



**NUI MAYNOOTH**  
Ollscoil na hÉireann Mhúad

**THE UNEQUAL OPERATION OF POWER IN IRISH EDUCATION:  
AN EXPLORATION AND EVALUATION OF THE DEVELOPMENT  
AND OPERATION OF THE SECTION 29 APPEAL SYSTEM AND THE  
EXTENT TO WHICH IT HAS ADDRESSED POWER AND  
INEQUALITY ISSUES IN IRISH EDUCATION**

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## LIST OF ABBREVIATIONS

ACCS	–	Association of Community and Comprehensive Schools
ADHD	–	Attention Deficit Hyperactivity Disorder
AERA	–	American Educational Research Association
APO	–	Assistant Principal Officer
ASTI	–	Association of Secondary Teachers of Ireland
BERA	–	British Educational Research Association
CEO	–	Chief Executive Officer
CMRS	–	Conference of Major Religious Superiors
CORI	–	Conference of Religious in Ireland
CPSMA	–	Catholic Primary Schools' Management Association
DES	–	Department of Education and Skills
DfES	–	Department for Education and Skills
EPSEN	–	Education for Persons with Special Educational Needs
EWO	–	Education Welfare Officer
FOI	–	Freedom of Information
INTO	–	Irish National Teachers' Organisation
IPPN	–	Irish Primary Principals' Network
ISSU	–	Irish Second-Level Students' Union
IVEA	–	Irish Vocational Education Association
JCSP	–	Junior Certificate School Programme
JMB	–	Joint Managerial Body
LCA	–	Leaving Certificate Applied
LEA	–	Local Education Authority
NAPD	–	National Association of Principals and Deputy Principals
NBSS	–	National Behavioural Support Service
NCCA	–	National Council for Curriculum and Assessment
NCSE	–	National Council for Special Education
NEPS	–	National Educational Psychological Services
NEWB	–	National Educational Welfare Board
NPC- P	–	National Parents' Council – Primary
NPC- PP	–	National Parents' Council – Post-primary

- OECD – Organisation for Economic Co-operation and Development
- OFSTED – Office for Standards in Education
- SEN – Special Educational Needs
- T.D. – Teachta Dála
- TUI – Teachers’ Union of Ireland
- U.K. – United Kingdom
- VEC – Vocational Educational Committee

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## ABSTRACT

This dissertation reports the findings of research conducted on the appeal process established by Section 29 of the Education Act, 1998. The purpose of the research was threefold:

1. to document the development of the Section 29 legislation and procedures from its origins in the 1990s to the end of the first decade of its operation in 2011
2. to determine the success of Section 29 in terms of achieving its aims
3. to utilise the Section 29 Appeal process to facilitate a critical analysis of the power differentials evident in Irish education.

Section 29 gives parents, guardians and students who have reached the age of 18, the right to appeal certain decisions made by a school's Board of Management to the Secretary General of the Department of Education and Skills (DES). The decisions which may be appealed are refusal to enrol, permanent exclusion from a school and suspension. The appeal mechanism came into effect on 23 December 2000 following consultation between Department officials and the education partners. The agreed appeal procedures provide for a 4 stage appeal process, culminating in an appeal hearing which is heard by an independent appeal committee. By the end of 2011, a total of 2,963 appeals had been lodged with the DES.

This study involved an in-depth examination of a wide range of published and unpublished documentation outlining the establishment, operation and review of the Section 29 appeal system. The research also examined the perceptions of DES officials, appeal personnel and the education partners about the Section 29 appeal process through the use of a series of semi-structured interviews with 28 targeted individuals.

The study of the development and operation of the Section 29 appeal process and of the challenges to the appeal process over its first eleven years has offered an insight into the unequal operation of power in Irish education. The underpinning conceptual framework of this research was that school personnel, and the organisations that represent them, embody power and influence that they are reluctant to surrender and which are difficult to challenge. The research has drawn on a range of literature that focuses on the theme of the power of schools and on inequality issues in schools and the wider education system to explore the predominant power of particular groups in society and how such groups maintain their own social, cultural and economic superiority. The work of Pierre Bourdieu was particularly referenced in this regard.

A core finding of this research is that the Section 29 appeal process has made schools more accountable for their actions. It has been particularly successful in ensuring that schools follow agreed procedures and policies in relation to the admission and exclusion of children. The findings also indicate that Section 29 has empowered many parents as it has enabled them to challenge decisions of schools that heretofore were extremely difficult to challenge. The study demonstrates that the fundamental power differentials inherent in Irish education persist. Those with the most valued social and cultural capital continue to have the most powerful voices in the education system and schools. Those parents with the most valued social, linguistic and cultural capital are the main beneficiaries of the Section 29 appeal mechanism.



## CHAPTER 1 INTRODUCTION

### 1.1 BACKGROUND TO THIS RESEARCH

In her foreword to the White Paper on Education, *Charting Our Education Future* (Government of Ireland, 1995), Minister Niamh Breathnach, T.D. made reference to an intense debate on education that had taken place over the previous three years. She referred, in particular, to the discussions that took place during the National Education Convention in 1993. The Minister stated in her foreword that these discussions were unprecedented as they “involved for the first time, structured multi-lateral dialogue among all the major partners in education on crucial issues affecting the development of education”.

The framework for education in Ireland had developed in an ad hoc manner, with schools having considerable power and independence. This was acknowledged in the *Report on the National Education Convention* (Government of Ireland, 1994: 107) which contends: “For historical reasons, Irish schools, particularly at post-primary level, have high levels of autonomy in their everyday operations.” Glendenning (1999: 321) asserts that prior to the commencement of the Education Act (Government of Ireland, 1998) “The disciplinary authority of teachers went largely unchallenged and schools were free to suspend and expel students without any recourse for parents except to the courts.” Craven (2006: 175) states that the legal cases that were taken by parents against schools in relation to school discipline in the years prior to the commencement of the Education Act demonstrated that “In the enforcement of discipline, as a result of a breach of a school policy...the courts will allow schools and their management a wide latitude and discretion, subject to fair procedures.”

The Education Act (1998) established a legislative basis for primary and second-level education in Ireland. The Act states that its purpose is “to ensure that the education system is accountable to students, their parents and the state for the education provided”.

## 1.2 THE SECTION 29 APPEAL MECHANISM

The White Paper (1995: 186) recognised that there were certain problematic issues generating tension between schools and their communities, particularly issues about enrolment and the exercise of discipline. It referred to the potential role for the proposed education boards<sup>1</sup> in the establishment of an appeal system to address these areas of tension. This appeal function was given shape under Section 29 of the Education Act (1998). Section 29 gives parents, guardians 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 Skills (DES). The decisions which may be appealed are:

- Refusal to enrol
- Permanent exclusion from a school
- Suspension<sup>2</sup>.

The Board of Management is bound by the directions made by the Secretary General on foot of the appeal. Notwithstanding that, the determination is open to legal challenge through the process of judicial review.

The appeal mechanism came into effect on 23 December 2000. By the end of 2011, a total of 2,963 appeals had been lodged with the DES (Table 1.1). The procedures for processing and hearing appeals against suspension, exclusion and refusal to enrol, which were agreed following consultation between the Department and the education partners, are outlined in *Appeal Procedures under Section 29 of the Education Act, 1998* (Department of Education and Science, Circulars M48/01 and 22/02) (Appendix 1).

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<sup>1</sup> The White Paper proposed that ten intermediate education structures known as education boards would be established. Much power would be devolved to these boards.

<sup>2</sup> The Section 29 procedures stipulate that the period of suspension that can be appealed is suspension for a period that will bring the cumulative period of suspension to 20 school days or more in any one school year.

Table 1.1: Appeals lodged 2001-2011 (Department of Education and Skills)

Appeals	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11
<b>Post primary</b>	28 (97%)	59 (80%)	97 (66%)	170 (67%)	216 (72%)	181 (68%)	188 (49%)	214 (56%)	266 (68%)	294 (80%)	263 (72%)
<b>Primary</b>	1 (3%)	15 (20%)	50 (34%)	83 (33%)	84 (28%)	85 (32%)	195 (51%)	171 (44%)	124 (32%)	75 (20%)	104 (28%)
<b>Total</b>	29	74	147	253	300	266	383	385	390	369	367

### 1.2.1 Other Relevant Legislation

A number of other pieces of legislation also impact on the Section 29 appeal process. The Education (Welfare) Act (Government of Ireland, 2000) stipulates that a Board of Management shall not refuse admission to any child<sup>3</sup> unless in accordance with the school's published admissions policy and that a board must respond in writing to an application for admission within 21 days. Section 23 of the Education (Welfare) Act states that schools must prepare and publish a Code of Behaviour and specify in this Code the procedures to be followed before a student can be suspended or permanently excluded from the school. Section 24 states that a board must give 20 days written notification to the Education Welfare Officer (EWO) prior to permanently excluding a pupil from the school and must state the reasons for the exclusion.

The Equal Status Act (Government of Ireland, 2000 and 2004) also has had major implications for schools as the Act promotes equality of access and participation and prohibits exclusion or other forms of discrimination based on nine specific grounds<sup>4</sup>. Likewise, Section 2(b) of the Education for Persons with Special Educational Needs Act (EPSEN) (2004) states that "a child with special educational needs shall be educated in an inclusive environment with children who do not have such needs". Until this Act<sup>5</sup> is commenced fully, parents of children with special educational needs

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<sup>3</sup> The term child, pupil, student and young person are used interchangeably in this research to describe those under 18 years of age.

<sup>4</sup> The nine grounds are gender, marital status, family status, sexual orientation, religion, age, disability, membership of the Traveller community, race. The age ground only applies in the case of schools and other educational establishments to those aged 18 years and over.

<sup>5</sup> Sections 1, 2, 14, 18, 19-37, 40-43 that relate to: the interpretation of the Act, the duties of schools, delegations of functions by school principals, establishment of the NCSE and amendment to Education Act (1998) have been commenced.

(SEN) continue to seek placements for their children using Section 29 of the Education Act.

### 1.3 KEY DEBATES AND CONCERNS OF STAKEHOLDERS

This dissertation presents ample evidence of changes in school practices around both admissions and disciplinary proceedings arising out of the appeal process. Initially many appeals were upheld as outlined in Table 1.2 below. Those appeals which were upheld were those that found in favour of the appellants. Those appeals that were not upheld did not find in favour of the appellants.

*Table 1.2 Appeals that went to full hearing (Primary and Post-primary) (DES)*

Year	Refusal to Enrol		Expulsion		Suspension	
	Upheld	Not upheld	Upheld	Not upheld	Upheld	Not upheld
2001	2 (40%)	3 (60%)	2 (50%)	2 (50%)	0	0
2002	6 (40%)	9 (60%)	13 (76%)	4 (24%)	2 (100%)	0 (0%)
2003	32 (71%)	13 (29%)	8 (36%)	14 (64%)	2 (67%)	1 (33%)
2004	60 (59%)	41 (41%)	10 (34%)	19 (66%)	2 (40%)	3 (60%)
2005	55 (52%)	50 (48%)	13 (22%)	45 (78%)	5 (50%)	5 (50%)
2006	50 (56%)	40 (44%)	23 (33%)	46 (67%)	1 (20%)	4 (80%)
2007	72 (46%)	85 (54%)	13 (24%)	42 (76%)	3 (50%)	3 (50%)
2008	58 (40%)	87 (60%)	24 (32%)	52 (68%)	9 (64%)	5 (36%)
2009	61 (36%)	108 (64%)	9 (20%)	35 (80%)	2 (40%)	3 (60%)
2010	27 (17%)	132 (83%)	5 (12%)	37 (88%)	3 (75%)	1 (25%)
2011	68 (47%)	78 (53%)	16 (27%)	43 (73%)	11 (85%)	2 (15%)
<b>Total</b>	<b>491 (43%)</b>	<b>646 (57%)</b>	<b>136 (29%)</b>	<b>339 (71%)</b>	<b>40 (60%)</b>	<b>27 (40%)</b>

More appeals were upheld than not upheld in the early years of the process either because schools did not have their Codes of Behaviour or Admissions Policies properly documented or ratified, or because there was a mismatch between the documented policy and the practice that had taken place in the school. This led to a level of resentment from schools and teacher unions about the appeal process. Some education partners at the time expressed the view that appeals were anti-school and that schools were put on trial during appeal hearings. For example, the Teachers'

Union of Ireland (TUI, 2004: 2) in their draft policy paper, *An Approach to Discipline in Schools* criticised Section 29 appeals for providing “parents and students with a grievance procedure that is quick, private and free”.

In 2005, as a result of lobbying on the part of teacher unions and management bodies, a review of student behaviour in second-level schools<sup>6</sup> was initiated by the then Minister for Education and Science, Mary Hanafin. The Task Force presented the *Interim Report on Student Behaviour in Second Level Schools* to the Minister in June 2005. In this report it is stated that:

the processing of a Section 29 appeal places heavy demands on a school in terms of time and with regard to expenditure in accessing legal advice. Where an appeal fails, the resultant lowering of morale and sense of helplessness experienced by a school staff are considerable...schools consistently report frustration with the experience (Department of Education and Science, 2005: 24).

The final report *School Matters: The Report of the Task Force on Student Behaviour in Second Level Schools* (Department of Education and Science, 2006: 134) recommended that a review of Section 29 of the Education Act be considered “with a view to amending it in ways that are more protective of all the school community”. As a result of the report of the Task Force, new legislation was introduced - the Education (Miscellaneous Provisions) Act (Government of Ireland, 2007). Section 4 of this Act amends Section 29 of the Education Act with the intention of balancing the rights between the educational interests of the student who is the subject of the appeal and the educational interests of the school community in appeals relating to expulsion and suspensions. The Act was signed by the President of Ireland in April 2007 but has not, to date, commenced. It would appear that among the causes of this delay was the fact that the DES was awaiting the outcomes of a number of judicial reviews.

#### **1.4 CHANGES AS A RESULT OF JUDICIAL REVIEWS**

The legislation surrounding Section 29 appeals was eventually tested in the High Court in the late 2000s following a number of judicial reviews initiated by schools and, in one case, by the appellant, who were frustrated by the outcome of individual

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<sup>6</sup> The terms second-level school and post-primary school are used interchangeably in this dissertation

appeals. The resulting judgements had a considerable impact on the scope and work of Section 29 appeal committees. As a result of this ruling, the appeal committee, in considering an appeal, was only permitted to consider the lawfulness and reasonableness of the procedures followed by schools in relation to suspension, expulsion and refusals to enrol as opposed to acting in a quasi-judicial manner. A committee could not impugn a school's enrolment or discipline policy; it could only review the decision of the Board of Management regarding the implementation of the Board's written policy. In addition, appeal committees were informed that parental preferred choice of school did not constitute grounds for upholding appeals.

According to Riordan (2010), the role and function of an appeal committee after the High Court rulings were similar to a regulator "limited to an examination of the lawfulness of the decision of a Board of Management rather than as a body with the power to substitute its own decision for that of a Board of Management". This development placed a significant constraint on the power of appeal committees. This constraint was welcomed by the unions and management bodies as a Section 29 appeal committee could now only overturn a decision of a Board of Management if it found that the decision "plainly and unambiguously flies in the face of fundamental reason and common sense" or that the Board of Management "had before it no relevant material which would support its decision" (Department of Education and Science, 2010).

As a result of the constraints imposed on appeal committees arising from the judicial reviews, a significant proportion of the appeals outcomes were not upheld over the course of 2009 and 2010 (Table 1.2). However, in 2009, the DES, dissatisfied with the outcome of one of these High Court judgements, appealed the decision to the Supreme Court. In November 2010, the Supreme Court found in favour of the DES and, hereafter, appeal committees reverted to most of their former practices with the result that the numbers of Section 29 appeals that were upheld again increased (Table 1.2).

## **1.5 AIMS OF THIS RESEARCH**

There are three core focuses to this research:

1. To document the development of the Section 29 legislation and procedures from its origins in the 1990s to the end of the first decade of its operation in 2011.
2. To determine the success of Section 29 in terms of achieving the following aims:
  - (a) to make schools more democratic and more publicly accountable for their actions in terms of admission and exclusion
  - (b) to serve the needs of parents/guardians and pupils/students who were not being treated equitably by some schools, especially in terms of their admission and exclusion practices.
3. To use the Section 29 appeal process to facilitate a critical analysis of the power differentials evident in Irish education. This research explores an aspect of inequality in Irish education and focuses on how certain socially advantaged groups have a recognised voice in schools. It also considers how advantaged groups use their cultural, social and economic capital to perpetuate their group's educational advantage.

### **1.5.1 Focus 1: The Development of Section 29 Appeals**

This research examines the development of the Section 29 appeal process from its original inception until 2011. It explores the rationale for introducing Section 29 and interrogates the original expectations of the DES regarding the appeal process. It looks at the operation and the impact of appeals since the commencement of the Education Act (1998). It documents the changes to the appeal process over the years, examines the reasons for these changes and considers who the key influential stakeholders were, their modus operandi in influencing change, and their relative level of influence.

### **1.5.2 Focus 2: Determining the Success of Section 29 Appeals**

Section 29 was introduced into the Education Act to make schools more publicly accountable for their actions in terms of their admissions and discipline practices and policies. It provided a forum of appeal to parents/guardians who believed that their children were treated unfairly by some schools in terms of these practices and policies. This research seeks to determine if the Section 29 process is robust in terms of enabling greater democratic engagement in schools by parents/guardians and young

people. It also seeks to determine if Section 29 has served the need of all parents and young people or if it has favoured those with the relevant social, cultural, linguistic and economic capital to access it and benefit from it.

### **1.5.3 Focus 3: Examining the Power Differentials in Education**

This research critically analyses the power differentials evident in the Irish education system. It describes how the education system promotes those with the most cultural, economic and social capital - the middle classes, while devaluing those without this capital - the marginalised in society. Therefore, those without the same levels of cultural, social and economic capital as school personnel often disengage from education and become further marginalised as a result. Those with this capital benefit most from education and occupy powerful positions in society as a result. Thus social inequality is replicated in schools.

O’Sullivan (2005: 9-15) contends that those who are most persuasive in defining reality, namely the middle classes, enhance their power. They do this by defining a reality that suits their particular cultural paradigm,<sup>7</sup> which is to legitimise their own authority. The Section 29 appeal process provides an opportunity to explore the power differentials evident in Irish education. An analysis of the attitude of school personnel and those education partners who represent school personnel to the development of the appeal process reveals their reluctance to engage with appeals or to willingly accept the decisions of appeal committees. This was because prior to the introduction of appeals, schools had the autonomy to refuse enrolment to certain students and to exclude certain students without being answerable to anybody. Thus many school authorities were willing to provide an education service to those that conformed to their cultural norm, but were often unwilling to provide this service to those who were deemed potentially challenging or disruptive – usually those students who did not conform to their cultural norm.

Bourdieu’s (1977, 1986, 1989, 1990, 1991, 1992) discussions on capital provides an insight into the reason why certain social groups have greater access to power than others. He describes cultural capital as being the sum of knowledge, skills, education

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<sup>7</sup> O’Sullivan (2005: xvi) describes a paradigm as “a framework of meaning, how something is looked at”.



and general disposition to which an individual has access that grants her or him status relative to others in society. Bourdieu (1986) argues that cultural capital can take three different forms. It exists in the *embodied state* in the form of long-lasting dispositions of mind and body (such as accent, tone, ways of holding one's body); it also exists in the *objectified state*, in the form of cultural goods such as books, films, works of art, and machines available to the individual to consume or possess. Finally, cultural capital exists in *institutionalised form*, in the character of educational credentials. Bourdieu and Wacquant (1992: 119) describe social capital as “the sum of the resources, actual or virtual, that accrue to an individual or a group by virtue of possessing a durable network of more or less institutionalized relationships of mutual acquaintance and recognition”. Bourdieu (1989: 276) asserts that “The economic and social return of academic capital depends in many cases on the social (or even economic) capital that allows it to acquire its full value, a dual demonstration of the dominated status of this form of capital”.

