

Yukon Education

Policy Subject: Education Appeal Tribunal Procedures and Operations

Date Passed: November 19, 2009

Policy No. 1009

Legislation:

Education Act, Section 186 (1) i
Education Appeal Tribunal Payment Regulations
1991/036
Oath of Non-Disclosure for Education Appeal Tribunal
Members 1991/039

Cross Reference:

Dispute Resolution Policy

Principles:

The Yukon Government supports establishing clear procedures that:

1. Clarify the process that will be followed upon an Appeal to the Education Appeal Tribunal. (*The Tribunal*)
2. Encourage respectful conflict resolution and effective problem solving towards early resolution of issues that have been appealed.
3. Respect confidentiality and privacy rights of students and their families.
4. Support the Education Appeal Tribunal in their work.

Definitions:

Mediation is a process where the parties themselves play a role in finding solutions and reaching agreement on how to resolve the conflict.

Mediator: a mediator assists people involved in a conflict as a

neutral third party with no interest in the outcome or a defined role in the conflict,

A ***Tribunal Hearing*** is a formal hearing with formal procedures and rules of order where a binding decision is imposed on the parties by a panel as a certain outcome of the Appeal.

The ***Parties*** mean the person or persons who have filed the appeal, generally the *complainant*, and the Department of Education representatives (generally the *respondent*)

A ***Pre-Hearing Conference*** is a meeting involving the parties and the chair to clarify the Appeal process, explain options for pre-hearing mediation, and/or establish the procedures involved in a formal hearing of the Appeal

Powers of the Tribunal

Per Section 161 of the Education Act, the Education Appeal Tribunal, in deciding a matter being appealed, may make an order doing one or more of the following:

- (a) confirm or varying the decision that is under appeal;
- (b) identify a student as a student with special educational needs;
- (c) direct 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) direct a School Board or the deputy minister to enroll a student in a school named by the Education Appeal Tribunal;
- (e) determine that an Individualized Education Plan be prepared for a student;
- (f) apportion the cost of providing the services required for an Individualized Education Plan to a School Board, the department, or any other department of the Government of the Yukon;
- (g) direct a determination to be made in accordance with section 16;
- (h) define the contents of a student record when the appeal under consideration is pursuant to section 20;

- (i) reinstate to school a student who has been placed on an indefinite suspension by a School Board, Council or superintendent pursuant to section 41; and;
- (j) approve a proposal for a locally developed course if the appeal is pursuant to subsection 43(3).

Matters to be considered in making a Decision (Section 162, Education Act)

The Education Appeal Tribunal shall consider:

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

Standards and Procedures:

1. Upon receipt of a written Appeal, the Chair of the Education Appeal Tribunal (the Tribunal) will conduct a first screening to confirm jurisdiction under the Education Act.
2. The Chair of the Tribunal will notify and provide copies of all written appeals and summary to the parties. Such notice will be forwarded to an appointed designated contact within the Department of Education within five working days of receiving the Appeal.
3. The Tribunal will consult with the Complainant and the Department representative to determine appropriate date and time for a pre-hearing conference within 30 days of the Appeal, unless a further timeline is necessary and agreed to by the Chair.
4. The Chair of the Tribunal shall convene a pre- hearing conference.
5. The purpose of the pre-hearing conference is to:

- Confirm the matter under appeal and jurisdiction under the Education Act
 - Describe the procedural options in regard to an informal resolution, mediation and/or moving directly to adjudication hearing;
 - Determine whether there is an opportunity for an informal resolution with meetings between the department and the Complainant;
 - Determine whether there is an opportunity for an informal resolution involving a mediator;
 - Determine the desire of the parties to try any informal process prior to proceeding to formal adjudicative hearing.
6. In order to ensure chair neutrality, the chair shall appoint an external mediator in the event that mediation is chosen as the first step in resolution.
 7. The Chair may consult with the parties prior to appointing a mediator.
 8. In the event that the parties reach an informal resolution to the complaint, the Chair will request a signed Notice of Withdrawal from the Complaint.
 9. In the event that a mediator is appointed and facilitates a decision between the Parties, the chair shall ensure that the mediator records, in writing, the decisions and agreements between the Parties, outlining commitments and any required follow up steps; this Agreement will be signed by all Parties.
 10. In the event that a mediator is appointed and the Parties do not reach agreement, the matter shall proceed to a hearing and a date for that hearing must be set as soon as possible.
 11. Prior to commencing with a formal hearing, the chair will conduct a pre-hearing conference to confirm the issues and to set the date by which the parties must have provided for a full disclosure of documents, identify hearing dates, expectation of time necessary for hearing, confirmation and to outline the hearing process.
 12. The Chair shall arrange for the exchange of documents at least

15 working days in advance of a formal hearing in order to provide for adequate time for this to occur.

