



Commission scolaire English-Montréal

English Montreal School Board

BY-LAW NO. 8 (2020)

COMPLAINT EXAMINATION PROCEDURE

NOTE: The masculine gender, when used in this document, refers to both women and men. No discrimination is intended, it is used solely to simplify the text.

1. OBJECTIVE OF THE BY-LAW

The present By-Law outlines the procedure to be followed for the examination of **Complaints** from students of the English Montreal School Board (EMSB) or their **Parents**, if the students are minors. It is designed to try to resolve the issue at the level closest to where the situation has occurred.

The **Complaint** examination procedure enables a complainant who is dissatisfied with the handling of a **Complaint** or with the outcome to refer the **Complaint** to a person designated by the EMSB, as the **Student Ombudsman**.

By this By-Law, the EMSB wishes to introduce an efficient and effective management process of complaints with the following objectives:

- To ensure that all **Complaints** are treated with equity, impartiality and transparency;
- To ensure that all **Complaints** are treated diligently and expediently;
- To ensure that the rights of anyone involved in a **Complaint** will be respected;
- To ensure that anyone making a **Complaint** receives a clear and detailed explanation of all decisions rendered.

All individuals involved in this process shall maintain the confidentiality of the individuals involved.

2. LEGAL FRAMEWORK

Provincial legislation:

- *Education Act* (R.S.Q., c. I-13.3)
- *Regulation respecting the complaint examination procedure established by a school board* (R.S.Q., c. I-13.3, r.7.1)
- *Act respecting Access to documents held by public bodies and the Protection of personal information* (R.S.Q., c. A-2.1)

EMSB By-Laws and Policies:

- The Code of Conduct of each EMSB school or centre;
- The Anti-Violence and Ant-Bullying Plans of each EMSB school or centre;
- The EMSB Safe Physical Cyber Environment Policy (DG-27)

3. FIELD OF APPLICATION

A **Complaint**, or any part of same which relates to matters under the jurisdiction of the Department of Human Resources may be at any time referred to the Director of Human Resources, who will deal with it in accordance with the applicable laws and collective agreements.

In such a case, no follow-up will be provided to the complainant other than to inform them that the file is being handled by the Department of Human Resources or closed. Any action taken, including corrective, disciplinary or assistance measure, is confidential.

4. DEFINITIONS

In the present By-Law, the use of bold interface identifies the terms defined in this section as follows:

4.1 Ad Hoc Committee: A committee composed of three Commissioners, including at least one Parent Commissioner, appointed by Resolution of the Council of Commissioners, as prescribed by section 11 of By-Law No. 11 (*Internal Governance*). The mandate of the **Ad Hoc Committee** is to examine a Parent's **Request for Reconsideration** of a Decision under sections 9 to 12 of the *Education Act*, the whole as provided under section 7 of the present By-Law.

4.2 Complaint: A notice regarding the dissatisfaction of a complainant relating to the functions of the EMSB and the services it provides, on which an action or a decision was asked of a Principal of a school/centre for services provided at the school/centre level. **Complaints** are submitted with the prescribed **Complaint Examination Form** available at the office of the Secretary General.

If the **Complaint** relates to services provided by the EMSB other than at school/centre level, it shall be raised at the applicable level of authority (e.g. with the Director of the Service/Department concerned). All **Complaints** will be dealt with according to the present By-Law.

4.3 Parent: Is defined at section 13 of the *Education Act* as the person having parental authority, or unless that person objects, the person having custody de facto of the student.

4.4 Request for Reconsideration: The process by which the Council of Commissioners may uphold, reverse or modify a decision made by an officer or an employee of the EMSB, the

Council of Commissioners, the Executive Committee or a Governing Board. Such decision shall concern an individual student and the **Request for Reconsideration** shall follow the requirements of sections 9 to 12 of the *Education Act*. A decision of general application is not subject to reconsideration.

*The present By-Law shall not be construed as limiting the right of students or their **Parent(s)**, if the student is a minor, to make a **Complaint** nor the rights granted under sections 9 to 12 of the *Education Act*.*

4.5 Review of a Decision: At any administrative decision-making level, the complainant can request the review of the **Complaint** and, in accordance with the present By-Law, the decision may be upheld, reversed or modified. The decision may be rendered verbally at any administrative level, however the complainant may request that the decision be provided in writing.