Cultural capital is mainly provided by parents who inculcate in their children the particular attitudes and knowledge that may enhance their capacity to succeed in the education system, to gain relevant qualifications and add even further to their store of cultural capital. Those without educationally beneficial cultural capital are often those who fail in school, who are excluded from school or are refused enrolment to school. In the Irish context, Lynch (1999: xiii-xiv) names those who are marginalised and who experience exclusion from education as those from working-class communities, those who are disabled, those who belong to the Traveller community, refugees, and people from other minority groups. These marginalised people are usually also bereft of economic and social capital, having neither access to financial resources nor social networks to benefit them in society.

A review of the wide-ranging literature focused on the theme of equality and power in education (Chapter 3), strongly suggests that the Irish education system is characterised by significant levels of inequality. The system is dominated by the more powerful voices of those advantaged by class or other status. These more powerful groups exercise disproportionate influence on education policy and it is in their interest to maintain the status quo. Those with the strongest voice in determining education policy, at both school and system level, are those with the most beneficial

cultural, social and economic capital. Bourdieu (1989: 264-265) asserts that those who hold power possess enough economic and cultural capital “to be able to occupy dominant positions”. He also asserts (1989: 79) that they hold a monopoly on power.

This monopoly on power can be seen in the Irish education system. For example, the Education Act (1998) names the education partners as patrons, national associations of parents, recognised school management organisations, and recognised trade unions and staff associations representing teachers. It is evident from this list that there is a strong focus on bodies representing teachers and managers who, unlike parents, all share the same cultural, social and economic capital. Although parents’ bodies are recognised as partners in education, parents are not a generic group. Research has demonstrated (Lodge et al, 2004) that those who dominate parents’ councils tend to be from the middle classes. However, the Education Act does not differentiate, in its list of partners, between parents who are from the middle classes and parents who are marginalised or who have children with disabilities. Devine et al (2004b: 267) consider this a “limited model of democracy” because it grants status to some groups while rendering others invisible by silencing the voices of those without educationally beneficial cultural capital – the marginalised. The marginalised are excluded from defining educational policy at system as well as school level and their children are often the ones who are excluded from schools.

This research, through the lens of the development of Section 29 appeals, examines the powerful forces in Irish education that determine educational policy, resist change and have a significant impact on the culture of schools. It provides a critical analysis of the power differentials in the education system by identifying those who have the stronger and the weaker voices in defining educational policy.

## **1.6 OUTLINE OF THESIS**

Chapter 2 presents the rationale for this research, the design of the research instruments and the data collection methods used. It describes the quantitative nature of the research - documentary analysis and use of semi-structured interviews. It provides a description of how the data was analysed and discusses the methods used to ensure the reliability and validity of the research data through triangulation of

evidence. It then considers the ethical issues that were taken into account in producing this dissertation, especially given the fact that I am a practitioner-researcher.

Chapter 3 reviews the literature on the themes of equality and access to and exercise of power in education. Bourdieu's theory of capital provides an overarching framework for the chapter. Bourdieu is a significant theorist in this regard. He is referenced by many other writers who critically consider power differentials in education and analyse inequality at school level and in the wider education system. In this chapter, the manner that the organisation of schools, particularly second-level schools, can reinforce social and class divisions is discussed. The influence of teachers in determining a student's experience of school, the relatively limited access to power by students, and the power and influence of the middle classes in ensuring their voices are heard are also examined. Inequalities in terms of students' access to and participation in schools and the effects of early school leaving and exclusion from school are then examined. Finally, the chapter considers the relative levels of influence of different social groups on policy makers.

Chapter 4 describes the educational landscape in Ireland prior to the introduction of Section 29 appeals. It then outlines the rationale for the introduction of appeals in relation to enrolment and discipline. The chapter charts the development of Section 29 appeals from their inception until the drafting of the legislation in relation to appeals. The various wordings of early drafts of the appeal legislation are described. Finally, other legislation relevant to Section 29 appeals is outlined.

Chapter 5 charts the development of the appeal procedures from the first draft until the publication of the circulars describing the appeal procedures. The influence of the education partners in determining the shape of these appeal procedures is examined. The chapter demonstrates that, in keeping with the views of many commentators on the theme of inequality and power in education, many partners were keen to maintain the power structures that existed in their schools.

Chapter 6 details the interviewees' views on how appeals operate in practice, focusing, in particular, on the operation of the local level procedures, facilitation and the terms of reference of appeal hearings. The power differentials inherent in appeal hearings are

examined, and evidence emerges of the different viewpoints of different appeal personnel as to the terms of reference of appeals. An analysis of appeal determinations in 2004 and 2005 is presented and a comparison is made between Section 29 appeals and appeals in other jurisdictions.

Chapter 7 focuses on the views of the interviewees on appeals in relation to refusals to enrol and appeals in relation to suspension and enrolment. The chapter examines appeals as they pertain to students who are marginalised and students with special educational needs. It reveals the inequalities that exist between schools in terms of their enrolment procedures. It also reveals the power of school personnel when it comes to suspension and expulsion of students. The chapter describes the practice engaged in by many school authorities of effective or 'de facto' expulsions which further leads to the social stratification of schools.

The negative reaction of school personnel and their representative organisations to Section 29 appeals is described in Chapter 8. The chapter also reveals the power and influence of the education partners. Their lobbying about the perceived erosion of school discipline at second level led to the establishment of the Task Force on Student Behaviour in Second Level Schools. The chapter describes the submissions to this Task Force in relation to Section 29 appeals. The main concerns of school personnel and their representative organisations can be summarised as a fear of losing their power and a concern for the rights of the compliant majority of students in schools. The chapter then describes the impact of the Task Force on Section 29 appeals which included the drafting of new legislation, The Education (Miscellaneous Provisions) Act. This Act amended Section 29 of the Education Act.

The chapter then describes a number of High Court actions taken mainly by schools as a result of Section 29 appeal determinations. The chapter shows that the results of the judicial reviews impacted significantly on the scope and power of appeal committees and, for a while, considerably restricted their power.

Chapter 9 examines the impact of Section 29 of the Education Act on schools, parents, students and the education system. It presents evidence that suggests that schools are more accountable and democratic since the introduction of appeals. It shows that

Section 29 has given a voice to many parents in terms of their right to appeal decisions relating to enrolment and discipline. However, it reveals that certain marginalised parents may not be benefiting from the appeal system. The chapter also describes the *Discussion Paper on a Regulatory Framework for School Enrolment* that has been proposed by the DES and reveals how Section 29 has been less successful in terms of dealing with enrolment issues in schools.

Chapter 10 draws on the findings of the previous chapters to describe the power differentials and inequalities evident in the Irish education system. The chapter demonstrates that these power differentials were particularly acute prior to the introduction of Section 29 appeals. It shows that the power of school authorities to refuse enrolment to students and to exclude students without good reason was considerably diminished as a result of Section 29 appeals. The chapter also reveals that Section 29 appeals has curbed the power demonstrated by some teachers to demand punishment of students without due process being followed and has led to a more collective sense of responsibility among staffs. However, it also reveals that inequalities still exist between schools and that some educationalists are only concerned with those students that are from the same cultural paradigm as they are. Therefore, although Section 29 appeals may have curbed the power of school authorities, it has not changed the culture in many schools.

Chapter 10 upholds the assertion made by many commentators [such as Young (2001 and 2006), Devine et al (2004), Lynch (1999), Lynch and Lodge (2002), Bourdieu (1991)] on the theme of equality in schools that those with the powerful voices in education are from the middle classes. Those who do not have a voice at national level or at school level are the marginalised. Therefore, the values of those with the most social and cultural capital dominate the education system and society at large. This is accepted by society as normal and remains largely unchallenged.

Chapter 11 presents the findings and recommendations that have emerged from this research. These findings and recommendations are mainly for policy makers, but are also relevant for schools and for appeal personnel. The findings show that the Section 29 legislation has made schools more democratic and more publicly accountable for their actions in terms of admission and exclusion. It has also served the needs of some

parents/guardians and some pupils/students by giving them a voice to challenge schools in terms of their admission and exclusion practices. However, the Section 29 appeal mechanism has not addressed the power and inequality issues that still persist in some Irish schools and in the wider education system. While Section 29 appeals give a voice to those parents and students who have most cultural and social capital, the findings indicate that it does not give such a voice to those lacking in such capital. The research demonstrates that those who are the most powerful in determining policy at school and at system level are the middle classes. They have the cultural, linguistic and social capital to make their viewpoints heard. These viewpoints suit the middle classes but do not accommodate the viewpoints of the marginalised. This dissertation also asserts that there are fundamental difficulties with the operation of Section 29 appeals.

## **CHAPTER 2 RESEARCH METHODOLOGY**

### **2.1 INTRODUCTION**

This chapter describes the key steps undertaken in conducting this research. It discusses the rationale for the research, the rationale for the research instruments chosen and the strengths and weaknesses of these research instruments. It also examines the reliability and validity of the research methods chosen, the issue of potential researcher bias, and the process of triangulation used in the study. Methods used to analyse and present the data produced by the research instruments are outlined. The ethical issues associated with the conduct of this research are also examined.

### **2.2 RATIONALE FOR THIS RESEARCH**

Section 29 appeals have, since their inception, been the focus of curiosity and controversy because of their potential to impact on schools' practices and procedures. Despite the considerable speculation about Section 29 appeals, they are confidential transactions between the two parties to the appeal – the appellants and the school. The reason for this is to protect the identity of the young people under the age of 18 who are involved. While the Department of Education and Skills does publish statistics about the outcomes of appeals, it does not publish information on individual appeals. It is only those appeal determinations that were the subject of judicial reviews that have become public. To date, the only published research on the impact of appeals and consequent interrogation of the nature of the appeal process has been the report published by the Task Force on Student Behaviour in Second Level Schools (DES: 2006).

In my role as inspector of schools in the DES, I was appointed to sit on Section 29 appeal committees almost from their introduction into the education system until 2010. This involvement gave me an interest in this area of research. My work inspecting schools has also given me insights into the impact of Section 29 at school level and my work in the Department has given me insights into the operation of appeals at system level. I participated in over one hundred Section 29 appeal hearings during the years of my involvement and worked with a large number of Section 29

appeal committees. I became aware of different approaches to appeal hearings depending on the composition of various appeal committees, and was aware of the power of Section 29 appeals in bringing about greater clarity in school admissions and discipline policies and in challenging the culture of some schools in terms of their admissions and exclusion practices. Cochran-Smyth and Lytle (2009: vii-ix) use the term ‘practitioner research’ to describe research where the practitioner is also a researcher. They suggest that such research is valuable for critiquing inequities in schools and society. My position as an inspector and as a member of appeal committees gave me a unique vantage point from which to observe the power relations in Irish society as expressed in the conduct of Section 29 appeals. I was, however, conscious of the possibility of bringing my own views and biases in relation to the operation of the appeal system into my research. This will be addressed later in this chapter.

As Andrews describes (2003: 15), I had identified “a nexus” of issues in relation to Section 29 appeals. Having read a range of literature on the theme of equality and power in education, my research questions began to emerge. I wanted to ascertain whether power differentials, as described in the literature, and apparent in the education system were replicated in the way Section 29 transacts. I sought to examine whether those with the most educationally beneficial cultural and social capital influence the way appeals are conducted and determined. I also sought to examine the level of access of those with the least beneficial cultural and social capital to the appeal system.

### **2.3 RESEARCH DESIGN**

The following questions governed the design of this research:

1. What was the rationale for introducing Section 29 appeals and how did the appeal legislation and procedures develop from their origins in the 1990s to the end of the first decade or so of its operation in 2011?
2. Has Section 29 of the Education Act (1998) achieved the aim of making schools more democratic and more publicly accountable?
3. Have Section 29 appeals served the needs of those parents/guardians and young people with limited access to power who felt they were not being



treated equitably in terms of schools' admissions and exclusion practices?

4. How are the power differentials evident in Irish education reflected through the prism of Section 29 appeals?

The research undertaken for this thesis is largely qualitative in nature as it focuses on a description of a particular process and on the perception of this process by a range of stakeholders. It provides a narrative and describes events and analyses opinions. Quinn Patton (1987: 23) outlines how such research requires qualitative evaluative methods consisting of a detailed description of a particular programme focusing on how the programme is perceived by participants. These descriptions are based on observations and/or interviews with key personnel, policy makers, staff, clients, and programme administrators.

I read a range of literature on the themes of power and culture of schools in which issues relating to power, the identification of the groups in society who hold power and how such groups resist change in the education system are examined. The work of Bourdieu on cultural, social, linguistic and economic capital has formed an overarching theoretical framework for this research. I examined appeal mechanisms and legislation from other jurisdictions, in particular the United Kingdom (U.K.) and I had access to a range of internal DES documentation from the time when Section 29 was first being drafted. This documentation charts the various iterations of the draft appeal procedures. Brannan (2005: 11) describes how the formulation of research questions leads to the choice of methods a researcher uses. The research strategy I adopted was a mixed method approach as it involved analysing documents in relation to Section 29 of the Education Act and conducting semi-structured interviews as a means of giving voice to the opinions of the stakeholders on the Section 29 appeal process and to interrogate events surrounding Section 29 appeals. One of the reasons for choosing this strategy was to triangulate the evidence produced from the documentation with the evidence from the interviews. Olsen (2004: 3) defines triangulation as "the mixing of data and methods so that diverse viewpoints or standpoints cast light upon a topic". Thus triangulation is important in ensuring reliability and validity and in addressing potential researcher bias. These issues are discussed in more detail in sections 2.4.6 and 2.4.7 of this chapter.

## **2.4 DATA COLLECTION METHODS**

### **2.4.1 Examination of Records in Relation to Section 29**

I sought as part of this research, to determine the rationale for introducing Section 29 appeals and to ascertain how the appeal legislation and procedures developed from their origins in the 1990s to the end of 2011. I chose to examine records relating to the origins of appeals to inform my research and to inform interview questions.

Wellington (2000: 114) describes how documentary analysis can be used as the main focus of educational research or to complement another method of research. He notes the following stages of documentary research:

- Exploratory stage: where documents are used to reveal an area of inquiry and alert researchers to key issues and problems
- Complementary stage: where documents complement other research methods and approaches
- Concluding stage: where documents are used as an aid to drawing conclusions from the research. Plummer (1983: 73) called this the business of ‘consolidating, clarifying and concluding’.

Documentary analysis proved useful at all three stages of my research. It assisted at the exploratory stage in alerting me to key issues in relation to Section 29 appeals. It assisted at the complementary stage as I chose to use documentary analysis to complement another method of research, which was the use of semi-structured interviews with key stakeholders in appeals. The documentary analysis provided me with key information on the rationale for appeals and alerted me to key issues that I was able to interrogate through the use of interviews. Many of the documents provided information on the views of the education partners about Section 29 appeals, at the time that the appeal procedures were being drawn up. Finally, the evidence from the documentation as well as the evidence from the interviews enabled me to triangulate evidence and draw conclusions from my research.

In his discussion on the uses of documents, Wellington (2000:110-113) describes a typology of documents and their degree of access as follows:

Closed – available only to a limited number of insiders

Restricted – available only by gaining special permission or having access granted  
Archived – access via a special place of storage or archive  
Published 1 – available in libraries, bookshops or on the internet but at a price  
Published 2 – available free on application or via the internet  
Published 3 – freely distributed to every household, school, college etc.

Wellington notes that the position of documents in the above typology influences the way a researcher analyses their “intention, their source and their meaning” and guides the ethics of their analysis.

I commenced my analysis by examining documentation available in the public domain in relation to the Green Paper on Education (1992), the National Education Convention (1993) and the White Paper on Education (1995). I also examined Dáil records, available on the internet, of the Oireachtas debates on the proposed legislation pertaining to appeals. These debates related to the proposed appeals as they were outlined in the two Education Bills (1997). These documents fall into Wellington’s category of ‘published’. Because of my insider status as an employee of the Department of Education and Skills I had access to ‘restricted’ documentation in the form of records relating to submissions to the Green Paper, the White Paper and the National Education Convention and to the establishment of appeal procedures under Section 29 of the Education Act (1998). These documents included internal memos and minutes of meetings between Department officials and between Department officials and the main education partners.

The initial documentary analysis took place over a period of approximately six months and guided the development of questions that were subsequently used in the semi-structured interviews conducted at a later period of the research. The documentary analysis, as noted above, also served to provide much information about the rationale for appeals and the devising of the appeal procedures.

I gained access to all the submissions to the Task Force on Student Behaviour in Second Level Schools, which fall into the category of *Archived*. I also had access to *restricted* documentation in the form of most of the appeal determinations made during 2004 and 2005. The names of all appellants, school personnel, appeal personnel and schools were redacted on these determinations prior to my accessing

them because of data protection issues. Therefore, it was not possible, for example, to establish the category of schools against which appeals were taken.<sup>8</sup> However, access to these documents provided me with an opportunity to analyse the different considerations that were taken into account by appeal committees when arriving at their determinations.

Silverman (2006: 157) believes that text documents are a rich source of information for researchers as they “document what participants are actually doing in the world – without being dependent on being asked by researchers”. Text documents were particularly useful to me, as I was conscious that, in an interview situation, interviewees might refrain from articulating their particular stances in relation to Section 29 appeals either because they saw me as part of the establishment or because the passing of time had made them forget those stances. Silverman (2006: 114-117) notes that qualitative interviews are useful for accessing the attitudes and values of individuals, but he cautions against believing that interviews can “get inside someone’s head”. The analysis of documentation relating to the discussions on the development of appeal procedures also served to inform me of the names of those Department officials and education partners who were most involved in the appeal negotiations and who, therefore, should be approached for interview.

My own institutional cultural capital as an inspector within the DES, allowed me access to the abovementioned material for the purposes of this research. Bourdieu (1989: 4) talks about “agents engaged in the university field” who, when writing about power:

spontaneously think of themselves as exceptions to their own analyses. They unknowingly contribute to exercising the symbolic domination that is exercised upon them, that is, upon their unconscious, insofar, and only insofar, as their mental structures objectively conform to the social structures of the microcosm in which their specific interests are formed and invested – in and through this very conformity.

This is of particular relevance to my research because of the challenge inherent in critiquing a system of which I am also a part. I am a professional educator with insider

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<sup>8</sup> The required anonymity of this data also meant that it was impossible for me to identify potential research participants who had attended appeal hearings either on behalf of their schools or as appellants. This is discussed in sections (2.4.2 and 2.5).

knowledge of schools. I am also an ‘insider’ in terms of my social class perspective; part of what Bourdieu calls ‘the State nobility’. Bourdieu asserts (1989: 3) that recognition of such a challenge helps to modify its influence. However, at all times, I had to guard against researcher bias brought about by my insider status. This is discussed later in the chapter.

#### **2.4.2 Target Groups for Interview**

I gave detailed consideration to the selection of personnel for interview for this research. In determining who to interview I sought to represent the views of as many schools and parents who were involved in appeals as possible and I had to decide how best this could be done. I was not in a position to contact individual parents and schools because this data is not publicly available. Section 29 appeals data is subject to the Data Protection Acts (1988 and 2003) and thus no information regarding specific appellants or schools against which appeals are taken can be made public. As noted already the names on appeal determinations that were made available to me were redacted to maintain anonymity of participants in appeals. However, I was committed to ensuring that those representing parents and schools should be invited to participate in this study. This is in keeping with Morse et al (2002: 12) who state that the participants chosen for research should “best represent or have knowledge of the research topic”. I therefore, chose to contact the representative organisations for parents - the National Parents’ Associations at primary and post-primary levels, the representative organisations for teachers - the teacher unions and the representative organisations for school managements - the management bodies. These bodies each have a broad overview of concerns arising from their members across the country in relation to Section 29 appeals and other issues.

As part of my qualitative research, I decided to conduct interviews with four groups:

- Department of Education and Skills officials who had either been involved in the devising of the Section 29 appeal procedures or who had worked in the section of the Department who administered the appeals
- Appeal committee members with a range of experience of facilitation and experience of appeal hearings

- The education partners who had been involved in negotiations about Section 29 appeals at their inception or later and other stakeholders<sup>9</sup> in education who, although not directly involved in negotiations about Section 29 appeals, had an interest in such appeals
- Dr Maeve Martin who, as the author of the Report on the Task Force on Student Behaviour in Second Level Schools, had a particular understanding of the impact of Section 29 appeals on schools.