13. The Chair shall select panel members from among any member of the Education Appeal Tribunal and confirm that no conflict of interest exists to prevent their participation in the Appeal.
14. The Chair is required by the Education Act to hear the appeal.
15. All Tribunal meetings and hearings shall be closed, unless all parties agree that they be open and the chair agrees to them being open.
16. If any party has an objection to any member of the Panel the Chair shall request that that party provide reasons for the objection. After the reasons have been given, the Tribunal Chair shall make a ruling on the eligibility of the member of the Education Appeal Tribunal to participate in the Appeal as a Panel member.
17. Tribunal Hearings will be conducted in a manner outlined and attached as Appendix I.
18. The Education Appeal Tribunal panel, in conducting a formal hearing, may direct any investigation it considers necessary.
19. Once a Decision is reached by the Tribunal, a copy of the Decision will be sent to:
 - a. The parties
 - b. The designated contact at the Department of Education who shall be responsible for ensuring a copy is forwarded to the Minister of Education.
20. Decisions made by an Education Appeal Tribunal Hearing are binding on the parties.
21. Any Order issued by the Tribunal shall be filed with the Yukon Supreme Court in accordance with court procedures.

On-going discussions by the parties towards issue resolution

22. At any point in the appeal process, either party may request that the other party meet to convene talks towards a resolution of the issues. Such discussions do not remove or in anyway diminish

the appeal rights of the Complainant.

23. In some cases, where there is a likelihood of agreement, either party may request that any pre-scheduled hearing dates or pre-hearing conference dates be deferred, so that the talks may continue, and the Tribunal will respond accordingly by requesting the other party to agree.

Oath of Confidentiality

1. All members of the Education Appeal Tribunal are required to sign and comply with an Oath of Confidentiality upon their appointment to the Board, attached as Appendix II.

Record Keeping

1. All records created in the process of the Appeal are required to be kept by the Tribunal Secretariat for a period of one year after the matter is resolved; subsequently, the Tribunal will deliver to the Department all background documentation, except a permanent File Copy of the Decision only.

Annual Reporting

The Department of Education will include Report of the activities of the Tribunal in their Annual Report which will include only the number of enquiries, mediations and hearings.

Appeals to the Education Appeal Tribunal

Written Complaint received by the Tribunal Secretariat



Tribunal Secretariat to ensure a Summary of Complaint (per Appendix I) is provided with the Request for Appeal from the Complainant



First Screening

Chair of the Tribunal will confirm that the matter falls under the jurisdiction of the TRIBUNAL. (If not, a letter is circulated advising that the Complaint cannot be accepted.)

If yes:

Pre-Hearing Conference

Scheduled to involve the complainant and the respondent to clarify the issue and outline the process, set timelines, advise the parties of one last opportunity for resolution prior to the next step.



Mediation Option Chosen by parties

An independent Mediator as appointed by Chair in consultation with parties will meet with the Parties, If an Agreement is reached, the Mediator will facilitate the drafting of the Agreement and Notice will be sent to the TRIBUNAL that the Appeal has been Withdrawn.

No Agreement

The matter will proceed to Hearing, with a date set in a timely manner.

Hearing Option

Pre-hearing conference to prepare parties for hearing, confirm issues, timelines, identify panel members, set dates for exchange of information at least 15 working days in advance of hearing.

Tribunal Hearing and Decision

Decision sent to Parties.

An Order, if issued, sent to the Yukon Supreme Court, the Parties and the Minister.

