



# **Procedures for hearing and determining appeals under section 29(1)(c)(ii) of the Education Act, 1998 (applicable to appeals made from 12<sup>th</sup> November 2020 onwards)**

**Appeals against refusal to admit for a reason other than the school being oversubscribed**

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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<sup>th</sup> November 2020 onwards, apply to all appeals made under Section 29(1)(c)(ii) of that Act.
- 1.2. Section 29(1)(c)(ii) 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 refuse to admit a student to a school, where the decision to refuse admission is for a reason other than the school being oversubscribed. 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)(c)(ii) of the 1998 Act.
- 1.3. 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.
- 1.4. Prior to making an appeal under section 29(1)(c)(ii) the applicant **may, but is not required to**, request a review by the board of management of the decision to refuse admission.
- 1.5. The procedures for such a review are set out in this document and must, where a review is requested, be complied with by the board of management and applicant.
- 1.6. 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.
- 1.7. An appeals committee and the parties to the appeal must comply with these procedures.

## 2. Option to request a review by the board of management prior to making an appeal

- 2.1. Prior to making an appeal under these procedures, an applicant **may, but is not required to**, request in writing a review by the board of management of the decision to refuse admission.
- 2.2. The request for a review by the board of management must be made within **21 calendar days** of the date of the decision to refuse admission and must:
  - (a) be based on the implementation of the school’s admission policy and the content of the school’s annual admission notice and
  - (b) set out the grounds of the request.

- 2.3. The board of management must notify the applicant within **42 calendar days** of the date of the decision to refuse admission, that it is not in a position to review the decision and the reason therefor where the request for review has not been made within the required 21 day calendar days set out in section 2.2 of these procedures.
- 2.4. Where the circumstances at section 2.3 do not apply, the board of management must conduct the review in accordance with the following:
- (a) the board of management must review the decision to refuse admission having regard to the grounds set out in the request for review,
  - (b) the board of management must conduct the review without an oral hearing,
  - (c) the school principal may provide any facts, documents and other information relevant to the decision under review to the board of management but must not be involved in the board of management's consideration or determination of the outcome of the review,
  - (d) in conducting the review, the board of management must examine, having regard to the grounds set out in the request for review, whether or not there was any failure or error in making the decision to refuse admission and where there was any such failure or error whether or not it had a material effect on the outcome of the application,
  - (e) following the review and no later than **42 calendar days** from the date of the decision to refuse admission the board of management must issue the applicant with:
    - (i) a statement confirming that there was no failure or error in making the decision to refuse admission, or
    - (ii) a statement confirming that a failure or error occurred in making the decision to refuse admission, and whether or not such failure or error had a material effect on the outcome of the application,
  - (f) where a board of management issues a statement under (e)(ii) above and where the failure or error had a material effect on the outcome of the application and related to the admission of a student to a school or special class, the board of management must rectify the failure or error by admitting the student to the school or special class concerned.
- 2.5. An applicant may withdraw a request for review under this section (section 2) at any time prior to the conclusion of that review by notifying the board of management in writing to that effect.

### 3. Making an appeal

- 3.1. 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 refuse to admit a student to a school where the decision to refuse admission is for a reason other than the school being oversubscribed.

- 3.2. 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 to refuse to admit a student to a school.
- 3.3. The timeline for making an appeal under these procedures is as follows:
- (a) an appeal must be made no later than **63 calendar days** from the date of the decision to refuse admission. **(Please note this refers to the date of the decision to refuse admission and not to the date of any notification or statement arising from the optional request for review by the board of management under section 2 of these procedures.)**
  - (b) where a review has been requested in accordance with section 2 of these procedures, an appeal must not be made prior to:
    - (i) the issuing of a notification by the board of management under section 2.3 of these procedures, or
    - (ii) the issuing of a statement by the board of management under section 2.4(e) of these procedures, or
    - (iii) the expiry of **42 calendar days** from the date of the decision to refuse admission,whichever of the above is the earliest,
  - (c) the requirement at (b) will not apply where an applicant has, in accordance with section 2.5 of these procedures, withdrawn a request for a review by the board of management.

It is important to note that where a request has been made to the board of management for the optional review and the school does not comply with the requirements under section 2 of these procedures, an appeal can still be made to the Section 29 Administration Unit, but it must be made within the timeframes outlined above-; that is no later than 63 days from the date of the decision to refuse admission, irrespective of whether or not the board of management has issued the applicant with an outcome to the request for a review.

