

Appendix 1

The Section 29 Appeal Process and Statistics for 2019 (refusal to enrol, suspension or expulsion of pupils)

Overview:

Section 29 of the Education Act 1998 allows parents (and students who have reached the age of 18 years) to appeal certain decisions made by a school's Board of Management (BoM), or a person acting on behalf of a BoM, to the Secretary General of the Department of Education and Skills (DES).

The Act provides for the appeal of a decision to;

- permanently exclude a student,
- suspend a student or
- refuse to enrol a student in a first or second level school.

Further provision is made in the Education (Welfare) Act, 2000 to allow the NEWB to initiate appeals and to make submissions at appeal hearings. Some aspects of the previous legislation were amended by the Education (Miscellaneous Provisions) Act 2007 which has yet to be commenced. The terms of the Education for persons with Special Educational Needs Act (EPSN), 2004 and the Equal Status Act, 2000 are also relevant to these procedures.

Section 29 was introduced in order to recognise the legitimate right of access for all children up to the age of 18 years to an education and to ensure that state funded schools are obliged to make appropriate provision to vindicate that right. All School Management bodies will actively endorse the rights of parents and pupils to appeal decisions which have such serious and long term effects on their children's development and on their future lives. It places, however, an enormous burden on school principals and BoM's to ensure that the rights of the individual are properly balanced against the legitimate rights of other pupils to a safe and productive environment in which to pursue their education. They will also be called upon to balance their enrolment capacity and their available resources against the legitimate needs of the local community.

The DES has issued circular letter M48/01 (www.education.ie, click on circulars) to assist the management authorities of second level schools in the management of the appeals procedures.

The Process:

1. An appeal may be lodged by a parent/guardian of a student, by a student of 18 years or more, or by the NEWB against a BoM decision to permanently exclude, suspend a student or refuse to enrol a student. This appeal must be made within 42 calendar days from the date of the decision of the BoM. This date may be extended in exceptional circumstances.
2. The BoM will be asked to submit to the DES written information and documentation relative to the decision by the BoM i.e. School Code of Behaviour, Admissions Policy, relevant BoM minutes, written communication with the family etc.
3. The DES may, in some circumstances, deem the appeal to be inadmissible and will so notify both the appellant and the school authorities. If the appeal is deemed admissible the DES will normally appoint a Facilitator who will endeavour to find an acceptable resolution to the appeal through contact with the school and the parent/guardian/pupil who lodged the appeal.
4. The Facilitator is required to contact the Education Welfare Officer (EWO) who is linked to the school, to discuss the appeal. Other appropriate agencies/personnel may be called upon if deemed appropriate - Special Education Needs Organiser (SENO), Social Worker and/or National Psychological Services (NEPS).
5. The Facilitator will issue a report outlining either a successful outcome between the parties or a statement that facilitation has not been successful.
6. Where local facilitation is unsuccessful the Section 29 Unit in DES will make arrangements on behalf of the Minister, for a hearing of the appeal by an Appeals Committee. This Committee is established by Ministerial nomination of three persons, a DES Inspector and two persons with the requisite experience, expertise, knowledge and independence, to serve on such a Committee. The parties to the appeal are entitled to have two nominated speakers each and two observers (optional) in attendance at the Appeals Committee hearing.

Note: Parents have been accompanied by a legal person at some of the Appeals Committee hearings.