As noted above, the documentary analysis proved useful in helping determine the names of Department officials and education partners I needed to target for interview. Miller and Bell (2008: 56) discuss “using the researchers own social networks” for recruiting interviewees. My insider status as a former member of a number of Section 29 appeal committees meant that I was familiar with most appeal committee members. Therefore, the selection of appeal committee members for interview was more subjective than the selection of other people for interview. I decided to invite people for interview who had extensive experience of Section 29 and who lived in the greater Dublin area. It should be noted that the majority of the long-serving appeal committee members with the greatest range of experience of the appeal system lived in the greater Dublin area. I focused on these long-serving appeal committee members primarily because of the depth and breadth of their knowledge and experience of the operation of the appeals.

I also arranged interviews with a representative from each of the partner in education organisations. In total, five Department officials, nine appeal committee members, thirteen former or current representatives from the education partners and Dr Maeve Martin were interviewed. The interviews took place over a ten month period from July 2011 until May 2012. I wanted to await the outcome of a Supreme Court judgement in relation to a judicial review, which I knew would have the potential to impact on the transaction of appeals, before interviewing commenced. The interview schedule of questions (Appendix 3) was sent to the interviewees in advance and all interviewees were asked to select a location of their choice for the interview. Most interviews typically lasted between 60 and 90 minutes.

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<sup>9</sup> These stakeholders included the National Educational Welfare Board and the Irish Second-Level Students Union

### ***Interviews with Department of Education and Skills Personnel***

I selected for interview key personnel from within the Department of Education and Skills whom I knew, from the documentary analysis and from my own engagement in the appeal hearings, were involved in the drafting of the Section 29 appeal procedures and in the negotiations with the education partners in relation to the Section 29 appeal procedures or who worked in the section of the Department that operated these appeals. Other officials, while not formally interviewed for the research, readily assisted when asked specific questions in relation to the origins of appeals. Because of my position working within the Department of Education and Skills I was in a position to easily contact those who worked within the Department and invite them to be interviewed. All officials that I asked agreed to be interviewed for the research and all chose to be interviewed in their work offices.

### ***Interviews with Section 29 Appeal Personnel***

I interviewed nine people who participated on appeal committees, six of these nine people also worked as facilitators of appeals. I chose to invite these nine people for interview for two main reasons. Firstly, each of them had extensive experience of the appeals over several years. Secondly, the majority of them were also experienced facilitators in the appeal process. All interviewees were invited to identify a preferred location for interview. One chose to be interviewed in her/his own home, two opted to be interviewed in a neutral venue and the remaining six chose to be interviewed in offices within the Department of Education and Skills.

### ***Interviews with Partners***

The analysis of the documentation in relation to appeals provided me with the names of the partner organisations that were involved in negotiations about the development of Section 29 appeal procedures and each of these organisations was contacted by me. These organisations proposed a representative who had an interest and knowledge of Section 29 appeals to be interviewed. Some of the partners interviewed were members of their representative education organisations at the time that appeals were established and some were members of these organisations at a later stage. I also decided it would be helpful to interview a representative from both the National Educational Welfare Board (NEWB) and the Irish Second-Level Students' Union (ISSU). The NEWB was not established at the time of the appeal negotiations but

subsequently made submissions to the Department regarding Section 29 appeals. I chose to interview a representative of the ISSU in order to represent the student voice in this research. Some of the partners interviewed chose to come to the Department offices for interview, five of them requested me to come to their offices for interview and two of the interviews were conducted over the phone at the request of the interviewees. While telephone interviews are not ideal, they allowed the voices of these two stakeholders to be heard. Denscombe (2008: 11) describes the limitations of telephone interviews, as allowing some element of the immediate one-to-one interaction associated with face-to-face interviews, although missing visual contact.

The partners interviewed for this research represented the following organisations<sup>10</sup>: Association of Secondary Teachers of Ireland (ASTI), Irish National Teachers' Organisation (INTO), Joint Managerial Body (JMB), National Association of Principals and Deputy Principals (NAPD), Irish Vocational Education Association (IVEA), Irish Primary Principals' Network (IPPN), National Parents' Council – Primary (NPC-P), National Parents' Council – Post-primary (NPC-PP), National Educational Welfare Board (NEWB) and the Irish Second-Level Students' Union (ISSU). The Teachers' Union of Ireland (TUI) did not respond to the invitation to be interviewed for this research. In addition to the above partners, persons formerly involved in the Association of Community and Comprehensive Schools (ACCS) and the Catholic Primary Schools' Management Association (CPSMA) were also interviewed.

### ***Interview with Chair of the Task Force on Student Behaviour***

I interviewed the chair of the Task Force on Student Behaviour in Second Level Schools, Dr Maeve Martin, as part of this research. As chairperson of the Task Force, she was uniquely positioned to provide insights into the focus of much of the work of the Task Force. I sought and was granted permission by Dr Martin to name her in this research. This interview was held in a neutral venue of the interviewee's choosing.

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<sup>10</sup>Appendix 2 provides a brief description of the organisations from which partners were interviewed



### **2.4.3 Semi-structured Interviews<sup>11</sup>**

As I sought to obtain as wide a range of views as possible on the Section 29 appeal process, I decided to conduct individual interviews with all those chosen for interview. I discounted focus group interviews as Denscombe (2008: 177) notes how group interviews “limit the number of views and opinions available to the researcher”.

My intent was to have a research instrument which had structure but which also allowed for flexibility on the part of each participant to discuss particular issues as they arose. In seeking to collect data with these objectives in mind, I used semi-structured interviews as they allow for broad coverage of the subject under discussion, while also allowing for particular areas to be explored in depth. Drever (1995: 73-74) points out that semi-structured interviews are typically used in situations where the interviewer decides on a general structure for the interview by deciding what ground should be covered and what main questions should be asked. Drever states that the semi-structured interview typically operates within the following parameters:

- The semi-structured interview is a formal encounter on an agreed subject and is ‘on the record’
- It incorporates a mixture of closed and open questions
- The main questions are set by the interviewer who creates the overall structure
- Prompts and probes fill in the structure: prompts by encouraging broad coverage, probes by exploring answers in depth
- The interviewee has a fair degree of freedom in relation to what to talk about, how much to say, and how to express it
- The interviewer can assert control when necessary.

Denscombe (2008: 176) states that the interviewer in a semi-structured interview should be flexible in terms of the order in which the questions or topics are considered, and should allow the interviewee the opportunity to develop ideas and elaborate on points of interest.

### **2.4.4 Use of Audio-Recordings and Transcription**

All interviews were recorded using a dictaphone and with the permission of the participants. Bucher et al (1956: 4) identifies the advantages of tape recorded interviews over note taking and memory reconstruction as follows:

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<sup>11</sup>Appendix 3 contains the full list of interview questions

1. No verbal productions are lost in a tape recorded interview. Comparisons of tape recorded interviews with written interviews indicate that large amounts of material are lost in written interviews
2. The tape recorded interview eliminates a major source of interviewer bias – the conscious and unconscious selection on the part of the interviewer of the material to record
3. The tape recorded interview not only eliminates the omissions, distortions, elaborations, condensations, and other modifications of data usually found in written interviews, but it also provides an objective basis for evaluating the adequacy of the interview data in relation to the performance of the interviewer
4. The tape recorded interview is a liberating influence on the interviewer
5. Other things being equal, the interviewer who uses a tape recorder is able to obtain more interviews during a given time period than an interviewer who takes notes or attempts to reconstruct the interview from memory after the interview has been completed.

All the interviews were professionally transcribed and then checked for accuracy by me. Transcriptions were then sent via email to the interviewees for validation. Most interviewees did not make any changes to the transcriptions but any requested changes were accepted and retained by me.

#### **2.4.5 Categorisation of Data**

The documentary analysis and the interviews generated a considerable amount of data and therefore it was necessary to select an approach which allowed for the reduction of this large data mass into an organised and manageable set. Much of the documentation related to the rationale for appeals and the origins of appeals. It was relatively easy to categorise this data into broad headings relating to the reasons for the introduction of the appeals and the main issues that arose in relation to the appeal negotiations. The documentation relating to the submissions to the Task Force on Student Behaviour in Second Level Schools was also categorised into headings relating to the issues that arose in discussions about Section 29 appeals and the subsequent recommendations of the Task Force.

I considered using a data package to categorise the interview data but I then opted to do this work manually by categorising the transcribed interviews into sets of data under different headings so that I would familiarise myself more closely with the content of the interviews. The data collection and analysis process used were similar to that described by Mertens (2005:421-423). As I was collecting the interview data, I noted the similarities, differences, themes and ideas that were emerging. As the

interviews were conducted over a period of ten months, I had an opportunity to label the transcriptions of the interview data into various codes representing themes. Darlington and Scott (2002: 144) describes how coding involves “sifting through the data, making sense of it and categorising it in various ways”. When all the interviews had been conducted, I categorised the data according to the groups of people I had interviewed. I divided the data from each group into themes corresponding with the labels I had developed. The headings I used in categorising the data from the interviews largely corresponded with the interview question. This is in keeping with Krueger and Casey (2000), cited in Rabiee (2004: 657), who suggest that the purpose of the research should drive the analysis. As new issues emerged, facilitated by the semi-structured nature of the interviews, or if similar words or phrases were frequently used by different interviewees, these were also categorised as new headings. Rabiee (2004: 657) describes this use of both a thematic approach and allowing themes to develop from the “narratives of research participants” as framework analysis. Framework analysis involves five key stages: familiarisation, identifying a thematic framework, indexing, charting, mapping and interpretation. This type of analysis allowed me to compare and contrast interview perspectives within interview groups. It also had the advantage, identified by Corbin and Strauss (1990) in Fielding (2003: 116), of guarding against bias. This is because the structuring of the data into categories “forces preconceived notions and ideas to be examined against the data themselves”.

I combined the data from the different interview groups according to the themes that had emerged during the labelling and categorisation process. A sample of this labelling process is presented in Appendix 4. A concept mapping approach was then used for the purpose of combining key themes from the interview data with key themes from the documentary analysis and this allowed me to recognise patterns and associations between ideas. Burke Johnson and Onwuegbuzie (2004: 22) call this the data comparison and data integration stages which involve comparing and integrating data from different data sets. Finally, I interpreted the data through the lens of power in accordance with the conceptual framework of this research.

#### **2.4.6 Reliability and Validity**

Le Compte and Goetz (1982: 32) describe reliability as being concerned with the

replicability of research findings and validity as being concerned with the accuracy of research findings. Reliability and validity are conceptualised by Golafshani (2003: 604) as “trustworthiness, rigor and quality in qualitative paradigm”. All commentators on research design, referred to for the purposes of this research, note the importance of ensuring the reliability and validity of the research. Therefore, throughout the conduct of this research, I was always conscious of the need to ensure that my findings were reliable and valid.

Denscombe (2008: 334-335) describes how a good level of reliability means that the research instrument will produce the same data on each occasion that it is used. Goetz (1982: 35) describes reliability as “the extent to which studies can be replicated”; therefore, any variation in the results obtained by using the particular research instrument is due entirely to what is being measured as opposed to the research instrument itself. Brock-Utne (1996: 9) references Kleven (1995) who suggests that one means of gauging reliability is through asking if a second observer applying the same theoretical framework would have interpreted the findings in the same manner.

To ensure reliability in my research I chose to interview a large number of appeal personnel, Department officials and other stakeholder partners in education. This was because I wished to guarantee that a broad spectrum of views would be obtained on the same issues and to demonstrate the credibility of my findings (Le Compte and Goetz: 1982). I also made sure that I asked the same questions of all interviewees because, as noted by Morse et al (2002: 12), having an adequate sample, which may involve replication of data “means that sufficient data to account for all aspects of the phenomenon have been obtained”.

Denscombe (2008) describes validity as meaning that the research methods and the data produced are ‘right’ and reflect the truth. This implies that the research methods and the data produced as a result of the data methodology are both accurate and honest. Brock-Utne (1995: 1) references Kirk and Miller (1986) who maintain that “asking the wrong questions actually is the source of most validity errors”. This is one of the reasons why I chose to use semi-structured interviews in my research. As noted before, such interviews allowed me to probe particular issues as they arose and enabled a broad coverage of the topics under discussion.

Silverman (2006: 281) states that “Validity is identified with confidence in our knowledge, but not certainty in its truth”. This is because we cannot claim to state for certain that what interviewees say in interview is truth but we can claim to state for certain that our account of what they said is truthful. One way of doing this, according to Seale (1999: 148) cited in Silverman, is to record their observations in concrete terms, including verbatim accounts of what was said in interview. Sending the recorded interviews to be transcribed ensured that the interviews were recorded accurately and that I could directly quote with accuracy what was said in interview. Likewise, using verbatim accounts of statements made by various stakeholders in their submissions to the Department on the establishment of the Section 29 appeal procedures and to the Task Force on Student Behaviour in Second Level Schools assisted in ensuring that the data was not nuanced or manipulated to suit my particular theoretical framework and views.

Borg and Gall (1989: 404) discuss an obstacle to research validity which they call “experimenter effect”. They describe this as the “degree to which the biases or the expectations of the observer have led to distortions of data”. Le Compte and Goetz (1982: 38) also describe a potential threat to reliability as being that of informant bias and note that this should be handled by describing in detail those who provided the data. These were issues of which I had to take cognisance as I was a practitioner-researcher. Hence, in selecting participants for interview, I strove to ensure that I would represent the views of as many stakeholders as possible who had an interest and knowledge of appeals. I was also particularly vigilant in ensuring that I did not present my own opinions about appeals during the interview process lest they would influence the findings from the interviews. However, by asking the same interview questions of all interviewees I attempted to ensure the reliability and validity of my interview data. Further, the extensive documentary analysis undertaken for this research assisted in ensuring the reliability and validity of my data and of the research findings as it helped to eliminate the potential of informant bias in interviews.

#### **2.4.7 Insider Bias, Subjectivity of Interviews and the Triangulation of Evidence**

Quoting Denzin (1989) who stated that “Interpretative research begins and ends with the biography and self of the researcher”, Mehra (2002) declares that awareness of

one's biases is essential when embarking on qualitative research. She notes that "researcher bias and subjectivity are commonly understood as inevitable and important by most qualitative researchers" in that they are reflected "not only in the choice of methodology and interpretation of findings, but also in the choice of research topic. In other words, what we believe in determines what we want to study" (ibid: 1-6). Holden and Lynch (2004) cite research from 'subjectivists' such as Weber, Hanson, Kuhn and Feyerabend who "argue that researchers cannot distance themselves from (1) what is being observed, (2) the study's subject matter, or (3) the methods of study; in other words, the researcher is value-laden with inherent biases reflected by her/his background, status, interests, beliefs, skills, values, resources, etc".

I have already outlined at the beginning of this chapter my rationale for my research and the nature of my interest in Section 29 appeals. In designing the schedule of interview questions I sought to reflect the core aims of my research. I therefore developed questions that related to the origins of appeals, the impact of appeals and the operation of appeals. By asking these questions of a range of stakeholders in appeals, namely Department officials, appeal personnel and the main education partners, I was able to interrogate issues relating to inequality and power at school level and in the broader education system. The examination of documentation relating to the development of appeals and the Task Force on Student Behaviour in Second Level Schools, enabled me to further examine the main concerns and issues of various stakeholders about the appeal process, which in turn provided insights, not only into the origins, operation and impact of appeals but also on issues of inequality and power. I have already outlined, in section 2.4.5 my method of categorising the data I collected from interviews and from the documentary review. At each stage of my data analysis I interrogated my work in interpreting this data in order to maintain awareness of potential researcher bias. I also engaged with my supervisor as a critical friend to ensure that I presented my findings in as objective a manner as possible.

Allred and Gillies (2008: 150-158) seek to problematise the interview process as a means of collecting valid opinions by discussing the subjectivity of the interview process. They suggest that the very invitation to be interviewed can force interviewees to adopt particular positions. They describe these positions as "performances". In addition, they note how interpreting these interviews can involve projecting particular

stances and opinions onto interviewees. Therefore, the interviewer must constantly question his/her claims about representing the views of the interviewees. Dean and Foote Whyte (1958: 351) note how with interviews: “We are getting merely the informant’s picture of the world as he sees it. And we are getting it only as he is willing to pass it on to us in this particular interview situation.” They note that difficulties in interpreting interviews can be increased when the interviewee is describing his/her recollections from the past. This is because of the possibility that an interviewee may adapt his/her recollections in a selective way to fit into his/her current point of view.

In taking cognisance of these possibilities, it was necessary for me to triangulate data produced by different interviewees rather than accept the views of one or two. Olsen (2004) argues that triangulation is “aimed not merely at validation but at deepening and widening one’s understanding”. In other words, she believes that triangulation means getting a number of viewpoints on what is being studied. Dean and Foote Whyte (1958: 356) argue that the best way to avoid distortion or misinterpretation is by comparing one account of an event with accounts given by other informants. Therefore, evidence must be constantly weighted up and compared with other evidence to ensure the reliability of the interviewee and to balance different accounts of events. In presenting the evidence from the interviews in this research I therefore was cognisant of the need to represent the different views of the interviewees in relation to the same issues in order to present a balanced account of the opinions of the various interviewees, especially as they represented different interest groups, while applying my theoretical framework. I also took care to ensure that the data was presented in a manner that allowed the readers to see why I reached my conclusions based on the available data (Mehra, 2002: 12).

As noted earlier, one of the purposes of my examination of documentation was to triangulate the evidence produced from the documentation with the evidence from the interviews as well as to gain new information on appeals. Denscombe (2008: 135) describes the benefits of triangulation as corroborating or questioning findings by comparing different data sets. I commenced my research by examining the documentation available to me and this served as an initiation into my research. As described by Brannan (2005: 12) the use of the first method “sparked new hypotheses

or research questions” which were later “pursued using a different method”, in my case through interviews. As outlined in section 2.4.5, I developed categories or codes for each theme that emerged in my data analysis. This included analysis of data from interviews and from documentation. I was therefore able to explore issues that arose from the documentation in interviews and refer back to the documentation when similar issues arose from the interviews.

## **2.5 ETHICAL STANDARDS**

My work as an inspector with the DES facilitated my access to relevant documents in relation to Section 29 of the Education Act. In addition, my knowledge of DES and appeal personnel afforded me the opportunity to approach these people to seek interviews. It could be said that my position as an inspector assisted me in accessing key educational partners who were willing to be interviewed. However, my position as an employee of the Department of Education and Skills was not necessarily always an advantage in this regard, as there are obvious tensions between some key education stakeholders and the Department. I was always aware that these tensions could result in a lack of trust and a certain antipathy towards my research project

Mauthner et al (2008: 4) discuss the tensions that may arise where the researcher is a professional practitioner in the area of research and note how practitioner-researchers must decide how to “balance professional/occupational responsibilities with research ethics guidelines”. Bell and Nutt (2008: 71) define ‘practitioner-researchers’ as those who have responsibilities as practitioners and who are conducting research. They note how “dilemmas” are likely to occur for the practitioner-researcher who must acknowledge multiple responsibilities and sensitivities. These include responsibilities towards clients/service users, fellow practitioners and organisational bodies, as well as complying with regulations specified by agencies. According to Coupal (2005: 18) practitioner-researchers are "insiders" within an organisation, and thus are embedded in the power relations and knowledge of that organisation. As practitioner-researchers engage in the process of collecting and producing knowledge to represent the viewpoints of organisational members, they are positioning themselves “between the interests of the organization and extra-organizational interests of public accountability”. Likewise, Howe and Moses (1999: 56) describe how “Educational



research is always *advocacy* research inasmuch as it unavoidably advances some moral-political perspective.” Some researchers, as outlined by Mertens (2010: 462) deliberately set out to utilise their work and findings to address injustice or inequality and to advocate for transformation. Mertens describes how the “researchers worldview influences the nature of the research questions and the proposed methodology.” There are ethical dilemmas inherent in such research because if one commits to speak for marginalised people one may unintentionally compound the exclusion those groups experience. Commentators such as Young (1990) reflect upon this issue by noting how those who are marginalised are excluded from participation in society through their lack of voice. These dilemmas were relevant to me because I am a practitioner-researcher. Although I was committed in this research to evaluating the Section 29 appeal system, I was not in a position to give voice to those appellants or indeed schools who were the subject of appeals due to data protection issues and also due to the fact that it would be unethical to use my insider knowledge of some of those participants in appeals in this research.