Appendix I

Sample Hearing Guidelines

EDUCATION APPEAL TRIBUNAL

HEARING PROCEDURES

1. Formal call to order by Chair
2. Introductory Statement by Chair
 - a. Introduction of Education Appeal Tribunal members and Secretary
 - b. Preliminary matters
 - i. introduction of participants (refer to party making the appeal as “Complainant” and party whose decision is under appeal as “Respondent”)
 - ii. notice of hearing from Secretary
 - iii. tape recording for hearing
 - iv. identification of issue to be heard (student suspension, special needs, etc.)
 - v. Chair may explain the processes to be followed, time schedule expectations and clarification of the issues to be determined by the Tribunal.
 - vi. The Chair shall briefly outline the format to be followed, the procedures to be followed, the procedures to be used to present evidence and testimony, and the responsibility of the Chair to elicit further information, as necessary. It is suggested that all statements made during the hearing be addressed to the Chair. (An obvious exception would be discussions between parties and their own counsel).
 - c. Public Hearing. The Chair shall advise that the hearing is closed unless:
 - i. both parties agree that it shall be open

- ii. one party requests an open hearing and the Education Appeal Tribunal agrees with the request after having considered the request.
- 3. Witnesses. The Chair shall advise whether the witnesses shall be permitted to stay during the hearing or whether they will be excluded from the hearing until they give their evidence.
- 4. Opening of formal hearing
 - a. Opening Statement

The Chair asks for opening statements from each party to summarize the issues as each sees it.
 - b. Presentation of evidence
 - i. Written evidence

The Secretary shall distribute copies of written materials to the members of the Education Appeal Tribunal that have been received from the parties and as approved at the Pre-hearing Conference.

Written evidence shall:

 - 1. Be properly identified and authenticated
 - 2. stamped and given and properly marked for identification
 - 3. Confirmed by the parties as relevant and accepted into evidence. If any evidence is challenged, the objecting party will present reasons for its objections, the party entering the document may respond as to relevancy; the Tribunal shall rule on admissibility.
 - ii. The Chair requests the party appealing to proceed with the appeal.

This may be done by the party appealing providing information or by the party appealing and a representative providing information personally and/or through witnesses.

- iii. When a witness is called the Chair indicates where the witness is to sit. Evidence is presented under Oath, along with the name and address of the witness.
- iv. At the completion of direct examination of a witness, the opposing party may cross-examine. The Tribunal then may ask questions, directed through the Chair. There shall be an opportunity for the witness to clarify what he or she said if the witness wishes to do so, or if the presenting party wishes to ask any further clarifying questions.
- v. The members of the Education Appeal Tribunal may, through the Chair, ask any person questions of clarification. Questions for additional information should occur after questioning by both parties.
- vi. The Chair asks if there will be further need of each person at the conclusion of the questioning of that person. If so, the person is asked to remain to be called at a later time. Otherwise, the Chair thanks the person for the information and the person may leave.

5. Summary Statements

- a. The Chair asks for a Summary Statement of the Complainant's position.
- b. The Chair asks for a Summary Statement of the Respondent's position.
- c. The party appealing shall have an opportunity to Reply to the Summary Statement of the Respondent. A Reply is limited to matters raised by the Respondent that were not covered by the Complainant in their initial statement.

6. Closing statement by the Chair that will include when the decision of the Education Appeal Tribunal is expected to be made.

7. As long as it does not prejudice any Party, The Education Appeal Tribunal may:
 - a. change these hearing procedures at any time.
 - b. adjourn any hearing on the request of either party or on its own initiative
 - c. expel any person from a hearing if that person refuses to abide by the rulings of the Education Appeal Tribunal.
 - d. Accept the withdrawal of the appeal at any time before or during a hearing.
 - e. Designate an additional person or entity Intervener Status, which will allow their participation as a Party, or in so far as allowed by the Chair.
 - f. may obtain assistance from experts or consultants. Any information from experts or consultants shall be shared with the parties and an opportunity shall be provided to the parties to respond to the information.
8. The Judicial Rules of Evidence do not apply to a hearing by the Education Appeal Tribunal.
9. Either party or the Education Appeal Tribunal may obtain legal assistance for a hearing.
10. At the end of a hearing, the Education Appeal Tribunal shall decide if any costs of either party shall be paid for out of the budget of the Education Appeal Tribunal.

Appendix II:

**OATH OF
CONFIDENTIALITY FOR
EDUCATION APPEAL TRIBUNAL MEMBER**

I, _____, do swear/solemnly declare that:

1. I am an appointed member of the Education Appeal Tribunal and have access to information relating to appeals under the Education Act.
2. 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 _____, 200__.

DEPONENT/AFFIANT

PERSON ADMINISTERING THE OATH OR AFFIRMATION

Oath may be administered by a notary public, a peace officer, or a judge of any court.

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