7. The EWO is invited to attend the hearing and if in attendance will be given the opportunity to address the Appeals Committee. Representatives of other agencies - Special Education Needs Organiser (SENO), Social Worker and/or National Psychological Services (NEPS), may be invited to attend and address the hearing, where it is deemed by the Committee that they have a relevant contribution to make.
8. At the hearing both parties to the appeal will be given an opportunity to present their case. Both will have the right of reply and the right to question the other party, through the Chairperson. The Appeals Committee may question both parties to the appeal and seek the informed advice/views of others who may be called upon as considered appropriate.
9. The Appeals Committee will ensure adherence to due process in keeping with the school policy which is informed by relevant legislation, DES circular letters and NEWB published guidelines. Also the Committee ensures respect for the rights of all parties to the appeal under the principles of natural justice.
10. The Appeals Committee will note the documented paper trail and written records of any investigation, school management and BoM decisions which were taken in relation to the incident/issue pertaining to the appeal.
11. The Appeals Committee will arrive at a determination of the appeal in the light of the case made and the facts presented. Among issues Committees will take into consideration in reaching their determination include:
 - established practices within the school for dealing with issues of grievances which are the subject of the appeal,
 - the educational interest of the student who is the subject of the appeal,
 - the educational and safety interests of all other students in the school,
 - the ongoing effective operation and management of the school,
 - School Policies e.g. Special Educational Needs, Admissions/Enrolments Policy, Code of Behaviour, resources etc.
 - the policy of the Trustees/Patron/Board of Management in respect of the characteristic spirit/ethos of the school,
 - decisions arising from known Judicial Reviews relating to Section 29 appeals,
 - and such other matters as the Appeals Committee considers relevant
12. A Section 29 appeal is an appeal against a particular decision by a BoM at a particular point in time. Therefore, the Appeals Committees remit is to only consider the facts and circumstances as of the date of the decision under appeal. The material and documentation for consideration by committees must therefore be that which was before the BoM at the time they made their original decision. As part of its consideration an Appeals Committee can consider whether the school had before it all relevant material at the time of its decision, if not the Committee can consider this additional material.
13. Section 29 committees cannot involve themselves in decisions which are destined to find places for students in local schools, this is a problem which is addressed by section 27 of the Education (Welfare) Act 2000 and which is the responsibility of the Educational Welfare Officer (EWO) of the NEWB.
14. Court rulings (Judicial Reviews) presently constitute the most authoritative opinion on the scope and powers of Appeals Committees under Section 29 at present. Committees are bound by the principles set out by these rulings/judgments, unless legislation is changed, or additional Court rulings are made.

In reaching a determination Appeals Committees have two options:

 - (a) To uphold - where the school has clearly breached its own policies in an unreasonable manner. Alternatively, if the BoM did not have before it material, which it should have considered and if by doing so could have reasonably altered their decision.
 - (b) Not to uphold - here the Committee can find no basis to consider the school acted unreasonably or unlawfully.
15. The determination of the Appeals Committee is communicated in writing to the Secretary General of the DES who, in turn informs both parties to the appeal of the decision.
16. The determination as issued by the Secretary General, DES is binding on both parties to the appeal. However, it does not preclude either party from seeking a Judicial Review through the courts of the land.

Implications For Boards Of Management

The appeals process is quasi judicial in its application to schools and, therefore, imposes very serious obligations on BoM's to ensure that their policies and procedures meet the highest standards both in their formulation, their communication and their implementation.

The School Code of Behaviour must, in accordance with the guidelines laid down by the NEWB, contain:

1. The standard of behaviour that should be observed by each student attending the school,
2. The measures that may be taken when a student fails or refuses to observe these standards,
3. The procedures to be followed before a student may be suspended or expelled from the school,
4. The grounds for removing a suspension imposed in relation to the student, and
5. The procedure to be followed relating to notification of the child's absence from school.

The School Admissions Policy must contain specific details on enrolment procedures relating to

1. The students seeking entry as new first year students – the school must publish and contain in its Enrolment/ Admission Policy, a prioritised and sequential set of enrolment criteria,
2. Students seeking to enrol who have special educational needs,
3. Students who wish to transfer from another school,
4. Procedures to be followed by students wishing to enrol in a Post Leaving Certificate (PLC) programme,
5. Procedures to enable students enrol in a repeat Leaving Certificate programme of studies, and
6. Procedures to be followed in relation to students wishing to transfer from another school from which they have been expelled.

In arriving at decisions which are the subject of Section 29 appeals BoM's must ensure that natural justice prevails throughout the decision making processes that operate within the school, keeping in mind particularly:

- The right to be heard in one's own defence – anyone affected by a decision has the right to be told what case is being taken against him or her and allowed an opportunity to respond,
- The rule against bias – the decision made must not be biased and a person cannot be a judge in one's own case,
- The Board of Management must only take decisions which are within its own jurisdiction, and
- The time limits and written records of events leading to decisions must be strictly observed.

Section 29 appeals are difficult to deal with and present challenges to school management. They are to be avoided where possible but, the possibility of appeal must not deter a BoM from taking decisions which are judged to be in the best interest of the school and its students.

Appeals Committee Hearings

Questions often asked and issues frequently raised at Appeal Committee hearings

What do Appeals Committees look for, take into account or question when dealing with appeals? The following is not an exhaustive list but covers many aspects of the issues that may arise at an Appeal hearing.

1(a) Refusal to enrol:

Does the BoM have a current Board approved enrolment policy which has been developed by the stakeholders – Trustees, BoM, Staff, Parents and Student Council?

Date of BoM meeting at which the Admissions/Enrolment Policy was adopted, and updated or reviewed.

