

EDUCATION ACT

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DISPUTE RESOLUTION REGULATIONS

The Commissioner in Executive Council, under sections 73, 82 and 203 of the *Education Act*, S.Nu. 2008, c. 15, and every enabling power, makes the attached *Dispute Resolution Regulations*.

Definitions

1. (1) In these regulations

"concerned person", in relation to a disagreement over a decision, means

- (a) if the student to which the decision relates is not an adult, a parent of the student, and
- (b) if the student to which the decision relates is an adult, the student; (*personne intéressée*)

"decision-maker" means the person who made or failed to make a decision that is the subject matter of a disagreement; (*auteur de la décision*)

"disagreement" means a disagreement described in subsection 2(1); (*désaccord*)

"discussion coordinator" means an employee of the department who has been designated under section 33 as a discussion coordinator. (*coordonnateur des discussions*)

(2) Where pursuant to the definition of "concerned person" in subsection (1), the concerned person is a parent of a student, both parents may attend and participate in any discussion or review held under these regulations.

General

2. (1) These regulations set out the dispute resolution process to be followed

- (a) in resolving disagreements related to a decision made in respect of a student by a member of the school staff, the school team or the district education authority or the failure to make such a decision;
- (b) in appealing a decision to suspend or expel a student or in otherwise resolving disagreements relating to the suspension or expulsion of a student;
- (c) in resolving disagreements respecting the correction of personal information in student records under subsection 81(2) of the Act; and
- (d) in resolving disagreements respecting decisions made by a committee appointed under subsection 27(5) of the *Language of Instruction Regulations*.

(2) These regulations do not apply to a mediation or review in respect of any matter to which section 49 or 50 of the Act applies.

(3) A concerned person may be accompanied by another person for the purpose of giving support and assistance to the concerned person at any discussion or review held under these regulations but no discussion or review shall be delayed because a person to give support and assistance is unavailable.

(4) A person providing support and assistance under subsection (3) may not represent or replace the concerned person at a discussion or review held under these regulations.

(5) If a decision-maker was a district education authority, the following rules apply:

- (a) any discussion or review to be held under these regulations with the district education authority shall, subject to paragraph (b), be held with its chairperson or vice-chairperson and not with the whole district education authority;

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- (b) the chairperson or vice-chairperson of the district education authority may be accompanied by another member of the district education authority at any discussion or review held under these regulations and that member may participate in the discussion or review; and
- (c) no discussion or review shall be delayed because the member referred to in paragraph (b) is unavailable.

Duty to Provide Information

3. A principal shall provide a written explanation of the dispute resolution process to parents and to adult students, including a description of the process to be followed with respect to the correction of personal information in student records as provided for in section 81 of the Act.

Local Discussions

4. (1) If a disagreement described in paragraph 2(1)(a) or (b) arises, the concerned person may begin the dispute resolution process by asking the decision-maker to meet and discuss the matter.

(2) A request for dispute resolution may be made orally or in writing and need not be in any particular form.

(3) If the decision-maker is a member of the school staff, other than the principal, the following rules apply:

- (a) the discussions referred to in subsection (1) shall be held initially with the staff member;
- (b) after the discussions with the staff member or if the staff member does not meet with the concerned person within a reasonable time, the concerned person may refer the matter to the principal for discussion; and
- (c) after discussions with the principal or if the principal does not meet with the concerned person within a reasonable time, the concerned person may refer the matter to the district education authority for discussion.

(4) If the decision-maker is the school team or the principal, the following rules apply:

- (a) the discussions referred to in subsection (1) shall be held initially with the principal; and
- (b) after discussions with the principal or if the principal does not meet with the concerned person within a reasonable time, the concerned person may refer the matter to the district education authority for discussion.

(5) A decision-maker with whom discussions are to be initially held under this section or to whom a matter is referred under this section shall meet with the concerned person for the purpose of discussing the disagreement.

Department-Facilitated Discussions

5. (1) After a matter has been referred to a district education authority under paragraph 4(3)(c) or 4(4)(b) and the discussions have been held with the concerned person or if the discussions have not been held with the concerned person within a reasonable time, the concerned person may request discussions facilitated by the department.

(2) The following rules apply to a request under subsection (1):

- (a) the request shall be made in writing but does not have to be in any particular form;
- (b) subject to paragraph (c), the request shall be made to a discussion coordinator; and
- (c) the request shall be made to the Director General of the *Commission scolaire francophone* if the request relates to a student in a school under the jurisdiction of the *Commission*.

(3) The facilitator for a discussion requested under subsection (1) must be

- (a) the discussion coordinator or an employee of the department selected by the discussion coordinator unless paragraph (b) applies; or

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- (b) the Director General of the *Commission scolaire francophone* if the request relates to a student in a school under the jurisdiction of the *Commission*.

(4) The facilitator shall, at a time and place determined by the facilitator, meet with the concerned person, the decision-maker and such members of the school staff or other employees of the department and members of the district education authority as the facilitator considers appropriate for the purpose of the facilitated discussion.

(5) The facilitator shall

- (a) advise the concerned person of his or her right to request a review by a review board; and
- (b) provide information on how to request the review and the name of the person to whom the request should be made.

Personal Information and Student Records

6. (1) If a concerned person gives a principal a notice in writing under subsection 81(2) of the Act that he or she disagrees with a decision respecting the correction of personal information in a student record, the notice shall be treated as a request for discussions facilitated by the department and

- (a) subject to paragraph (b), the principal shall forward the notice to a discussion coordinator; or
- (b) the principal shall forward the notice to the Director General of the *Commission scolaire francophone* in the case of a notice related to a student in a school under the jurisdiction of the *Commission*.

(2) Subsections 5(3), (4) and (5) apply with necessary modifications to a matter to which subsection (1) applies.

(3) A notice under subsection 81(2) of the Act does not have to be in any particular form.

Language of Instruction

7. If a disagreement arises respecting a decision made by a committee appointed under subsection 27(5) of the *Language of Instruction Regulations*, the concerned person may request discussions facilitated by the department and subsections (2), (3), (4) and (5) apply with necessary modifications to the matter.

Review by a Review Board

8. (1) After facilitated discussions have been held under section 5, 6 or 7 or if the facilitated discussions have not taken place within a reasonable time, the concerned person may request a review by a review board appointed under these regulations.

(2) The following rules apply to a request under subsection (1):

- (a) the request shall be made in writing but does not have to be in any particular form;
- (b) subject to paragraph (c), the request shall be made
 - (i) to the discussion coordinator, or
 - (ii) to the facilitator who facilitated the discussions; and
- (c) the request shall be made to the Director General of the *Commission scolaire francophone* if the request relates to a student in a school under the jurisdiction of the *Commission*.

(3) If the facilitator who facilitated the discussions was not the discussion coordinator, the facilitator shall refer any request received under subparagraph (2)(b)(ii) to the discussion coordinator.

Review Board Clerk

9. (1) Upon receiving a request for a review under section 8, the discussion coordinator or the Director General, as the case may be, shall appoint a person to act as the clerk of the review board.

(2) The clerk shall assist the person who appointed him or her in the appointment of the review board chairperson and assist the chairperson and the review board in carrying out their functions, but the clerk shall provide such assistance only to the extent that the discussion coordinator, Director General, chairperson or review board requests.

Parties

10. The parties to a review under section 8 are

- (a) the concerned person and the principal of the student's school if the school team or the principal or another member of the school staff was the decision-maker;
- (b) the concerned person and the district education authority if the district education authority was the decision-maker; or
- (c) the concerned person and the committee appointed under subsection 27(5) of the *Language of Instruction Regulations* if the committee was the decision-maker.

