

Appendix 1

Section 29 Appeals and the Education (Admission to Schools) Act 2018

The most recent piece of legislation dealing with education and schools is the Education (Admission to Schools) Act 2018. The Act is very prescriptive on how Boards of Management should make provision for the admission of students from the intake group right through for all other year groups. (Reference Section 60 for Admission to Schools; Section 61 for the Admission Statement and Section 62 for the Admission Policy).

All Boards of Management and day to day school management have already implemented aspects of this Act 2018 when enrolling the first year intake for the school year 2021/2022. School Admission Policies had to be reviewed, updated and formally approved by trustees/patrons to comply with this new Act. ACCS provided direction, advice and support to all Community and Comprehensive schools which are now fully compliant with the criteria and procedures as contained in this piece of legislation. Intake procedures in future years will be clearer and more defined as all parties in education become familiar with the legal framework of enrolment into schools.

This Act has also changed the Section 29 appeal process. There is no facilitation process allowed for in the Act of 2018. There are three types of appeal and three sets of procedures: (1) a paper-based appeal where the refusal to enrol is due to oversubscription; (2) an oral hearing where the refusal to enrol is for other reasons but the school has a place; and (3) an oral hearing for permanent exclusion or suspension for more than 20 days.

Enrolment: Oversubscription:

The Act at Section 60 outlines 3 categories of intake: (a) Intake Group, i.e. first years; (b) Special Class, and (c) Other years/groups.

- Where oversubscription arises from application numbers being in excess of the stated maximum intake in a year group and an applicant is refused enrolment, a Section 29 appeal is based only on documentation pertaining to the enrolment process.
- However, before an appeal is requested, the parent must first request the BOM to review the decision to refuse enrolment. (Reference Section 29C (1) (a) and (b)).
- This review is mandatory where the refusal to enrol is due to oversubscription. It is optional if the refusal is for other reasons.
- This review request must happen within 21 days of the date of the Board decision. The BOM must reply within 42 days of the original decision.
- The BOM must refuse a request to review the decision if the request is received outside the 21-day period or if the applicant is using information not made available in the original application. Reference 29C (3) (a) and (b) (i).
- The parent may make an appeal request after 42 days from the original decision if the BOM did not meet its requirements but no later than 63 days from the date of the original decision.
- The Section 29 Administration Unit in Mullingar will arrange a paper-based examination by appointing a Committee within 21 days of the receipt of the completed application from the applicant.
- There is no presence from either the school or the parent at this type of appeal.
- If the committee allows the appeal, the decision must include a direction to the Board to admit the student or to adjust the ranking on the waiting list. Reference Section 29E (3) (a) and (b). The Board must comply with the direction.

Documentary response from the Board for an appeal relating to refusal to enrol due to oversubscription for the intake group:

The Act is very prescriptive as to what a Board may or may not consider when processing enrolments, in particular for the intake group, i.e. first years. The criteria as stated in the school's Admission Policy, the notice of enrolment, the stated capacity, the time frame involved, the process used in the offer of places and the creation of the waiting list are key elements. The Appeal Committee will require the school to provide evidence of:

- The stated maximum number to be enrolled in the intake group
- The total number of applications received by the official closing date
- The number of late applications
- The number of applicants which met the criteria for each listed ordered category as per the Admission Policy

- The category into which the applicant was assigned and the reasons for assigning it to that category
- How the application was processed
- At what point was the stated capacity reached
- How an application was processed in a category if capacity was reached at that particular point of the process
- How the waiting list was ordered; was it by random selection
- An explanation on how the random selection was organised
- The position of the applicant on the waiting list
- Who was present at the time the enrolment was processed
- The Admission Policy, the Notice of Enrolment and copies of any letters and or communication between the parties

Schools must maintain that waiting list for the duration of the school year in question. Any vacancies arising during the course of the year must be offered in order as stated on that list. It is not open to the Board to remove an applicant from that list simply because they know that the applicant is attending another school. An applicant can only be removed from the list where an offer is refused. Such a waiting list is easily maintained during the course of first year. Vacancies do not arise that frequently. The waiting list for the intake year ceases at the end of that school year. Reference 62 (7) (l) (i) and (ii).