4.6 Student Ombudsman: An independent and neutral individual who shall be designated by the Council of Commissioners and mandated to inform student(s) or their **Parent(s)** and direct their inquiries to the appropriate person in accordance with the present By-Law as well as to receive, investigate and give an opinion on the merits of a **Complaint** in order to recommend, if required, any appropriate corrective measures.

The Council of Commissioners designates an individual to act as **Student Ombudsman** as well as a Substitute **Student Ombudsman**. During the period when the **Student Ombudsman** is absent and he cannot carry out his normal functions, the Substitute will take the role as the acting **Student Ombudsman** until the **Student Ombudsman** resumes carrying out his normal duties.

The **Student Ombudsman** can only provide an opinion on the merits of a case once the complainant has exhausted all remedies provided for in the present Complaint Examination Procedure. The **Student Ombudsman** may also make only recommendations to the Council of Commissioners addressing the matters submitted to their review.

The **Student Ombudsman** may take up a **Complaint** at any stage if he considers that an intervention is necessary to prevent harm from being caused to the complainant.

5. CONFIDENTIALITY

As required at section 4 of the *Regulation respecting the complaint examination procedure established by a school board*, the confidentiality of a **Complaint** shall be ensured at all levels.

As part of the investigation of a **Complaint**, facts shall be verified, witnesses may be contacted, and interviews may take place.

Complainants shall indicate on the Complaint Examination Form provided by the office of the Secretary General if they consent that their identity be revealed or that information revealing their identity be disclosed during the investigation process, if necessary.

In cases where it is not possible to investigate without revealing the identity of the complainant or information revealing their identity, the person conducting the investigation will communicate with the complainant to discuss possible avenues.

In the event no other avenue is possible, a **Complaint** may be closed without investigation.

In the case of judicial proceedings or grievance arbitration, the identity of complainants as well as the facts related to their **Complaint** may have to be revealed and they may be compelled to testify.

The **Complaint** file is confidential and only the persons allowed by law can access it. Complainants understand that only the information regarding the student and/or the complainant, or information allowed to be disclosed by the *Act respecting Access to documents of public bodies and the Protection of personal information* will be provided to them.

Complainants also understand that publicly disclosing the fact that they have made a **complaint** and the topic or content of their **complaint** may indicate that they waive the obligation of confidentiality.

Information concerning third parties is also confidential and cannot be disclosed unless they consent.

5.1 Categories of Complaints Regarding Confidentiality

It is understood that when investigating the matter, one may decide on their investigation plan, determine the persons they wish to interview and focus on the facts they deem relevant to the investigation.

In all cases, prior to concluding that any party involved in or the object of an investigation has committed an error or a fault or has omitted to act, the person investigating the matter shall consult with said party.

To guide complainants, the following categories of **Complaints** have been identified:

5.1.1 Examination of the **Complaint** is entirely possible without revealing the identity of the complainant because other means of investigation exist, particularly situations where there are many witnesses.

For example:

- A comment made in a meeting with multiple attendees
- A verbal confrontation in a group

5.1.2 Examination of the **Complaint** is not possible without revealing the identity of the complainant.

Either of these cases apply to the situation:

A) The decision concerns a specific student.

For example:

- Exclusion from a school activity
- Course or class placement
- Program placement or exclusion

OR

B) The **Complaint** concerns a situation intrinsically related to the complainant whereas an investigation cannot be conducted without revealing their identity or the facts which could identify them, particularly where there are very few or no witnesses.

6. COMPLAINT EXAMINATION PROCEDURE

6.1 General Principles

- 6.1.1** Only the student concerned or his **parent(s)**, if the student is a minor, may make a **Complaint**. Follow-ups will not be provided on anonymous **complaints**.
- 6.1.2** The use of the **Complaint** form provided by the office of the Secretary General is mandatory and can be requested at any point during the process. The form allows for a clear identification of the decision to be reviewed, the steps taken by the complainant and their consent to reveal the information concerning them necessary to investigate. Any documentation or information complainants wish to provide can accompany the form.
- 6.1.3** Prior to submitting a **Complaint**, the complainant shall have tried, in good faith, to resolve the issue with the person who made the decision.
- 6.1.4** The person who receives the **Complaint** shall, at all stages, be provided with all pertinent information relating to the **Complaint**. In accordance with the investigation process, interested parties will be given the opportunity to present their observations.
- 6.1.5** The complainant has the right to be accompanied by the person of their choice at any stage of the **Complaint** examination procedure.
- 6.1.6** The complainant may receive assistance from the Secretary General in formulating their **Complaint** or guidance in any step related to the **Complaint**.
- 6.1.7** At any stage once a decision has been rendered, the complainant may forward their **Complaint** to the next decision-making level.