A policy that states clearly, in simple direct language, the exact order of preference given to applicants (Criteria to be applied).

Has the BoM ensured that all applicants for enrolment received a current copy of the agreed Admissions/Enrolment Policy plus any additional documentation relevant to enrolment in the school? Refusal to deal with or correspond with prospective parents, no matter what the difficulties, is difficult to defend.

Does the policy state the type of school, e.g. single sex boys or girls, co-educational, religious ethos, multi-denominational etc.?

Has the BoM fixed the maximum number of student intake per school year or class group?

What is the rationale (educational) for such numbers? Is it recorded in the minutes of the BoM meetings? Are prospective applicants aware of this or is it included in the Admissions/Enrolment Policy?

Are there clearly stated procedures in place when demand for places exceeds availability? What happens at each stage of the stated preference order when this happens?

1(b) Waiting lists:

How are they formed? Are they formed based on dated receipt of applications? First come or first accepted? Alternatively, do they result from a random selection process? When do these waiting lists cease to exist or be relevant? What happens to unsuccessful Applications

received by the school following the commencement of the new school year? What must parents do to keep their child's unsuccessful application active/alive for any future student vacancy that arises?

1(c) Random Selection:

It must be transparent. It is advisable that any lottery be managed by the Board of Management, held in public, independently monitored (e.g. Garda, Auditor), with concerned parents entitled (notified of the event) to attend and observe the process.

1(d) School of choice:

This is in the legislation. Accordingly it is very important to be specific about the criteria for enrolment, the catchment area, feeder schools etc.

1(e) Does the Board of Management reserve the right to offer a place (or places) on 'exceptional circumstances/grounds' in preference to another student higher up the ranking order?: What are the 'exceptional circumstances/grounds'? Are these 'exceptional circumstances/grounds' outlined in the school policy?

1(f) Using health and safety to refuse enrolment:

What evidence or proof exists that such a prospective pupil will be a threat to the safety and health of the school community?

There may be genuine fears based on very strong and clear evidence for such a stance being taken in refusing to enrol a very violent aggressive student.

BoM's have a duty of care to ensure the safety, health and welfare of the whole school community. This matter should be stated in the Admissions/Enrolment Policy.

1(g) Special Needs:

Legislation does not allow for refusals to enrol to be predicated on the receipt of resource hours, the provision of an S.N.A or being psychologically assessed etc. There are however, situations where schools receive applications for the enrolment for students with very severe disabilities and which a mainstream school cannot hope to address.

Where a Special Needs Class is formed, BoM's should adopt and use very clearly defined psychological terminology in their policy to determine intake into that class.

BoMs should ensure that there is no discrimination or bias shown towards students with special needs, physically disabled, traveller background, religious grounds, international students etc.

1(h) Communication:

Publishing the policy is a requirement of the Education Act.

Are prospective parents communicated with at all stages of the process? How do people find out about the school? Is it by word of mouth, advertising, through feeder primary schools, by church notices or through the school website? Is the website and school documentation updated annually? Remember each applicant is entitled to receive a copy of the relevant Admissions/Enrolment Policy and/or Code of Behaviour Policy.

Did the school meet the official time obligations when notifying successful/unsuccessful applicants? All successful applicants must be approved by the BoM. All applicants must be advised in writing of the success or otherwise of their application - within 21 days of the closing date of the closing date for receipt of applications. This letter should be signed by the Secretary of the Board of Management.

Note: This position is that the Minister has not prescribed any information/has not given any direction in this area hence this reason cannot be used as the basis for upholding an appeal. Nevertheless Boards should insure that all applications are dealt with promptly.

Were the parents informed of their right to appeal the decision of the BoM to the Secretary General, DES? This should also be stated in the written policy of the school.

Summary:

Boards should have approved and officially sanctioned (signed) Admissions/Enrolment policy; have clear procedures in place for implementing the process of enrolment; implement the policy as approved; maintain good paper trail and retain same as evidence of compliance.

Suspension & Exclusion

2(a) Suspension:

Is the school's code of behaviour in line with the guidelines issued by the NEWB? Is it drawn up with input from the main stakeholders: Trustees, BoM, Staff, Parents and Students Council? Does the BoM review its policy?

Are the issues of suspension and exclusion specifically mentioned in the code?

Who has the authority to suspend? Is it BoM sanctioned? Are Board members briefed about suspensions and the frequency of them? What efforts were made by the school authority to bring about a change of attitude/behaviour on the part of the student? What were the issues for which suspensions were imposed? Repeat/Serial offenders – what happens? The effect of student suspensions and are there any other options? Were parents consulted prior to the student being suspended and is there evidence of the school trying to resolve matters prior to the use of suspension sanction?