There was also the possibility that I might bring preconceived notions and biases about how appeals should be operated into play in devising my interview questions and in influencing the data being produced. Denscombe (2003: 273) asks: “If someone else did the research would he or she have got the same results and arrived at the same conclusions?” Bell and Nutt (2008: 72) suggest the need for the practitioner-researcher to choose whether or not to emphasise the role of ‘practitioner’ when carrying out research. I made a conscious effort not to disclose my own opinions during interviews, nor to allow my opinions to shape the discussion. In addition, as noted by Winch (2002: 158-159) there is a danger of “failing to take a view of the matter which extends beyond one’s own ideal of what should be the case”. Denscombe (2008: 143-145) notes that there are three principles which govern the conduct of research:

1. The interest of participants should be protected
2. Researchers should avoid deception or misrepresentation
3. Participants should give informed consent.

In conducting this research, I endeavoured to ensure that there was no conflict of interest between my role as a member of Section 29 appeal committees and my role as a researcher. I sought to maintain the integrity of my own work as an educationalist and as a member of appeal committees and I continually evaluated the adequacy of my

research methods. Voluntary informed consent was always a condition of participation in the research. Students and other ‘vulnerable populations’ were not named in this research; nor were schools and members of appeal committees named. The American Educational Research Association’s (AERA) Code of Ethics has developed a set of standards specifically designed to guide the work of researchers in education. This Code of Ethics states (2000: 1) that educational researchers should strive to protect individual lives, societies, children and other vulnerable populations “by continually evaluating our research for its ethical and scientific adequacy, and by conducting our internal and external relations according to the highest ethical standards”. Likewise, the British Educational Research Association (BERA) published *Revised Ethical Guidelines for Educational Research* in 2004 in order to “enable educational researchers to weigh up all aspects of the process of conducting educational research within any given context”. In conducting this research, I was mindful of AERA’s and BERA’s Codes and Guidelines.

## **2.6 CONCLUSION**

In this chapter, I have outlined the reasons for undertaking this research and the research methodology chosen. Because of the issues I have identified in relation to Section 29 appeals, the focus of the research was qualitative. It was based on documentary analysis, interviews with key personnel involved in Section 29 appeals and interviews with the education partners as named in the Education Act. I also interviewed other stakeholders in education, namely the NEWB and the ISSU. The risk of ‘insider bias’ and the dangers inherent in being a practitioner researcher have been explored in this chapter. I have also acknowledged the benefits that my own educational cultural capital have brought me in terms of conducting this research. The concept of cultural capital will be explored in more detail in Chapter 3, which presents a review of literature in relation to power and equality issues in education. I made every effort to ensure that, while conducting a critical analysis of the power differentials inherent in Irish education through the lens of Section 29 appeals, my own prejudices as a member of one of the organisations that I was analysing, my social capital, and my insider knowledge of schools would not influence the findings of this research.

## CHAPTER 3 LITERATURE REVIEW

### 3.1 INTRODUCTION

The underpinning conceptual framework of this research is that school personnel<sup>12</sup>, and the organisations that represent them, embody power and influence that they are reluctant to surrender and which are difficult to challenge. The research draws, in particular, on the work of Pierre Bourdieu. His theory of cultural, social and economic capital is an overarching framework for the research as his work focuses on the power and influence of schools in reinforcing the status quo in terms of maintaining social divisions. His work also explores the predominant power of particular groups in society and how such groups maintain their own social, cultural and economic superiority.

Bourdieu (1989) asserts that school personnel are complicit in ensuring that the inequalities inherent in society are maintained because they reinforce social divisions. They do this by allocating pupils to classes that match their social status, by making judgements about their students based on the students' cultural, economic and social capital and by favouring those who possess this capital. Bourdieu and Passerson (1990) assert that teachers measure their students against their own linguistic norms (accents). Children without this linguistic capital are those most likely to drop out of school as they are unable to adapt to the language of schools. Bourdieu and Passerson (1990) also suggest that teachers' dominance over students in schools is rarely questioned, especially in more traditional schools. Schools, which are middle-class institutions, and teachers who hail mainly from the middle classes, favour likeminded students and so contribute to the reproduction of social class. These students in turn will, by virtue of their success in school, become the powerful in society and will continue to ensure that the education system benefits their own social class inter-generationally. According to Bourdieu and Passerson (1990), those without social, linguistic, economic and cultural capital have little voice in society and rely on others to speak for them. However, those who claim to speak for them represent the values of the middle classes.

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<sup>12</sup> The term school personnel embodies teachers, principals and Boards of Management

This chapter examines a range of literature on the theme of equality and power in education. The Irish and international literature reviewed demonstrates how inequality in education is expressed at school level in the way that the organisation of schools implicitly advantages those with the most educationally beneficial cultural capital and disadvantages those with the least. The literature also demonstrates that it is the middle classes who have the most power in terms of influencing decisions made at school level and in terms of achieving success in school. The literature explores inequalities of access to school, inequalities in terms of children's participation and attainment during their time in school and the reaction of children and young people to the power differential that exists between teachers and themselves. It also explores the absence of voice for the marginalised in schools, factors that influence early school leaving and factors that lead to exclusion from school. Much of the literature reviewed in relation to exclusion focuses, in particular, on the experience of second-level students, as they are the ones most likely to be excluded from school or to drop out of school. The literature also examines those with the strongest voice and those with the weakest voice in terms of defining educational policy at school and at system level.

## **3.2 THE ORGANISATION OF SCHOOLS**

### **3.2.1 The Organisation of the Curriculum**

Many writers including Malone (2006), Young (2001) and Hargreaves, Earl and Ryan (1996) contend that, by stipulating what should be in the curriculum, a State is defining what it considers to be of importance in society and therefore what does and does not count as cultural capital. According to Young (2001: 97) the curriculum, as defined in the American education system, does not cater for multiculturalism as it teaches 'marketable' skills that do not suit groups such as Latinos and African Americans. Noddings (1992: 31), Young (2001) and Hyland (2002: 55) criticise the narrow definition of success in terms of schooling which concentrates on just two intelligences – the linguistic and the mathematical. Young (2006: 95) argues that the standards on which a student's performance is evaluated in schools are often biased in order to pass the privileges of "middle-class white Anglo male parents on to their sons".

Malone (2006), Hyland (2002) and Hargreaves, Earl and Ryan (1996) criticise the fact that while prescribed curriculums engage the interests of many students, they can 'push-out' or disengage certain students from learning and from school, particularly those students who are less able academically. Therefore, the importance of ensuring that the curriculum on offer by a school matches the needs and expectations of as many of its students as possible cannot be overestimated. This is described by Bruner (2003: 70) as a "quest...to devise materials that will challenge the superior student while not destroying the confidence and will-to-learn of those who are less fortunate". As Malone points out, the main problem about school for working-class students is the relevance or lack of relevance of what they are studying. These students do not see their world represented in the curriculum. McVerry (2009) suggests that these students see the curriculum as irrelevant and boring in the context of their lives.

In the 1990s, new second-level curricular programmes were introduced in Ireland which expressed a more vocational dimension to the traditional Junior and Leaving Certificate programmes. The Junior Certificate School Programme (JCSP) and Leaving Certificate Applied (LCA) programme were specifically aimed at potential early school leavers. Students who follow these programmes are generally of low academic ability. Malone, (2006: 271) contends that while there are many benefits for students in participating in these programmes, there are also disadvantages. These include placing the student in a class group which inevitably contains students of low academic ability and the consequent feeling of inferiority in those students.

According to Drudy and Lynch (1993: 158-159), the curriculum on offer in Irish schools perpetuates social and educational inequalities. Schools that offer an 'academic' curriculum deliberately exclude students who prefer more practical subjects. Such students are predominantly from working-class families. This is elaborated on by Young (1998), referenced in Malone (2006), who related the division between academic subjects and practical subjects to a form of "social stratification based on the division between mental and manual labour". Malone also refers to Hatcher (2000: 39-40) who suggests that working-class students are more likely to prefer knowledge which is "task-based" and thus a more academic curriculum does not always suit them. Yet, an academic curriculum has more status than a more practical-oriented one. This can be seen in the fact that traditionally, Voluntary

Secondary schools offered a more academic curriculum than Community and Comprehensive schools and Vocational Schools, therefore attracting more middle-class students. Meanwhile, Community, Comprehensive and Vocational Schools often offered a more practical-oriented curriculum. Malone contends that because a practical education is seen as being of a lower status to an academic education, more working-class students often attend these schools. The National Council for Curriculum and Assessment (NCCA) in its commentary on the Economic and Social Research Institute's (ESRI) research into the experiences of students in the third year of junior cycle makes the point that "some schools actively avoid" offering the Leaving Certificate Applied programme "out of fear that it would damage the status and reputation of the school in an increasingly marketised education system". The NCCA contend that decisions relating to provision of the LCA in these schools "has as much to do with the school's self-image as with the appropriateness of the education programmes offered to students" (2007: 42).

### **3.2.2 The Allocation of Students to Classes**

Many students experience inequality in relation to allocation to classes and low expectations from teachers. Those students in lower streams often experience a reduced or 'watered down' curriculum. Bissett (2000:115-117) notes how students in higher streams are presented with challenging and interesting material, while students in lower streams are presented with "dumbed down" material that is not stimulating or interesting. This is because schools equate low streams with low status students and expose them to "low status or low grade knowledge".

Bourdieu (1989: 117) contends that schools and other educational institutions play a critical role in "the permanent redistribution of power and privileges". He says that they do this by placing students in class groups that are matched to their social class origin. Bourdieu (1991: 97) asserts that students are placed in homogeneous class groups i.e. class groups containing students of the same social status and background. He observes that as one moves down the social hierarchy to the lower class groups, one finds children from the deprived classes and immigrant children. In these class groups one will inevitably find a "delinquent culture".

Lynch and Lodge (2002: 49-67), in their study of twelve single sex and co-educational schools over a two-year period, found, in congruence with Bourdieu's theory, that students were allocated to streams or bands according to their social class. Students from working-class backgrounds were disproportionately allocated to the lower status streams while those from middle-class backgrounds were more likely to be placed in higher streams. These streams were most work focused and had least disruption, thus advantaging the middle-class students. Therefore, middle-class students, inevitably the better off in society, were more likely to access a challenging and stimulating curriculum in the higher streams that enhanced "their educational and life chances" than the working-class students in the lower streams. Lynch and Lodge (2002: 184) refer to the "profoundly problematic" way in which students in Irish schools are selected for different class streams, noting that the tests used for selection of students into class groups are largely linguistic and mathematical, further disadvantaging working-class students.

Lynch and Lodge (2002: 64-86) also describe the effects of streaming and banding on students who are placed in lower bands or streams. These students had been negatively labelled on ability grounds and were, therefore, more likely to disengage from school and thus feel inadequate and failures. Such students were more negatively perceived by their teachers and, as a result, their relationships with their teachers were more negative than their counterparts in higher streams or bands. Teachers of students in the lower streams were more likely to use ridicule or sarcasm regarding the students' behaviour, demeanour or appearance. Lynch and Lodge note how students taking a subject at ordinary level "were subjected to far more criticism for their behaviour, yet they were not evidently more disruptive or inattentive than students taking the subject at higher level." Students in the lower streams were more likely to drop out of school early. They also tended to form friendships with students in similar classes or streams leading to "social as well as academic segregation". Lynch and Lodge also found that, even in mixed-ability classes, teachers tended to "stream students mentally and to spend more time with higher achieving students". They also found that the high academic achievers were rewarded in other aspects of school life, including being given more authority, such as being more likely to be appointed as class prefects.

In congruence with Lynch and Lodge's research, the ESRI, in its longitudinal study of the experiences of Irish students from first year through to third year found that students who were placed in lower streams in schools were much more likely to disengage from school and have negative attitudes to their teachers and school [Smyth et al (2004), Smyth et al (2006), Smyth et al (2007)]. Likewise, Smyth (1999: 31-36) found that the practice of streaming students according to a measure of academic ability has an overall negative effect and leads to increased inequality of outcomes. Such students had reduced overall average marks, particularly at Junior Certificate level.

Hargreaves, (1981), cited in Bissett (2000:18) states that streaming has "strong overtones of class differentiation and bias." Bissett (2000: 125) concludes that education is experienced differently by students of different social classes while Malone (2006: 301-304) describes class grouping practices as "another example of power differentials in action" which impact on "students' curricular choices, friendship networks and academic self-image". She notes that several students related that they felt unfairly victimised simply because they were in a lower stream. Keddie (1971: 156) comments that "innovation in schools will not be of a radical kind unless the categories teachers use to organize what they know about pupils and to determine what counts as knowledge undergo a fundamental change".

### **3.3 POWER ISSUES IN SCHOOLS**

#### **3.3.1 The Power and Control of Teachers**

Willis (1977: 67), in a research project examining the transition from school to work of non-academic, white, working-class boys, describes how students are subordinated even by the physical space they occupy in school. Everything, including the school bell, the weekly timetable of lessons, the necessity to show respect to the teacher at all times, the necessity to address the teacher as 'sir' or 'miss', the fact that teachers hold the keys to rooms and desks, that teachers have the power to initiate discussions, distribute textbooks etc "all these things assert the superiority of staff and of their world" and demonstrate their power.



Lynch and Lodge (2002: 160-161) note how a striking, yet unquestioned, feature of schools is “the extent to which students’ lives within schools are tightly controlled in terms of time and space”. Noddings (1992: 140) suggests that the way students are ordered in schools, such as sitting in rows, giving brief answers to teachers’ questions, being forced to attend school, and requiring permission to use the toilet, is “stifling” for students.

Many commentators show that teachers are the main influence in mediating a student’s experience of school. If students feel they are being treated fairly at school they are more likely to stay in school. Hanafin et al (2009: 147) refer to the notable and long-standing body of research which suggests that teacher behaviour towards, and evaluation of, children in classrooms is mediated through knowledge that they have of them in such domains as their prior achievement, social class and family resources”. Malone contends (2006) that schools can alienate a young person from education. She shows (2006: 270) that students experience feelings of exclusion if they perceive that teachers favour some students over others. This tendency of teachers to have favourites is examined by the American sociologist Howard Becker (1952), cited in Keddie (1971). Becker suggests that certain teachers favour certain students because they are always looking for the ‘ideal pupil’. According to Becker, this ideal pupil reflects back to the teacher his/her own social, moral and intellectual values. Kilpatrick (1998:21) makes a similar point, describing how teachers treat pupils differently depending on “whether they conform to expectations”, their ‘likeability’, their attainment and their ability. Those pupils who do not conform to these expectations are most frequently suspended or expelled. Kilpatrick refers to these children as the “psychologically excluded” because they will inevitably become disaffected with school and, hence, doomed to failure. Munn and Lloyd (2005: 213-217) conclude, from their research into the causes of exclusion, that excluded pupils generally feel an acute sense of injustice because teachers do not treat all pupils equally. They, like other commentators, note that teachers are likely to categorise pupils into ‘able’ ‘nice’ ‘worth saving’ or ‘unworthy of professional effort’.

Bourdieu (1989: 30-35) analysed 154 individual reports written by a teacher of philosophy who kept a record of her students’ written and oral grades (five or six per student), along with descriptive comments, over a period of four years in the 1960s.

Annotated alongside the students' grades were their dates of birth, the names of the secondary schools they attended, their parents' occupations and their addresses. Bourdieu describes how those students from the highest social origins received the most positive comment and the best grades. He concludes that teachers, when making judgements about students, take into account their physical appearance, clothing, accessories, manner and behaviour which are read by teachers "as signs of the quality and the value of the person".

Bissett (2000) found that, even before a student enters secondary school, his/her personal history, and sometimes his/her family history, have travelled with the student from primary school; so too has an assessment of the student's personality and academic ability. He references Sharp and Green (1975) who state that "there is a subtle but insidious process of social stratification in which teachers discriminate between pupils and rank them on a hierarchical scale" into categories such as 'bright', 'dull', 'thick', 'dim' etc. Drudy and Lynch (1993: 95) note how the difference between the social class origin of teachers and many of their pupils (particularly disadvantaged, working-class children) has implications for learning and for teacher-pupil interactions. They note the evidence from O'Sullivan's work (1980 and 1984) that some teachers have a "deficit model" in the way they perceive working-class children. They perceive these children as lacking in education and in character, and often they perceive them "as abnormal, morally reprehensible, or the product of social malaise". The research by Smyth et al (2006: 66) also found that levels of negative interaction between teachers and students varied by social class so that students from professional or farming backgrounds experienced "less negative interaction with their teachers than students from other social backgrounds". They also found that students from Traveller backgrounds were "more likely to report negative interaction with teachers".

Research shows how the attitude of a teacher to a child is critical to that child's success in the school. Ryan (2004: 76-89) suggests that even the most marginalised pupils enter the school system with high expectations and hopes of completing school. This is why it is so important for them to have positive experiences of school. Ryan describes some early school-leavers' assertions that the cause of their early school leaving was a negative encounter with a teacher. Ryan concludes that the 'ethic of care' is paramount, as all children want their teachers to care. Research by Wehlage et

al (1989), Boldt (1994) and Croninger and Lee (2001), cited in Malone (2006: 302-303), acknowledges that positive relationships with teachers and a feeling of being cared for by teachers are “positively associated with decisions to stay in school and to engage with the learning process”. In fact, good teacher-pupil relationships not only prevent early school leaving, they were found to improve school performance. In addition, informal conversations with children in the school yard, on the corridor etc were seen as being particularly important for children who were considered to be at risk socially. Boldt (1997: 12) describes being struck by the experiences of school portrayed by the early school leavers he interviewed. These early school leavers all agreed that most teachers did not care about them, did not understand them or were unable to relate to them:

The findings indicate clearly that a pupil’s experience of school is one of the most important factors in determining whether he or she will remain in school to obtain a qualification. It is also apparent that this experience depends largely on relationships with teachers.

Devine et al (2004b: 255) emphasise the importance of teachers having a deep understanding of the concepts of pluralism, inclusion, and diversity in order to recognise and reject the “manifestations and consequences of prejudice, racism, sexism, classism and all other social and cultural debilitating forces”. Noddings (1992: 177-179) criticises the “pernicious gossip” about pupils that “corrupts so many discussions in teachers’ rooms”. Noddings states that teachers should “become more like parents who are engaged in the task of raising a huge heterogeneous family” as opposed to identifying obstacles and difficulties. Wrigley (2008: 138-139) observes that “cultural leadership for school improvement” requires a range of changes including:

- exploring the differences between authoritarian and co-operative cultures
- examining the cultural significance of alienated forms of learning
- examining the cultural messages of classrooms which are dominated by the teacher’s voice
- developing a better understanding of cultural difference, in order to prevent high levels of exclusion
- understanding how tacit assumptions about ‘ability’ and ‘intelligence’ are worked out in classroom interactions
- discovering how tacit assumptions about single parents and ‘dysfunctional’ working-class families operate symbolically in classroom interactions.

### **3.3.2 The Experience of Children and Young People of School**

Bourdieu and Passeron (1990: 17-60) contend that the power of the teacher has never been questioned. Teachers, because of their “pedagogic authority”, are seen as “fit to transmit that which they transmit”. This authority allows teachers to impose sanctions on some pupils and exclude others. By doing this, teachers are reproducing power relations and are thus “imposing recognition of the legitimacy of the dominant culture on the members of the dominated groups or classes”. Bourdieu (1991: 192) states that most pupils, by submitting to their teachers, are granting them symbolic power “a power which the person submitting to grants to the person who exercises it”. Bourdieu and Passeron (1990: 100-111) are also aware that the more traditional the school, the more likely this is to happen. They describe a traditional teacher as one who does not want his authority to be contested and who blames his pupils if they do not understand him. They describe this type of education as being based on the “infallibility of the master”. Drudy and Lynch (1993: 65) assert that Voluntary Secondary schools are more hierarchical than other school sectors and that “people educated within such an organisation are likely to be predisposed towards seeing the hierarchical order as ‘natural’”.

