

## SECTION 29 APPEALS

### INFORMATION NOTE/FAQs FOR PARENTS AND SCHOOLS

*\*any reference to 'parent(s)' in the note also refers to 'guardian(s)'.*

#### **What can a parent appeal?**

Section 29 of the Education Act, 1998 allows an appeal to be made to the Secretary General of the Department of Education and Skills in respect of a decision by a Board of Management, or a person acting on behalf of the Board of Management;

- a) To refuse to enrol a student in the school,
- b) To permanently exclude a student from the school, or
- c) To suspend a student from the school for a period which would bring the cumulative period of suspension to 20 school days in any one school year.

Section 29 appeal application forms are available from the Department of Education and Skills website at the following link <https://www.education.ie/en/Parents/Services/Appeal-against-Permanent-Exclusion-Suspension-or-Refusal-to-Enrol/>

In the case of a school which is established or maintained by an Education and Training Board (ETB), the appeal against the decision of the board of management of the school must be made, in the first instance, to its ETB. Forms for taking an ETB section 29 appeal are available from your relevant ETB office. Contact details for all ETBs are available at the following link <http://www.etbi.ie/etbs/directory-of-etbs/>

Many schools will also have a local internal appeals process to the Board of Management available and parents may wish to pursue this option in advance of making a decision to take an appeal under Section 29.

#### **When do I make an appeal?**

An appeal under Section 29 of the Act should be made within 42 calendar days of receipt of the Board of Management's decision. If the school provides for an appeal to the Board of Management you can take your Section 29 appeal after your appeal to the Board of Management is complete.

#### **What is the Nature of the Appeal?**

The Courts have issued a number of judgements involving appeals taken under Section 29 of the Education Act, 1998. These rulings have brought greater focus to the scope of an appeal taken under Section 29 of the Education Act, 1998. While this note should not be taken as a

legal interpretation of these judgements the main conclusions from those judgements and how they affect Section 29 Appeals include:

1. The Supreme Court determined the scope of a Section 29 appeal in its judgement on the *St. Molaga's* case. The Supreme Court held that a Section 29 Appeals Committee has jurisdiction to conduct a **full** hearing on an appeal and was not limited to a review of the decision of a Board of Management under appeal.
2. Parents have a right to apply to their school of choice but they **do not** have an absolute right to have their child enrolled in that school. This means that parental school of choice alone is not grounds for lodging an appeal.
3. Schools have a published enrolment/admissions policy. It is **not** the function or role of a Section 29 Appeals Committee to find places for students in local schools or to judge a school's enrolment policy where parents believe that the policy may be flawed.
4. In respect of appeals relating to **refusal to enrol**, Ms Justice Ní Raifeartaigh in a High Court judgement from 2017, summarised key statements from four previous High Court decisions in regard to the relationship between the Section 29 appeal committee's role and the enrolment policy of a school as follows:
  - (i) The appeals committee should not find fault with the enrolment policy, it should apply it.
  - (ii) The appeals committee cannot criticise or ignore a provision in the enrolment policy and substitute what it considers appropriate.
  - (iii) The appeals committee is required to take the decision on the basis of the same matters as the school and is not entitled to take into account other unrelated matters such as alternative school placements and
  - (iv) The appeals committee has no jurisdiction to review the enrolment policy of a school and its only task is to decide whether the enrolment policy was correctly followed. It should interpret and apply the policy but it is not appropriate to look behind the policies or indirectly to criticise them. It cannot pay attention to elements unrelated to the correct implementation of the entrance policies.
5. In a judgement from 2011, Mr Justice Charleton advises that the role of an appeals committee in an **expulsion** appeal is to determine if the expulsion is warranted or not. To determine this he advised that an appeals committee should consider:
  - (i) The behaviour of the student and the effect of that behaviour on the school;
  - (ii) The track record of the student up to the point of the issue or issues that gave rise to the expulsion;
  - (iii) The attempt by the school at diverting, correcting or checking the behaviour and

- (iv) The rights or wrongs of whatever reason is offered for the behaviour (contrition, any explanation that is offered for behaviour and any response of the student to the school's efforts) and
- 6. In addition, in 2017, in a separate judgement, Ms Justice Ní Raifeartaigh added one further factor to be considered by appeals committees in **expulsion** appeals – the age or maturity of a child.
- 7. In **expulsion** and **suspension** appeals, an Appeals Committee must also have due regard for the relevant provisions of the Education Welfare Act, 2000, the NEWB 'Developing a Code of Behaviour: Guidelines for Schools' and the Schools Code of Behaviour.

### **What do Parents have to do when making an Appeal?**

The Section 29 appeal application form asks parents to set out their grounds of appeal. Parents are asked to explain the grounds of appeal and to consider if the school acted reasonably. Parents must also provide a copy of the letter they have received, signed on behalf of the Board of Management, which outlines the decision to refuse enrolment, permanently expel or suspend the student.

In relation to enrolment appeals, parents are asked to state:

- (1) Why you believe the school was not fair in how it dealt with you and
- (2) Where you consider the school did not correctly apply their enrolment policy.

In relation to appeals against suspension or expulsion of a child, parents are asked to state:

- (1) Why you consider the school was not fair in how it dealt with you and/or your child;
- (2) Where you consider the school did not correctly apply its rules on suspension or expulsion contained in its Code of Behaviour and
- (3) Why you consider that the suspension or expulsion is not warranted.