Information to Parties

11. Within seven days after receiving a request for a review under section 8, the discussion coordinator or the Director General, as the case may be, shall make reasonable efforts to inform the parties that the review has been requested and that

- (a) a review board will be appointed in accordance with these regulations;
- (b) the review board is required to give the parties an opportunity to be heard if the review proceeds;
- (c) the review board is required to make its decision in accordance with the principles and concepts of Inuit Qaujimagatuqangit, particularly the principles of Inuuqatigiitsiarniq, Aajiiqatigiinniq and Qanuqtuurniq; and
- (d) the review may not proceed if the chairperson, in accordance with these regulations and after consulting with the concerned person, decides that
 - (i) the request is frivolous or vexatious,
 - (ii) there is nothing that can be done following the review that would result in a significant benefit to the student affected by the decision, or
 - (iii) there has been an unreasonable delay in requesting the review and the delay will make it difficult or impossible to conduct a fair review.

When Review not to Proceed

12. (1) Before appointing the other members of a review board, the chairperson may decide that a review will not proceed if, after consulting with the concerned person, the chairperson decides that

- (a) the request is frivolous or vexatious;
- (b) there is nothing that can be done following the review that would result in a significant benefit to the student affected by the decision; or
- (c) there has been an unreasonable delay in requesting the review and the delay will make it difficult or impossible to conduct a fair review.

(2) Within 14 days after his or her appointment, the chairperson shall determine whether he or she should consult with the concerned person to decide if the review should proceed.

(3) The chairperson may not decide that a review will not proceed without first consulting with the concerned person.

(4) The chairperson shall make his or her decision in accordance with the principles and concepts of Inuit Qaujimagatuqangit, particularly the principles of Inuuqatigiitsiarniq, Aajiiqatigiinniq and Qanuqtuurniq.

(5) The chairperson shall act expeditiously in making a decision under this section.

Procedure

13. (1) Subject to these regulations, the conduct of and the procedure to be followed by a review board are under the control and direction of the chairperson.

- (2) In determining the procedure to be followed, the chairperson shall have regard to
- (a) the needs of the student;
 - (b) the Act, the regulations and any relevant directions of the Minister; and
 - (c) the importance of the review being conducted fairly.

(3) A review board may consult with any person it considers appropriate for purpose of carrying out a review but shall do so in a way that does not prejudice the right of the parties to be heard.

Parties to Supply Materials

14. The parties shall supply such materials in their possession as may assist the review board in making its decision.

Opportunity to be Heard

15. The review board shall give the parties the opportunity to be heard.

Inuit Qaujimagatuqangit

16. The review board shall make its decision in accordance with the principles and concepts of Inuit Qaujimagatuqangit, particularly the principles of Inuuqatigiitsiarniq, Aajiiqatigiinniq and Qanuqtuurniq.

Nature of Review Board Decisions

17. (1) A review board may not overrule or change the decision that is the subject of the review or require a decision where the failure to make a decision is the subject of the review but it may make recommendations on resolving the disagreement and refer the matter back to the decision-maker.

- (2) The following apply in respect of an appeal of a decision to suspend or expel a student:
- (a) subsection (1) does not apply;
 - (b) the review board may decide what, if anything, should be done to settle the matter; and
 - (c) without limiting the generality of paragraph (b), the review board may,
 - (i) overrule or change the decision that is the subject of the review, or
 - (ii) make recommendations on resolving the disagreement and refer the matter back to the decision-maker.

Reaching a Decision

18. (1) The chairperson of a review board shall use reasonable efforts to have the review board reach a decision by a consensus of the members.

(2) If a review board does not reach a decision by consensus, the decision of the majority of the members shall be the decision of the board.

Decision in Writing

19. The review board shall give its decision to the parties in writing.

Records

20. After a review board gives its decision, the chairperson shall deliver the records of the review board to the department.

Appointment of Review Board

21. (1) A review board consists of a chairperson and two other members.

(2) Within 14 days after receiving a request for a review under section 8, the discussion coordinator or the Director General, as the case may be, shall appoint, from a list supplied by the Minister, an individual to be the chairperson of a review board.

(3) The chairperson shall appoint the other two members of the review board within 14 days after determining to proceed with a requested review.

Notice of Expeditious Decision

22. If, because of the needs of the student, it is important that a review board make its decision expeditiously, the discussion coordinator or the Director General, as the case may be, at the time of appointing the chairperson of the review board, shall inform the chairperson of the reasons why the decision should be made expeditiously.

Factors in Appointment of Chairperson

23. (1) In determining who to appoint as chairperson of a review board, the discussion coordinator or the Director General, as the case may be, shall have regard to

- (a) the need for the review board to make a decision expeditiously; and
- (b) any potential conflict of interest between the chairperson and any party to the review or the decision-maker.

(2) The discussion coordinator or the Director General, as the case may be, shall use his or her best efforts to appoint the chairperson of a review board from the student's community.

Factors in Appointment of Other Members

24. (1) In determining who to appoint as the other members of the review board, the chairperson shall have regard to

- (a) a need for the review board to make its decision expeditiously;
- (b) how knowledgeable the prospective member is about education; and
- (c) how knowledgeable the prospective member is about Nunavut, the community, Inuit societal values and the principles and concepts of Inuit Qaujimajatuqangit.

(2) The chairperson shall use his or her best efforts to appoint the other members of the review board from the student's community.

Disqualification from Appointment

25. (1) The following persons shall not be appointed to a review board:

- (a) a member of the district education authority;
- (b) a person who was a member of the district education authority at any time after
 - (i) the request for discussions was made under section 4 in the case of a disagreement to which that section applies;
 - (ii) the request was made under section 45 of the *Access to Information and Protection of Privacy Act* in the case of a disagreement related to the correction of personal information in student records under subsection 81(2) of the Act, or
 - (iii) the request was made under subsection 27(2) of the *Language of Instruction Regulations* in the case of a disagreement related to the decision of a committee appointed under subsection 27(5) of those regulations;
- (c) a member of the staff of the district education authority or of the school staff of any school under the jurisdiction of the district education authority;

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- (d) a person who made or recommended the decision which is being reviewed; or
- (e) any close relative of the chairperson, a party to the review or of any person described in paragraph (a), (b), (c) or (d).

(2) In addition to the disqualifications under subsection (1), a person shall not be appointed to a review board if he or she has a conflict of interest, including a relationship with another member of the review board, a party or anyone described in paragraph (1)(a), (b), (c) or (d), that would make it inappropriate, in the opinion of the person making the appointment for the person to be appointed.

(3) In subsection (1), “close relative” in relation to a person means a spouse, child, sibling, mother or father of the person or any other relative who resides with the person.

Duty to Decline Appointment

26. A person shall not agree to be appointed to a review board if the person knows that he or she is disqualified under section 25.

Duty to Disclose Conflict of Interest

27. (1) A person shall not agree to be appointed to a review board without first disclosing any conflict of interest he or she may have in serving on the review board.

(2) The disclosure required by subsection (1) shall be made by the potential appointee to the person making the appointment.

Agreement to Serve Until Work Completed

28. A person shall not be appointed to a review board unless the person agrees to carry out his or her duties until the review board issues its decision and not to resign without a justifiable reason.

When Duties Cannot be Performed

29. If, before a review board makes a decision, a member cannot continue to carry out his or her duties, a new review board must be appointed.

Revocation of Appointments for Cause Only

30. The appointment of a member of a review board may not be revoked except for cause.

List of Potential Chairpersons

31. (1) The Minister shall establish and maintain a list of potential chairpersons for the purposes of subsection 21(2).

(2) The Minister shall use his or her best efforts to have the names of at least two persons from each community on the list.

(3) The list shall set out the following information for each person:

- (a) the person’s name, community and contact information; and
- (b) the languages the person is able to use.

(4) The Minister shall not add a person to the list unless the person provides the Minister with a criminal record check done within the preceding three months.

(5) A person who wishes to remain on the list may from time to time provide the Minister with new criminal record checks.

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(6) The Minister shall remove a person from the list three years after the date of the most recent criminal record check provided by the person.

(7) The Minister shall update the list at least annually.

(8) The Minister shall remove the name of a person who asks to be removed from the list.

Remuneration and Expenses

32. The Minister shall pay remuneration and expenses to the members of the review board in accordance with the directives under the *Financial Administration Act*.

Designation of Discussion Coordinators

33. The Minister may designate employees of the department as discussion coordinators for the purpose of these regulations.