

Procedures for Hearing and Determining Appeals under Section 29 of the Education Act, 1998

Introduction

Section 29 of the Education Act, 1998, gives parents (and students who have reached the age of 18) the right to appeal certain decisions made by a school's board of management, or a person acting on behalf of the board of management, to the Secretary General of the Department of Education and Science.

The Act provides that a decision of a board of management to permanently exclude, suspend or refuse to enrol a student may be appealed on commencement of Section 29. The class of decisions which may be appealed may be extended by the Minister, following consultation with the partners. While consultation on this aspect will be commenced as soon as possible, these procedures are now being introduced in order to provide, in this initial stage, for appeals of permanent exclusions, suspensions and refusals to enrol. The procedures will apply only to appeals of decisions taken by a board of management on or after the date of implementation of the procedures.

The legislation provides that the Minister for Education and Science will establish one or more appeals committees, for the purpose of hearing and determining appeals, and that such committees will act in accordance with such procedures as may be determined from time to time by the Minister, following consultation with the partners in education.

Having regard to the desirability of resolving grievances within the school where possible, the parties to an appeal under section 29, i.e. the appellant and the school's board of management, will be asked to consider the matter in the first instance at local level to see if an accommodation can be reached. As a general rule, appeals will only be considered by an appeals committee under section 29 where the parties are unable to resolve the issue at local level.

In the case of a school established or maintained by a vocational education committee, the appeal against the decision of the board of management of the school will be made, in the first instance, to the vocational education committee.

The Education (Welfare) Act, 2000 provides that the National Educational Welfare Board will also be able to appeal certain categories of decisions, and may also make submissions to appeals hearings.

The Department is establishing an Appeals Administration Unit to administer the new appeals process in accordance with the procedures outlined hereunder. All appeals under section 29 and requests for information in relation thereto should be addressed to this Unit [c/o Department of Education and Science, Portlaoise Road, Tullamore, Co.Offaly].

Making of an appeal to the Secretary General of the Department of Education and Science

1. An appeal may be made to the Secretary General of the Department of Education and Science in respect of a decision by a board of management, as defined in the Education Act, 1998, or by a person acting on behalf of the board of management, to:
 - a) permanently exclude a student from the school
 - b) 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, or
 - c) refuse to enrol a student in the school.
2. An appeal may be made by the parent of the student concerned, or by the student, where he/she is aged 18 years or over, or by the National Educational Welfare Board when established in respect of a decision under paragraph 1 (a) or 1 (c).

3. An appeal will generally not be admitted unless it is made within 42 calendar days from the date the decision of the board of management under paragraph 1 (a), (b) or (c) was notified to the parent or student concerned. However, a longer period for making appeals may be allowed as an exception where the Appeals Administration Unit is satisfied that circumstances did not permit the making of an appeal within the 42 day limit.
4. In the case of a school which is established or maintained by a vocational education committee, the appeal against the decision of the board of management of the school shall be made, in the first instance, to the vocational education committee.
5. Appeals should be made in writing on the Section 29 Appeals Application Form [specimen copy attached] and addressed, by signed letter, fax or e-mail, to the Appeals Administration Unit. The appellant should at the same time notify the school of the appeal or, alternatively, send a copy of the completed Application Form to the school. Where fax or e-mail is used, the appellant should also send a signed copy by post. Appeals Application Forms may be obtained from the school or from the Appeals Administration Unit.
6. The Appeals Application Form should be completed in full, and should specify:
 - a) the appellant/ student's full name, address and, where relevant, telephone number
 - b) the decision being appealed
 - c) the grounds on which the decision is being appealed
 - d) the full name and address of the school concerned
 - e) the date that the parent or student was informed of the decision
 - f) the outcome of any relevant appeal proceedings at school level.
7. If clarification is required by the Appeals Administration Unit before determining whether to admit an appeal, such clarification will be sought immediately. Such clarification may include verifying with the board of management details regarding any local procedures that may have been used.
8. Prior to the processing and consideration of an appeal under these procedures, the parties to the appeal will be asked, as a general rule, to consider the matter in the first instance at local level within the school to see if an accommodation can be reached. Where the 30 day period referred to in paragraph 10 has already commenced, the parties to the appeal will be given up to one week in which to determine whether an accommodation at local level can be reached. In exceptional circumstances a longer period may be allowed.

Processing of an appeal

9. An appeal may only be considered where it meets the conditions set down in paragraphs 1 to 5 of these procedures and when all of the requisite information, as outlined in paragraph 6 above, has been provided.
10. Section 29 (4) provides that appeals must be concluded within a period of 30 days from the date of receipt of the appeal by the Secretary General, with the possibility of extending this period by 14 days. The date of receipt for this purpose shall be deemed to be the date on which the completed Appeals Application Form containing all the required information has been received by the Appeals Administration Unit.
11. Once the completed Application Form containing all required information has been received, a letter of acknowledgement will issue to the appellant forthwith. The letter may also ask the appellant to submit any additional documentation relevant to the appeal without delay. Such documentation could include school reports, documentation relating to any local procedures used, psychological or medical reports.