Was the EWO (NEWB), where necessary, kept fully apprised of developments? BoM's should be aware of their legal obligations to communicate with the EWO.

Rolling suspension, long-term suspension, indefinite suspension until certain criteria are met, are impossible to support and should not be used. Rolling suspension or indefinite suspension is a sure way to lose an appeal!

Are parents kept informed of suspensions and how many days has their child been suspended from the school during the school year and their right to appeal? How can the school authorities be sure that letters of suspension have been delivered and received by parents - registered post?

Is suspension used as a mechanism until certain resources are granted – impossible to justify?

2(b) Exclusion (permanent):

An Appeals Committee will require details of the process and procedures which were followed and which culminated in a BoM excluding a student from the school.

Prior to excluding a student a BoM must grant a hearing to the parents in the presence of the Principal who presents the case for exclusion.

Reasons for the exclusion - the evidence on which the decision was based. Who provided that evidence? How was it collected?

Who investigated the incident? Is there a report?

At what stage were the parents involved in the process? How were they communicated with? Did they realise the gravity of the situation? Were they provided with written accounts/statements/reports? Is there a paper trail?

Were the parents allowed time to assess the situation, carry out their own investigation, speak to their own child or others involved?

Video or camera evidence. Other students may be in the frame. Data protection of all students on camera a big issue. (Check Millett & Matthews advice on ACCS website)

Were they informed in writing that the matter was being referred to the BoM and that a recommendation would/might be made to exclude their son/daughter from the school? Were the student's rights under natural justice respected?

Review process and procedures pertaining to the BoM meeting where it was decided to exclude. Who attended? Who made the case for exclusion? How were the parents received? Were they allowed somebody to speak on their behalf? Was the pupil present?

Did the Principal and any other Board member directly involved in the investigation withdraw from the meeting prior to the decision to exclude, being made?

The Appeals Committee is always anxious to ascertain what efforts the school authority made to change/improve the behaviour of a pupil who refuses to meet the standards set down in the code of behaviour. In particular:

- what counselling was given;
- rewards rather than punishment;
- role of guidance counsellor, chaplain, year-head etc.;

- what was the student's previous behaviour, medical history, medication etc.;
- any psychological assessment and recommendations;
- use of outside support agencies;
- anger management course;
- efforts made to involve students in a range of non classroom activities;
- additional resource hours;
- small group tuition; class change, teacher change; parental support involvement of the EWO, JLO, VTT, NEPS, SENO as appropriate, if any.

In the event of a number of students being involved in a very serious incident which could result in exclusion for some, but not all students – how were decisions arrived at; how was blame apportioned? Were all treated fairly?

2(c) **Communication:**

In the case of a student expulsion, were efforts made to find an alternative school for the student – to facilitate them sitting public examinations, to complete subject/examination project work, to receive advice and guidance re state exams etc. Efforts to find a school place not necessary but may be helpful.

The communication of the decision to exclude, the notice to be forwarded to the EWO, the time schedule involved before the exclusion takes place, the notice to parents of their right to appeal the decision to the DES, are issues which must be included in the formal letter from the Board to the parents informing them of the BoM's decision to exclude - the letter should be sent by registered post.

Note: BoM's should note that a student cannot be expelled before the passage of 20 school days from the date on which the EWO receives the written notification. Student can remain suspended for these 20 days. Inform the EWO of this also. Following the passage of this 20 day period the BoM should confirm the expulsion in writing to the parent

Summary

Breaches of minor technicalities are generally dealt with in an understanding manner by an Appeals Committee.

Schools need a good code of behaviour which is clearly understood and accepted by BoM, staff, parents and students. Was the code distributed and explained to the students and/or parents (parents evening)? The code should be balanced with positive rewards as well as punishments for breaches which range from minor to very serious. Many schools are now requesting parents and students to sign the code stating that they have read, understood and accept the code in its entirety.

Any decision regarding an expulsion for a serious breach of the school's code of behaviour should quote from the section of the code that pertains to the expulsion when presenting to Appeals Committee.

In general it is important to stress that properly developed school policies, reviewed and updated in agreement with all the relevant stakeholders and applied in a fair and impartial manner is critical for Section 29 appeals. Appeals are based on relevant school policies and on their implementation and such appeals will stand or fall on how these policies were developed, communicated to parents and students and implemented. Ensure that all school policies are ratified by the Board of Management, dated, signed by the Chairperson or Principal as Secretary to the Board of Management and recorded in the minutes of the Board Meeting.

