

Procedures for Hearing and Determining Appeals under Section 29 of the Education Act, 1998 in respect of Education and Training Board (ETB) Schools.

Introduction

Background

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 board, or a person acting on behalf of the board, to the Secretary General of the Department of Education and Skills.

However, in the case of a school established or maintained by an ETB, the appeal against the decision of the board of the school will be made, in the first instance, to the ETB.

This document specifies the procedures to be followed in making an appeal to the ETB. (The procedures for making an appeal to the Secretary General of the Department are contained in a separate document, which is available from the ETB).

Decisions on which Appeals can be made

The Act provides that decisions relating to the permanent exclusion of pupils, suspensions and refusals to enrol a student may be appealed on commencement of section 29. The class of decisions which may otherwise 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 proposed in order to provide, in this initial stage, for appeals of permanent exclusions of pupils, suspensions and refusals to enrol. The procedures will apply only to appeals of decisions taken by a board on or after the date of implementation of the procedures.

Local Resolution

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 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 ETB under section 29 where the parties are unable to resolve the issue at local level.

Role of Educational Welfare Services of the Child and Family Agency (EWS)

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

Making of an Appeal to the ETB responsible for the management of the school

1. An appeal may be made to the ETB with responsibility for the management of the school in question in respect of a decision by the board of that school, as defined in the Education Act, 1998, or a person acting on behalf of the board, to:
 - a) permanently exclude a pupil
 - b) suspend a pupil 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 child.
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 EWS, where appropriate, when this is established.
3. An appeal will generally not be admitted unless it is made within fourteen calendar days since the decision of the board under paragraph 1(a), (b) or (c) was notified in writing to the parent or student concerned. The School Principal will notify the parent, or student as appropriate, of their right of appeal to the ETB. However, a longer period for making appeals may be allowed as an exception where the committee is satisfied that circumstances did not permit the making of an appeal within the above time limit.
4. Appeals should be made in writing on the Section 29 Appeal Application Form available from the Committee, and should be submitted by signed letter, fax or e-mail to the Chief Executive Officer (CEO) at the Head Office address of the Committee. If the appeal is made by fax or e-mail, it must also be confirmed in writing. The school should, at the same time, be advised of the appeal by the appellant and the grounds on which it is being made. Where fax or e-mail is used, the appellant should also send a signed copy by post.
5. The Appeals Application Form should be completed in full, and should specify:
 - the appellant's full name, address and, where relevant, telephone number
 - the student's name;
 - the decision being appealed
 - the grounds on which the decision is being appealed
 - the full name and address of the school concerned
 - the date that the parent or student was informed of the decision
 - the outcome of any relevant appeal proceedings at school level.
6. If clarification is required by the CEO before determining whether to admit an appeal, such clarification will be sought immediately. Such clarification may include verifying with the board details regarding any local procedures that may have been used.
7. Prior to the processing and consideration of an appeal under these procedures, the parties to the appeal will be asked by the CEO, or his nominee, 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 9 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

8. An appeal may only be considered where it meets the conditions set down in paragraph 1 to 5 of these procedures and when all the requisite information, as outlined in paragraph 6 above has been provided.
9. A maximum period of 30 days from date of receipt of the appeal by the CEO is allowable in the ETB sector for conclusion of the appeal process. The CEO, or his nominee, will keep appropriate records in respect of the appeal.
10. Once the completed Appeals 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.
11. A letter will also issue simultaneously to the board, informing it of the appeal, the grounds on which it has been lodged, and the board will be asked to submit any information or documentation which the board considers may be relevant to the appeal to the ETB, including where appropriate a statement outlining the reasons for the decision of the board. Information submitted by the board 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.
12. All information and documentation provided by the appellant and by the board to assist the appeal will be treated in strict confidence and, save as otherwise provided by law, the ETB 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 as the case may be. However, it is accepted by all parties to the appeal that, in the event of a subsequent appeal being made to the Secretary General of the Department of Education and Skills, all documentation relating to the appeal in the ETB sector will be forwarded to the Department.
13. Where an appeal is deemed by the CEO 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.
14. An appeal may be withdrawn at any time by the appellant by notifying the ETB to that effect.