### **What happens after Parents lodge an Appeal?**

Parents and schools are encouraged to resolve the issue of the appeal. A Section 29 facilitator\* will contact a parent to discuss the issues surrounding the appeal. A Section 29 facilitator is an independent person appointed to try to resolve the matter between the parents and the school. The facilitator will also make contact with the school. Normally a period of one week is provided for the facilitation process. If no resolution can be found and the parent wishes to continue with the appeal then the appeal goes to a hearing.

Both parties will be notified of the date and location of the appeal hearing. Both parties will also be contacted and asked to submit any final documentation in relation to the appeal hearing by a certain date. Both parties must comply with these timelines to ensure that all documents are shared between the parties and are provided to the Appeals Committee in sufficient time before the appeal hearing.

Appeals are heard within a 30 day period from the date that the appeal is admitted. This period can be extended by up to 14 days in exceptional circumstances.

*\*(Please note that a facilitator is not appointed in respect of any appeal involving a school which is established or maintained by the ETB. Regarding these schools please note that any appeal under Section 29 must be taken to the ETB in the first instance. If an appeal to the ETB is not successful it is open to the parent to take a further appeal under Section 29 to this Department.)*

### **Can a Parent withdraw an appeal before the Appeal Hearing?**

Yes, a parent may withdraw an appeal at any stage between making the initial appeal application and the appeal hearing itself. In particular, a parent may decide to withdraw an appeal after the facilitation process. A parent may decide to withdraw an appeal for a number of reasons. These could include:

- Receiving an offer of a place in another school;
- Understanding the role of a Section 29 Appeals Committee and the inability of the Appeals Committee to find fault with a School's Enrolment Policy;
- After meeting the independent facilitator, a parent may conclude that a School have applied their policy correctly and that it is unlikely that an appeal will be upheld.

The decision to withdraw an appeal is entirely a matter for the parents to decide on.

### **Who can attend the Appeal Hearing?**

The parents can attend the hearing. A student under 18 years of age cannot attend the hearing. The board of management of the school may designate two of its members, or one of its members and the school principal to attend the hearing on its behalf. An Educational Welfare Officer may also attend the hearing.

Subject to the prior consent of the Section 29 Appeals Committee, either party to the appeal may also be accompanied at the hearing by no more than two persons nominated by them for this purpose. Persons accompanying either party to the appeal will not be permitted to make statements at the hearing, except where the Section 29 Appeals Committee gives its consent.

Normally, a maximum of two people representing either party will be allowed give oral evidence at the appeal hearing. Neither party is permitted to have legal representatives as speakers at a hearing.

### **What happens at the Appeal Hearing?**

A Section 29 Appeals Committee consists of 3 independent persons; a serving Department Inspector and 2 other persons appointed by the Minister (persons who have had considerable experience in the education sector and this may include retired Inspectors and/or retired School Principals). One of the Appeal Committee members will act as Chairperson. At the hearing, the parties (parents and school) to the appeal will be given an opportunity to present their case. Both parties will have the right to reply and each will have the right to question the other party through the chairperson. Hearings are conducted with the minimum of formality consistent with giving all parties to the appeal a fair hearing.

### **What happens after the Appeal Hearing?**

After the hearing, the Appeals Committee consider the issues and make a decision on the appeal. This decision is notified to the Department, and as soon as practicable, the Principal Officer of the Parents, Learners and Database Section of the Department, shall notify the parties to the appeal, in writing, of the determination of the independent Appeals Committee. Parties are normally notified of the decision within three weeks of the appeal hearing. Where an appeal is upheld by an independent appeals committee, the Secretary General of the Department of Education and Skills issues a direction, which is binding, to a school Board of Management. Where an appeal is upheld, the Board of Management is normally directed to enrol or readmit a student.

### **What happens if an appeal is not upheld?**

The Educational Welfare Service (EWS) of the Child and Family Agency (Tusla) is the legal body which can assist parents who are experiencing difficulty in securing a school placement for their child (see contact details below). The EWS can be contacted at:

#### **North Dublin/North Leinster:**

Louth, Meath, Cavan, Monaghan, Dublin North

**01-7718815**

#### **South Dublin and Environs:**

Kildare, Wicklow (West), Dublin South

**01 7718633**

#### **South/South-East:**

Clare, Limerick, Kerry, Cork, Tipperary, Waterford, Wexford, Kilkenny, Carlow, Wicklow (East)

**021-2428611**

**West/North-West:**

Donegal, Sligo, Leitrim, Mayo, Galway, Roscommon, Longford,  
Westmeath, Offaly, Laois

**091-385302**

**How can the parents or a school challenge the Section 29 Appeal decision?**

Public decisions, made by administration bodies and appeal bodies, such as the Section 29 Appeals Committee may be judicially reviewed by the High Court. If you wish to legally challenge the decision of the Section 29 appeals committee by way of a Judicial Review through the High Court, you will need to seek legal advice on the matter

**Where do I get further information?**

If you would like further information on the Section 29 appeal process you can contact any of the staff in the Section 29 Appeal Administration Unit at 0761 108588 or by email to [section29@education.gov.ie](mailto:section29@education.gov.ie)

**SECTION 29 APPEAL ADMINISTRATION UNIT**

**AUGUST 2018**