

SCHOOL BOARD AND MINISTERIAL APPEAL PROCEDURES

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NOTE: Although this document is in final draft format, please note that these Appeal Procedures, and amended Regulations contained in Appendix I are now in effect.

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SCHOOL BOARD AND MINISTERIAL APPEAL PROCEDURES

NOTE:

In these procedures, words in the singular include the plural where the context requires.

PURPOSE

The purpose of these procedures is to help parents*, students, and educators understand and prepare for a school board or ministerial appeal hearing under the Nova Scotia *Education Act*, the *Ministerial Education Act Regulations* and the Department of Education *Special Education Policy*. Applicable sections from these documents can be found in the Appendices.

SCOPE

Open, constructive communication between school staff and parents can resolve most disputes surrounding the individualized program planning process. Using a collaborative, consultative approach throughout the program planning process will enhance opportunities to address concerns that may arise.

School board and ministerial appeal procedures address unresolved disputes between a parent of a student with special needs who is enrolled in the public school system, the school, or the school board respecting grounds for an appeal as outlined in section 53(3):

- the school board's decision not to proceed with the development of an individualized program plan for the student;
- the proposed or existing individualized program plan outcomes for the student; or,
- the proposed or existing placement of the student in respect of the education programs provided by the school board.

Outcomes are statements of what students are expected to know and be able to do. Individualized outcomes are developed for students with special needs when the outcomes of the prescribed public school program are not applicable or attainable. A program planning team for the student with special needs develops the individualized program plan as outlined in the Minister's policies and procedures (see *Special Education Policy*). Placement refers to the setting in the public school system in which the individualized program plan is implemented.

If the matter has not been resolved by means of the school board appeal process, the parent or school board may make a request to the Minister to establish a Ministerial Board of Appeal. This is outlined in Sections 53–61 of the *Ministerial Education Act Regulations* (see Appendix I).

* Under the Education Act [3(1)(t)] “parent” includes... a guardian...

GENERAL CONSIDERATIONS

- The appeal process must be accessible, straightforward, and fair.
- A parent makes the appeal for a student under 19 years of age. A student who is under 19 years of age, and lives independently, may initiate an appeal. Students who are 19 years or older may appeal on their own behalf.
- Upon receipt of a request for an appeal that is based on a dispute concerning outcomes or placement or both, a school board appeal committee must be established as per Special Education Policy 1.8 when the superintendent determines that the appeal will proceed. All members of the appeal committee must participate fully throughout the hearing of an appeal and the making of a decision.
- The composition of the school board appeal committee should include three members, none of whom are employees of the board or who have provided contracted services to the school board or parent within three years of the appeal date. One member is recommended by the parent, one member is chosen by the board and the third member, appointed by the superintendent, who will be the chair, and who is acceptable to the parent and the board. Should there be no agreement on the naming of the chair, the Director of Student Services, Department of Education, will appoint a chair.
- All persons involved in the appeal process are expected to abide by the appeal procedures.
- All persons involved in the appeal process should be open to a reasonable settlement of the appeal before and during the hearing.

SCHOOL BOARD APPEAL PROCESS

As per Policies 1.8 and 2.6 in the *Special Education Policy*, school boards are required to establish a school board appeal process.

The program planning team is responsible for ensuring that the program planning process has taken place as outlined in Policies 2.2 and 2.6 (see Appendix II for applicable policies).

In cases where parents or the school board do not agree with the proposed or existing outcomes for the student, or the proposed or existing placement in which the individualized program is implemented, or both, an appeal procedure may be initiated as outlined in Step 1 below. However, all efforts should be made to resolve the dispute through discussions and mediation before an appeal is requested.

The following steps outline the process. (See also Appendix III).

STEP 1

The parent, or the school board, writes a letter to the superintendent of the school board to request an appeal. This must be received by the Superintendent within 30 working days of the date of the decision by the Program Planning Team at Stage 4, (Policy 2.2, Appendix II) related to the proposed or existing outcomes or placement, or both. The reasons for the appeal and supporting documentation should accompany the request.