In a project on the theme of ‘Equality and the Social Climate of Schools’ completed by Lynch and Lodge (1999: 219-227), pupils in twelve schools in six different counties were researched. A total of 1,201 pupils (77%) were asked to write about “any time or place when you think you’ve been unfairly or unequally treated since you came to this school, either by other pupils or by teachers” and “to make school a fairer and more equal place, what kind of changes would you like to see in it?” Issues raised in essays were then probed further in focus groups of teachers and pupils. The dominant theme that emerged was concern about the way authority and power were operated at school level. Pupils were concerned about being unequally treated by teachers and blamed this on differences in age and status between pupils and teachers. This was found particularly in schools which had a large intake of pupils from working-class backgrounds. Pupils expressed a wish to have more involvement in issues directly affecting them at school. Those pupils who were high achievers had greater involvement with the school. Coupled with a desire to have greater involvement in decision-making, pupils also expressed a wish to be shown greater respect by those in authority. They believed that, had those in authority genuinely

respected them, they would be given the opportunity to defend themselves if accused of a misdemeanour “rather than being punished without consultation”. Pupils expressed concern about “the perceived inequalities in the punishments meted out for various misdemeanours”. Pupils were also concerned about how pupils became labelled by teachers, or by their peer group as ‘troublemakers’. Sometimes teachers gave pupils these labels because of their poor behaviour as a junior pupil, because of the friendship groups of the particular student or because the student’s older siblings or relations were poorly behaved. This negative labelling was deeply resented by pupils. This is similar to Byrne and Smyth’s (2010: 83) findings that many young people who dropped out of school early felt that their teachers “did not listen to them or were not interested in them” and that they were ‘put down’ by their teachers.

Lynch and Lodge (2002:151-165) describe how pupils reject authority when they see it as unnecessary but accept control if they perceive it to be fair and reasonable. If a student had a negative encounter with even one teacher, this affected their attitude to the school as a whole. Therefore, “dislike of school was often due to the negative experiences students had with a very small number of teachers”. Lynch and Lodge conclude that while pupils recognise the way power is exercised over them in schools, many of them do not accept it. This is because teachers assume that, by their very position in society, they ought to be respected. However, from the point of view of the student “neither school nor teachers were regarded as being deserving of respect by virtue of the authority vested in them by the institution”.

Willis (1977: 77) contends that a teacher’s authority must be won and maintained, not by coercion, but by earning the respect of the pupils. He describes the “belittling and sarcastic attitude of some teachers”. The working-class boys in his study hit back at these teachers through misbehaviour, opposing their authority, engaging in vandalism and exploiting any apparent weakness in the teacher. Because of their negative experience of school, Willis found that these working-class boys hated mental work, which they associated with being controlled by school, and preferred manual work, which signified for them an escape from school. Therefore, resistance to mental work was the same as resistance to authority. Willis concludes that for these boys, education was turned into control, their resistance to this control led to educational refusal and, ultimately, this situation reproduced class conflict and social division.

Bissett (2000: 64-72), referring to McLaren's study (1992) of a group of Portuguese immigrant pupils in Toronto, makes the point that the resistance of the Portuguese pupils to school is due to the didactic nature of the power relationships they experience. Bissett (ibid: 50-54) also refers to Everhart's (1983) study of twelve to fifteen year old boys in a Junior High school in the United States. These boys generated their own systems of power in school. They constantly resisted the power exerted over them by their teachers and, in turn, wanted to exert power over their own lives.

Derman-Sparks (2002: 63-64) describes how poor children often show the effects of economic disadvantage. They may be malnourished, exhausted and sick from untreated health problems. Yet, they get little sympathy from their teachers at school. Instead, they often meet teachers who view these children, not the environment they come from, as the problem and make assumptions that these children are stupid and will be unable to learn. Likewise, a child who comes to a school from a different culture or way of life will inevitably meet with a very different school culture and language. According to Derman-Sparks, these children, all too often, begin to feel that their culture and language are devalued and therefore experience lowered self-esteem, which adds to their difficulties in school. Derman-Sparks notes the marked contrast between this situation and the situation of children from a white or dominant culture. These are generally wealthy, middle-class children who are "much more likely to enter a school where there is a match between school culture and home culture and are thus immediately at an advantage". Conaty (2002: 52) comments on how middle-class children attend middle-class schools where the language, values and aspirations of the schools are the same as those at home.

For marginalised children, or those who do not conform to the expected norm, the experience of school can be devastating. McVerry (2009) asserts that the experience is detrimental to their self-esteem, as these pupils cannot achieve their goals because the education system is so competitive. Such pupils have little chance of being able to afford fee-paying schools or grinds and so cannot compete with those who can.

Bernstein (1990: 118-119) contends that the working class utilises a restricted linguistic code whereas the middle classes use an elaborate linguistic code. This

elaborate code or language of the middle and upper classes is described by Bourdieu as linguistic capital and is, according to Bourdieu (1991: 45-46), the “linguistic norm” in middle-class communities and in schools, against which all other “linguistic practices are objectively measured”. He describes linguistic capital as a form of symbolic capital that signifies both wealth and authority. Thompson, in his introduction to Bourdieu (1991: 21-22), explains how those with this linguistic capital are enabled to participate comfortably in official places such as schools, public and political institutions. This is in contrast to those from the lower classes who do not have the linguistic “habitus” to feel comfortable in such situations. Bourdieu and Passeron (1990:73-87) suggest that the influence of linguistic capital is always present and, therefore, those with the least linguistic capital are those most likely to drop out of school. The higher the social class of a student and the greater endowment of linguistic capital, the better chance he/she has of progressing in school. As Bourdieu and Passeron (1990: 119) note: “There is a world of difference between the experience of school that is prepared for by a childhood spent in a family circle where words define the reality of things, and the experience of unreality given to working-class children by the scholastic acquisition of a language which tends to make unreal ‘pure’, ‘correct’ – i.e. ‘corrected’ – language of the classroom...”

MacRuaric (2004: 145) contends that the language form or dialect of lower socio-economic groups is looked down upon by the middle classes whose language is seen as “the dominant norm” and, therefore, pupils are positioned by schools differently according to the way they speak. Bissett (2000: 17-23) points out that working-class children have difficulty adapting to the rules of engagement of school because the language of schooling is alien to that which is practised at home. Accordingly, the implication of a school adhering to the elaborate code of language or dominant norm is to disadvantage pupils who do not use this code and therefore to advantage those pupils who do. Bissett concludes that a consequence of this is the development of an anti-school culture among the disadvantaged pupils. Bourdieu (1991: 62) explains that low cultural capital condemns the working classes to exclusion or self-exclusion because those who are unable to adapt to the language of schools are also those who are most frequently sanctioned by schools.

### **3.3.3 The Voice of the Marginalised in Schools**

Derman-Sparks (2002: 60) describes those who are economically disadvantaged as often having darker skin or being from an ethnic minority. She defines those considered as being diverse in Ireland as Travellers, asylum seekers and refugees, those who speak different languages, have different religions or different cultural beliefs to the dominant Irish culture. She suggests that society continues to advantage only some – those from the majority culture. The others are continuously disadvantaged and are blamed for their disadvantages or differences “and their differences used as the reason for their disadvantaging”. She goes on to say that schools offer a range of excuses as to why these children have poor attainments. Such excuses include: not speaking English; families not valuing education; not knowing how to work independently, and so on. However, she contends that schools themselves often do not look at their own policies and practices to see if they are contributing to the lack of success of these children who are disadvantaged or come from ethnic minorities. This view is shared by Malone (2006: 291-292) and Lyons et al (2006: 379) who comment that uninclusive schools are forever blaming their pupils for their lack of commitment, as opposed to examining their own practices.

Young (2006: 97) states that schools expect children to display certain expected behaviours considered to be the norm. However, there are many children who are unable to exhibit these behaviours because their behaviours are considered different from the norm. Young contends that if certain pupils fail to measure up to the expected standards because of their disabilities, their socialised habits, their cultural backgrounds or way of life, they will be stigmatised and labelled by schools.

Lodge and Lynch (2004), Malone (2006) and McDonagh (2006) discuss how the education system is seen as negative by many Travellers for a number of reasons. These commentators suggest that there is a lack of flexibility in schools about Travellers’ nomadic lifestyles. They also suggest that schools undermine Traveller culture and discriminate against them. Lodge et al (2004: 7) report on how some Traveller young people feel that teachers give up on them and do not recognise their cultural values. McDonagh (2004: 101-104) discusses how the negative experience of school in terms of low expectations and outcomes has influenced Traveller parents’ attitude to school in relation to their children. She asserts that most teachers show little



awareness or knowledge of the reality of Travellers' lives. In commenting on how rates of drop-out from school were higher among Traveller students and those from disadvantaged socio-economic backgrounds, Byrne and Smyth (2010: 111-112) note that these students' reasons for leaving school "tended to centre on not getting enough encouragement from teachers, experiencing conflict with teachers, teachers not understanding their culture or being expelled". Lodge et al (2004: 6-7) make the point that "Irish education continues to operate on an assumption of heterogeneity in terms of ethnicity, religious belief and language".

### **3.3.4 The Relative Absence of Children's and Young People's Voices**

Lynch (1999: 163-164) critiques the way pupils in schools are treated, stating that "at best, our treatment of children is welfarist and patronising; at worst, it is indifferent, condescending and lacking in respect". While acknowledging that children are different from adults, she stresses that this difference does not merit "subordination or lack of respect". Lynch (1999: 169) describes how the United Nations, in examining Ireland's implementation of the *Convention on the Rights of the Child* (1989), was "concerned that the views of the child are not generally taken into account". This exclusion of the child's voice, according to Devine (2004: 113), is because of the common discourse in Irish society which sees children as immature and "incapable of participating effectively in decisions about their lives but also, and by implication, differences in the power and status of adults and children in Irish society".

In their research on the possibility of involving pupils in decision-making in schools, Knipe et al (2007: 422) comment on the maturity of the pupils' responses to their questions and how they were capable of thinking responsibly about the issues under discussion. They conclude that pupils have "a valid role to play in consultation regarding educational issues such as suspension and exclusion". McLoughlin (2004: 139) also contends that children are often frustrated at the slow pace of change in schools and the lack of consultation with them about areas of school that affect them. He concludes that "children perceive adults in the school as having no consciousness of the need to consult with them". This is similar to Lynch (1999: 179-182), who comments on the irony of how adults seem to think they can speak for children and empathise with their thoughts and feelings. She notes how adults "see nothing wrong with organising conferences, meetings and conventions about children without

involving them as partners”. Lynch and Lodge (2002: 148-149) assert that domination of young people, although accepted in society, is an injustice. They note that where the power relations between children and teachers are not respectful there can be “negative educational consequences” for children.

### **3.3.5 Parents’ Voice in Schools**

Apple (2004: 21-22) describes how middle-class parents bring their “social, economic and cultural capital” to bear on schools, thus exploiting the education system to their child’s advantage. These parents, by virtue of the fact that they have cars and are mobile, can visit many schools to see which is the most suitable for their child. They can then afford to drive their child across town to attend a “better” school. They can also afford to provide their child with other “hidden cultural resources” such as summer camps and after-school programmes in music, sport and extra classes that give their children an ‘ease’ and a ‘style’. They also pass on to their children the confidence to be at ease with people in authority. Bissett (2000: 54-60) refers to a study by Connell et al (1980: 133) of high schools in Australia which shows that middle-class parents are much more able than working-class parents to influence the educational destiny of their children. These parents see schools as a market force to be exploited for the benefit of their children, whereas “working class parents are more likely to experience it as a hierarchically structured, distant bureaucracy”. Lyons et al (2003: 380-382) found that middle-class parents had the cultural, financial and social capital to intervene in schools on behalf of their children, while working-class parents lacked the “resources, skills and knowledge” to do likewise.

Lodge et al (2004: 4) state that research internationally shows that middle-class parents are a lot more likely to dominate parents’ groups at local level, to engage with schools and to exercise more influence over schools than working-class parents and parents from minority groups. Drudy and Lynch (1993: 126-127) also assert that middle-class parents will pursue their own middle-class agendas through parents’ councils. This results in the domination of the voice of the middle classes within the education system. Conaty (2002: 52) expresses the same view and concludes that middle-class parents are very unlikely to “upset patterns being reproduced in schools as their children are the prime beneficiaries of the system”. Lodge and Lynch (2004: 4) note that membership of groups, such as parent associations and student councils,

often does not reflect diversity across the community. They (ibid: 98) contend that, unless the views and realities of minority groups and the marginalised are recognised and catered for in education and other services, “exclusion and misrecognition of minorities cannot be meaningfully challenged”.

### **3.4 INEQUALITIES IN SCHOOLS**

#### **3.4.1 Inequality of Access to Schools**

Lynch and Lodge (2002) and Lynch and Moran (2006) cite numerous causes of inequality, not only within schools but also between schools. Such inequalities include the existence of fees and high voluntary contributions in some schools, expensive uniform requirements and the promotion of traditions of academic achievement. These act as a barrier to less well-off families accessing such schools. Lynch and Lodge contend that the way in which schools promote themselves and their traditions influences student selection. This is because certain schools suggest that only pupils of a particular social class or of a certain level of academic ability will succeed in their school. By doing this, they exclude pupils from other social classes or of lower academic ability. Lynch and Moran (2006) describe how some schools welcome professional parents but perceive working-class parents and their children as a liability and a risk to the status of the school. These schools discourage working-class pupils from attending their school but encourage middle-class pupils to attend.

Lynch and Lodge describe a three-tiered system of schools in Ireland – fee-paying schools at the top, Voluntary Secondary schools on the second tier and Vocational schools and Community Colleges, which mainly contain working-class pupils, on the bottom tier. Lynch and Moran (2006: 19) note how working-class and farming class students are “disproportionately represented in the community or designated disadvantaged schools, which have only basic uniform requirements, minimal or no voluntary contributions, and a history of vocationally-based education”.

Wacquant, in his foreword to Bourdieu (1989: x), describes how Bourdieu maintains that schools are very powerful in reinforcing social divisions and guaranteeing social order. He says that they do this by granting elite degrees and elevating “those destined to occupy eminent social positions from those over whom they will lord”. Bourdieu (1989: 5) describes the concept of schools being liberating forces that guarantee

success to those who achieve, as opposed to those who come from the social elite, as being a myth. He asserts that nepotism and origins of birth have more to do with success in society than talent, and contends that schools legitimise the domination of the ruling classes. Thompson (1991: 24), in his introduction to Bourdieu, reasserts this position when he says that the education system “enables those who benefit most from the system to convince themselves of their own intrinsic worthiness, while preventing those who benefit least from grasping the basis of their own deprivation”.

Bourdieu and Passeron (1990: 198) suggest that schools are conservative institutions that promote certain traditions and beliefs under the pretence of defending their ethos “and autonomizing the aims of a particular institution”. They note that the cultural capital that is promoted by these schools is reproduced because they contain likeminded people and classes of people, thereby “contributing to the reproduction of the social structure” (ibid: 11). Bourdieu (1968) states that “Men formed by a certain school have in common a certain cast of mind; shaped in the same mould they are predisposed to enter into an immediate complicity with like souls.”

Tuohy (2008: 130-131) discusses the growing chasm between different types of schools. He notes how some schools are perceived as being full of disruptive pupils, while others are seen as being for the elite. He describes the tension in Dublin between fee-paying and non-fee-paying schools and describes the strategies used by schools in other parts of Ireland to ‘skew’ their intake and avoid ‘difficult’ pupils. He remarks that many of the most exclusive and, therefore, excluding schools are often Catholic and that this “sits uncomfortably with the Church’s stated pursuit of the common good”.

Lynch and Lodge (1999: 240) describe a tradition in secondary schools of selecting student intake to suit the schools’ social and academic identity. They describe how, prior to free education, all secondary schools in Ireland charged fees and generally only those who could afford to attend school. These schools were consequently perceived as being socially exclusive. This image is still retained in towns in Ireland and “people lack a sense of ownership of such educational institutions even though they have the formal right to attend them”. Malone (2006: 75) notes that some schools may also be unwilling to offer curricular and other programmes designed for potential

early leavers in order to create or maintain an image of themselves as an “academic school”.

### **3.4.2 Parental Choice**

Section 6 (e) of the Education Act (1998) asserts the rights of parents to send their children to a school of the parents’ choice, “having due regard to the rights of the patrons and to the effective and efficient use of resources”. This is further reinforced in Section 15 (d) of the Act. Fox and Buchanan (2008: 2) express admiration for Ireland’s commitment to granting parents access to the school of their choice. Raftery and Kilbride (2007: 38-39) note that factors such as standards of discipline, reputation and opportunities for participation in extra-curricular activities affect parents’ choices of school. However, Lynch (1999: 166-167) and Lynch and Moran (2006: 232) contend that parental choice in education is realistically open only to those with the means to exercise choice. This is supported by Malone (2006: 75) who notes how “the possession of appropriate forms of cultural capital creates significant advantages for middle-class parents in the choice process”. Malone (ibid: 164) refers to research by Crowley (2001) which found that working-class parents had limited input into their child’s decision to follow the Leaving Certificate Applied programme which was “in marked contrast to the role taken by middle-class parents in negotiating choice of second-level school”.

Lynch and Lodge (1999: 251) point out that “social class stratification between schools is more evident than social stratification within schools”. Lynch (1999: 265) notes that upper middle-class families have a wider range of choices in selecting an appropriate school for their children. Hence, their children are least likely to attend their nearest school. Lodge et al (2004: 5-6) describe how a large number of schools can be found in urban areas of Ireland. Some of these schools contain children from working-class backgrounds, while others nearby contain middle-class children. They therefore conclude that “traditionally, schools have been organised formally and informally in order to segregate diversity whether it be in belief, gender, ability, ethnicity, or indeed, social class”.

### 3.4.3 Inequalities in Participation and Attainment

Malone (2006:291-292) refers to Wehlage et al (1989) who describe the following barriers to inclusive membership of schools by pupils:

- Adjustment – some children find it difficult to move from the more caring culture of primary schools to the more academic culture of second-level schools
- Difficulty – when pupils are faced with failure academically they become progressively disengaged from school and this often leads to exclusion or the child dropping out of school
- Incongruence – between the personal and social needs of the child and the values and priorities of the school
- Isolation – lack of personal relationships with teachers.

Clancy (2001) in O’Sullivan (2005: 185-187), shows in tabular form the different participation and achievement rates at second-level level of students by socio-economic groups (Appendix 5). O’Sullivan comments on how retention rates to Leaving Certificate vary depending on a student’s social class. The retention rate for the children of unskilled manual parents is just over 65%, while the figure is 92% for children of higher professional families. Allen (1998: 199) notes the relationship between lack of qualifications and unemployment. A total of 78% of young people without formal qualifications were unemployed after leaving school in 1993, whereas only 30% of young people who gained a Leaving Certificate qualification were unemployed. Share et al (2007: 230) also quote Department of Education and Science figures from 1997 which show that 63% of all those unemployed had not completed second-level education (Department of Education and Science, 1998: 25). Share et al comment that, although there has been an increase in educational attainment and student performance at all levels in recent years due to increased emphasis on the importance of education, there still remains the same social class differential. They show that young people without qualification from working-class backgrounds are more likely to be unemployed than children from middle-class backgrounds. They contend that it is the middle classes who benefit from the increased emphasis on education because they see it as a “mechanism for social advantage”. Share et al (2007: 232) quote O’Connell et al (2006), who show that 87% of all pupils who attend fee-paying schools proceed to third level after completing their Leaving Certificate, while only 55% of all pupils who attend Vocational schools proceed to third level after completing their Leaving Certificate.

O’Sullivan (2005: 316) does not believe that education gives all an equal chance. He asserts that it is biased towards the middle classes. According to O’Sullivan, those young people who do not succeed in education never had a chance of success in the first place because of their marginalised status. Drudy and Lynch (1993: 156-161) assert that poverty makes it more difficult for working-class pupils to “maximise any advantages that the system can offer”. They argue that upper and middle-class families pass on their cultural capital to their children in the form of social skills, a ‘good’ accent, “ready access to an elite or middle-class culture – books, word-processors, and sporting or leisure facilities”, thus making it much easier to do well in school.

