

**Policy 2.12**

**Category: Governance and Operations**

**Appeals and Hearings Regarding Student Matters**

**BACKGROUND**

The principles of natural justice support the provision of a process for parents and electors to appeal decisions, taken and not taken, by board employees. In addition, Section 42 of the *Education Act* requires that a board establish appeal procedures with respect to decisions taken by board employees that could significantly affect a student's education.

Students and parents have a right and boards have an obligation, to ensure those significant decisions that affect a student's education can be appealed. In accordance with Section 42 of the *Education Act*, the Charter Board will hear appeals of decisions on all matters which are submitted and that significantly affect the education of a student.

Under Section 43 of the *Education Act*, the Minister of Education may review a decision of a board with respect to the following matters:

- provision of specialized supports and services;
- the expulsion of a student.

**POLICY STATEMENT**

The CAPE Charter Board believes that decisions regarding the education of a student should be made normally at the level closest to the student.

**DEFINITIONS**

1. **Appeal** - process in which cases are reviewed, where parties request a formal change to an official decision. Appeals function both as a process for error correction as well as a process of clarification and interpretation.
2. **Expulsion** - forcing someone, or being forced, to leave a school, organization, or country.
3. **Philosophy** - a set of ideas about how to do something or how to live.
4. **Mission** - a written declaration of an organization's core purpose and focus that normally remains unchanged over time.
5. **Advocate** - a person who speaks or writes in support or defense of a person, cause, etc.
6. **Appellant** - a person or party who appeals a judgment or decision.

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**GUIDELINES**

7. The CAPE Charter Board expects its staff to make decisions that are consistent with the philosophy, mission statement and objectives of the school. These decisions shall reflect due process and fair treatment of parents or guardians.
8. With respect to appeals under the *Education Act*,
  - 9.1 The CAPE Charter Board will act as the appeal body on matters related to placement of a student in a special education program;
  - 9.2 payment of fees and costs, and matters referred to in Section 57 of the *Education Act*.
9. Parents and guardians should be advised of the existence of the appeal process and of procedures for appeal. The student who is the subject of an appeal may be present at an appeal.
10. Parents who are not satisfied with a final decision by the CAPE Charter Board may request a review by the Minister of Education.
  - 1.1 Concerns with decisions that significantly affect the education of a student should first be discussed with the teacher first and then the school principal. If satisfactory resolution is not achieved, the parent or guardian is to be advised by the principal of their rights to appeal to the Superintendent.
12. Parents of students, and students 16 years of age or over, have the right to appeal to the CAPE Charter Board a decision of the Superintendent. The Superintendent must advise parents and students of the right of appeal any matter to the CAPE Charter Board.
13. Parents, or students as above, when appealing a decision to the CAPE Charter Board, have the right to be assisted by a resource person(s) of their choosing. The responsibility for engaging and paying for such assistance rests with the parents or students. The name of the resource person(s) must be provided to the Charter Board five (5) days in advance of the hearing.
14. Excepting for a student suspension in excess of five (5) school days (*Education Act*, s. 36), an appeal request must be filed within five (5) calendar days from the date that the individual was informed of the Superintendent's decision. The appeal must be filed in writing and must contain the name of the party filing the appeal, the date, the matter at hand, and the reason for the appeal.
15. Upon receipt of the written request for an appeal, the Superintendent will convene a review process as soon as practically possible, but no later than fifteen (15) calendar days from receipt of the written notice of appeal.

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16. The Superintendent will advise the parent or guardian (in writing) of
  - 16.1 The date, time and location of the appeal review.
  - 16.2 Their right to be accompanied by an advocate, and /or a lawyer, and/or interpreter (at their own expense).
  - 16.3 Their right to present witnesses and offer evidence to support their appeal.
17. The appeal shall be heard in camera, with specified individuals in attendance.
18. The appeal hearing will be conducted in accordance with the following guidelines:
  - 18.1 The CAPE Board Chair will outline the purpose of the hearing, which is to provide:
    - 18.1.1 An opportunity for the parties to make representation in support of their respective positions to the CAPE Charter Board. This information may include expert medical, psychological and educational data and may be presented by witnesses. The information presented may include both written and verbal communications.
    - 18.1.2 The CAPE Charter Board with the means to receive information and to review the facts of the dispute;
    - 18.1.3 the CAPE Charter Board with the means to reach a fair and impartial decision.
  - 18.2 Notes of the proceedings will be recorded for the purpose of the Board's records.
  - 18.3 The Superintendent and/or staff will explain the decision and give reasons.
  - 18.4 The appellant will present the appeal and the reasons for the appeal and will have an opportunity to respond to information provided by the Superintendent and/or staff.
  - 18.5 The Superintendent and/or staff will have an opportunity to respond to information provided by the appellant.
  - 18.6 Board members will have an opportunity to ask questions or clarifications from both parties.
  - 18.7 No cross-examination of the parties will be allowed, unless the Chair deems it advisable under the circumstances.
  - 18.8 The Board will meet without the respective parties to the appeal in attendance to arrive at a decision regarding the appeal. The recording secretary will remain in attendance. The board may have legal counsel in attendance.

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- 18.9 If the board requires additional information or clarification in order to make its decision, both parties to the appeal will be requested to return to the hearing for the required additional information.
19. The Board decision and the reasons for that decision will be communicated to the appellant by telephone, and confirmed in writing, following the hearing. Included in the communication to the appellant shall be information that the appellant has the right to seek a review by the Minister if the appellant is dissatisfied with the decision of the Board, if the matter under appeal is a matter described in the *Education Act*.

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**References:**

*Education Act*

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Adopted: October 12, 1999

Motion: #

Revised: March 31, 2003

Motion: #

Revised: April 16, 2007

Motion: #2007-04-16-16

Revised: September 30, 2008

Motion: #2008-09-30-19

Reviewed: June 2011

Reviewed: April 2013

Reviewed: August 2018

Reviewed: October 2021