STEP 2

Upon receipt of a request for an appeal, the Superintendent* will forward all relevant provincial and school board policies and procedures to the parents or the school board requesting the appeal within ten working days. This includes Nova Scotia Department of Education *Special Education Policy*, *The Program Planning Process: A Guide for Parents*, the school board's special education policy, and *School Board and Ministerial Appeal Board Procedures*.

STEP 3

The Superintendent reviews the request within 15 days to determine whether the appeal is based on a dispute regarding

- (a) the school board's decision not to proceed with the development of an individualized program plan for the student;
- (b) the proposed or existing individualized program plan outcomes for the student; or
- (c) the proposed or existing placement of the student in respect of the education programs provided by the school board.

*Superintendent includes designate of Superintendent

If the appeal is based on one or more of these dispute concerns, the Superintendent establishes an appeal committee which must meet within 40 working days. If not, the Superintendent may refer the matter to board staff to review and attempt to resolve the dispute. The Superintendent's decision whether or not to allow the appeal must be communicated in writing to the appropriate parties.

STEP 4

The school board appeal committee hears the appeal within 40 working days. All parties to the appeal should be informed in writing of the committee's decision. The chair will notify the appellant his/her right to initiate a ministerial appeal within 20 working days.

RESPONSIBILITIES AND RELATED GUIDELINES

SECTION 1 - CHAIR

The chair of the school board appeal committee is responsible for ensuring that the committee hears the appeal. The chair must also ensure that proper procedures are followed that will allow members to make a prompt, fair and unbiased decision. The chair writes the report for the appeal committee and provides copies to the superintendent, parents and members of the appeal committee.

PRIOR TO THE HEARING

Responsibilities of the Chair:

- Promptly inform all parties of the place, date, time, and duration of the hearing.
- Provide those involved in the hearing with all relevant records and documentation and the process to be followed. (Seven working days prior to the appeal is recommended.)
- Determine attendees at the hearing.

Guidelines:

- The chair sets a recommended maximum time limit of two hours, with no more than 30 minutes allotted for each party's presentation.
- The second hour should be used by the members of the appeal committee to further clarify the information which has been presented.
- Assign a person to record attendance and the proceedings of the hearing.

AT THE HEARING

Responsibilities of the Chair:

- Outline the nature of the unresolved dispute, the issue(s) to be decided, and the parameters which form the basis of the appeal.
- Set the rules of order to be followed during the Appeal Committee hearing.
- Collect from participants, other than parents, all records and documents used in the hearing used in the hearing and return them to the school board to be stored in accordance with the Student Records Policy.

Guidelines:

- The chair welcomes and introduces all participants.
- The chair explains their role and the roles of other participants in the appeal hearing.
- The chair will rule on any procedural questions or issues which may arise during the hearing.
- The chair informs committee members that after the hearing, they must not communicate with anyone other than appeal committee members regarding the appeal.

AFTER THE HEARING**Responsibilities of the Chair:**

- Present, in writing, the decision of the appeal committee outlining the facts of the case and the relevant legislation or policy.
- Advise the appellant of the regulations regarding the Ministerial Appeal Process (sections 53-61) should the appeal be unsuccessful.
- Forward the written decision of the school board appeal committee to all parties. A copy of the decision should also be forwarded to the Director, Student Services Division, Department of Education. These copies should be sent within 10 working days of the appeal hearing.

SECTION 2 - RESPONDENT AND APPELLANT

PRIOR TO THE HEARING

Responsibilities of Respondent and Appellant:

- Gather pertinent records and documents and send them to the chair of the appeal committee not less than 10 days before the appeal hearing.
- Request from the chair permission for others to attend and/or participate and submit the names, telephone numbers and email addresses of those whom you wish to attend the hearing.
- Information provided to the chair of the appeal committee will be kept confidential.

AT THE HEARING

Responsibilities of Respondent and Appellant:

- Arrive in time for the hearing.
- Observe rules of order and time limits as outlined by the chair.
- Be respectful of others during the hearing.

Guidelines:

- Person who requested the appeal (Appellant) presents his/her case, within the 30 minute time allotted, clearly stating their specific concerns related to section 53 (3).
- Person responding to the appeal (Respondent) presents his/her case within the 30 minute time allotted.
- Following presentations, appeal board members may question for purpose of clarification for 40-50 minutes. This is not the time for a discussion between the parents and the school board. Any discussion should have already occurred prior to the School Board Appeal, at Program Planning Team meetings or other meetings involving the two parties.
- The appellant may briefly summarize (5-10 minutes) why the appeal should succeed.
- The respondent may briefly summarize (5-10 minutes) why the outcomes or placement should be as proposed or existing.

Appendix IV Checklist for Person Making the Appeal

√ *Pre-Appeal Hearing Checklist*

- Contact the school or school board to obtain copies of pertinent documentation which you may need for the appeal.
- Familiarize yourself with appropriate sections of the Education Act, Regulations under the Education Act, and the provincial *Special Education Policy*, that pertain to the appeal process. Also, review your School Board Appeal Process and School Board Special Education Policy . (See Appendices I and II)
- Confer with the Chair regarding persons whom you wish to attend and/or present information.
- Meet with those approved by the chair to speak on your behalf before the hearing to discuss your presentation.
- In consideration of the time available at the appeal, prepare a summary of the facts and issues of your appeal, highlighting any information that may support your position. State the result(s) you wish to achieve from this appeal. Set out the reasons for the desired result(s).
- Be sure that you know the time and location of the hearing.

√ *Appeal Hearing Checklist*

- Arrive in plenty of time for your hearing.
- Make your opening statements clearly and concisely. Confine your remarks to addressing the grounds for the appeal and your desired results.
- Present your position with supporting documentation and assistance, if appropriate, in a clear and concise manner within the time allotted.
- Be respectful when speaking to the chair and respect the rights of others to state their viewpoints.
- At the close of the hearing, be aware of time lines for making a decision regarding the appeal.

MINISTERIAL APPEAL PROCESS

If the Appellant or a board disagree with the decision of the board level appeal, a written request for a Ministerial Appeal may be made to the Minister of Education.

STEP 1

A written request must be made within 20 working days from the date of the decision. The request must be sent to the Minister of Education, Department of Education requesting the Minister to establish a Board of Appeal to provide a ruling on the dispute. The Department of Education will acknowledge the receipt of this request in writing.

STEP 2

The Minister reviews the request for the appeal and determines if the request for a Ministerial Appeal is consistent with the regulations. If the Minister agrees that the appeal can proceed, the Minister will appoint a chair who is not an employee of the Minister or the province. The parent will be informed in writing, and a date for the appeal hearing will be set. Two additional members of the Ministerial Board of Appeal will be appointed, at least 20 days prior to the hearing, in accordance with section 55(1):

- (a) one member, who is not an employee or a member of the school board and who was not providing services to the school board at the time of or at any time within the 3 years before the date of the request under section 54, to be named by the school board
- (b) one member who is not a parent or a relative of the student, named by the parent and who was not providing services to a parent of the student in respect of the student at the time of or at any time within the 3 years before the date of the request under section 54, immediately after “of the student” in clause (b).

The *School Board and Ministerial Appeal Procedures* will be forwarded to the parent when a date is set. A written confirmation of the date, place and time is sent to the parent and school board. The Department of Education will ensure that the Ministerial Appeal is heard within 40 days of receipt of the decision to proceed with a Ministerial Appeal.

If the Minister does not agree to grant the appeal as per sections 53-61 of the Regulations, a written response will be sent to the parent and school board indicating the reason that the request for appeal was denied.

STEP 3

Supporting documentation must be submitted by the parent and the school board in triplicate to the Department of Education at least 15 working days prior to the date of appeal. If documentation is received later than that date, it will be at the discretion of the chair to hold the hearing on the date scheduled, to reschedule the hearing date or not to accept additional documentation. The Department of Education will distribute documentation to parties so as to be

received no later than 10 working days prior to the date of the appeal hearing.

STEP 4

As per Section 61(2) of the Regulations, the decision and order of the Ministerial Board of Appeal shall be made and delivered to the parties and the Minister, by the Chair, within 60 days, from the date of appointment of the Ministerial Board of Appeal.