12. A letter will also issue simultaneously to the board of management, informing it of the appeal and the grounds on which it has been lodged, and the board of management will be asked to submit as soon as possible any information or documentation which it considers may be relevant to the appeal to the Appeals Administration Unit, including, where appropriate, a statement outlining the reasons for the decision of the board of management. Information submitted by the board of management may also include relevant school records, documentation relating to any local procedures used, or such psychological or medical reports as may be held by the school in respect of the pupil concerned.
13. All information and documentation provided by the appellant and by the board of management to assist the appeal will be treated in strict confidence and, save as otherwise provided by law, the Appeals Administration Unit will not disclose such information or documentation to a person who is not party to the appeal without the consent of the appellant or board of management as the case may be.
14. Where an appeal is deemed to be inadmissible under these procedures, a letter to that effect will issue to the appellant forthwith, and copied to the school, stating clearly the grounds on which the appeal is not being admitted.
15. An appeal may be withdrawn at any time by the appellant by notifying the Appeals Administration Unit to that effect.

Composition of Appeals Committee

16. An Appeals Committee established by the Minister for the purposes of hearing and determining an appeal under Section 29 shall consist of three persons which shall include an Inspector, and two other persons who, in the opinion of the Minister, have the requisite expertise, experience and independence to serve on the Committee. One of these two persons will act as chairperson of the Committee.

Facilitation process

17. Where the Appeals Committee considers that it may be possible to facilitate agreement between the appellant and the school board of management (the parties to the appeal), notwithstanding any failure to reach agreement at local level within the school, a facilitator will be appointed by the Appeals Administration Unit to contact, or arrange to meet, the parties at the earliest opportunity. The facilitator so appointed shall not be a member of the Committee or a member of the Department's Inspectorate. Where the facilitator considers it desirable, the School Attendance Officer or Education Welfare Officer with responsibility for the school in question may be requested to assist the facilitation process.
18. The facilitator will attempt to broker an agreement between the parties to the appeal.
19. Where agreement is reached, the facilitator will provide the parties to the appeal with a copy of the agreement.
20. Where an appellant accepts the agreement reached during facilitation, no further appeal may be made to the Secretary General in respect of the original decision of the board of management which formed the basis of the appeal in the first instance.
21. A period of up to one week will generally be allowed for the facilitation process. This may be extended in exceptional circumstances.

Appeals hearing

22. Where it appears to the Committee, or to the facilitator appointed by the Committee, that agreement between the parties to the appeal is not possible within the relevant time constraints, the case will be referred for hearing by the Appeals Committee and a report of the facilitation process will be provided to the Appeals Committee.
23. A date, time and venue for the hearing will be arranged in consultation with all concerned.
24. The parties to the appeal will be informed at that stage of their right to submit any additional documentation in support of their case (that has not already been provided to the Appeals Administration Unit). Such additional information should be provided in time to enable the time limits set by paragraph 26 to be met. Where the appeal relates to a decision under paragraph 1 (a) or 1 (c), the National Educational Welfare Board may make a submission and such submission shall be made within the same time limits.
25. The parents, student, and, where the National Educational Welfare Board makes an appeal in accordance with its power under section 26 of the Education (Welfare) Act, 2000, a representative of the Board, may attend the hearing as, or on behalf of, the appellant. The board of management may designate two of its members, or one of its members and the school principal, to attend the hearing on its behalf. Subject to the prior consent of the Appeals Committee, either party to the appeal may also be accompanied at the hearing by not 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, save in exceptional circumstances where the Committee gives its consent.
26. The Committee may invite persons with relevant expertise to attend and make statements at the hearing.
27. In advance of the hearing the parties to the appeal will be provided, in confidence, with a complete set of documentation submitted in relation to the case in question for the purposes of the hearing. The parties will also be notified as to the persons who will be attending the hearing, including any persons specifically invited by the Committee. This information/ documentation should be provided no later than 3 days before the hearing.
28. Where either, or both, of the parties to the appeal are unable to attend the hearing, they should contact the Appeals Administration Unit immediately, so that the hearing may be rescheduled.
29. Where either, or both, of the parties to the appeal fail to attend the hearing, without having given prior notification to the Appeals Administration Unit, the hearing may proceed in their absence at the discretion of the Appeals Committee.
30. 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 each will have the right to question the other through the chair.
31. The Committee may question both parties to the appeal, and seek the views of any other persons (see above) who may have been called.

Determination of Appeals

32. Appeals will be determined by the Committee in the light of all the facts presented to it, including the views of any persons called by it to the hearing, and having due regard to:
- the established practices within the school for dealing with issues/ grievances which are the subject matter of the appeal, including, where relevant and available, any statutory or non-statutory procedures, guidelines, regulations or other provisions in operation at any time,
 - the educational interests of the student who is the subject of the appeal,
 - the educational interests of all other students in the school,
 - the effective operation and management of the school,
 - any resource implications arising from the issues under appeal,
 - where relevant, the policy of the patrons and the board of management in respect of the characteristic spirit/ ethos of the school, and
 - such other matters as the Committee considers relevant.
33. In making its determination, the Committee may take advice from such persons as it considers appropriate.
34. Where a vote is required in order to establish the Committee's determination of an appeal, the matter shall be determined by a majority of votes of the Committee members voting on the question. In the case of an equal division of votes, the chairperson of the Committee shall have a casting vote.
35. Notwithstanding paragraph 16, the Committee may hear and determine an appeal notwithstanding a vacancy for the time being in its membership.
36. The Committee shall, in writing, notify the Secretary General, or an officer appointed by the Secretary General under Section 29 (11), of its determination of the appeal, the reasons therefor and its recommendation as to the action to be taken.
37. The Secretary General, or officer appointed under Section 29 (11), shall, in writing, notify both parties of the determination of the appeal, the reasons therefor and, where necessary, will issue such directions to the school's board of management as he/she considers to be necessary for the purpose of remedying the matter which was the subject of the appeal. The board of management will be bound by such directions.

Review of procedures

These procedures may be reviewed from time to time by the Minister following consultation with the partners in education.