Composition of Appeals Sub-Committee

15. An Appeals Sub-Committee established for the purposes of hearing and determining appeals under section 29 shall be formed by each ETB under the terms of section 21 of the Vocational Education Act, 1930. No Member of this Sub-Committee can also be a member of the board of management of the school which is a party to the appeal.

Appeal Hearing

16. A date, time and venue for the hearing will be arranged in consultation with all concerned, including the EWS.
17. The parties to the appeal will be informed at that state of their right to submit any additional documentation no later than seven calendar days before the scheduled date for the appeals hearing in support of their case (that has not already been provided to the Sub-Committee). Where appropriate, the EWS will also be invited to make a submission.
18. Both parents and the student, and where appropriate, a representative of the EWS, may attend the hearing as or on behalf of the appellant. Not more than one board member and the school principal may attend the hearing on behalf of the board of management. Subject to the prior consent of the Appeals Sub-Committee, the parties to the appeal may 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 with the consent of the Sub-Committee.
19. In advance of the hearing the parties to the appeal will be provided by the CEO, 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 of the persons who will be attending the appeal hearing, including any persons/witnesses specifically invited by the Sub-Committee. This information/documentation will generally be provided no later than three days before the hearing. In exceptional circumstances, the Chairperson of the Appeals Sub-Committee may agree to the provision of documentation closer to the date of the hearing. However, in such cases, the other party to the appeal will be given an opportunity to consider this documentation in advance of the hearing.
20. The Sub-Committee may invite relevant persons/expert witnesses to attend and make statements at the hearing.
21. Where either, or both, of the parties to the appeal are unable to attend the hearing, they should contact the Sub-Committee at the earliest opportunity prior to the hearing, so that the hearing may be rescheduled.
22. Where either, or both, of the parties to the appeal fail to attend the hearing, without having given prior notification to the Department, the hearing may proceed in their absence at the discretion of the Appeals Sub-Committee.

23. At the hearing the appellant will be given an opportunity to present his or her case. Both parties to the appeal will have the right of reply and each will have the right to question the other through the Chairperson.
24. The Sub-Committee may question both parties, and seek the views of any witnesses that may have been called.

Determination of Appeals

25. Appeals will be determined by the Sub-Committee in the light of all the facts presented to it, including the views of any witnesses, and having due regard, inter alia, to:
 - the approved practice 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 interest of all other students in the school;
 - the effective operation and management of the school;
 - the resource implications arising from the issues under appeal, and
 - where relevant, the policy of the patrons/trustees and the board in respect of the characteristic spirit/ethos of the school.
26. In making its determination, the Sub-Committee may take advice from such persons as it considers appropriate.
27. Where a vote is required in order to establish the Sub-Committee's determination of an appeal, the matter shall be determined by a majority of votes of the Sub-Committee members voting on the question and, in the case of an equal division of votes, the Chairperson of the Sub-Committee shall have a second and casting vote.
28. The Sub-Committee will, in writing, notify the ETB of its determination of the appeal, the reasons therefore and its recommendation as to the action to be taken.
29. Following referral by him to the ETB, the CEO will, in writing, and within the 30 days allowed for the conclusion of the appeals process, notify both parties of the determination of the appeal, the reasons therefore and, where necessary, will issue such directions to the board of the school as he/she considers to be expedient for the purpose of remedying the matter which was the subject of the appeal. The board will be bound by such directions. In notifying the appellant of the outcome the CEO will, simultaneously advise the appellant of the right of, and timeframe for, further appeal to the Secretary General of the Department of Education and Skills.

Review of Procedures

30. These procedures may be reviewed from time to time by the Minister following consultation with the partners in education involved in the ETB sector. In particular, it is very likely that the procedures will need to be reviewed following the enactment by the Oireachtas of the proposed amendments to the ETB legislation.

Appeal to Secretary General

31. If the appellant remains unhappy with the outcome of this process he or she has an entitlement to make an appeal directly to the Secretary General of the Department of Education and Skills and may be done by contacting the Department at “**Department of Education & Skills, Section 29 Appeals Administration Unit, Friar’s Mill Road, Mullingar, Co. Westmeath**”.
32. In that event, the appeals process which had been undertaken at the ETB level will be deemed to have concluded the provisions in the Department’s procedures for local resolution and facilitation.