

**REVISED STATUTES OF BRITISH COLUMBIA, 1996 (amended 2007)**

**CONTENTS**

**PART 2 — STUDENTS AND PARENTS**

**Division 3 - Joint Rights and Duties**

11 Appeals

11.1 Appeals to superintendent of achievement

11.2 Powers and duties of superintendent of achievement on appeal

11.3 Board decision may be suspended

11.4 Adjudication of appeals

11.5 Reconsideration by board

11.6 Decision final

11.7 Application of the Administrative Tribunals Act

11.8 Immunity protection for superintendent of achievement, mediator or adjudicator

**Appeals**

**11** (1) In subsections (2) and (4), "decision" includes the failure of an employee to make a decision.

(2) If a decision of an employee of a board significantly affects the education, health or safety of a student, the parent of the student or the student may, within a reasonable time from the date that the parent or student was informed of the decision, appeal that decision to the board.

(3) For the purposes of hearing appeals under this section, a board must, by bylaw, establish an appeal procedure.

(4) A board may refuse to hear an appeal under this section unless the appellant discusses the decision under appeal with one or more persons as directed by the board.

(5) A board may establish one or more committees for the purpose of investigating appeals under this section.

(6) A board may make any decision that it considers appropriate in respect of the matter that is appealed to it under this section, and subject to section 11.1 (2), the decision of the board is final.

(7) A board must

(a) make a decision under this section within 45 days of the date on which the Board received the appeal, and

(b) promptly report that decision to the person making the appeal.

### **Appeals to superintendent of achievement**

- 11.1** (1) Subject to the regulations, a decision of a board made under section 11 (6) or a reconsideration by a board under section 11.5 may be appealed to a superintendent of achievement.
- (2) An appeal under this section is a new hearing.
- (3) An appeal under this section does not suspend the operation of a decision under appeal unless the superintendent of achievement otherwise orders under section 11.3.

### **Powers and duties of superintendent of achievement on appeal**

- 11.2** (1) On receipt of an appeal under section 11.1, a superintendent of achievement may
- (a) refer the matter for mediation or adjudication, to a mediator or adjudicator under contract with the minister or a person designated by the minister, or
  - (b) summarily dismiss all or part of the appeal.
- (2) A superintendent of achievement must exercise the discretion under subsection (1) in accordance with guidelines established by the minister.
- (3) If a superintendent of achievement has referred a matter for mediation, the superintendent of achievement may refer the matter to an adjudicator for determination if
- (a) mediation is unsuccessful in bringing about agreement between the parties, or
  - (b) a party so requests.
- (4) A superintendent of achievement may, subject to the orders of the minister, establish practices and procedures for the purposes of subsection (1).

### **Board decision may be suspended**

- 11.3** (1) A person who files an appeal under section 11.1 may request the superintendent of achievement to suspend the operation of the decision under appeal.
- (2) The superintendent of achievement may, on his or her own initiative or at the request of a person under subsection (1), suspend the decision for the period and on the conditions the superintendent of achievement considers to be appropriate.

## Adjudication of appeals

**11.4** (1) On receipt of an appeal referred by a superintendent of achievement under section 11.2, an adjudicator may

- (a) confirm, vary or revoke the decision under appeal,
- (b) refer the matter back to the board for reconsideration, with or without directions, or
- (c) dismiss all or part of the appeal.

(2) In adjudicating an appeal under subsection (1), an adjudicator must not make a decision that would result in any of the following:

- (a) the size of any class exceeding the limits set out in section 76.1 (1) or (2);
- (b) the size of any class, for any of grades 4 to 7 in any school in the school district, exceeding 30 students unless
  - (i) in the opinions of the superintendent of schools for the school district and the principal of the school, the organization of the class is appropriate for student learning, and
  - (ii) the principal of the school has obtained the consent of the teacher of that class;
- (c) the size of any class, for any of grades 8 to 12 in any school in the school district, exceeding 30 students unless
  - (i) in the opinions of the superintendent of schools for the school district and the principal of the school, the organization of the class is appropriate for student learning, and
  - (ii) the principal of the school has consulted with the teacher of that class;
- (d) any class in any school in a school district having more than 3 students with an individual education plan, within the meaning of section 76.1 (5), unless
  - (i) in the opinions of the superintendent of schools for the school district and the principal of the school, the organization of the class is appropriate for student learning, and
  - (ii) the principal of the school has consulted with the teacher of that class.

(3) An adjudicator may, subject to the orders of the minister, establish practices and procedures for the hearing of an appeal.

### **Reconsideration by board**

- 11.5** If an adjudicator refers a matter back to a board under section 11.4 (1) (b), the adjudicator may
- (a) request that the board review specific issues in its reconsideration, and
  - (b) require the board to complete its reconsideration by a certain date.

### **Decision final**

- 11.6** A decision of a superintendent of achievement under section 11.2 (1) (b), or of an adjudicator under section 11.4 (1), is final and binding on the parties.

### **Application of the Administrative Tribunals Act**

- 11.7** The following provisions of the *Administrative Tribunals Act* apply to a superintendent of achievement and adjudicator for the purposes of an appeal under section 11.1 of this Act as if the superintendent of achievement or adjudicator were a tribunal under the *Administrative Tribunals Act*:

- (a) section 29 [*disclosure protection*];
- (b) section 31 [*summary dismissal*];
- (c) section 34 (3) and (4) [*power to compel witnesses and order disclosure*];
- (d) section 36 [*form of hearing of application*];
- (e) section 38 [*examination of witnesses*];
- (f) section 44 [*tribunal without jurisdiction over constitutional questions*];
- (g) section 45 [*tribunal without jurisdiction over Canadian Charter of Rights and Freedoms*];
- (h) section 58 [*standard of review if tribunal's enabling Act has privative clause*];
- (i) section 61 [*application of Freedom of Information and Protection of Privacy Act*].

### **Immunity protection for superintendent of achievement, mediator or adjudicator**

- 11.8** Section 56 of the *Administrative Tribunals Act* applies to a superintendent of achievement, mediator or adjudicator for the purposes of an appeal under section 11.1 of this Act as if the superintendent, mediator or adjudicator were a tribunal under the *Administrative Tribunals Act*.