APPENDIX I

Ministerial Education Act Regulations, Sections 53-61

- 53 (1) For the purposes of subsection (2), “student with special needs” means a student
- (a) who is identified by the school board as requiring additional program planning in the learning process to meet the student’s needs; and
 - (b) who is enrolled in and receiving an education program provided by the school board for which the Program Planning Process has been initiated and followed in accordance with the Nova Scotia Special Education Policy.
- (2) Subject to subsection (3), if a dispute has occurred between the parent of a student with special needs and the school board, and the dispute has not been resolved by the school board appeal process, the parent or school board may, no later than 30 days after the date of the decision of the school board appeal committee respecting the matter in dispute, request the Minister in writing to establish a Board of Appeal to provide a ruling on the dispute.
- (3) A request under subsection (2) for a Board of Appeal ruling may be made only if the dispute concerns
- (a) the school board’s decision not to proceed with the development of an individualized program plan for the student;
 - (b) the proposed or existing individualized program plan outcomes for the student; or
 - (c) the proposed or existing placement of the student in respect of the education programs provided by the school board.
- 54 Upon receipt of a written request, the Minister may, as soon as practicable, appoint a Board of Appeal to hear the appeal and make a decision concerning the dispute in respect of which the Board of Appeal was requested to be established.
- 55 (1) A Board of Appeal shall consist of three members:
- (a) one member, who is not an employee or a member of the school board and who was not providing services to the school board at the time of or at any time within the 3 years before the date of the request under Section 54, to be named by the school board;
 - (b) one member, who is not a parent or relative of the student, and who was not providing services to a parent of the student in respect of the student at the time of

or at any time within the 3 years before the date of the request under Section 54, named by the parent; and

- (c) one member appointed by the Minister who is not an employee of the Minister or the Province.

(2) The member of a Board of Appeal appointed by the Minister shall be the chair.

56 The chair of a Board of Appeal shall fix a time and place for the hearing may determine the duration of the hearing and may request, in advance of the hearing,

- (a) records and documentation that are to be submitted at the hearing; and
- (b) the names of persons whom the parties wish to attend in support of either of the parties.

57 The hearing of an appeal shall not be open to the public and no person will be permitted to be present other than the parties, their counsel and such other persons as the chair may require or permit to be present.

58 (1) The parties concerned may be represented at a hearing by counsel or any other person permitted at the hearing by the Board of Appeal pursuant to Section 57.

(2) The chair may adjourn any hearing at any time and from time to time.

(3) A Board of Appeal shall observe the confidentiality of all documents and records.

(4) The chair shall determine all questions arising during a hearing respecting procedure, or admissibility of evidence.

59 (1) On completion of a hearing, a Board of Appeal must

- (a) respecting a dispute concerning a matter specified in subclause 53(3)(a)
 - (i) confirm the school board's decision not to proceed with development of an individualized program plan for the student, or
 - (ii) order the school board to proceed with the development of an individualized program plan for the student;
- (b) respecting a dispute concerning a matter specified in subclause 53(3)(b)
 - (i) confirm the proposed or existing individualized program plan outcomes for the student; or

- (ii) order modification of the proposed or existing individualized program plan outcomes for the student,
- (c) respecting a dispute concerning a matter specified in subclause 53(3)(c)
 - (i) confirm the school board's placement of the student in respect of the education programs provided by the school board, or
 - (ii) order a change in the placement of the student in respect of the public school programs provided by the school board;
- (2) On completion of a hearing, a Board of Appeal may order the costs of the appeal to be apportioned between the school board and the parent.

60 Repealed.

61 (1) The decision of a Board of Appeal shall

- (a) be written by the chair, and
 - (b) include reasons for the decision
- (2) The decision and the order of a Board of Appeal shall be made and delivered to the parties and the Minister within 60 days, or as soon thereafter as practicable, from the date of appointment of the Board of Appeal.
- (3) An order made by the Board of Appeal shall be final and binding upon all parties to the dispute.

APPENDIX II

Policies 2.2 and 2.6, *Special Education Policy*

POLICY 2.2: PROGRAM PLANNING PROCESS

Each school board is responsible for establishing a process of identification, assessment, program planning, and evaluation for students with special needs.

POLICY 2.6: INDIVIDUAL PROGRAM PLANS

An individual program plan (IPP), based on the student's strengths and challenges, will be developed and implemented for every student for whom the provincial curriculum outcomes are not applicable and/or attainable.