Teachers and those in middle management positions of power and influence must retain clear accurate records. Senior management should ensure that due process is afforded to all parties in a fair and balanced manner.

Documentation charting the process is a sine qua non in any appeal.

Conclusion

The above information attempts to offer school management and BoM's advice and guidance in relation to Section 29 appeals which deal specifically with refusal to enrol, suspensions and permanent exclusions. This advice takes into account recent Court rulings (Judicial Reviews) but is not totally inclusive of all issues that may arise regarding a Section 29 appeal.

BoM's are also advised to familiarise themselves with the full reports of the decisions handed down in the following landmark cases pertaining to Section 29 appeals:

1. 23/11/10:

The Department of Education and Skills appealed J. Irvine's High Court judgement of St. Molaga's N.S., 17/02/09.

The Board of Management of St. Molaga's National School v The Secretary General of the Department of Education and Skills and Ors. Judgement by the Supreme Court delivered by Justice J. Denham.

"The concept of an appeal is a full hearing on the merits with the jurisdiction to make a determination on the issues raised. An appeal goes beyond a review of the decision making process".

2. 27/01/2011:

The Board of Management of Lucan Educate Together v The Secretary General of the Department of Education and Skills (Judge O'Keefe).

"In my opinion, the Committee cannot strike down or disregard a provision in the enrolment policy of a school and substitute what it may consider as appropriate".

3. 03/04/09:

Timothy O'Donovan v The Board of Management of De La Salle College, Wicklow and Ors (Judge Hedigan).

4. 10/07/09:

Westmeath VEC v The Secretary General of the Department of Education and Skills and Ors (Judge O'Keefe).

5. 27/07/11:

Judicial Review: Mr. Justice Charleton (2011 No. 266 JR) City of Waterford VEC.

(This is a very important judgement as it outlines clearly what a Board may or may not consider when deciding to permanently exclude a student. It is very important for those serving of Appeals Committees also).

6. 31/07/13:

Judicial Review: Mr. Justice Hedigan (2013 No. 387 JR).

(This concerns a college in Galway and students involved in drugs and the school's efforts at investigating all the circumstances. An interesting one with good guidelines.)

7. 14/11/17:

Judicial Review: Mr. Justice Coffey (2017 No. 726 JR).

(This concerns enrolment policies and the issue of oversubscription not being provided for and that the matter should therefore be referred back to the Board of Management to develop criteria for the allocation of places.)

All the above Court reports may be viewed on the website www.courts.ie (click English/Gaeilge, click Judgements on right-hand side).

For further advice on the Section 29 process, contact ACCS at 01-4601150.

Section 29 Appeals (Education Act 1998) Community and Comprehensive School Sector

Parents and Learners Section: Monthly Statistics

Figures below relate to appeals that were closed in 2019

Total Appeals 2019

Section 29	Withdrawn	Local Resolution	Facilitator Resolution	WENT TO HEARING			Totals
				Upheld at Hearing	Not Upheld at Hearing	Upheld in part	
Permanent Exclusion							
Primary	3	0	0	4	13	0	20
Post Primary	5	0	1	18	55	1	80
Total	8	0	1	22	68	1	100
Refusals to enrol							
Primary	72	0	7	30	58	6	173
Post Primary	71	0	13	17	61	13	175
Total	143	0	20	47	119	19	348
Suspensions							
Primary	1		0	6	0	1	8
Post Primary	1	0	0	1	3	1	6
Total	2	0	0	7	3	2	14
Total for all Appeals	153	0	21	76	190	22	462
Percentage	33.12%	0.00%	4.55%	16.45%	41.13%	4.76%	100.00%
Total Appeals Proceeding to Hearing	288	62.34					
Current Admitted Cases	26						

Section 29	Withdrawn	Local Resolution	Facilitator Resolution	WENT TO HEARING		
				Upheld at Hearing	Not Upheld at Hearing	Totals
Permanent Exclusion						
Community & comp	0	0	0	0	11	11
Total	0	0	0	0	11	11
Refusals to enrol						
Community & comp	17	0	3	7	11	38
Total	17	0	3	7	11	38
Suspensions						
Community & comp	0	0	0	0	0	0
Total	0	0	0	0	0	0
Total for all Appeals	17	0	3	7	22	49
Percentage	34.69%	0.00%	6.12%	14.29%	44.90%	100.00%

Total Appeals Proceeding to Hearing 29