Lynch and O’Riordan (1999: 100-123) identify a range of barriers to equality of access and participation in higher-level education that prevents working-class pupils from attending third-level institutions. The principal barrier is poverty. Working-class pupils do not have the same access to cultural and economic capital as their middle-class counterparts. This capital is expressed in the form of grinds, access to appropriate spaces to study etc. Many working-class pupils also work part time to contribute to family income and this is also identified as a barrier to success in education and access to further education. Lynch and O’Riordan (1999) also note that education is not a priority for many parents of working-class pupils. Therefore, a “culture of ambition” is not promoted in the home. The dominant role of middle-class personnel such as teachers in defining the organisation of school life was identified by Lynch and O’Riordan as a barrier to education because working-class parents and pupils believe that their culture and values are not respected by schools. They report that: “The sense of being an outsider, of being treated as inferior, created tensions around learning in schools.”

McVerry (2009) shows that those who have financial and cultural resources can use them to purchase extra “education points”. He states that those who have benefited from the education system are determined that their children will receive the same benefits from the education system. On the other hand, those who did not benefit in the same way from the education system do not have the same ambition for a good education for their children and “resign themselves to whatever role in society their children can achieve with the limited points that their resources can obtain”.

The Education Act (1998) defines educational disadvantage as: “The impediments to education arising from social or economic disadvantage which prevent students from deriving appropriate benefit from education in school.” Kellaghan (2002: 17) notes how a sizeable “underclass” in Irish society is “excluded from the comforts of the majority”. These are the people from disadvantaged backgrounds who are associated with low income and high rates of poverty and have a tradition of long-term unemployment. Their disadvantage is intergenerational and their opportunities for social mobility are limited. He notes how disadvantage is often, but not always, concentrated in areas of social deprivation where there is crime, drug abuse, family breakdown and social disorganisation. People who are disadvantaged depend on the State for income support, have limited schooling and poor levels of attainment. Conaty (2002: 20-21) discusses how equality of opportunity is lacking in marginalised areas and this “often finds expression in apathy, voicelessness, vandalism, substance misuse, joy-riding, demotivation, low self image and alienation”. She identifies the five key indicators associated with the educationally disadvantaged as being of minority racial/ethnic group identity, living in a poverty household, living in a single parent family, having a poorly educated mother and having a non-English language background.

Hyland (2002: 47) refers to the National Anti-Poverty Strategy (1996), which commented on the lack of continuity between the school and non-school experiences of poor children “resulting in the socio-economically disadvantaged child being unable to participate fully in the school experience”. She also cites Boldt and Devine (1998) who state that “educational disadvantage may be considered to be a limited ability to derive an equitable benefit from schooling compared to one’s peers by age”. Young (2006: 95) describes those who lose out in the education system as those with “physical or mental disabilities, poor children, children whose parents are unable to monitor and help with homework, children who poorly know the language of instruction, children who face racist or ethnocentric prejudice from teachers etc”. She believes that they are destined to become “lifetime losers” by being labelled as failures at school.



The solution to the economically-generated inequality in schools, according to Lynch and Lodge (2002: 181-182) lies in “ensuring equality of access, participation, outcome and condition for all students to all forms of knowledge and understanding”. This, they believe, involves challenging common practices at all levels of education that benefit the middle classes at the expense of others. These practices include how parents select schools for their children, how schools allocate pupils to classes, the operation of subject choice in schools and how children are treated differently by teachers in the classroom. Lynch and Lodge suggest that promoting equality in schools requires changing the power differential in schools and in the wider education system. This would involve changing the way power is exercised over those pupils who do not have the same advantages as their middle-class counterparts and would necessitate giving a voice to a wider range of partners in education “so that subordinate voices can be heard and heeded”. They recognise that this would involve a fundamental restructuring of existing power relationships in Irish society, as it would involve giving a voice to those who, up to now, were not given a voice.

#### **3.4.4 Factors that Influence Early School Leaving**

Many commentators suggest that as a result of negative experiences of schools, many disadvantaged pupils leave school early or become so disengaged with school that their behaviour deteriorates and they are ultimately excluded. Apple, in his foreword to Deegan et al (2004: xi-xii), notes how the education system ratifies many of the inequalities in society. The Department of Education and Science (2007: 8-10) identify a range of factors associated with early school leaving (Appendix 6). It also identifies the factors associated with preventing early school leaving. These factors are “the quality of schooling, the expectation of teachers and peers and good teacher-student relationships”. Lodge and Lynch (2004: 14) show that young people from working-class backgrounds are most likely to leave school early and they point out that most of these young people are boys. Likewise, Byrne and Smyth’s (2010: 173) research shows that early school leaving is “differentiated by parental social class background” and is “particularly prevalent among working-class boys”. Boldt (1997: 5) references research from the National Economic and Social Forum (1997: 27) which indicated that “85% of all early school leavers came from working-class origins or small farms”. Byrne and Smyth’s (2010: 128) research findings suggest that the reasons that young people from disadvantaged or from Traveller backgrounds are

more likely to drop out of school early are centred around “low teacher expectations, disciplinary issues or poor student-teacher interaction”, and a sense of feeling rejected by their schools. Likewise, McCoy and Byrne’s (2011: 149) study of factors that influenced early school leaving find that young people who dropped out of school “felt that they had been treated unfairly by their teachers and perceived that their teachers had low expectations of them”.

The following factors are identified by Boldt (2000: 13-18) as preventing young people from “reaching their full potential and benefiting fully from their experience of school”:

1. Basic needs – such as food and security
2. Home factors – such as lack of affection and poor role models
3. Personal factors – such as laziness, lack of interest, peer pressure, alcohol, working part time, having negative experiences of primary school, being involved with the “wrong crowd” and being unable to grasp opportunities
4. Community-related factors – such as lack of facilities, poor employment opportunities, illegal drugs in the area, having the wrong “address”
5. School-related factors – such as the academic nature of the curriculum and the pressure from State examinations.

Share et al (2007: 234-235) refer to a study by McSorley (1997) of young people who had dropped out of the primary and second-level school systems in the Dublin suburb of Clondalkin. The study suggests that parents living in deprived areas such as parts of Clondalkin who are socially and economically disadvantaged often:

lack the economic, academic and emotional resources to ensure their children are up, fed, dressed, with homework properly done and uniforms, books and lunch all ready in time for the school day. Long-term and intergenerational unemployment, addiction problems and familial conflict each contribute to a breakdown in structure and routine that is inimical to academic success.

McSorley records that many such parents had a negative view of secondary school with only six per cent having a qualification higher than the Intermediate Certificate. In addition, their expectations for their children were low. McSorley’s findings reflect earlier research carried out by Fagan (1995: 48) who found that children who drop out of school often had parents who also dropped out of school themselves. These parents place a greater value on their children getting out of school to get a job than staying in school to get an education. Young (2006: 96) says that there are relatively few opportunities for adults to try again to gain the education they failed at in school and

so these adults are “usually condemned to the lower ranks of the occupational hierarchy for the rest of their lives”.

### **3.5 EXCLUSION AND SUSPENSION FROM SCHOOL**

#### **3.5.1 What is Exclusion?**

Glendenning (1999: 343-344) highlights the blurred distinction between the terms exclusion, suspension and expulsion and notes that in Ireland there has been no authoritative definition of the term exclusion. There is more clarity to these words in the U.K. Kilpatrick (1998: 1) defines disciplinary exclusions as “the means by which the headteacher of a school can prevent a child or young person from attending the school, either for a fixed period or permanently”. Munn et al (2000: 71-73) discuss the widespread use of ‘informal exclusion’ in British schools. This is where a misbehaving student is advised to look for another school in which to complete his/her education without officially recording this as exclusion. Schools use the argument that a fresh start in another school will benefit the student and that exclusion will not appear on their school records.

#### **3.5.2 Who are the Excluded?**

There is a large degree of consistency across countries in relation to the types of students who are most likely to be excluded from schools. The Department for Education and Skills (DfES) (2004) recorded that there were 9,290 permanent exclusions from primary, secondary and all special schools in England. Of these, 83% of the exclusions were from secondary schools, 14% were from primary schools and 3% from special schools. Approximately 82% of those who were permanently excluded were boys and the rate of exclusion was highest for 14-year-old boys. The statistics show that twice as many pupils of mixed ethnic origin were permanently excluded from schools than white pupils. Exclusion rates were highest for Travellers of Irish heritage (51 in every 10,000), Black Caribbean (37 in every 10,000) and Gypsy Roma (36 in every 10,000) groups.

The Scottish Government website [www.scotland.gov.uk](http://www.scotland.gov.uk) (2/4/09), in a press release about exclusion rates in Scotland, cited the following as the main reasons for exclusion:

- persistent disobedience (33%)
- verbal abuse against staff (26%)
- insolent or offensive behaviour (17%)

It stated that boys account for 80% of all exclusions in Scotland.

Kilpatrick (1998: 15) found that pupils in Northern Ireland who have been frequently suspended or permanently excluded were generally male pupils who were attending second-level schools, had a record of poor attendance, were in receipt of free school meals and were known to a range of support agencies.

In their research on rates of exclusion in the United States, Achilles et al (2007) found that higher levels of exclusion were found among the following groups:

- children of African American ethnicity
- males
- children of low socio-economic status
- children who experienced multiple school changes
- children from urban areas
- children whose parents expressed low satisfaction with school.

Munn and Lloyd (2005: 207) note that exclusion is “disproportionately experienced by boys, those aged 14-15, and those who are already suffering from the disadvantage of poverty, having special educational needs or being ‘looked after’ by the local authority”.

### **3.5.3 The Effects of Exclusion and Suspension**

Knipe et al (2007: 408) highlight the link between exclusion from school and social exclusion. They suggest that exclusion from school leads to underachievement, reduced chances of employment opportunities and engagement in petty crime. Research by Ipsos Mori (2000) indicates strong links between school exclusion and juvenile offending. Of the excluded pupils who were surveyed, 72% admitted to committing a crime in the previous twelve months. Their research also indicated that there were higher levels of alcohol consumption and drug abuse among excluded pupils than among regular school attendees, and that over 60% of excluded pupils had fathers who were not in full-time employment. Glendenning (2006b: 93-94) and

Hodgson and Webb (2005: 12-28) note the link between educational failure, delinquency and prison. Hyland (2002: 48) shows that, in the 1990s, the Irish State invested approximately €61,000 in the education of each young person at third level over four years, while the annual cost to the State of maintaining a young person in a detention centre or prison was almost €100,000.

Kilpatrick (1998: 19-21) describes the many effects of exclusion on pupils. These include:

- Falling behind academically
- Having problems re-integrating back into the education system
- Feeling alienated and rejected
- Being at greater risk of becoming involved in delinquency and substance abuse
- Being more likely to be unemployed, dependent on state benefits, under police surveillance and living in social housing.

She also notes the adverse effect of exclusion on family relationships. She describes how expulsion or suspensions lead to a lack of structure for the expelled student which has a detrimental effect on psychological well-being. Munn et al (2000: 3-15) report that parents of excluded children punish their child further through hitting, shouting, exclusion from family life for a time, exclusion from socialising with friends and stopping pocket money. They also report that parents generally accept exclusion as a punishment for their children but are angered by issues over the exclusion procedures of the schools, the loss of education for their child and the ineffectiveness of exclusion in changing the child's behaviour.

Munn et al (2000) report on the sense of injustice felt by some pupils who had been excluded because they felt that their side of the story of the incident that had led directly to the exclusion had not been properly heard. Certain pupils also felt picked on by teachers and singled out for punishment more than others. This singling out was often because they already had a reputation for bad behaviour or because they had gained this reputation by proxy, because of the bad behaviour of their older siblings or because they were living in the 'wrong' part of town. The pupils also reported that teachers did not behave consistently. They were very aware that the results of a misdemeanour "could be a bit of a lottery" depending on the teacher and on his/her

mood. The pupils, especially male pupils, described ‘bad’ teachers as those who shouted and threatened and ‘good’ teachers as those who listened to pupils and talked to them. Good teachers were described as ‘strict’, “but only in relation to insisting that students were at school to work – not strict in terms of adhering to the letter of the disciplinary system”. The pupils also made the point that teachers could lose their tempers inappropriately but would not accept similar behaviour from a pupil. Excluded pupils, especially those with reading and writing difficulties, described how they found it difficult to catch up on school due to their exclusion.

#### **3.5.4 High and Low Excluding Schools**

Appendix 7 gives the reported reasons for exclusion in order of frequency in primary and secondary schools in England as reported by Munn et al (2000: 21). The most frequent reason for exclusion was fighting or assault and the second most frequent reason was disruptive behaviour. Rustique-Forrester (2005: 25-27), in her study of the causes of exclusion, interviewed four staff from four secondary schools located in high-poverty neighbourhoods in England. She found different levels of capacity within schools to deal with poor behaviour. Schools with higher rates of exclusion demonstrated a low capacity to respond to the needs of pupils, particularly those with behavioural and academic difficulties. These schools accepted as inevitable that some pupils would be excluded and they had few systems and structures in place to respond collectively to the challenges of difficult pupils. In contrast, staff in lower-excluding schools were more focused on pupils’ individual needs, had headteachers who encouraged a collective sense of responsibility among staff and had in place good support structures for pupils in need.

Devine et al (2004b: 251) suggest that schools with a traditional and hierarchical culture are slow to accept difference. Diversity within such a culture is interpreted as a challenge and dealt with in terms of hostility, resistance and suppression. On the other hand, schools that are open and inclusive view difference and diversity “as an opportunity, no less great in its challenge, but one which is worked through in an open and constructive manner”. Smyth (1999: 7-9) contends that effective schools have a clear and consistent set of school rules, regular feedback between teacher and pupils and parental and pupil involvement in the school.

Munn et al's (2000: 90) summary of the differences between high and low-excluding schools is outlined in Appendix 8. Munn et al observe that a school that tries to match the in-school resources to the particular needs of a difficult student has a greater likelihood of success than a school that applies a routine set of responses and supports automatically without taking the individual student's situation into account.

### **3.5.5 Including and Excluding Pupils with Special Educational Needs (SEN)**

Griffin and Shevlin (2007: 116) believe that learning difficulties do not automatically lead to behavioural difficulties, provided that the school is supportive of children with special educational needs (SEN). However, they do acknowledge that recent research has indicated that over 31% of pupils in SEN settings are now presenting with behavioural problems. They (ibid: 70) comment on how many second-level schools in particular are "far from inclusive" when it comes to pupils with SEN. Meaney et al (2005: 219) observe that the "blanket application of a uniform discipline policy" can be very harsh on pupils who are emotionally disturbed and who are, therefore, prone to aggressive behaviour, and on pupils with SEN who may misbehave due to frustration at not being able to access the curriculum as easily as other pupils. Carey (2005: 105) contends that parents of children with SEN will not respect or trust a teacher "who insists on teaching the child like all other children".

The DfES statistics released in England in 2004 indicated that pupils with SEN are much more likely to be excluded from school. In 2002-2003, 0.45% of all SEN pupils were excluded compared with only 0.05% of the school population without SEN. Meaney et al (2005: 219) comment on how suspension or expulsion is worse for pupils with SEN, as they will fall even further behind in their learning. In addition, they will find it more difficult than other pupils to gain entry to another school. Achilles et al (2007) found that higher levels of exclusion were more likely among pupils with emotional/behavioural disorders and attention deficit hyperactivity disorder (ADHD) compared to pupils with a learning disability. They quote Fiore and Reynolds (1996) who reported "suspension rates of approximately 20% for special education pupils versus 10% for the overall student population".

### **3.5.6 Government Policy and Exclusion**

In her study on school exclusion, Rustique-Forrester (2005: 1-9) found that England's Government policy in relation to the national curriculum, national assessment tests, league tables and Office for Standard in Education (OFSTED) inspections, and the right of parental choice of school "led to a narrowing of the curriculum, the marginalization of low-performing students, and a climate perceived by teachers to be less tolerant of students with academic and behavioral difficulties". She reported that there was also a steep rise in exclusion, which increased by 400%, at this time. She describes how constraints caused by the national curriculum led to teachers having less flexibility to make decisions about instruction as they were obliged to cover certain content. This made it more difficult to differentiate the curriculum to accommodate the needs of low-performing pupils. The implementation of national assessments, performance targets, school ranking and monitoring systems i.e. league tables and OFSTED inspections, increased the likelihood of pupils with behavioural problems being removed from school. The parents' right to send their child to a school of their choice led to school competition, which caused schools to become more selective in their student admissions processes and created incentives that encouraged schools to exclude certain pupils.

Munn et al (2000: 42-43) also contend that the publication of league tables in the U.K. is an accountability mechanism which makes schools reluctant to admit or hold on to pupils who threaten their performance and image. Similarly, Apple (2004: 15-38) describes "a new power bloc" of neo-liberals who want a "return" to higher standards and who are committed to the ideology and techniques of accountability, measurement and "management". He believes that, as a result of pressure from this 'power bloc', pupils who are seen as less academically able are less attractive to schools. The direct result is an increasing rate of exclusion from school in England as "poor and working-class students, students of African descent and other ethnically 'different' children are not valued commodities on this kind of market". Apple points out that that such behaviour sends a powerful message to pupils:

that schools themselves are prime examples of institutions that simply respond to those who already possess economic and cultural capital. This is decidedly not the message that any society that is serious about what might be called thick democracy wants to teach.



Apple observes that the publication of league tables in England has meant that schools are increasingly looking for ways “to attract motivated parents with ‘able’ children” in order to enhance their position. As a result, there has been a “subtle shift” in emphasis from student needs to student performance and from what the school does for the student to what the student does for the school. Irving and Parker-Jenkins (1995: 2) reference Ball (1990) who blames this type of school behaviour on the “current market orientation” which he believes “is forcing schools to be seen to be academically successful, and has served to create a situation whereby the troubled child is marginalised and unwelcome”. These views are echoed in Ireland by McVerry (2009) who criticises the Irish education system for absorbing the market-driven values of obtaining points for college entry. Like Apple, he notes how marginalised pupils are aware of the academic bias in the education system and how they act out their frustration with this system in school. However, according to McVerry, instead of listening to these pupils, school authorities simply expel them.

### **3.6 INEQUALITIES IN THE WIDER EDUCATION SYSTEM**

#### **3.6.1 Voices in Defining Education Policy**

Young (2006: 93) contends that policy makers “pay lip service” to the idea that education will “close the inequality gap” in society. She suggests that this is because, throughout most of the world, it is still true that the quality of a child’s education is determined by his/her parents’ wealth and income. She describes how it is accepted in all Western societies that those with professional jobs expect and receive deference from those in lower status positions. She goes on to discuss how in advanced industrial societies most people appear not to consider this structure unjust, “even though it entails inequalities of all kinds - wealth, recognition, and power”. She believes that the education system in most advanced industrial society functions, as a result, to produce winners and losers and that this is accepted as legitimate.

According to Bruner (1996: 32), “educational systems are highly institutionalized, in the grip of their *own* values”. Lynch and Lodge (2002:1) describe how formal education is powerful in promoting those with most cultural capital – the middle classes. They contend (2002: 35-48) that if equality is to be promoted “the advantage of some at the expense of others needs to be eliminated; the benefits of education have

to be distributed according to the principles of social justice rather than by the principles of economic advantage”. Therefore, there is a need for conditions to be created in society where all individuals and groups can access and benefit from education equally. Yet Lynch and Lodge suggest that there is no real appetite at policy level to create this equality and eradicate the social class inequalities that exist in Irish society.