- 6.1.8** A complainant may ask for specific clarifications regarding the application of a decision rendered at any level of the **Complaint** examination process.
- 6.1.9** Every person involved in the process shall ensure that **Complaints** are handled in a confidential manner. In the analysis of the **Complaint**, information may be requested from any person involved or any person who may provide relevant information. Witnesses shall be made aware that their participation shall remain strictly confidential and shall sign an engagement to respect the confidentiality of any element of the process.
- 6.1.10** Every person involved in the process shall ensure that there is no form of retaliation. A complainant who believes that retaliatory measures were exercised against him may bring his concern of reprisal directly to the next decision-making level.
- 6.1.11** A Commissioner who receives a **Complaint** from a **Parent** or a student refers them to the Chair of the Council of Commissioners, who will in turn, inform the Director General.

6.2 Process of a Complaint

*Notwithstanding the process provided in the present section, a complainant dissatisfied with the **Complaint** examination or its outcome has the right at any stage to request the intervention of the **Student Ombudsman**, who will accept or refuse to intervene in accordance with the present By-Law and the Regulation Respecting the Complaint Examination Procedure Established by a School Board.*

6.2.1 Process Summary

- 6.2.1.1** In all cases where the **Complaint** concerns the functions of the EMSB and the services provided at the school or centre level, the **Complaint** shall first be made to the following persons in the following order:
- a) To the Principal of the school/centre;
 - b) To the applicable Sector Director (Elementary, High Schools or Adult Education and Vocational Services) or Director of the Service/Department which provided the service;
 - c) To the Director General;
 - d) As applicable, to the Council of Commissioners (**Ad hoc Committee**) for reconsideration if the **Complaint** is subject to such or to the **Student Ombudsman** in other cases.

6.2.2 Detailed Process

6.2.2.1 School/centre Principal: At the school/centre level, concerns can first be brought verbally or in writing to the Principal in an attempt to resolve any issue in a mutually agreeable manner.

However, if the **Complaint** concerns said person, the complainant shall complete the prescribed complaint examination form and bring the **Complaint** directly to the next decision-making level.

6.2.2.2 Sector Director or the applicable Service/Department Director: Once a final decision has been rendered within a reasonable delay by the school/centre Principal, should the complainant be dissatisfied with this decision, he shall submit the prescribed completed complaint examination form to the review of the Sector Director or the applicable Service/Department. However, if the **Complaint** concerns said person, the complainant may bring the **Complaint** directly to the next decision-making level.

In the same manner, in any other situation related to functions or to services provided by the EMSB, a **Complaint** regarding a final decision rendered by an employee of a Service/Department shall be directed to the Director of said Service/Department, who may review the decision.

6.2.2.3 Director General: Once a final decision has been rendered by the concerned Sector Director or the Director of the concerned Service/Department, should the complainant be dissatisfied with the handling of his **Complaint** or its outcome, he may forward his completed complaint examination form for review by the Director General.

6.2.2.4 Should the complainant be dissatisfied with the handling of his **Complaint** or its outcome by the Director General he may forward his completed complaint examination form to the Secretary General. It shall be noted that the Secretary General does not review the **Complaint** but solely ensures that the process is duly followed.

6.2.2.5 Upon receipt of the completed complaint examination form, the Secretary General will ensure that due process was followed, and that the **Complaint** pertained to the functions and services of the EMSB.

6.2.2.6 The detailed process defined under the present section shall not exceed thirty (30) school days. Should the timeframe be longer than expected, a communication should be sent to the parent or guardian informing them of the new expected timeline.

6.2.2.7 Should the complainant wish to pursue the matter further, the next step will be determined as follows:

a) Complaint subject to reconsideration:

Should the matter be subject to reconsideration as per sections 9 to 12 of the *Education Act*, the complainant may request that his **Complaint** be submitted to the Council of Commissioners as per section 6 of the present By-Law. The Council of Commissioners shall dispose of the request within sixty (60) days of receiving it.

