the hearing.
- 40(8)** The person making the appeal and the person who suspended the pupil have the right to attend the hearing, may be accompanied by any person serving in an advocacy or support capacity, and may submit relevant information and question witnesses.
- 40(9)** Prior to the hearing, each party to the appeal shall ensure that all relevant information and documents respecting the suspension of the pupil and the basis for the appeal are provided to the school appeals committee and to each other.
- 40(10)** The school appeals committee may uphold, vary or revoke the suspension of the pupil.
- 40(11)** The decision of the school appeals committee, with reasons, shall be in writing and shall be forwarded to the parties to the appeal within five teaching days after the hearing.
- 40(12)** A decision of the majority is a decision of the school appeals committee.
- 40(13)** If either party to an appeal is dissatisfied with the decision of the school appeals committee, the decision may be appealed to the district appeals committee by giving notice to the superintendent of the school district, in writing, within five teaching days after receipt of the decision.
- 2001-49; 2002-43

***School Administration Regulation (97-150), Section 42 - Appeals to the superintendent***

- 41(1)** A person who is entitled to appeal
- (a) a decision made in accordance with section 11 or 12 of the Act in respect of the placement of a pupil,
  - (b) the suspension of a pupil under subsection 24(2) of the Act, or
  - (c) the denial of access to pupil records under section 54 of the Act,
- may initiate an appeal by giving notice of the appeal, in writing, to the superintendent of the school district within ten teaching days after being notified of the decision, the suspension or the denial.
- 41(2)** On receipt of notice of an appeal under subsection (1), the superintendent shall, subject to any policies or directives of the District Education Council,
- (a) direct that the appeal be heard by a school appeals committee, or
  - (b) refer the matter, as soon as is practicable, to the District Education Council.

- 41(3) Where the superintendent directs that an appeal be heard by a school appeals committee, subsections 40(2) to (13) apply to the appeal.
- 41(4) On receipt of notice of an appeal under subsection 40(13), the superintendent shall refer the matter, as soon as is practicable, to the District Education Council.
- 41(5) When a matter is referred to a District Education Council under paragraph (2)(b) or subsection (4), the District Education Council shall convene, as soon as is practicable, a district appeals committee to hear the appeal.

***School Administration Regulation (97-150), Section 42 - Composition of the district appeals committee***

42(0.1) The District Education Council concerned shall

- (a) serve, as a whole, as the district appeals committee,
- (b) appoint a district appeals committee consisting of three or more members of the District Education Council, or
- (c) appoint a district appeals committee as provided for in subsection (1).

42(1) Subject to subsection (4), a district appeals committee appointed under paragraph (0.1)(c) shall consist of three persons, appointed by the District Education Council concerned, of which

- (a) one member shall be a superintendent, a director of education, a district supervisor of instruction or other teacher,
- (b) at least one member shall be a parent of a pupil enrolled in a school in the school district, and
- (c) one member shall be a member of the District Education Council.

42(2) Repealed: 2001-49

42(3) Repealed: 2001-49

42(4) A person referred to in subsection 43(3) or who participated in a school appeal respecting the same appeal shall not be a member of the district appeals committee, and no member of the district appeals committee shall be a family associate of a person referred to in subsection 43(3) or be a person who participated in the making of the decision being appealed.

***School Administration Regulation (97-150), Section 43 - District appeals committee procedure***

43(1) The district appeals committee shall hold a hearing, as soon as is practicable, to consider the appeal.

- 43(2)** The District Education Council concerned shall determine the date, time and place of the hearing, notify the parties to the appeal and the members of the district appeals committee of such date, time and place at least twenty-four hours before the date of the hearing and make any other necessary arrangement for the hearing.
- 43(3)** The person making the appeal and the person who made the decision in respect of placement, suspended the pupil or denied access to pupil records have the right to attend the hearing, may be accompanied by any person serving in an advocacy or support capacity, and may submit relevant information and question witnesses.
- 43(4)** Prior to the hearing, each party to the appeal shall ensure that all relevant information and documents respecting the decision in respect of placement, suspension of the pupil or denial of access to pupil records and the basis for the appeal is provided to the district appeals committee and to each other.
- 43(5)** The district appeals committee may uphold, vary or revoke the decision of the school appeals committee or the decision in respect of placement, the suspension of the pupil or the denial of access to pupil records, as the case may be.
- 43(6)** The decision of the district appeals committee, with reasons, shall be in writing and shall be forwarded to the parties to the appeal within five teaching days after the hearing.
- 43(7)** A decision of the majority is a decision of the district appeals committee, and the decision of the district appeals committee is final.