A number of commentators on the theme of equality and power in education focus on the people and types of institutions that have a voice in defining educational policy in Ireland. Lodge and Lynch (2004: 4) are aware of how, at national level, “power is exercised among a small number of hugely influential actors”. They name these as the teacher unions, the churches, the Vocational Educational Committees (VECs) and the Department of Education itself. They also emphasise the point that other groups representing “minorities or even majorities” are rarely included in decision making about national policy. Devine et al (2004b: 247) call this a “laissez faire approach” which will never work because it fails to “challenge the dominate/subordinate dynamic in existing power structures”. O’Sullivan (2005: 9-15) describes the dominant voices in education as “structuring forces within a culture”. He says that it is they who decide the “problems and priorities” in education at national level, what should “command attention or excite emotions”. The dominant voices also prescribe the solutions to the problems identified. This organisation of society, according to O’Sullivan (2005: 117), allows “little scope for difference, choice or individuality”. In fact, O’Sullivan (ibid: 77) points out that Bourdieu (1977: 169-170) saw this as “fundamental censorship”. This is because the control exercised by these structuring forces allows for some perspectives to predominate and others to be censored, and the perspectives that are inevitably censored are those of the marginalised.

Bottomore in his foreword to Bourdieu and Passeron (1990) asserts that “every power which manages to impose meanings and to impose them as legitimate by concealing the power relations which are the basis of its force, adds its own specifically symbolic force to those power relations”. Bourdieu and Passeron (1990: 200) point out that the education system is such a power and that its main function is to legitimate “the established order” and ensure its domination and succession. Bourdieu (1991: 106) states that those with most power are those who have the most “symbolic capital”. He

describes symbolic capital as recognition and respect conferred by likeminded groups. Bourdieu asserts (1967) that these likeminded groups share a common culture that leads to “a deep underlying fellow-feeling that unites the members of the governing classes”.

Drudy and Lynch (1993: 106-121) contend that cultural capital is “institutionalised” in Irish society and that it “constitutes a major form of wealth”. Therefore, the State works hard to ensure that it reproduces the conditions necessary for those with most cultural capital to continue to dominate society, be it in education or in any other sector. Drudy and Lynch (1993) note how State-produced policies in terms of education reproduce the status quo because there is no political will to change the composition of the dominant groups in the education sector. Not only do policy makers all belong to the class with most cultural capital – the middle class, those they consult, named as the churches (the Catholic church being the most dominant), the teacher unions, the VECs and the Parents Councils, are also made up of the middle classes. They describe the teachers’ unions as being among the most powerful “mediators”. This power is acquired through being granted a formal consultative and decision-making role by the State and therefore the unions have much power in terms of policy development at national level. Drudy and Lynch (1993) refer to an Organisation for Economic Co-operation and Development (OECD) report (1991) on education policies which describes teacher unions in Ireland as having a powerful voice in education, through their numerical strength, their organisation and their “formidable negotiating skills”. They also refer to Burke (1992) who argues that teachers unions and other groups such as management bodies of schools “enjoy a virtual veto on the formulation of national educational policy”. Therefore, Drudy and Lynch argue that change in our education system and in educational policy “will only be accommodated” if “it does not alter existing patterns of privilege distribution. To seek radical alterations in the latter could be politically and/or economically suicidal for the state managers”. These writers all believe there is a need to re-define the current composition of those who have a voice in shaping educational policy.

Lynch (1999: 3) states that “educational credentials have become the major determinants of wealth, status, and power” in Ireland and the middle classes are the ones most likely to gain these educational credentials. Therefore, radical change in our

education system is stymied. Drudy and Lynch (1993: 118-119) emphasise the fact that the middle classes are in the best position to define educational policy because of their power to influence elected State representatives and other policy makers. This is because of their numerical power and their linguistic capital.

Share et al (2007: 170) believe that inequality is a word described mainly by policy makers as applying only to those who are socially excluded, to 'them', not to all 'us', the included. Therefore, as Share et al state: "Inequality tends to be understood in terms of gross differentiation between the majority – the 'more or less middle classes' – and an 'underclass' made up of the poor, the long-term unemployed, substance abusers and marginalised groups such as Travellers." Drudy and Lynch (1993: 156-161) support this view noting how the voice of the poor is excluded from the debate about educational inequality.

### **3.6.2 The Voice of the Marginalised**

Like many other writers on this theme, Lynch and Lodge (2002: 131-132) note how those who are on the margins of society are seen as 'other' by the dominant group in society – the middle classes. Because the values of the middle classes "permeate cultural and institutional norms", the values and life perspectives of the marginalised are "rendered invisible". These disparities of power are accepted as normal, because the marginalised sometimes "view themselves through the lens of supposed 'normality'" and "they often internalise the negative stereotypes to which their group is subjected".

Conaty (2002: 108) expresses the view that equality is not about people all having the same resources or power. Instead, it is about recognising that all people have equally important contributions to make. Devine et al (2004a: 199) contend that defining someone else as different or the "other" suggests having a sense of oneself as normal. Therefore, many in Ireland who define themselves as "normal" are white, Catholic and from the settled community. These people see ethnic minorities such as Travellers, Jews or black people as being "outside the norm, with consequent implications for their status within Irish society as a whole". This theme is also taken up by Gash and Murphy Lejeune (2004: 232) who describe how those who are seen as being outside the norm are not consulted by either schools or policy makers. They suggest that

people from different faiths, culture groups and other interest groups such as Pavee Point, Barnardos and the National Children's Alliance are rarely consulted or represented. They note that even the National Children's Strategy (2000: 70) recognises that "there remain considerable barriers to participation in Irish society of children from ethnic minority groups, including Travellers". The Strategy states that such children's "specific needs must be identified and addressed to the same extent as every other child, but in a way that respects their ethnic and cultural diversity".

Lynch and Lodge (2002: 16) discuss how, unintentionally, researchers collude with the permeation of the status quo as they create "public images about groups and contexts of inequality" over which marginalised people have no control. These researchers claim to "know and own" the lives of people they really know little about. By making such a claim about others, and especially oppressed people, they are controlling them. Lynch and Lodge (2002: 16) say:

The very owning and controlling of the stories of oppression adds further to the oppression as it means that there are now people who can claim to know and understand you better than you understand yourself; there are experts there to interpret your world and to speak on your behalf. They take away your voice by speaking about you and for you.

Bourdieu (1991: 206) expresses this view when he says:

The more people are dispossessed, especially culturally, the more constrained and inclined they are to rely on delegates in order to acquire a political voice. In fact, isolated, silent, voiceless individuals, without either the capacity or the power of making themselves heard and understood, are faced with the alternative of keeping quiet or of being spoken for by someone else.

Lynch (1999: xiii-xiv) argues that there is a need for policy makers in education to adopt more "egalitarian and educationally enlightened practices". By this she means that policy makers must create opportunities for dialogue not only with educators and teachers but also, and more importantly, with those who are marginalised and are excluded from education. Lynch makes the point that researchers often speak for, and write about, the marginalised. Yet, she says the same researchers have no idea about the "lifeworlds" of these groups. Lynch and O'Neill (1999: 41) discuss "a domesticating form of research" which describes people's lifeworlds "from a distance" and in language that the people who are being researched do not recognise. These researchers claim to be experts on those they are researching but in fact they

cannot truly identify with their lives or worlds. The result is an “impoverishment” of academic analysis and policies that “manage rather than eliminate inequality in education”. Drudy and Lynch (1993:161) agree, noting how working-class people do not write about themselves or the problems they encounter in education - “their problems and issues are filtered through the lens of middle-class academics who, no matter how well-intentioned or theoretically informed they may be, have no ongoing experience of the effects of poverty on educational participation”. Noddings (1992: 116) makes a similar point saying: “Caring at a distance is fraught with difficulties.”

McVerry (2009) insists that part of the reason for inequality in education is that those who think, talk and write about education are mainly successful beneficiaries of the education system. They might not want to know or hear the difficult questions that those who have not benefited from the education system might ask. In fact, those who write about education may not even understand the experience of those who have failed in the education system. Commentators like O’Sullivan (1995: 551) contend that, rather than trying to interpret what these people might want, the State should engage in dialogue with them. Freire (1972: 68) makes a similar point stating: “It is not our role to speak to the people about our own view of the world, nor to attempt to impose that view on them, but rather to dialogue with the people about their view and ours.”

Devine et al (2004b: 247-250) suggest that people from the margins of society or from ethnic minority groups often “internalise their socially ascribed positions in the social world from an early age” and have little respect for themselves. Devine et al argue for partnership to be broadened to match the needs of marginalised people. In doing this, they are not proposing that only those from marginalised groups would be consulted. They propose that the marginalised should be consulted along with the others or majority voices “whether or not the perspectives and concerns of the former are discordant from those of the majority”. They argue that true social inclusion is only reached when there is dialogue between different groups as a matter of course and “when all members of society accept that no one group has a monopoly on truth or goodness, that the life-worlds and cultures of *all* groups have something positive to offer to others and can also learn and benefit from one another”. Likewise, Young (2001: 100) argues for an ideal called “differentiated solidarity” which involves people

solving problems together by inviting all groups to speak from their own experience. This differentiated solidarity requires that groups argue not for what they want but for what is just.

### **3.7 CONCLUSION**

This chapter presents an analysis of literature on the theme of equality and power in education. It examines this theme through focusing on the organisation of schools, the power and control exerted by teachers, the inequalities that exist in the education system, the causes of exclusion, and the manner in which the education system perpetuates, rather than challenges, these inequalities. Much of the literature reviewed refers to inequalities at second-level, where rates of exclusion and school drop-out are higher.

The literature suggests that the curriculum offered by schools perpetuates inequality, particularly at second level. For example, Voluntary Secondary schools that only offer an 'academic' curriculum exclude certain pupils. This is because working-class pupils, in particular, often prefer more practical subjects, which are more frequently offered in Community, Comprehensive and Vocational schools. Furthermore, as discussed by Bourdieu (1989), because of the cultural and social capital inherent in middle-class pupils, these pupils are often placed in homogenous groups matched to their social class origins and are mainly placed in the top streams in schools. Pupils in lower streams, as described in the literature, are found to be overwhelmingly from working-class backgrounds and are subjected to a curriculum that is less challenging and stimulating. These pupils are also more negatively perceived by their teachers and deemed more disruptive and troublesome. Therefore, education is experienced differently, according to the cultural and social capital of the student.

The literature demonstrates that teachers often treat pupils differently depending on their ability and on whether the pupils conform to the teachers' expectations of conformist behaviour. Because the majority of teachers come from middle-class backgrounds, they favour those children who reflect this background back to them. Those children who do not conform to teacher expectations are the children who tend to become disaffected with school and more likely to fail. These children are aware of

the differentiated treatment by teachers of them depending on the social, linguistic and cultural capital they possess. For those marginalised children who do not conform to their teachers' expectations, their experience of school can be very negative. Schools and teachers are inclined to blame these children for their difference and lack of conformity as opposed to looking at their own prejudices and practices. Parents of middle-class children know how to exploit the education system to their child's advantage and intervene in schools on their children's behalf, unlike the parents of marginalised children, who may lack the cultural and social capital to do so. This often leads to a lack of accountability on the part of schools, as there is little questioning of their authority. Even though most schools have parents' councils, some commentators demonstrate that these are likely to be dominated by middle-class parents who benefit from the maintenance of the status quo in schools.

The literature reviewed demonstrates the many barriers to education experienced by disadvantaged parents including high voluntary contributions and uniform costs. The principal barrier to participation in school is poverty. This is because lack of economic capital contributes to early school leaving. International literature suggests that those most likely to be excluded from schools are working-class, teenage boys. The literature suggests that exclusion has long-term social consequences, not only for the excluded child but for society. The literature also demonstrates that excluded children believe they were unequally treated by their teachers. It also indicates that pupils with special educational needs are frequently excluded from schools.

While the literature focuses on the power and control of schools, it also examines the power and control of policy makers in reinforcing social divisions. Practices in the U.K. such as OFSTED inspections and the publication of school league tables lead to competition between schools, which puts pressure on schools to exclude certain pupils and to focus on high achievers. Thus, poor and marginalised pupils are not valued by so-called elite schools.

The literature examines the inequalities that exist in the wider education system. It demonstrates that policy makers, because of their own social and cultural capital, may have little real desire to close the inequality gap in society. These policy makers are the Government and the partners in education. The literature reveals the power of



these groups in ensuring that the established order of schools is replicated. Those who are seen as being outside the norm are rarely consulted by either policy makers or schools. None of these partners represent minority groups and, although they may claim to speak for the marginalised, they rarely do.

Section 29 was written into the Education Act (1998) to give a stronger voice to parents and pupils and to ensure that schools adopt more accountable and democratic practices and treat all their pupils equally. What follows is an analysis of the influence of Section 29 of the Education Act to determine whether or not Section 29 has achieved these aims.

## **CHAPTER 4 BACKGROUND TO SECTION 29**

### **4.1 INTRODUCTION**

This chapter describes the educational landscape in Ireland in relation to enrolment and exclusion issues before the introduction of Section 29 of the Education Act (1998). This landscape was governed by rules and circulars rather than by legislation. It allowed schools considerable power and autonomy over their own affairs. However, a culture of accountability and transparency was introduced in the early 1990s by the Green Paper on Education (1992) and the White Paper on Education (1995). Both papers demonstrated recognition of the need to give parents a stronger voice in education. Furthermore, the concept of appealing a decision of a school that adversely affected the life chances of a child was introduced.

The chapter describes the first references to appeals in the early 1990s. It outlines when the concept of introducing an appeal system, specifically in relation to enrolment and exclusion issues, became more established. The chapter explores the rationale for introducing appeal legislation into the Education Act. Such legislation was introduced to restrict the considerable power of schools to refuse enrolment to a child, or to expel a child. The chapter charts the many changes to the concept of appeals, from the time of the first Education Bill in 1997 until the Education Act (1998). It also discusses other legislation relevant to Section 29 appeals and examines appeal procedures in other jurisdictions.

### **4.2 THE EDUCATIONAL LANDSCAPE PRIOR TO APPEALS**

The framework for education in Ireland developed over the years in an ad hoc manner and schools had considerable autonomy and flexibility. Glendenning (1999: 10) points out how from 1922 until the enactment of the Education Act in 1998 a “singular characteristic” of the Irish education system was its “informality”. She notes how until the enactment of the Education Act the system relied heavily on rules, regulations, memoranda and circulars”. Keane, in his introduction to Meaney et al (2005), states: “It is a remarkable fact that until the year 1998 one of the most important areas of life in Ireland, education, was almost entirely unregulated by legislation.”

#### **4.2.1 Circulars Relating to Behaviour and Discipline Prior to the Education Act**

Over the years, the Department of Education issued a number of guidelines and circulars to schools in relation to discipline. These are summarised in Appendix 9. The circulars stress the need for expulsion to be resorted to only in the most extreme circumstances, when a child's behaviour is so disruptive as to put the safety or rights to the education of others at risk. The circulars also emphasise the need for schools to apply fair procedures and the rules of natural justice when sanctioning a child for behavioural issues. They encourage schools to allow parents a right of appeal to a Board of Management if a child has been suspended or expelled. The need for cooperation between school and home is also stressed in the circulars.

#### **4.2.2 Court Rulings in Relation to Suspension and Expulsion**

Glendenning (1999) and Craven (2006) discuss a number of court cases, taken by parents of children who were suspended or expelled, against school authorities in the years prior to the commencement of the Education Act. A number of these court cases are outlined in Appendix 10. Craven and Glendenning both conclude from the results of these cases, all of which went in favour of the schools, that the courts are unlikely to interfere lightly with the discretion of school authorities in issues that relate to internal discipline of schools. Thus, the power of school authorities to manage their disciplinary affairs was difficult to challenge. Glendenning (2006a: 186-187) discusses how decisions made by a school in relation to disciplining a child could be challenged if the school failed to implement fair procedures or principles of natural justice. She asserts that principles of natural justice "apply in the school context where the rights and liabilities of pupils are being seriously affected by a decision although case law indicates that the courts tend to apply them less stringently in the school setting".

Craven (2006: 173-175) says that implementing fair procedures requires:

1. Informing the pupil (and the parents) of the allegations and the gist of the evidence supporting them and
2. Allowing the making of representations before the deciding authority, i.e. the Board of Management, before sanction is imposed.

### **4.2.3 Guidelines and Circulars in Relation to Admissions Policies Prior to the Education Act**

The Report on The National Education Convention (1994: 107) describes how, since most schools are situated in areas where other schools are also located, they are in competition with each other for pupils. Therefore, the report states that “an implicit and variably stratified division of labour has emerged in the different schools’ curricular provision, and to a significant extent in their gender, academic ability, and social status clientele”. However, just one circular was issued by the Department of Education in relation to the enrolment procedures of schools, and this was in relation to enrolment at second-level. This circular (51/93) is described in Appendix 11. It highlights the fact that second-level schools were perceived as operating discriminatory enrolment procedures, including selecting pupils on the basis of academic ability, and it directs that schools should inform parents of their enrolment procedures.

## **4.3 THE FIRST REFERENCES TO APPEALS**

### **4.3.1 The Green Paper on Education**

When the Green Paper on Education: *Education for a Changing World* (1992) was introduced to the Dáil by Minister Brennan T.D. on 16 October 1992, he outlined how one of the aims of the paper was “to create great openness and accountability throughout the system, and maximise parent involvement and choice”. The Minister spoke about wanting to “open the doors of the education world to the public” and about wanting to create a “real partnership” in education based on openness and transparency ([www.oireachtas-debates.gov.ie](http://www.oireachtas-debates.gov.ie)). The publication of the Green Paper led to a series of consultations, debates, submissions and reports.

At a clarification meeting, after the publication of the Green Paper in July 1992, it was stated by the National Parents’ Council (NPC) – Primary that there was a need for a mechanism for parents to be able to complain about a teacher or any other matter relating to the schooling system. The Department<sup>13</sup> representatives at this meeting alluded to the possibility of a complaints or appeal system being set up, although they

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<sup>13</sup> The word ‘Department’ is used at times in this dissertation to depict the Department of Education and Skills or its previous titles – Department of Education and Department of Education and Science

noted that if a national appeal board were set up, it would immediately have to deal with thousands of cases. In a written submission to the Green Paper in 1993, the NPC-Primary reiterated the need for a complaints procedure for parents. The NPC stated that there was a lack of clarity about who was responsible or accountable for dealing with complaints and resolving problems and, as a result, many serious complaints were unresolved. The NPC submission proposed that new procedures, underpinned by law, should be drawn up by the Department of Education in consultation with the partners and that the procedures should ensure that problems were resolved at the lowest level at which it was practicable to do so. However, if a complaint was not resolved in the school within a realistic timescale, parents (or others) should have recourse, as a legal right, to an appeal tribunal/committee. The NPC referenced Northern Ireland legislation as a basis for setting up such an appeals procedure in the Republic.

In another submission on the Green Paper in October 1993 by the National Association of Parents (a body which aimed to represent parents from all levels), an appeals procedure for parents on behalf of young people was proposed in relation to breaches of codes of discipline. Parents were therefore articulating the viewpoint that they needed a stronger voice in education and a mechanism to appeal what they perceived as unfair decisions of schools in relation to their children.

#### **4.3.2 The National Education Convention**

A National Education Convention was held between 11 and 21 October 1993. The Convention heard the views of 42 bodies involved in education. There are references to both complaints and appeal procedures in the submission by the NPC-Primary to the Convention. The report of the Convention stated (1994: 12):

Central to the legislative provision in respect of entitlements to a minimum education, and also to the provision of partnership structures will be the provision of means of redress – appeal mechanisms through which disputes can be independently addressed and resolved, in a timely fashion, whether at school level, after dialogue has failed to resolve an issue, at local level, or at national level.

#### **4.3.3 Working Group to Review the Operation of School Attendance Legislation**

A further proposal to introduce an appeals procedure was made in the report of the Department's Working Group to Review the Operation of School Attendance

Legislation (February, 1994). This working group referred to the growing phenomenon of excluding pupils from school, and noted that in dealing with very disruptive pupils there were conflicting rights of parents, children and schools. The Working Group recommended that the Local Education Structures, which were being proposed at the time, should establish appeal procedures for dealing with exclusion cases.

#### **4.3.4 The Department of Education's View**

Documentation suggests that the National Parents' Council – Primary was the first group to propose an appeal mechanism for various issues, including teacher underperformance. However, Department officials serving in the Department of Education and Science in the 1990s believe that the Department was becoming more open to a spirit of partnership with parents, and was probably influenced by education legislation in the United Kingdom and New Zealand at the time<sup>14</sup>. This legislation advocated appeal processes which gave a binding outcome to the issue of expulsions and refusals to enrol.