OR

b) Complaint not subject to reconsideration:

Should the **Complaint** not be regarding a matter subject to reconsideration, the complainant who is not satisfied with the handling of his **Complaint** or its outcome is referred by the Secretary General to the **Student Ombudsman**.

In such a case, the **Student Ombudsman** could then intervene since all remedies provided for in the present By-Law will be considered exhausted. The Secretary General will inform the complainant of the procedure to follow to gain rapid access to the **Student Ombudsman**, who shall submit to the Council of Commissioners his opinion on the merits of the case and may submit recommendations to the Commissioners within thirty (30) days.

7. PROCESS IN THE CASE OF THE RECONSIDERATION OF A DECISION BY THE COUNCIL OF COMMISSIONERS

7.1 The Secretary General will acknowledge reception of the completed complaint examination form and inform the complainant that it will be processed for reconsideration as expeditiously as possible by the Council of Commissioners.

7.2 By resolution, the Council of Commissioners establishes an **Ad Hoc Committee** to examine the **Complaint**.

7.3 The resolution establishing the **Ad Hoc Committee** shall have as terms of reference at least the following elements:

a) The date when the **Complaint** was received and the school/centre or Service/Department involved;

b) The name of the three (3) Commissioners composing the **Ad Hoc Committee**, including at least one Parent Commissioner who shall be the Chair of the Committee;

c) The date by which the **Ad Hoc Committee** shall remit its final report and recommendations to the Council of Commissioners and the elements that shall be included in the final report of the **Ad Hoc Committee**;

d) Modalities and distribution of the minutes of the meetings of the **Ad Hoc committee**.

7.4 The **Ad Hoc Committee** shall make a final report of its findings and accompany the report, if it seems appropriate, with recommendations. The **Ad Hoc Committee** shall indicate whether or not the decision of the EMSB shall be reconsidered by the Council of Commissioners.

7.5 During the examination of the request, the interested parties shall have the opportunity to present their point of view to the **Ad Hoc Committee**.

7.6 The Council of Commissioners shall render its decision at the meeting where the report of the **Ad Hoc Committee** is presented by the Chair of the **Ad Hoc Committee**. If the Council of Commissioners fails to follow the **Ad Hoc Committee's** recommendations, reasons for the refusal shall be given at the same time.

7.7 The complainant shall be advised of the decision of the Council of Commissioners within five (5) days it has been rendered and shall be informed of the grounds on which it was made in writing. He will also be advised of his right to apply to the **Student Ombudsman** should he be dissatisfied with the examination of his **complaint** or its outcome and the procedure to follow to gain rapid access to the **Student Ombudsman**, who shall submit to the Council of Commissioners opinion on the merits of the case and may submit recommendations to the Commissioners within thirty (30) days.

8. STUDENT OMBUDSMAN

8.1 Intervention of the Student Ombudsman

8.1.1 Once he receives a **complaint**, the **Student Ombudsman** will communicate with the Secretary General to verify that the complainant has exhausted the remedies provided for in the present By-Law. He will therefore refer the complainant to the appropriate decision-making level until such remedies have been exhausted. The **Student Ombudsman** cannot give his opinion on the merits of the **Complaint** or make recommendations until then, unless an intervention is necessary to prevent harm from being caused to the complainant, in which case he will advise the Secretary General without delay.

8.1.2 The **Student Ombudsman** will look at the facts of a case objectively, with neutrality and impartiality. He has no decision-making role for the EMSB or for the complainant, no personal stake in a particular outcome and he will not derive any benefit from any conclusion reached or any recommendation made.

8.1.3 The **Student Ombudsman** will listen to concerns, provide information on any inquiries he receives regarding the present By-Law and refer the complainant to the appropriate person(s) or to the Secretary General.

8.1.4 The **Student Ombudsman** may, upon summary examination of the **Complaint**, dismiss it, if in his opinion, it is frivolous, vexatious or made in bad faith.

8.1.5 The **Student Ombudsman** may refuse or cease to examine a **Complaint** if he has reasonable cause to believe that intervening would clearly serve no purpose or if the length of time having elapsed between the events that gave rights to the dissatisfaction of the complainant and the filing of the **Complaint** makes it impossible to examine the **Complaint**.

