

19. Appeals Procedure

1.0 SCOPE OF THE POLICY

- 1.1 All decisions made by a divisional administrator of the Western School Division may only be appealed through the procedures and under the rules set out in this policy.
- 1.2 If any person involved with a decision feels that the policy had an unintended or unjust effect, it may request that the Board review the policy through the rules and procedures set out below.
- 1.3 This policy does not apply to personnel decisions which will be handled according to divisional employment policies and/or procedures.
- 1.4 This policy does not apply to any action regarding Board members, which shall be handled according to divisional procedures, policies, the Trustee Code of Conduct, or The Public Schools Act as appropriate.
- 1.5 Western School Division shall make assistance available to an Appellant who cannot adequately prepare the documentation for an appeal or review because they cannot communicate in written English or French.

2.0 DEFINITIONS

"APPEAL" means a request under the criteria set out in Article 3.7 by a person affected by a decision, or in the case of a student that person's parent or guardian, to set aside the decision and make a different decision in its place.

"APPELLANT" means any person or group of persons instituting an

appeal. "BOARD" means the elected School Board of the

Western School Division

"DECISION" means a determination of an issue by divisional administration

"DIVISIONAL ADMINISTRATION" means any person authorized to make decisions for the purposes of this procedure, excluding the Superintendent.

"REVIEW" means a request to the Board to review a policy or procedure under which a decision has been made.

"SUPERINTENDENT" means the Superintendent of the Western School Division but includes such other person as they may have appointed or delegated authority to make a decision regarding an appeal.

3.0 PROCESS FOR AN APPEAL

- 3.1 Appeals of decisions may be made to divisional administration, the Superintendent or Superintendent's designate, or to the Board, by following these procedures:
- A decision made by divisional administration may only be appealed to the Superintendent or Superintendent's designate by such process as the Superintendent may define.
 - An appeal of a divisional administration decision may not be brought to the Board by the Superintendent unless approved for consideration by a unanimous vote of the Trustees.
 - Decisions made by the Superintendent may be appealed to the Board.
- 3.2 Appeals to the Board must be filed with the Board within 30 days of the decision being communicated to the Appellant.
- 3.3 An appeal must be in writing and must set out, at a minimum:
- the decision made and the date it was made;
 - the name and title of the person who made the decision;
 - the facts upon which the appellant relies;
 - the basis upon which the Appellant appeals; and
 - the decision or result that the Appellant seeks.
- 3.4 Appeals shall be addressed to the Chair of the Board, who shall present the Notice of Appeal to the full Board at the next Board meeting following receipt of the Appeal. The Board shall hear the appeal details and consider any preliminary matters in camera. The Board may dismiss the appeal summarily.
- 3.5 If the appeal is not summarily dismissed, the Appellant shall file all the material upon which the Appellant relies in writing. The material will then be provided to the Superintendent, who shall provide a written response with any additional material. The Appellant will then be provided with the Superintendent's response and may respond in writing to evidence not contained in the Appellant's documents or to the response by the Superintendent.
- 3.6 At all times, the onus is on the Appellant to demonstrate that the decision was:
- illegal;
 - made contrary to a law;
 - made in violation of the person's rights as protected by the Constitution Act (1982) or any other statute;
 - not made according to the appropriate policy or procedure of the School Division;
 - noted that the School Division had no policy, made without a policy in place and the decision was unfair; or
 - manifestly unjust.
- 3.7 The standard for review for an appeal will be deference. The decision will stand unless

the Appellant shows that the decision was made without any basis, or upon an illegal basis, and in the absence of policy, was unfair. The Board may NOT substitute its discretion for that of the Superintendent.

- 3.8 The decision on an appeal will be in writing and will be signed by the Chair of the Board. The outcome of the decision is public and will be in the following format:
- a. *The Board received an appeal of X decision. The appeal is denied. OR*
 - b. *The Board received an appeal of X decision. The appeal is well-founded, and the following decision is made in its place:*
- 3.9 The public information will not identify the Appellant or provide any information that would tend to identify the Appellant.

4.0 REVIEWS

- 4.1 A person who believes a policy has created an unjust or unfair result or that the policy of the Board is illegal may ask the Board to review the policy.
- 4.2 In asking the Board to review the policy, the onus is on the Appellant to demonstrate that the policy was contrary to law, had an unintended effect or created a decision, the effects of which were so disproportionate as to be unfair.
- 4.3 In the case of a matter asserted to be contrary to a law or in disagreement with the law, the Board may defer a decision and require the Appellant to make the necessary application to Court.
- 4.4 A request for a review shall be sent to the Chair of the Board, or in the case in which the Chair is not available or in a conflict of interest, to the Vice-Chair who shall present the application for review to the full Board within 2 Board meetings of its receipt.
- 4.5 In determining whether to allow the review to proceed, the Board may consider any factor the Board deems relevant, including but not limited to:
- a. The actual effect of the decision;
 - b. Whether the effect is likely to re-occur;
 - c. Whether a similar review has been considered within the previous two terms of the School Board;
 - d. The time required to undertake the review and other duties and decisions that would be impaired by the time required;
 - e. The effect that changing the policy may have on other decisions and upon the good order and safety of the school within the School Division.
- 4.6 If the Board decides not to go through with a review, that decision may not be appealed.

- 4.7 If a review is authorized, the Appellant will be given 14 days to provide any additional information related to the policy or practice that is to be reviewed.
- 4.8 The Superintendent will then be given 21 days after receipt of the information or evidence to provide any further evidence or information.
- 4.9 The Board shall consider the information in front of it in camera and determine if consideration of a change to an existing policy or practice or enactment of a new policy is required.
- 4.10 If a new policy or the change to any existing policy of practice is deemed necessary by the Board, the determination of the new policy will be made by the Board in the usual process of determining a policy.
- 4.11 In the course of determining or setting the new or changed policy, no mention may be made of the decision that prompted the review.
- 4.12 A change in a policy, practice, or custom shall not invalidate or change the prior decision.
- 4.13 The Superintendent, in the Superintendent's absolute discretion, may change or terminate any decision made if:
 - a. the new policy would have resulted in a different decision;
 - b. changing or terminating the decision is not moot; and
 - c. the effect of continuing the decision, in the opinion of the Superintendent, would be unfair or unjust.

5.0 RULES OF GENERAL APPLICATION

- 5.1 Appeals and reviews will normally be determined by the written materials provided. However, the Board may approve attendance at a hearing of all parties by a resolution of the Board passed by a 2/3 majority vote.
- 5.2 Hearings on appeals or requests for review based upon a particular decision shall be held in camera unless the Board approves an open hearing by a resolution passed by a 2/3 majority vote.
- 5.3 The strict rules of evidence shall not bind the Board in determining appeals or considering reviews.
- 5.4 Trustees directly involved in an issue will not participate in determining an appeal but may debate and vote on matters under review.
- 5.5 The Board may set time limits for the filing of any materials and may make decisions based upon the materials filed after the time provided by it.

Reference:

Policy 2 – Board Governance Model

Policy 3 – Role of the School Board

Policy 5 Board Operations

Policy 9 – Board and Superintendent Relationship

Policy 11 – General Board and Administration Constraints Decision-making Matrix

Date Adopted: November 12, 2024

Date Amended: