



Procedures for hearing and determining appeals under Sections 29(1)(a) and 29(1)(b) of the Education Act, 1998 (applicable to appeals made from 12th November 2020 onwards)

Appeals against expulsion or suspension for a period or periods totalling not less than 20 school days in a school year

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1. Introduction

- 1.1. In accordance with section 29B of the Education Act, 1998, the Minister for Education and Skills has, following consultation with the education partners, determined the procedures set out in this document which shall, from 12 November 2020 onwards apply to all appeals made under section 29(1)(a) and section 29(1)(b) of that Act.

Appeals against permanent expulsion

Section 29(1)(a) of the 1998 Act provides that a parent, or in the case of a student who has reached the age of 18 years, the student, may appeal a decision of a board of management or a person acting on behalf of a board of management to permanently exclude a student from a school. In accordance with section 26 of the Education (Welfare) Act, 2000, the Child and Family Agency may appoint a person, independent of that Agency, to appeal a decision under section 29(1)(a).

Appeals against suspension for a period or periods totalling not less than 20 school days in a school year

Section 29(1)(b) of the 1998 Act provides that a parent, or in the case of a student who has reached the age of 18 years the student, may appeal a decision of a board of management or a person acting on behalf of a board of management to suspend a student from attendance at a school for a period or periods totalling not less than 20 school days in a school year.

For the purposes of appeals under Section 29(1)(b) of the 1998 Act the decision of a board of management, or person acting on behalf of a board of management, to place a student on a reduced school day may be appealed under this section. Exclusion of a student for part of the school day, without parental consent or where consent is given and subsequently withdrawn, is a suspension. In these procedures each day that a student is on a reduced school day may be counted as a day for the purpose of counting of 20 school days for the making of an appeal under section 29(1)(b) of the 1998 Act.

- 1.2. These procedures have been determined by the Minister having regard to the principles of inclusion, equality of access to and participation in education, efficiency, effectiveness, clarity and fairness for applicants and schools.
- 1.3. An appeals committee and the parties to the appeal must comply with these procedures.
- 1.4. In these procedures, “applicant” is used to refer to the person (parent, student aged over 18 years of age or person appointed by the Child and Family Agency as applicable) who has made/is making an appeal. In these procedures “parent” and “student” have the meanings assigned to them by sections 2 and 60 of the Education Act, 1998 respectively.

2. Making an appeal

- 2.1. In accordance with sections 29 to 29F of the Education Act, 1998 and with these procedures, an appeal may be made in respect of a decision by a board of management or by a person acting on behalf of the board of management, to:
 - (a) permanently exclude a student from a school, or
 - (b) suspend a student from attendance at a school for a period or periods totalling not less than 20 school days in a school year.
- 2.2. An appeal may be made by the parent of the student concerned, or by the student concerned where the student has reached the age of 18 years. In accordance with section 26 of the Education (Welfare) Act, 2000, the Child and Family Agency may appoint a person, independent of that Agency, to appeal a decision of a board of management or person acting on behalf of the board of management to permanently exclude a student from a school.
- 2.3. An appeal must be made within **42 calendar days** from the date of the decision of the board of management or a person acting on behalf of the board of management.
- 2.4. Appeals must be made in writing on the **Section 29 Appeal Form** and submitted to the Section 29 Appeals Administration Unit which has been established within the Department of Education to provide administrative support to enable appeals committees perform their functions. The **Section 29 Appeal Form** may be downloaded from the Department's website or obtained directly from the Section 29 Appeals Administration Unit. Contact details for the Unit are available on the Department's website.
- 2.5. The **Section 29 Appeal Form** must be completed in full, and must specify the following:
 - (a) the applicant's full name, address and where available email address and telephone number,
 - (b) the student's full name, address and date of birth,
 - (c) the type of decision being appealed,
 - (d) the grounds on which the decision is being appealed,
 - (e) the name and address of the school concerned,
 - (f) the date of the decision,
- 2.6. A copy of the decision of the board of management which is the subject of the appeal must also be provided.
- 2.7. If any clarification or further information is required this will be sought from the applicant as necessary by the Section 29 Appeals Administration Unit.

3. Processing of an appeal

- 3.1. Once the completed **Section 29 Appeal Form** along with all required information and documentation has been received by the Section 29 Appeals Administration Unit, it will acknowledge receipt of same. The applicant may also be asked to submit any additional information and documentation relevant to the appeal by a specified date in advance of the appeal hearing. Such documentation could include school reports, documentation relating to any local procedures used, psychological or medical reports.
- 3.2. A notification will issue simultaneously to the board of management, informing it of the receipt of the **Section 29 Appeal Form** and the grounds of appeal set out therein.
- 3.3. The board of management will be asked to submit by a specified date in advance of the appeal hearing a copy of the School's Code of Behaviour along with any information and documentation which the board of management considers may be relevant to the appeal to the Section 29 Appeals Administration Unit. Information submitted by the board of management may 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 student concerned.
- 3.4. The National Council for Special Education may be requested to submit a report to the appeals committee where an applicant has indicated that a student has a special educational need.
- 3.5. Where possible, appeal hearings will be held within **21 calendar days** from the date of receipt of the fully completed appeal application by the Section 29 Appeals Administration Unit. The date of receipt for this purpose shall be deemed to be the date by which the completed **Section 29 Appeal Form** and all of the required information and documentation has been received by the Section 29 Appeals Administration Unit.
- 3.6. All information and documentation provided by the applicant and by the board of management in relation to the appeal will be treated in strict confidence and will not be disclosed to any other party to the appeal without the consent of the applicant or board of management, as the case may be, other than in accordance with these procedures, with the Data Protection Privacy Statement applicable to these procedures or as otherwise provided by law.
- 3.7. An appeals committee must refuse to determine an appeal or refuse to continue to determine an appeal made where any of the circumstances set out in section 9.1 of these procedures apply.
- 3.8. An applicant may withdraw an appeal at any time by notifying the Section 29 Appeals Administration Unit in writing, including by email, to that effect.

4. The appeals committee

- 4.1. The Minister will appoint a three person appeals committee to consider the appeal from a panel of persons who have been appointed by the Minister for the purposes of considering appeals under section 29 of the Education Act, 1998.
- 4.2. The Minister will nominate one member of the appeals committee to be the chairperson of the committee.
- 4.3. The Minister may, where he or she considers it necessary to do so, and prior to an oral hearing, replace a member of the appeals committee with another member of the appeals panel.

5. Arranging the appeal hearing

- 5.1. A date, time and location for the hearing will be notified to all persons concerned. The parties to the appeal will be informed of their right to submit any additional information and documentation in support of their case (that has not already been provided to the Section 29 Appeals Administration Unit). Such additional information and documentation should be provided in advance of the appeal hearing within the time limits specified by the Section 29 Appeals Administration Unit.
- 5.2. In advance of the hearing, both parties to the appeal will be required to confirm who will be attending the appeal hearing. The parents and student (where the student is aged over 18), and where applicable, a person appointed by the Child and Family Agency may attend the hearing. The board of management may designate two of its members, or one of its members and the school principal (the deputy principal may attend in the absence of the school principal) to attend. Each party to the appeal may also be accompanied at the hearing by not more than two persons nominated by them for this purpose. The Child and Family Agency (normally an Educational Welfare Officer [EWO]) and the National Council for Special Education (normally a Special Educational Needs Organiser [SENO]) may also attend the hearing. Persons accompanying either party to the appeal will not be permitted to make statements at the hearing, save in exceptional circumstances where the appeals committee gives its consent.
- 5.3. The appeals committee may invite persons with relevant expertise to attend and make statements at the hearing.
- 5.4. In advance of the hearing copies of all documentation submitted for the purposes of the hearing will be supplied to both parties to the appeal. The parties will also be notified as to the persons who will be attending the hearing, including any persons specifically invited by the appeals committee. This information and documentation should be provided to the parties no later than **3 calendar days** before the hearing.
- 5.5. The parties will also be notified of the names of the three appeal committee members who will hear and determine the appeal. Where an appeals committee member has to be replaced at short notice before an appeal hearing, the

Section 29 Appeals Administration Unit will, where practicable, provide the parties to the appeal with the name of the replacement member in advance of the hearing.

- 5.6. An appeals committee may by notice in writing require an applicant, board of management, or other relevant person or body to furnish to the committee the information specified in the notice within the period specified in that notice.
- 5.7. An appeals committee may draw such inferences as it considers appropriate as a result of any failure of a party to an appeal to provide any information required or requested in accordance with these procedures.
- 5.8. The National Council for Special Education may be requested to submit a report to the appeals committee where an applicant has indicated that the student has a special educational need.
- 5.9. The Child and Family Agency and the National Council for Special Education may make a written submission for the purposes of an oral hearing and such submission must be made within the time limits specified by the Section 29 Appeals Administration Unit.

6. Appeal Hearing

- 6.1. Where either, or both, of the parties to the appeal are unable to attend the hearing, they should make prior contact with the Section 29 Appeals Administration Unit as early as possible. While efforts will be made to make new arrangements it may not always be possible to rearrange an appeal hearing.
- 6.2. Where either, or both, of the parties fail to attend the hearing, the hearing may proceed in their absence at the discretion of the appeals committee.
- 6.3. The oral hearing will be conducted with the minimum of formality consistent with giving all parties a fair hearing. During the hearing both parties to the appeal will be given an opportunity to present their case. Both will have the right of reply in relation to the matter under appeal and each will have the right to question the other party through the chairperson.
- 6.4. The appeals committee may question both parties to the appeal, and may question any other persons who may be in attendance or who may have been called.
- 6.5. The Child and Family Agency (normally an Educational Welfare Officer (EWO)) and the National Council for Special Education (normally a Special Educational Needs Organiser (SENO)) may make submissions at the hearing.
- 6.6. An appeals committee may, where it is of the opinion that reaching agreement on the matters the subject of the appeal is practicable in the circumstances, provide such assistance to the parties to reach agreement as the committee considers appropriate.
- 6.7. In accordance with section 29D(4) of the Education Act, 1998 in hearing and determining an appeal under these procedures an appeals committee shall have regard to:

- (a) the nature, scale and persistence of any behaviour alleged to have given rise to, or contributed to, the decision made by or on behalf of the board of management and whether or not such behaviour is confined to specific classes in the school concerned,
- (b) the merit of any explanation offered by the student in relation to his or her behaviour,
- (c) the reasonableness of any efforts made by the school to enable the student to participate in and benefit from education and whether or not all reasonable efforts have been fully exhausted and any response by the student to any efforts made by the school to enable the student to participate in and benefit from education,
- (d) the educational interests of the student concerned and the desirability of enabling him or her to participate in and benefit from education with his or her peers,
- (e) the educational interests of, and the effective provision of education for, other students of the school and the maintenance of a classroom and school environment which is supportive of learning amongst all students in the school and ensures continuity of instruction provided to students,
- (f) any evidence that the behaviour of the student has impacted on the safety, health and welfare of teachers, staff or other students of the school,
- (g) the school's code of behaviour under section 23 of the Education (Welfare) Act, 2000 and other relevant policies of the school, and:
 - (i) in the case of the code of behaviour, whether it complies with section 23 of the Education (Welfare) Act, 2000 and the guidelines issued under subsection (3) of that section (i.e. Developing a Code of Behaviour: Guidelines for Schools), and
 - (ii) in the case of any other relevant policies, the extent to which each of them is implemented and is in compliance with:
 - any enactment that imposes duties on schools or their boards of management,
 - any relevant guidelines or policies of the Minister,
- (h) the duties on schools or their boards of management imposed by or under any enactment,
- (i) any guidelines issued by the Child and Family Agency under section 22(7) of the Education (Welfare) Act, 2002,
- (j) any submissions made by the National Council for Special Education or the Child and Family Agency, and
- (k) such other matters as the appeals committee considers relevant.

7. Determination of appeals

- 7.1. Following the oral hearing, an appeals committee will come to its conclusion having examined and considered the evidence and materials made available to it and make a preliminary decision in relation to the appeal.
- 7.2. In determining an appeal, the appeals committee may take advice from such other persons as it considers appropriate.
- 7.3. In the case of an equal division of votes, the chairperson will have a second or casting vote.
- 7.4. Nothing referred to in section 6.7 above affects the obligation of an appeals committee to allow an appeal relating to permanent expulsion from a school if the parent of the student or the student where 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 expulsion.
- 7.5. The appeals committee will, by notice in writing, notify the Minister, the applicant, the board of management and, where the Child and Family Agency or the National Council for Special Education made submissions at the oral hearing, the Child and Family Agency or the National Council for Special Education of its preliminary decision, the reasons for its preliminary decision and where it proposes to allow an appeal, its proposed direction to the board of management.
- 7.6. The applicant, board of management and where the National Council for Special Education or the Child and Family Agency made submissions at the oral hearing, the Council or the Agency, may make observations to the appeals committee in relation to its preliminary decision and any proposed direction. Any observations must be made in writing within **7 calendar days** of the preliminary decision being issued to parties.
- 7.7. An appeals committee will, having considered any observations made, make its final decision.
- 7.8. An appeals committee, in its final decision will:
 - (a) where it allows an appeal under section 29(1)(a) (expulsion appeal), include a direction to the board of management to readmit the student and remove the expulsion from the record of the student, and
 - (b) where it allows an appeal under section 29(1)(b) (suspension for 20 school days appeal), include a direction to the board of management to readmit the student and remove the suspension from the record of the student.
- 7.9. For the purposes of appeals under section 29(1)(b), (suspension for 20 school days appeal), which relate to a student who is on a reduced school day, a direction issued under 7.8 (b) of these procedures to readmit the student will be clarified by the appeal committee in their decision to mean the student return directly to the school on full time attendance or the student return on a phased basis with a view to achieving the students full time attendance within a period specified by the appeals committee

- 7.10 An appeals committee will, by notice in writing, inform the Minister of its final decision and the reasons for its final decision and, where it allows an appeal, will forward to the Minister a copy of the direction included in its final decision.

8. Direction to the board of management where an appeals committee allows an appeal

- 8.1. The Minister will, as soon as practicable after he or she receives a notice under section 7.9, forward to the applicant, the board of management, the Child and Family Agency and where the applicant has indicated that the student has a special educational need, the National Council for Special Education:
- (a) a copy of the final decision of the appeals committee and the reasons for its decision, and
 - (b) where the appeals committee has allowed an appeal, a copy of the direction included in the final decision of the appeals committee.
- 8.2. A board of management must comply with a direction made under section 7.8 of these procedures.

9. Refusal to hear or determine an appeal or refusal to continue to hear or determine an appeal

- 9.1. In accordance with section 29F(1) of the Education Act, 1998 the appeals committee must refuse to hear or determine or refuse to continue to hear or determine an appeal made under these procedures where:
- (a) it is of the opinion that the appeal is vexatious, frivolous, an abuse of process or without substance or foundation, or
 - (b) having regard 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 or further considered, or
 - (c) an appeal has not been made within the required **42 calendar days** as referred to in section 2.3, or
 - (d) the applicant has failed to provide information as requested in accordance with these procedures.
- 9.2. An appeals committee must inform the Minister by notice in writing where it decides to refuse to hear or determine an appeal or to refuse to continue to hear or determine an appeal.
- 9.3. A notice under section 9.2 must include the appeals committee's reasons for refusing to hear or determine or refusing to continue to hear or determine the appeal concerned.