Applications for transfer to other years from 2nd year through to Senior Cycle, requires very careful monitoring. The Board must ensure that it sets capacity for the mainstream classes, option subjects, for the Transition Year and the LCA classes. There is greater movement at Senior Cycle and therefore vacancies arise because students leave or drop out of school during senior years. It is vital therefore that schools set capacity in the different subjects/groups at Senior Cycle.

The Act at section 62 (7) (q) provides for the “setting out of procedures for the admission of students who are not already admitted to the school, to classes or years other than the school’s intake group and after the commencement of the school year in relation to which admission is sought including, where appropriate, in accordance with paragraph (i) which relates to oversubscription and waiting lists. At section 65 (3) (xiv), it is stated that a Board shall put in place, “arrangements and procedures that shall apply in relation to applications for admission to a class or year other than the intake group of the school,” when it is reviewing its Admission Policy.

The basic premise in this Act is that parents are entitled to apply to any school and have a right to know why the application is refused, the reasons for such a refusal and the applicant’s place on the official waiting list. Schools in the past placed a variety of conditions as to when applications could be made. Such excuses and or conditions no longer seem tenable.

There are four conditions listed in the Act at section 62 (l) (i) (ii) and (iii) and 62 (j) whereby an application can be refused or withdrawn. These sections refer to the provision of false or misleading information or the refusal by the parent to sign and accept the school’s Code of Behaviour or the non acceptance of an offer or the obligation of an applicant to provide information on the application to and the offer of a place in other schools.

These four conditions together with oversubscription plus the “arrangements and procedures,” as outlined in the Admission Policy, (reference 65 (3) (xiv)), and the formal application form, are important factors for Boards and schools when considering admissions to other years and groups other than the intake year. The Board of Management still has duties and responsibilities to the existing student body and staff. The Educational Welfare Act at Section 5 refers to, “ the right of a Board of Management to take such other reasonable steps as it considers appropriate to ensure that good order and discipline are maintained in the school and that the safety of students is secured.”

Special Education and Special Schools and Special Classes:

The Education Act of 1998 has been amended at Part V1 by having a new section 37A inserted in the Admissions Act of 2018 (reference 37A 1 to 22) which empowers the Minister to assess the provision of education for children with special educational needs. This section of the Act involves the NCSE preparing a report for the Minister examining the provision of education for children with special needs in a particular area. Where the Council considers that there is a deficit in that provision the Minister has the power to designate, following consultation, that schools in the area should be requested to make additional provision in respect of children with special educational needs. Reference 37A (3) (a) to (e).

Admission to Special Classes:

In Section 61 of the Admissions to School Act the Admission Statement must state, as provided at 61 (2)(e), that the school “provides an education exclusively for students with a category or categories of special educational needs specified by the Minister, the admission statement of the school shall include a statement that the school may refuse to admit a student who does not have the specified category of special educational needs concerned”.

The Admission statement requires the Board of a school not to discriminate in its admission of a student on, “the disability ground of the student or the applicant in respect of the student concerned, (61 (1) (f)), and also on “the ground that the student or the applicant in respect of the student concerned has special educational needs. (61 (1) (i)).

A child therefore, with special educational needs, cannot be refused admission to a mainstream class on the basis that the child has an SEN or that the school does not have the required resources. The NCSE and or the Child and Family Agency have the authority to designate a school in the case of a child with special educational needs. Reference 67 (1) to (20). However, in making that designation the Council shall have regard to – “the ability of the school to accommodate the child concerned and to meet his or her educational needs, including that ability when resources are made available to the school.” Reference 67 (2) (f).

Permanent Exclusion and Suspension:

Parents of a student who has been permanently excluded from a school or who has exceeded 20 school days of suspension are entitled to request a Section 29 hearing. This type of appeal allows for the attendance of Board representatives and parents at the hearing. There is now no facilitation process prior to the hearing.

The section in the Act which is of critical importance to Boards of Management, parents and Appeal Committee members is section 29D (4) (a) to (k). The directives in this section are based on the Charleton Judicial Review Judgement, (2011 No. 266 JR). Appeal Committees have been advised that when hearing a permanent exclusion the members must consider each and every one of these stated directives when making a determination.

