



EDUCATION APPEAL TRIBUNAL PROCEDURES POLICY

Approval:
Original signed by DM Cameron

Effective Date: June 3, 2024

GENERAL INFORMATION

Dispute Resolution Procedures Under the Education Act

Resolution of School Based Disputes

The Education Act (Act) requires each School Council to (in consultation with the superintendent, school administration, and teachers of the school) establish a procedure for resolving disputes within the school community. If a decision made by a person employed in a school significantly affects the education, health, or safety of a student, the parent of the student may appeal the decision in accordance with that dispute resolution procedure.

The Department of Education's *School Council Dispute Resolution Procedure Policy* provides guidelines for School Councils to use when they develop dispute resolution procedures for their schools in order to promote consistency across Yukon schools.

Appeals to the Education Appeal Tribunal

The Act specifically provides that disputes involving the following decisions may be appealed to the Education Appeal Tribunal, rather than through the dispute resolution procedure established by the School Council:

- Special needs appeals as described in s. 17 of the Act;
- The decision of a superintendent in a dispute involving student records as described in s. 20 of the Act;
- The decision of a school board, council or superintendent regarding the suspension of a student as described in s. 41 of the Act; and
- The rejection by the Minister of Education (Minister) of a proposal for a locally developed course of study under s. 43 of the Act.

The Act provides that the Minister may issue policies and guidelines respecting the procedures and operation of the Education Appeal Tribunal.

PURPOSE OF POLICY

The purpose of this policy is to clarify the process to be followed for disputes that are appealed to the Education Appeal Tribunal for resolution.

DEFINITIONS

“Mediation” is a structured, interactive process where a neutral third party assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques. All participants in a mediation are encouraged to actively participate in the process.

POLICY - APPEAL PROCEDURES

General Considerations

The Minister must appoint a Chair, Secretary, and up to nine other members to the Education Appeal Tribunal. This includes one member nominated by the Council for Yukon First Nations.

The Chair and members of the Education Appeal Tribunal must swear an oath of non-disclosure in the prescribed form (see Appendix A) for information gained during an appeal to the Tribunal.

All records created as the result of an appeal must be kept by the Secretary for a period of one year after the appeal process has been completed. The Secretary will keep a copy of the notice of settlement.

The Department of Education will include a summary report of the activities of the Education Appeal Tribunal in its Annual Report (i.e., the number of appeals, mediations, and hearings).

Process Upon Receipt of Appeal

Upon receipt of an appeal, the Chair of the Education Appeal Tribunal will review the appeal and determine whether the Tribunal has jurisdiction to consider the appeal under the terms of the Act.

If the Chair determines that the Tribunal has jurisdiction to hear the appeal, a copy of the appeal along with any relevant background information relating to the appeal will be provided to the responding party(ies) within ten (10) working days.

The Department of Education will designate a contact person for the department to respond to appeals to the Tribunal and will notify both the Secretary and the Chair of the Tribunal of the name and contact information of this person.

The responding party(ies) will provide the Tribunal with a summary of their response to the appeal within ten (10) working days of being notified of the appeal by the Tribunal. The Tribunal will provide the appellant with a copy of the responding party's response.

Both the appellant and the responding party(ies) will provide sufficient information so that all parties are able to understand the substance of appeal and the response(s) to the appeal.

Mediation of an Appeal

Before holding a hearing for an appeal, the Chair of the Tribunal may appoint a mediator to attempt to resolve the matter under appeal, pursuant to s. 159 of the Act.

When an appeal is accepted, the Chair will ask both the appellant and the responding party(ies) whether they believe that the matter in dispute can be resolved through mediation.

If the Chair decides to appoint a mediator, all parties to the appeal will be consulted with before a mediator is selected.

If the mediator facilitates a resolution of the dispute:

- i) The mediator will provide, in writing, a signed record of the agreement to the parties, and a notice of settlement to the Tribunal.
- ii) The Tribunal will endeavour to ensure that the appellant provides, in writing, a withdrawal of the appeal.

If the mediator is not able to facilitate a resolution of the dispute, the matter must proceed to hearing as soon as practicable.

