



North Ayrshire Council  
Comhairle Siorrachd Àir a Tuath

## **Communities Directorate – Education Service Appeal Guidance for parents**

There are rights of appeal in relation to decisions regarding certain areas of education law:

- Placing Requests
- Exclusions
- Additional Support Needs

It should be noted that other decisions of the Education Authority can be judicially reviewed.

### **Who has the right to make an appeal?**

Parents have the right to appeal decisions in all cases where their child is still under school leaving age (16 year old). They may also have the right of appeal in cases where their child is over that age (i.e. is a young person), but the young person does not have the necessary understanding to appeal on their own. A person is of school age if he/she has attained the age of five years and has not attained the age of sixteen years, see Section 31 of the Education Scotland Act 1980.

The definition of parent in terms of the Education (Scotland) Act 1980 is wide and includes a guardian; any person who is liable to maintain or has parental responsibilities (within the meaning of Section 1(3) of the Children (Scotland) Act 1995) in relation to or has care of a child or young person'.

Generally, once pupils are over school leaving age, they will have the right of appeal and their parents will not.

Parents or young persons have the right to appeal against an exclusion. In addition, children (i.e. those under school age) who have legal capacity have the right to appeal. Equally, a parent can appeal on behalf of a pupil who is older than school leaving age if the pupil is unable to do so due to learning difficulty or mental incapacity.

The national guidance on exclusions states that either the child or the child's parent can appeal against an exclusion, but not both.

The child's views should be taken into account regardless of who is bringing the appeal.

## What decisions can be appealed?

There are certain decisions which can be appealed to the Education Appeal Committee (EAC) and some decisions where the appeal will be considered by the Additional Support Needs jurisdiction of the First-tier Tribunal for Scotland's Health and Education Chamber (ASN Tribunal).

Education Appeal Committee (EAC) hears appeals relating to:

- Exclusion from school (unless the challenge is based on disability discrimination)
- Refusal of a placing request (unless there is a CSP, a CSP is to be prepared or there has been a decision not to prepare a CSP and such decision has been referred to the First- tier Tribunal)

First-tier Tribunal for Scotland Health and Education Chamber (ASN Tribunal) hears appeals relating to:

- CSPs (including appeals relating to opening a CSP or continuing a CSP on review, refusing to open a CSP or discontinuing it, failure to comply with time limits and the information contained within a CSP)
- Transitions
- Capacity and Wellbeing
- Exclusions where there is a disability discrimination claim
- Placing requests where there is a CSP, a CSP is to be prepared or there has been a decision not to prepare a CSP and such decision has been referred to the ASN Tribunal

The ASN Tribunal hears appeals (known as references) from parents and young people against decisions of education authorities regarding the provision of education support under the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act). Children aged between 12 and 15 who have capacity to make a reference (and where their wellbeing will not be adversely affected) can also make two types of reference:

1. A reference in relation to a CSP
2. A reference appealing against the education authority's assessment of the child's capacity or wellbeing.

Under the Equality Act 2010, there is a right to make a disability discrimination claim to the ASN Tribunal (whether this relates to an exclusion or not) relating to pupils in education. Such claim can be made by the parent, young person or child, so long as the child or young person has the capacity to make such a claim.

## Where do appeals go?

Exclusion appeals and most appeals against placing request refusals are heard by the Education Appeal Committee, with a further right of appeal to the Sheriff. Appeals against

attendance orders are heard by the Sheriff.

Appeals in relation to Co-ordinated Support Plans (Including some placing request appeals) are heard by the ASN Tribunal. As stated above, the ASN Tribunal can hear exclusion appeals if the alleged ground of exclusion is disability discrimination under the Equality Act 2010. A full list of matters which can be heard by the ASN Tribunal is noted above.

There is some overlap here as parents have a choice between appealing an exclusion to the EAC or to the ASN Tribunal on the grounds of disability discrimination

\*The ASN Tribunal website will provide information on the rules and procedures relating to the hearings undertaken by that organisation – see [Health and Education Chamber](#).

## **Education Appeal Committee (EAC)**

Appeals about most placing requests and most exclusions are heard by an Education Appeal Committee. The Administrative Justice & Tribunals Council (Scottish Committee) whose statutory remit is to keep under review the administrative justice system and the constitution and working of tribunals, includes Education Appeals Committees.

An appeal committee set up under section 28D (1) of the Education (Scotland) Act 1980 shall be constituted in accordance with Schedule A1 of the 1980 Act.

An appeal committee will consist of 3, 5 or 7 members nominated by the authority from among persons appointed by the authority under Schedule A1; and sufficient persons may be appointed to enable 2 or more appeal committees to sit at the same time.

As it is important that appellants have confidence that they will receive a fair hearing from an appeal committee, care is taken to avoid any choice of members that may give rise to a conflict of interest. The appeal committee members are reminded that the appeal committee is an independent committee and should act impartially. Hearings are conducted in accordance with the requirements of natural justice and human rights legislation and in as informal an atmosphere as is compatible with the importance of the hearing.

## **Membership of the Education Appeal Committee**

Schedule A1 (3) of the Education (Scotland) Act 1980

The persons appointed to sit as members of an EAC shall comprise:

- Elected Members
- parents of children currently of school age (and traditionally drawn from Parent Councils)
- persons who in opinion of the authority have experience in education; or are acquainted with the educational conditions in the area of the authority

However, no person employed by the authority as director of education or in an administrative or advisory capacity as respects the discharge of their education functions will sit as a member.

Similar, whilst there is no requirement to have an elected member on every EAC, there is a requirement that where elected members are on the panel, they will not form a majority on the EAC.

### **Clerk to the Committee**

Each appeal committee will have the services of a clerk. The clerk is an appropriate officer of North Ayrshire Council and is responsible for arranging the hearings and circulation of papers. They are an employee who in the course of their employment by the local authority, do not deal with the admission of children to school, the exclusion of children or children with additional support needs. The clerk is responsible for the production of a record of the hearing. If the committee withdraw or invite the parties to do so when they wish to consider their decision, the clerk will remain with the committee but only for the purpose of offering advice on procedure and the application of the relative legislation.

The clerk may be called on to give advice on procedure to the appeal committee during the course of the hearing and when they retire to consider a decision.

### **Procedures before Notice of Appeal**

Placing requests can be made and decisions appealed during term time. We seek to arrange our timescale so that notices of appeal will be lodged well before customary holiday periods in order that all appeals for the following school session are normally heard and decided before the beginning of that session.

The notice of a final decision not to uphold an appeal relating to parental preference or exclusion cases will be accompanied by information in simple terms on how an appeal can be made about this decision.

### **Notice of Appeal**

A placing request appeal must be lodged by the appellant with the appeal committee within 28 days of receipt of the decision. The appeal committee have power, on good cause being shown, to hear appeals which have not been made timeously. In the case of appeals against exclusions, there is no time limit for appeals to the appeal committee.

### **Acknowledgement of Appeal**

Within 5 working days of receipt of a reference to the appeal committee, the appeal committee must issue an acknowledgement of it and give notification of it to the education authority.

### **Hearings**

An appeal committee must afford the appellant an opportunity of appearing and making representations and in all cases a time and place of hearing must be appointed. The notification to be given to an appellant will include a statement as to his/her rights:

- to appear or to be represented at the hearing, for example by a lawyer or a relative or friend;

- to be accompanied at the hearing by up to 3 friends including the person (if any) representing the appellant;
- to lodge written representations; and
- to allow the presentation of his/her case to rest on written representations if any, lodged by him/her or on his/her behalf.
- that a hearing may proceed in the absence of the appellant
- that the education authority will be represented at the hearing

Appeals must be heard in private but any of the following persons may be present as observers (the first four by permission of the chairman and the fifth by right):

- a member of the education authority
- the Executive Director (Communities) of the education authority or any person representing him/her
- a panel member who would benefit for training purposes from attending
- a member of Education Scotland (previously Her Majesty Inspectorate of Schools)
- a member of the Administrative Justice & Tribunals Council or its Scottish Committee

The procedure at the hearing is as follows:

- presentation of the case for the education authority
- questioning by the appellant
- questioning by the appeal committee
- case for the appellant
- questioning by Education Service
- questioning by the appeal committee
- summing up by the education authority
- summing up by the appellant

However, the chair of the committee has ultimate control over the procedure followed – members are also allowed to put questions to anyone giving evidence at the hearing.

### **Factors that may be taken into consideration when reaching a decision in placing request cases**

It is for the education authority to satisfy the committee that the duty to place the child in the school preferred does not apply because one or more of the following grounds exists or exist

when the appeal is heard:

- would make it necessary for the authority to take additional teaching staff into employment;
- would give rise to significant expenditure in extending or altering the school's accommodation or facilities
- would be seriously detrimental to the continuity of the child's education
- would be likely to be seriously detrimental to order and discipline in the school or the educational wellbeing of the pupils there
- would prevent the education authority from retaining reserved places at the specified school, for pupils likely to move into the catchment area of the school
- if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child
- if, where the specified school is a special school, the child does not have special educational needs requiring the education or special facilities normally provided at that school
- if placing your child in your choice of school would mean significant costs on changing the accommodation
- if the school is a special school and the education authority would be in breach of its duty to provide mainstream education by placing your child there
- assuming that pupil numbers remain constant, make it necessary, at the commencement of future stage of the child's primary education, for the education authority to elect either to create an additional class (or an additional composite class) in the specified school or to take an additional teacher into employment at that school
- where the placing request has the consequence that the capacity of the school would be exceeded in terms of pupil numbers

### **Factors that may be taken into consideration when reaching a decision in relation to exclusions**

- are there sufficient grounds to justify the exclusion? (See grounds below)
- has the legal test been met?
- has due process been followed i.e. investigation, notification of exclusion and reasons given?
- does the child have additional support needs and were those needs met?
- does the child have a disability and did the exclusion result from behaviour related to

the child's disability?

## **Grounds for Exclusion**

There are 2 grounds for exclusion:

1. when the school thinks order and discipline in the school, and the education of other pupils will be badly affected if the pupil continues to attend, or
2. when the school thinks that a pupil's parent(s) did not follow school rules or have allowed their child to break school rules, or if the pupil is aged over 16, when the school thinks they broke the school rules. Schools should only exclude a pupil as a last resort and when there is no suitable alternative. The exclusion should be for as short a period as possible. The school, the pupil, and their parent(s) should use the time during and after the exclusion to resolve the situation and make sure the right support is in place.

The burden of proof in all hearings rests with the authority. The onus is on the authority to prove that they have applied the correct legal test for placing request refusal and exclusion.

## **Decisions**

The chairperson or the appeal committee will inform the appellant and the authority whether the committee propose to notify their decision with the reason for it in writing at the conclusion of the hearing or at some time after that conclusion. If the appellant is not present or represented at the hearing, then immediate written notification of a proposal to defer the decision must be given to the appellant. Deferral is not the only option available to an appeal committee, they can decide to consider the appeal and reach a decision in the absence of an appellant.

Where the appeal committee do not announce their decision at the end of a hearing, they should notify their decision and their reasons for that secession in writing within fourteen days. Where appropriate, they must inform the appellant of any right of appeal to the sheriff and the time limit applicable.

## **Record of Proceedings of an Appeal Committee**

The clerk of the appeal committee will keep notes of the proceedings, the attendance, the voting, the decisions and the reasons for the decisions. Such documents will not be public. In deciding how long to keep any notes the clerk will take into account the Freedom of Information policy of the local authority.

## Useful publications

- COSLA Revised code of practice for the constitution and procedures of education appeal committees in Scotland – Published July 2001. The Clerk should be able to provide a copy of this Code on request.
- A-Z of Scots Education Law a Guide for Parents 3<sup>rd</sup> Edition ISBN978-011-497346-9
- [Scottish Executive](#) circular 1/2001 Placing Requests for School age Children
- [Scottish Government](#) circular 8/2003 Exclusion from Schools in Scotland: guidance to Education Authorities
- [Scottish Government](#): A guide for parents on Choosing a School and the placing request system, November 2010

## Useful organisations

### [Health and Education Chamber](#) **First-Tier Tribunal for Scotland**

Glasgow Tribunals, Centre 20 York Street, Glasgow, G2 8GT

Phone: 0141 302 5860

### [Citizen Advice Scotland](#)

Spectrum House, 2 Powderhall Road, Edinburgh, EH7 4GB

Phone: 0131 550 1000

### [European Court of Human Rights](#)

Council of Europe, F-67075 Strasbourg Cedex, France

Phone:+33 (0)3 88 41 20 18

### [Independent Special Education advice \(Scotland\)](#)

164 High Street, Dalkeith, EH22 1AY

Phone: 0131 454 0144

### [Law Society of Scotland](#)

26 Drumsheugh Gardens, Edinburgh, EH3 7YR

Phone: 0131 226 7411

### [Scottish Government](#) **Learning Directorate**

Victoria Quay, Edinburgh EH6 6QQ

Phone: 0131 556 8400

### [Enable](#)

146 Argyle Street, Glasgow, G2 8BL

Phone: 0300 0200 101

## Legislation

View mentioned [legislation](#):

- Education (Scotland) Act 1980
- Education (Appeal Committee Procedures) (Scotland) Regulations 1982
- Education (Placing in Schools) (Scotland) Regulations 1982
- Education (Lower Primary Class Sizes)(Scotland) Amendment Regulations 2010
- Human Rights Act 1998
- Schools General (Scotland) Regulations 1975
- Standards in Scotland's School's Act 2000
- The Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005
- The Education (Additional Support for Learning)(Scotland) Act 2004
- The Education (Additional Support for Learning)(Scotland) Act 2009
- Tribunals Courts and Enforcement Act 2007