- 9.4. The Minister will as soon as practicable forward to the applicant and the board of management a copy of the decision of the appeals committee to refuse to hear or determine an appeal or to refuse to continue to hear or determine an appeal and the reasons for the appeals committee's decision.
- 9.5. An applicant may request a review of the decision of the appeals committee to refuse to hear or determine or to refuse to continue to hear or determine an appeal.
- 9.6. A request under section 9.5 must be made in writing on the **Review of Refusal to Hear or Determine an Appeal Form** and must be submitted to the Section 29 Appeals Administration Unit within **10 calendar days** of the date of issuing of the copy of the decision of the appeals committee in accordance with section 9.4.
- 9.7. On receipt of a completed **Review of Refusal to Hear or Determine an Appeal Form**, a member from the appeals panel shall be appointed by the Minister to review the decision concerned and that person shall not have been a member of the appeals committee that made the decision concerned.
- 9.8. A person appointed under section 9.7 must review the decision concerned and following the review must make a recommendation to the Minister:
 - (a) that the decision of the appeals committee is upheld, or
 - (b) that the decision of the appeals committee is set aside.
- 9.9. Where the Minister receives a recommendation under section 9.8 (b), the decision of the appeals committee will be set aside by the Minister and the Minister will direct the appeals committee to proceed to hear or determine or continue to hear or determine the appeal concerned.

10. Provision for communications by electronic means

- 10.1. The applicant may be required by the Section 29 Administration Unit to submit the appeal, supporting documentation or any correspondence regarding the appeal electronically, including by email.
- 10.2. The board of management of the school concerned may be required by the Section 29 Appeals Administration Unit to submit any documentation or correspondence regarding the appeal electronically, including by email.
- 10.3. Both the applicant and board of management of the school concerned must where requested, supply an email address to the Section 29 Appeals Administration Unit for the purposes of corresponding with the Unit regarding the appeal.
- 10.4. Any letter, notice and other written communication referred to in these procedures may be issued by the Section 29 Appeals Administration Unit electronically, including by email to the email addresses provided by the parties concerned.
- 10.5. The appeals committee may be required to issue notices under these procedures electronically including by email and such notices may be forwarded electronically, including by email, to the relevant persons.

11. Contingency arrangements for hearing appeals

- 11.1. Having regard to the Covid-19 public health emergency the Minister has determined that the arrangements outlined in this section (section 11) shall apply for such period or periods as the Minister from time to time considers necessary. The Minister will publish on the Department's website details of any period or periods during which the arrangements in this section (section 11) shall apply.
- 11.2. Hearings shall be conducted remotely using an online platform of the Department's choice.
- 11.3. Parties to the appeal and any other persons attending the hearing will be provided with directions to be followed in relation to connecting to the remote hearing and in relation to participation in the hearing. Those directions will include but are not limited to the following:
 - (a) parties and any other persons attending are not permitted to record or partially record the hearing,
 - (b) only those to whom prior permission has been given will be permitted to join and/or participate in the hearing,
 - (c) all parties and any other persons present at the hearing must declare their presence to the hearing immediately on joining,
 - (d) all documentation must be submitted prior to the hearing within the timeline specified by the Section 29 Appeals Administration Unit. No additional documentation shall be submitted at the hearing.

12. Section 29 appeals and designation of a school place

- 12.1. The provisions in this section (section 12) of the procedures shall apply when section 67 of the Education Act, 1998 is commenced. Please note that at the time of publication of these procedures, section 67 of the Education Act, 1998 had not yet been commenced.
- 12.2. Where an issue relating to a decision to refuse a student admission to a school or permanently exclude a student from a school would be capable of being the subject of an appeal under section 29 of the Education Act, 1998 and a designation under section 67 of the same Act, then an appeal under section 29 and a designation under section 67 may not, in respect of the same student, be made at the same time.
- 12.3. Where an appeal under section 29 has been unsuccessful in respect of student, nothing in section 12.2 shall preclude a designation being made under section 67 in respect of the same student.

13. Review of these procedures

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