Board members and principals should ensure that these directives are also addressed when deciding to permanently exclude a student. It may not be possible to deal with each and every single issue when a permanent exclusion is contemplated for a once off very serious breach of the school’s Code of Behaviour.

The importance of evidence cannot be overemphasised. Records of students’ previous behaviour and the interventions by the school to help a student comply with the Code of Behaviour will provide a hearing committee with evidence that the school did not rush to an extreme sanction without making efforts to care for the student. It is advisable that any member of staff who is involved in issues that may lead to the imposition of a sanction should be familiar with the potential implications of their decisions. Their records of breaches of the Code of Behaviour can become very significant when a Board of Management considers sanctions such as suspensions or expulsion.

As with other oral hearings the determination of a committee dealing with permanent exclusion or suspension is, in the first instance, a preliminary decision and both parties to the appeal have a period of 7 days to make any observations they wish on the outcome. The committee will take on board these observations and then provide a final determination. The final decision is either to allow the appeal or to disallow it. There is no part upholding in this new system. Where the committee determines that it has allowed the appeal, it will make a recommendation to the Board to readmit the student or remove the suspension and expunge the record. The Board of Management must comply.

N.B. An appeals committee must allow an appeal relating to permanent exclusion from a school if the parent, or the student if aged over 18, shows that subsection (1) or (4) of section 24 of the Act of 2000 has not been complied with in relation to that exclusion. These subsections refer to the notification which must be communicated in writing to the EWO of the Board’s intention to expel and that the student shall not be expelled from the school before the passing of 20 school days following the receipt of a notification under this section by an educational welfare officer. The Education Welfare Act at Section 24 (4) states that, “a student shall not be expelled from a school before the passing of 20 school days following receipt of a notification under this section by an educational welfare officer.”

Refusal to Hear or to Determine an Appeal:

A section 29 appeal committee is now empowered to refuse to hear or to determine or refuse to continue to hear or determine an appeal. (The Act 2018 Reference 29F (1)(a) to (f)). The grounds for such a decision arise if the committee believes that the appeal is:

- vexatious, frivolous or an abuse of process or without substance or foundation
- the appeal has not been made within the specified timeframes
- the applicant has failed to provide information as requested in accordance with the procedures
- or in the case of refusals to enrol appeals, the grounds for appeal relate to section 3, 7 and 7A of the Equal Status Act 2000
- in relation to oversubscription appeals it is of the opinion that the grounds relied on by the applicant did not have a material effect on the outcome of the application for admission or
- the appeal is based on information that was not made available in the application for admission or

- the applicant did not request a review by the Board of Management
- in relation to other oral hearings, it is satisfied, having regards to the grounds of the appeal and any attempts to facilitate agreement between the parties and any subsequent steps taken by the parties that, in the particular circumstances, the appeal should not be considered

The applicant must be informed of the committee's decision and the reasons for that decision, as soon as possible. The applicant may then request a review of that decision within 10 days. The review will be carried out by an established panel committee member who was not on the original committee. If the reviewer recommends that the appeal's committee decision is to be set aside, the Minister will direct the original committee to proceed with a hearing.

General Issues Relating to the Education (Admission to Schools) Act 2018

School management or the BOM cannot set a requirement that an applicant or his/her parents should attend an interview, meeting or open day as a condition of admission. Reference Section 62 (7) (f) (v).

The Admission policy must provide that an applicant when accepting an offer of a place must inform the school whether he/she has applied for or accepted a place in another school(s). Reference 62 (7) (j).

The Act provides very clear and detailed directives to Boards and schools when processing applications for the intake group. The Admission policy must also set out the procedures for the admission to classes/years other than the intake year and for admission during the course of the school year. Reference section 62 (7) (q) (i) (ii).

A request for a review of the decision by the BOM of a refusal to enrol due to oversubscription is mandatory. It is optional for decisions for reasons other than oversubscription. There is no such review in place in cases of permanent exclusion or suspension.

The Act requires that schools must explain to parents why an application for a school place was refused. Parents are entitled to know how the application was processed and its current status. It is not sufficient to merely state that the Board applied the Admissions Policy.

The Judicial Review Judgements which have taken place prior to the publication of the Admissions to Schools Act 2018 do not specifically apply to the terms in this Act. No judgement has yet been delivered on any aspect of the Act 2018.