Hearing and Determination of an Appeal

A hearing for an appeal referred to the Education Appeal Tribunal must be conducted by the Chair and two or more members of the Tribunal chosen by the Chair.

The Tribunal must set the time, place, and date for a hearing of an appeal, and notify the parties of the time, place, and date of the hearing.

Appeal hearings may take place in any place or community in Yukon.

The Education Appeal Tribunal may establish procedures for the conduct of hearings. Such procedures must be consistent with the following principles:

- i) If possible, the qualifications of the members of the Tribunal will be appropriate to the matter being heard;

- ii) In the hearing of an appeal, the Tribunal may make any investigation it considers necessary, and may call on any experts or consultants considered advisable to report to the Tribunal;
- iii) No decision can be made by the Tribunal without giving the parties to the appeal an opportunity to make representations at the hearing;
- iv) All parties to the appeal must receive copies of all documents that will be relied upon by any party at the hearing in advance of the hearing with sufficient time to be able to prepare for the hearing;
- v) At any point in the hearing process any party may request to meet with the other party(ies) to attempt to resolve the dispute, and the Tribunal will support an attempt to resolve the dispute where it believes that there is likelihood that the dispute may be settled; and
- vi) Each party to the appeal must pay their own costs, unless the Tribunal orders that the costs be paid out of funds approved for the budget of the Tribunal.

Final Decisions

Factors to be Considered in the Decision

In the determination of an appeal, the Education Appeal Tribunal must consider the following factors:

- (a) the educational interests of the student who is the subject of the appeal;
- (b) the impact of the decision on the total population of students served; and
- (c) any other factor that appears to be relevant to the matter in dispute.

Orders of the Education Appeal Tribunal

The Tribunal may make an order doing any of the following:

- (a) confirming or varying the decision under appeal;
- (b) identifying a student as a student with special educational needs;
- (c) directing a School Board or the deputy minister to implement an Individualized Education Plan in a particular environment including, but not limited to, a regular class;

- (d) directing a School Board or the deputy minister to enroll a student in a school named by the Tribunal;
- (e) determining that an Individualized Education Plan be prepared for a student;
- (f) apportioning the cost of providing the services required for an Individualized Educational Plan to a School Board, the Department of Education, or any other department of the Government of Yukon;
- (g) directing that a determination be made in accordance with s. 16 of the Act;
- (h) defining the contents of a student record when the appeal is being made pursuant to s. 20 of the Act;
- (i) reinstating to school a student who has been placed on an indefinite suspension by a School Board, School Council, or superintendent pursuant to s. 41 of the Act; and
- (j) approving a proposal for a locally developed course of study if the appeal is pursuant to s. 43(3) of the Act ().

The decision of the Tribunal is final and binding on the parties to the appeal.

A copy of each decision of the Tribunal must be sent to all parties to the appeal as well as to the Minister, and will be filed with the clerk of the Supreme Court of Yukon. On the filing of an order with the clerk of the Supreme Court, the order has the same force and effect as if the order were an order of that Court.

APPLICATION

This policy applies to all staff of the Department of Education, School Councils, School Boards, all other members of the school community, and the Education Appeal Tribunal.

EFFECTIVE DATE

This policy is effective June 3, 2024. It replaces Education Appeal Tribunal Procedures and Operations Policy effective November 19, 2009.

LEGISLATIVE AND POLICY REFERENCES

Education Act s. 17, s. 20, s. 41, s. 43, s. 113(1)(d), Part 8, s. 186 (1)(i)

Department of Education Policy “School Council Dispute Resolution Procedure Policy”.

HISTORY

Education Appeal Tribunal Procedures and Operations Policy effective November 19, 2009.

Appendix A
OATH OR DECLARATION OF NON-DISCLOSURE FOR
EDUCATION APPEAL TRIBUNAL MEMBERS

I, _____, do swear/solemnly declare that:

- i) I am a member of the Education Appeal Tribunal and have access to information relating to appeals under the *Education Act*.
- ii) I will not knowingly disclose to any person any information obtained in my capacity as a member of the Education Appeal Tribunal, except as permitted by the Act.

SWORN/AFFIRMED by me, at _____, Yukon, this _____ day
of _____, 20__.

Deponent/Affiant

(Person administering the oath or affirmation)