- 3.4. Appeals must be made in writing on the **Section 29 Appeal Form** and must be 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 to perform their functions. The **Section 29 Appeal Form** may be downloaded from the Department's website or may be obtained directly from the Section 29 Appeals Administration Unit. Contact details for the Unit are available on the Department's website.
- 3.5. 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 to refuse admission.
- 3.6. The following documents must be supplied along with the application form:
  - (a) a copy of the application for admission along with any supporting documents submitted to the school with that application,
  - (b) a copy of the decision to refuse admission,
  - (c) a copy of any notification issued by the board of management under section 2.3 of these procedures, **or** any statement issued by the board of management under section 2.4(e) of these procedures (this applies only where the applicant has sought a review under section 2 of these procedures and where such a request for review has not been withdrawn under section 2.5 of these procedures).
- 3.7. If any clarification or further information is required this will be sought from the applicant as necessary by the Section 29 Appeals Administration Unit.

## 4. Processing of an appeal

- 4.1. 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.
- 4.2. 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.
- 4.3. 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 admission policy and the school's annual admission notice along with any information and documentation that the board of management considers may be relevant to the appeal to the Section 29 Appeals Administration Unit.
- 4.4. 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.
- 4.5. 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 has been received by the Section 29 Appeals Administration Unit.
- 4.6. 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.

- 4.7. 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 10.1 of these procedures apply.
- 4.8. 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

## 5. The appeals committee

- 5.1. 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.
- 5.2. The Minister will nominate one member of the appeals committee to be the chairperson of the committee.
- 5.3. 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.

## 6. Arranging the appeal hearing

- 6.1. 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 and within the time limits specified by the Section 29 Appeals Administration Unit.
- 6.2. 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 the student (where the student is aged over 18) 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 other 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.

- 6.3. The appeals committee may invite persons with relevant expertise to attend and make statements at the hearing.
- 6.4. 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.
- 6.5. 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.
- 6.6. 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 the notice.
- 6.7. 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.
- 6.8. 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.
- 6.9. 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.

## 7. Appeal hearing

- 7.1. 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.
- 7.2. 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.
- 7.3. The 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.
- 7.4. 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.
- 7.5. 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.



- 7.6. 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.

## 8. Determination of appeals

- 8.1. 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.
- 8.2. In determining an appeal, the appeals committee may take advice from such other persons as it considers appropriate.
- 8.3. In the case of an equal division of votes, the chairperson will have a second or casting vote.
- 8.4. 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.
- 8.5. 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.
- 8.6. An appeals committee will, having considered any observations made, make its final decision and where it allows an appeal will include a direction to the board of management to admit the student.
- 8.7. 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.

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

- 9.1. The Minister will, as soon as practicable after he or she receives a notice under section 8.7, 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 or Child:
  - (a) a copy of the 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 decision of the appeals committee.
- 9.2. A board of management must comply with a direction made under section 8.6 of these procedures.

## **10. Refusal to hear or determine an appeal or refusal to continue to hear or determine an appeal**

- 10.1. 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 63 calendar days timelines as referred to in section 3.3, or
  - (d) the applicant has failed to provide information as requested in accordance with these procedures, or
  - (e) the grounds for an appeal relate to section 3, 7 or 7A of the Equal Status Act, 2000.
- 10.2. 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.
- 10.3. A notice under section 10.2 must include the appeals committee's reasons for refusing to hear or determine or refusing to continue to hear or determine the appeal concerned.
- 10.4. 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.
- 10.5. 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.

- 10.6. A request under section 10.5 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 10.4.
- 10.7. On receipt of a completed **Review of Refusal to Hear or Determine an Appeal Form**, a member from the appeals panel will be appointed by the Minister to review the decision concerned and that person will not have been a member of the appeals committee that made the decision concerned.
- 10.8. A person appointed under section 10.7 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.
- 10.9. Where the Minister receives a recommendation under section 10.8 (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.

## 11. Provision for communications by electronic means

- 11.1. The applicant may be required by the Section 29 Appeals Administration Unit to submit the appeal, supporting documentation or any correspondence regarding the appeal electronically, including by email.
- 11.2. 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.
- 11.3. 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.
- 11.4. 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.
- 11.5. 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.

## 12. Contingency arrangements for hearing appeals

- 12.1. Having regard to the Covid-19 public health emergency the Minister has determined that the arrangements outlined in this section (section 12) 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 12) shall apply.

- 12.2. Hearings shall be conducted remotely using an online platform of the Department's choice .
- 12.3. 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.

## **13. Section 29 appeals and designation of a school place**

- 13.1. The provisions in this section (section 13) 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.
- 13.2. 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.
- 13.3. Where an appeal under section 29 has been unsuccessful in respect of student, nothing in section 13.2 shall preclude a designation being made under section 67 in respect of the same student.

## **14. Review of these procedures**

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