The Supreme Court Judgement re St. Molaga's N.S. allows an appeal committee to hold a complete hearing of all the issues pertaining to the decision of the Board of Management.

It is accepted that an Appeal Committee cannot strike down any provision of a school's admission policy that is compliant with the terms of the Act.

The BOM is entitled to set capacity for the intake year, for special classes, for other year groups, for practical classes and for LCA classes.

The determination of an appeal committee must be consistent with the terms of the Education (Admissions to Schools) Act 2018 and other Acts pertaining to education.

Timelines used: The number of days are calendar days except for permanent exclusion and suspension which are counted as school days.

A request for a review of the BOM decision to refuse enrolment must be made within 21 days. The response from the BOM must be within 42 days from the original decision. The request for an appeal, (paper-based), must be made within 63 days of the original decision.

Where a review request is optional a request can be made any time after the original decision but not later than 63 days from that date.

The decision by parents to request an appeal for permanent exclusion, or for suspension of more than 20 cumulative school days, must be made within 42 days of the date the decision was effective. The permanent exclusion cannot become effective until 20 school days have elapsed after notification has been received by the EWO. It is the Board's responsibility to ensure that the decision to confirm the permanent exclusion is not made by the BOM or communicated to or received by the EWO during that 20-day period. Reference NEWB Guidelines on Expulsion chapter 12 and refer also to The Education Welfare Act Section 24 (4) as quoted above.

The Section 29 Administration Unit in Mullingar must arrange for oral hearings and paper-based hearings to be heard within 21 days of receipt of the complete application.

The decision of a committee of oral hearings is in the first instance a preliminary decision. This decision is communicated to both parties to the appeal and to the CFA and NCSE where they have made statements at the hearing. All parties may make observations on the determination for the attention of the committee within 7 days. The final determination follows taking account of those observations.

The decision to hear, refuse to hear, to continue to hear or not is now a decision for a Section 29 appeal committee based on the terms outlined in the Act and the documentary evidence communicated by the BOM to the DES. If an appeals committee refuses to hear or

continue to hear an appeal, the applicant may request that that decision be reviewed. That request must be made within 10 days of the decision having been communicated. Reference 29F (1)(a) to (f).

This Admission to Schools Act 2018 is an essential document for all Board members and school management at senior and middle management level. It provides further legal directives for all involved in the organisation and management of schools which must be adhered to and implemented.

Parents and Learners Section: Monthly Statistics:

Figures below relate to appeals that were closed in 2020

Total Appeals 2020

Section 29							
	Withdrawn	Local Resolution	Facilitator Resolution	WENT TO HEARING			Totals
				Upheld at Hearing	Not Upheld at Hearing	Upheld in part	
Permanent Exclusion							
Primary	2	0	0	0	2	0	4
Post Primary	5	0	0	8	19	0	32
Total	7	0	0	8	21	0	36
Refusals to enrol							
Primary	70	2	9	20	16	4	121
Post Primary	60	2	5	37	61	5	170
Total	130	4	14	57	77	9	291
Suspensions							
Primary	3		1	2	1	0	7
Post Primary	0	0	0	0	0	0	0
Total	3	0	1	2	1	0	7
Total for all Appeals	140	4	15	67	99	9	334
Percentage	41.92%	1.20%	4.49%	20.06%	29.64%	2.69%	100.00%

Total Appeals Proceeding to Hearing: 175

Parents and Learners Section: Annual C&C Statistics:

2020

Section 29							
	Withdrawn	Local Resolution	Facilitator Resolution	WENT TO HEARING			Totals
				Upheld at Hearing	Not Upheld at Hearing	Upheld in part	
Permanent Exclusion							
Community & comp	0	0	0	1	9		10
Total	0	0	0	1	9		10
Refusals to enrol							
Community & comp	20	0	0	24	14	1	59
Total	20	0	0	24	14	1	59
Suspensions							
Community & comp	0	0	0	0	0		0
Total	0	0	0	0	0		0
Total for all Appeals	20	0	0	25	23	1	69
Percentage	28.99%	0.00%	0.00%	36.23%	33.33%	1.45%	100.00%

Total Appeals Proceeding to Hearing: 49