8.1.6 The **Student Ombudsman** shall refuse or cease to examine a **Complaint** upon becoming aware or being informed that the **Complaint** concerns a serious fault committed by a teacher in the exercise of his functions or an act derogatory to the honor or dignity of the teaching profession for which a **Complaint** has been filed with the Minister of Education under section 26 of the *Education Act*. In such cases, the **Student Ombudsman** will inform the complainant and the Secretary General.

- 8.1.7** The **Student Ombudsman** may require the cooperation of any employee of the EMSB whose expertise is considered necessary to the examination of the **Complaint**. He may also, with the authorization of the Council of Commissioners, call on an outside expert.
- 8.1.8** In the case where all remedies concerning a **Complaint** have been confirmed exhausted, the **Student Ombudsman** shall give the Council of Commissioners an opinion on the merits of the **Complaint** within thirty (30) days after he received it, and, if required, recommend any appropriate corrective measures.
- 8.1.9** The Council of Commissioners, at its next sitting or as soon as possible thereafter, will inform the complainant of the **Student Ombudsman's** opinion on the merits of the **Complaint** and of any recommendation in relation to his case provided by the **Student Ombudsman**, as well as of any action to be taken with respect to these recommendations (as applicable, by providing a copy of a resolution taken by the Council of Commissioners to this effect).
- 8.1.10** The **Student Ombudsman** will not provide legal opinions and may never substitute his decision to the decision made by an employee or an officer of the EMSB, or of the Council of Commissioners.
- 8.1.11** The **Student Ombudsman** may consult documents or obtain the information required to determine if the **Complaint** should be retained. He may meet with any EMSB employees, as well as with the complainant, and if applicable, with the person(s) accompanying them.
- 8.1.12** The **Student Ombudsman** will handle all **Complaints** in a confidential manner, notwithstanding information required to refer the complainant to the appropriate decision-making level as per the present By-Law, which can be provided to the Secretary General, or information required to prevent an imminent risk of serious harm, which can be provided to the appropriate person or authority.

9. FINAL PROVISIONS

- 9.1.1** All **Complaints** will be handled by the EMSB in accordance with the *Act respecting Access to documents held by public bodies and the Protection of personal information*.
- 9.1.2** The Secretary General shall keep a Registry of all **Complaints** filed under the present By-Law. The **Complaint** as well as any relating documents are kept or destroyed according to the Retention Schedule applicable at the EMSB.
- 9.1.3** The **Student Ombudsman** shall declare to the Council of Commissioners if, in any particular case, he has a real or perceived conflict of interest. In particular, any personal or business relationship with a person involved in the **Complaint**, other than a business relationship through the EMSB, shall be declared. In case of a conflict of interest, the Substitute **Student Ombudsman** will handle the file.
- 9.1.4** By September 15th, the **Student Ombudsman** shall provide the Secretary General with an annual report, covering the previous school year, stating the number of **Complaint** referrals received and their nature, the corrective measures recommended, if any, and any action taken. No names of individuals or schools/centres or any other information that may identify

a person or a school/centre will be reported publicly. The report from the **Student Ombudsman** shall be part of the EMSB's Annual Report.

- 9.1.5 The EMSB shall report on the activities resulting from the application of the complaint examination procedure in its Annual Report.
- 9.1.6 At the beginning of each school year, the students and the **Parents** of minor students shall be informed of the present complaint examination procedure.
- 9.1.7 A specific mention that section 96.14 of the *Education Act* prescribes that a reference to the present By-Law shall be added to all students' Individualized Education Plans (IEPs).
- 9.1.8 The EMSB will make the By-Law available on its website along with the contact information for the **Student Ombudsman** and its Substitute.

10. COMING INTO FORCE OF THE BY-LAW

The Present By-Law replaces all previous versions of the By-Law No. 8 *Establishing the Complaint Examination Procedure for Students or their Parents or Guardians* (2010) as well as Procedure DG-8.P: *Administrative Procedures re: Queries from Parents*, adopted by Resolution #88-10-26-11.2.

The present By-Law comes into force on the day of the publication of a public notice that it has been adopted by the Council of Commissioners or on any later date indicated in the notice and will be reviewed if required.

The present By-Law is applicable to an ongoing **Complaint** as it retroactively changes the By-Law No. 8 that existed on the day of the decision. Ongoing **Complaints** may therefore be governed by this By-Law.

FLOW CHART

BY-LAW NO. 8

COMPLAINT EXAMINATION PROCEDURE