In the Dáil debates on the Education (No. 2) Bill in June 1998 ([www.oireachtas-debates.gov.ie](http://www.oireachtas-debates.gov.ie)), the Minister for Education, Deputy Michéal Martin, T.D. stated that the appeal system arose as a result of complaints from parents that they did not have a proper appeal mechanism relating to a range of issues pertaining to the management of schools. Glendenning (1999a), in a paper delivered in Trinity College in October 1999, noted that: “In latter years, public concern has increasingly been expressed regarding the number of pupils who are being excluded from schools who are not provided with any, or with any appropriate education. It is now acknowledged that the social response to this pressing problem has been grossly inadequate.”

Department officials interviewed stated that the impetus for introducing a specific appeal mechanism in relation to exclusion and suspension issues came from within the Department. These two parallel influences highlighted the need for an appeal process. It is likely that the concept of appeals, as a general principle, first came from the

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<sup>14</sup> This view was expressed by a number of the officials consulted by the researcher

parents. However, it is likely that the concept of appeals in relation to suspension and exclusion per se came from within the Department.

#### **4.3.5 The White Paper on Education**

The concept of partnership with parents was emphasised by the Minister for Education Niamh Breathnach T.D. when she introduced the White Paper to the Dáil on 4 May, 1995 ([www.oireachtas-debates.gov.ie](http://www.oireachtas-debates.gov.ie)). She stressed that one of the underlying themes of the White Paper was accountability: “Accordingly, the new framework for education will emphasise the rights of people served by the education system to understand and participate in the decision-making which affects them.”

The White Paper on Education, *Charting Our Education Future* (1995: 150-186) introduced the concept of a formal appeal process for the first time. The paper outlined how the proposed regional education boards “would foster a dynamic partnership between schools, parents and the communities they serve”. These education boards would be involved in:

the development of clear procedures, in consultation with parents and school authorities, for the resolution of disputes concerning issues which had been raised and not satisfactorily resolved at school level.

In a section entitled “Appeals”, the White Paper went on to outline that: “There is a potentially constructive appeal role for education boards in such areas as enrolment and discipline.”

#### **4.3.6 Appeal Procedures in Other Jurisdictions**

All U.K. jurisdictions provide for appeals in relation to exclusion and enrolment issues in schools. The Education Act (1980) first introduced the concept of appeals in England and Wales by providing an appeal mechanism for parents in relation to choice of school. The Education Act (1987) legislated for parents to appeal against the permanent exclusion of their child. Under the Act, parents can also appeal against fixed-term exclusions of their children from school, akin to suspensions in this country. Parents can appeal to the school or to the Local Education Authority (LEA). The composition of appeal boards in other jurisdictions often depends on the type of appeal being made. However, in most jurisdictions a lay member (a person with no experience of education) sits on the appeal board along with a practising teacher (not

from the school or LEA that is the subject of appeal) and usually one to three other educationalists. Appendix 12 provides an overview of appeal procedures in other jurisdictions.

#### **4.4 RATIONALE FOR SECTION 29 OF THE EDUCATION ACT**

The literature reviewed in Chapter 3 discusses issues of power and control by schools in terms of maintaining social class divisions and reinforcing the status quo. This section explores the rationale for the introduction of Section 29 appeals and shows that school authorities often denied certain pupils access to their schools or excluded them from school if they did not conform to their expectations. Marginalised children, in particular, were often victims of the unfair practices of some school personnel.

##### **4.4.1 The Informal Landscape Prior to Section 29**

Until the early years of the 21<sup>st</sup> century, if a child was expelled from a school or was refused admission to a school, the Post-primary administration section of the Department of Education would ask the local schools' inspector to try to find a suitable alternative placement for that child. This involved the inspector trying to persuade another school to enrol the child or trying to persuade the school to review its decision to refuse enrolment or to expel. The existence of such so-called 'placement cases' is evidence of the control and power exercised by many schools. Most of these were post-primary schools. A tension existed between allowing school authorities the autonomy to manage their own affairs and ensuring that they were dealing fairly and democratically with all pupils and their parents. Documentation suggests that the Department of Education received about 350 complaints per year in relation to second-level pupils who were either excluded from a school or who were refused enrolment. Most of these cases related to pupils with behavioural problems or to children who had special educational needs. The Department of Education recognised that, in the words of one official interviewed, "that's no way to run a system".

Much inspector time was spent on trying to find suitable placements for children because of the high level of exclusion and refusals to enrol. As outlined in interview by one Department official, inspectors had a:



significant role to play in trying to broker agreements locally in terms of trying to find school places for kids and trying to get through any impediments that might have been put in place by school authorities in terms of either enrolling or the whole disciplinary side of things.

Officials described this system as being totally ad hoc, having no statutory foundation and involving the inspector trying to “engender the good will and so on of the local school manager and the principals or whoever it might be in terms of trying to find a solution”. If a solution was found this was “often due to the skill-set of the particular inspector in terms of mediation”.

#### **4.4.2 Lack of Accountability of Schools**

This ad hoc system of placement cases did not address the underlying issue of the lack of accountability of schools in expelling pupils or in refusing to enrol them. Department officials and many partners and appeal personnel<sup>15</sup> who were interviewed for this research noted that prior to the introduction of Section 29 appeals, parents had very little means of redress if their child was refused enrolment into a school or if their child was suspended or expelled. Some education partners described the “perception” in the Department of the need for more accountability in schools, while others admitted that there was a real need for appeals to introduce accountability and transparency into schools.

One official interviewed spoke about the need for legislation to:

bring some control and organisation on schools, to make them accountable for their stewardship of schools and to be fair and reasonable to, particularly, pupils who were being excluded.

Another official noted that those with the least valued social and cultural capital were most likely to be expelled from schools. He said:

if you didn't fit the mould the school could engineer its policies, or its policies certainly could allow for situations where kids were suspended or expelled for relatively minor infractions... not for any major show-stopping activity that you would consider as being worthy of suspension or expulsion. But just an accumulation of credits because of forgetting to bring the pencil for a particular class, these sorts of merit systems that might suit your long established middle-class type environment but not every child in that environment.

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<sup>15</sup> Appeal personnel include those involved in facilitation of appeals and those who sit on appeal committees

Many partners who were interviewed talked about some schools “cherry picking” pupils, while others contended that some schools were suspending pupils “willy-nilly”.

Officials noted that prior to Section 29, the only options available to parents if their child was refused admission or was excluded from a school was either to resort to the courts or else to write to the Department. One official commented:

But the Department was largely powerless, it couldn't make the school take somebody and it couldn't really, not in a way that was legally effective, it couldn't really interrogate the school's decision.

Prior to the introduction of appeals, if a child was suspended for extended periods of time, that child was effectively deprived of an education, yet the school was not accountable to the Department.

An undated internal Department document entitled *Principles Underpinning Section 29* stated that schools should be accountable to the Department where their actions were adversely affecting the welfare of a child. The document states:

Currently, there is no scrutiny of the reasons why schools exclude particular children. There is no protection for a student where a school acts in an unreasonable/unfair/discriminatory fashion, and the general public expectation would be that where a school acts in such a manner that school should be answerable for its actions. Moreover, the Department has policies in relation to the provision of education to marginalised groups such as special needs children and children of the Travelling community. Where a school fails to act in accordance with such policies it would be expected that that school should be accountable for its actions in this regard.

#### **4.4.3 Giving a Voice to Parents and Pupils**

Many of the appeal personnel and partners who were interviewed suggested that Section 29 was introduced to give a voice to parents and to give children a fair hearing. One partner believed it was introduced to give parents certain “protections and rights”. Up to then, this person noted, there was no procedure for dealing with such issues apart from a complaint to the school's Board of Management which “was probably unsatisfactory from a parent's point of view”. Appeal personnel speculated

that Section 29 was introduced to enshrine the rights of parents and the right to a child's education. One noted that the intention:

was to remove as much discretion as possible from schools, to have everything open and transparent and to level the playing pitch for all when it came to getting into particular schools, so schools didn't have any devices or means, for example, for excluding a Traveller pupil or for excluding a pupil of a particular religion. I think it was to ensure fairness and equity...around these particular matters.

An official commented that there was a sense that schools were "almost dismissive of parents, that really there was a need for some method of redress for parents". This person spoke of a culture that had emerged in schools in the preceding years. He referenced the power of teachers when he said that:

what the school said went, whether that be the teacher or the headmaster or the headmistress or whatever else. And really there was a deficit there most definitely.

#### **4.4.4 Culture of Regulation**

Officials and some education partners noted that there was a culture of accountability in other areas of the public service, but not in schools. As stated by one official:

If you fired somebody there was a process of appeal there. Pretty much in any significant area of activity, if an action was taken that had a significant consequence for a person, then there was some mechanism for appealing it.

Department officials stated that there was a need for a statutory mechanism to allow parents the right of appeal without having to resort to the courts. As one official who was working in the Department at the time of the drafting of the appeal procedures stated, the fundamental objective of Section 29:

was to provide a structured way of actually bringing an outcome to grievances, to allow them to actually be objectively looked at and a decision made and that decision then essentially for all intent and purposes having binding effect.

A partner interviewed remarked that the introduction of Section 29 "was part of a broader attempt at systemic or better governance really in the education system".

## **4.5 SECTION 29 APPEALS: A DEVELOPMENTAL PROCESS**

### **4.5.1 The First Education Bill**

The concept of appeals was embedded in legislation in January 1997 when the first Education Bill (Appendix 13) was introduced by a coalition Government which included a radical left-wing party for the first time. Section 55 of this Bill provided that parents or the student (if he/she was 16 years or older) could make an appeal to an education board (to be established under the White Paper) against a decision of a teacher or other member of staff of a school that materially affected the education of a student. It also provided that they could make an appeal where a Board of Management refused to enrol a person as a student or excluded a student. The appeal committee was to be composed of a director, an inspector seconded to the education board and a practising barrister or solicitor of not less than ten years standing.

### **4.5.2 Parliamentary Debates on the Education (No. 1) Bill**

Minister Breathnach in the debate in the Dáil on the Education Bill on the 4 March, 1997 ([www.oireachtas-debates.gov.ie](http://www.oireachtas-debates.gov.ie) Volume 476: No. 4) referred to Section 55 of the Bill when she noted that it “specifically takes into account those students and their parents who feel they have been dealt with unjustly within the education system”. The opposition spokesman on education, Deputy Micheál Martin, in his contribution to the debate, recognised that there had been “a history of non-interference on the part of Government with individual schools in relation to operational matters”. He referred as examples to schools having decision-making powers with regard to issues such as entry, suspension and expulsions, and he criticised the Bill for taking away these powers and gradually weakening “the current self-governing autonomy of schools”. However, Minister Breathnach assured the Dáil that these concerns were unfounded:

The appeal system will include safeguards against frivolous or mischievous appeals and will be used only when a matter materially affecting a student is not resolved at principal or even at Board of Management level. The system will deal with serious grievances with speed and finality.

In the same debate, Deputy Síle deValera T.D. criticised the Bill for not having a teacher representative on the appeal board. Likewise, Deputy Kathleen Lynch T.D., in her contribution to the Dáil debate on this matter on 13 March 1997, while welcoming Section 55, urged the Minister to re-examine it with a view to “developing a better

balance on the appeals committee”. Such opposition to sections of this Bill demonstrates that some politicians, possibly because they shared the same cultural and social capital as school personnel, favoured the maintenance of the power and autonomy of schools.

#### **4.5.3 The Education (No. 2) Bill**

The debates on the Education Bill came to a halt when the coalition Government was defeated in a general election in 1997 and was replaced by a more centrist, Fianna Fáil led Government. It drafted its Education (No. 2) Bill (1997) (Appendix 14), which abolished the concept of education boards and amended the provisions of Section 55 of the first Education Bill. Section 29 of the Education (No. 2) Bill outlined the appeal system advocated by this Government. The Bill confined appeal procedures to exclusions, suspensions and refusals to enrol, with a proviso that the partners might allow in time for other decisions to be appealed and with the second proviso that refusals to enrol for reasons other than the unavailability of accommodation could be admitted. Parents or students over the age of 18 (rather than 16) could appeal decisions. The appeal committee was to include an inspector, a “practising barrister or solicitor of not less than ten years standing and such other persons as the Minister considers appropriate”.

When interviewed for this research, Department officials said they were unsure of the rationale for some of the changes in the appeal mechanism from the Education (No.1) Bill. However, one official stated that the change of age from 16 to 18 “was probably a judgement call on the part of the Minister” when the draft legislation was transacted through the Dáil. Another official speculated that dropping the right of appeal against a decision of a teacher or member of staff was probably to make appeals more manageable and doable. He referred to Section 29 (d) of the Education (Number 2) Bill which allowed for the expansion of appeals which he saw as “a more prudent thing”.

#### **4.5.4 Parliamentary Debates on Section 29 of the Education (No. 2) Bill**

In a range of subsequent debates on the Bill throughout 1998 ([www.oireachtas-debates.gov.ie](http://www.oireachtas-debates.gov.ie)) the Government received criticism for ‘watering down’ the original appeal procedures. In the committee debate on the Education (No. 2) Bill on 21 May,

1998 the Labour Party spokesman on education, Deputy O'Shea, T.D. sought to introduce an amendment to the Bill so that Section 29 would be extended beyond refusals to enrol, suspensions and expulsions "to deal with circumstances where the needs of students have not been adequately addressed". He gave examples such as when second-level schools did not provide the desired range of subjects, or problems that arose in terms of special education and school transport issues. Deputy Richard Bruton T.D. agreed, stating in the deliberations about the Bill at the Committee Stage on 17 June 1998, that his "memory of the earlier drafts of this Bill was that it was clearly envisaged there would be a broader canvas on which parents or students could make complaints".

Minister Martin dismissed this by stating that if appeals were broadened the entire system would become clogged up in a short time. He went on to say that there had been disagreements and differences of opinion among the partners about appeals in terms of achieving a balance stating:

On the one hand parents want the broadest possible set of parameters governing the basis on which appeals can be made while, on the other, principals, teachers, boards of management and trustees are anxious to ensure that the entire system is not clogged up with vexatious claims and appeals. They are anxious to avoid teachers spending their time making presentations, attending appeals and preparing material for further appeals rather than teaching. This could be an extreme spin put on the matter by one side of the partnership process. The Bill attempts to balance the competing viewpoints and develop a framework to deal with substantial issues such as the denial of access to education, refusal to enrol, suspension and expulsion.

Deputy Martin referred in debate to the fact that the NPC-Primary had difficulty with the composition of appeal committees. An amendment to the Bill then reduced the requirement of one of the appeal committee members to be a practising barrister or solicitor of not less than ten years standing to seven years. However, Deputy Bruton then noted that: "Requiring the presence of a practising barrister or solicitor is a signal that the direction the mechanism will take will be legalistic." Section 29 was further amended to allow for the presence of a barrister or solicitor while not making it a necessary requirement.

Another amendment to the Bill imposed the timeframe for dealing with an appeal as being within 30 days of the appeal being lodged with the Secretary General, excepting

a case where the committee received approval from the Secretary General for an extension of no more than a further 14 days because of specified difficulties in concluding the appeal.

There was also discussion at Committee Stage about the need to introduce an element of conciliation and arbitration into the appeal process. Hence an amendment was introduced which provided that the parties to the appeal should be assisted to reach agreement on matters that were the subject of the appeal where the appeal committee was of the opinion that reaching such agreement was practicable in the circumstances. Thus, the notion of facilitation in appeal cases was introduced.

#### **4.6 SECTION 29 OF THE EDUCATION ACT**

There were a couple of significant differences between the wording of Section 29 as it appeared in the Education (No. 2) Bill and as it appeared in the Education Act. The wording in the Bill referred to the right of appeal where a Board of Management refuses to enrol a student “for reasons other than the unavailability of accommodation in the school”. This reference was taken out of the final wording of the Act. The stipulation in the Bill that the appeal committee was to include a practising barrister or solicitor of not less than ten years standing was also omitted. The Department officials who were present at the drafting of the Section 29 legislation noted that it would have been typical of legislation in the 1990s to have barristers on appeal boards “as it would have been felt that barristers would know about fair procedures”. However, one official stated that “one of the things was we didn’t want Section 29 to be was a kind of mini tribunal or a kind of fertile ground for lots of lawyers to be all over it”. This is reiterated by another official who said that:

lawyers are not a good idea on appeals committees because ... you get people who study law when they are older and thereafter they look at life through the prism of the law.

Section 29 of the Education Act (1998) (Appendix 15) 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 decisions which may be appealed are:

- Permanent exclusion from a school
- Suspension for a period which would bring the cumulative period of suspension to 20 school days in any one school year, or
- Refusal to enrol.

The Act (Section 29.6) stipulates that:

Where –

- (a) an appeals committee upholds a complaint in whole or in part, and
- (b) it appears to the appeal committee that any matter which was the subject of the complaint (so far upheld) should be remedied, the appeals committee shall make recommendations to the Secretary General as to the action to be taken.

The commencement date for Section 29 was set for 23 December, 2000.

#### **4.7 OTHER LEGISLATION RELEVANT TO ENROLMENT AND EXCLUSION**

Section 29 appeals are enshrined in the Education Act (1998) but it is not the only piece of legislation that is of significance to the area of appeals. Appendix 16 provides a summary in table format of the other aspects of the Education Act (1998) and other legislation of relevance to Section 29 appeals. The raft of legislation in relation to education that emerged in the 1990s and 2000s impacted significantly on schools and considerably curbed their power.

##### **4.7.1 The Education Act (1998)**

Glendenning (1999: 163) described the Education Act as “a singular landmark in Irish life” because prior to the advent of educational legislation there was no statutory protection for a child’s right to be educated. She asserted (1999: 72-73) that because of this, children suffering from severe or profound disabilities, children who were emotionally disturbed or disruptive, children who were neglected by their parents both in terms of care and in terms of their education, children of low ability and children who were suspended and expelled from schools in situations where there was no other schools available for them to attend, were failed by the education system. Glendenning noted that few parents could afford to take a constitutional action to “vindicate the rights of their children” and, as a consequence, educational provision for many of



these categories of children named above has been inadequate or non-existent. The enshrining of these rights in the Education Act impacted on schools as, for the first time, they were forced by legislation to cater for a range of children with diverse needs as opposed to only those that they believed were, in the words of Munn and Lloyd (2005) “worth saving”.

#### **4.7.2 The Education (Welfare) Act (2000)**

The impact of the Education (Welfare) Act, (2000) on the Section 29 appeal process and on schools is also significant. Binchy (2006: 54) interprets the Act as stating that while school management “always has a duty of care towards all its pupils” now in discharging its duty of care to some pupils, “the school is not entitled to sacrifice its duty to other pupils – even a minority of one”. In the early years of appeals in particular, schools were struggling with certain aspects of this Act and lack of compliance with aspects of the Education (Welfare) Act was sometimes cited by appeal committees as reasons for not upholding appeals.

#### **4.7.3 The Equal Status Act (2000 and 2004)**

While not primarily concerned with education, these Acts also have relevance for the work of Section 29 appeals as they promote equality of opportunity and prohibit discrimination in relation to any or all of the nine grounds. However, the Act makes provision for certain exemptions in the case of single sex schools and denominational schools. Lodge and Lynch (2004: 50) note that while the Act recognises that schools can still “exercise preferential treatment regarding the admission of members of their own religious communities”, it cannot be interpreted as allowing schools to automatically refuse enrolment to a student of a different faith to the school’s particular ethos: “The onus is on the school to prove that refusal of such a student is essential in order to maintain its ethos.”

Differential treatment is also allowed on grounds of disability where doing otherwise would have a serious detrimental effect on services provided to other pupils in the school. However, the Act states that reasonable accommodation must be provided for people with disabilities “if it would be impossible or unduly difficult for that person to participate in school without the special treatment, facilities or adjustments” (Equality Authority, 2005a: 9).

#### **4.7.4 The Education for Persons with Special Educational Needs (EPSEN) Act (2004)**

While a number of sections of this Act have been commenced, namely those establishing the National Council for Special Education (NCSE) and those promoting an inclusive approach to the education of children with SEN, a number of sections of the Act were deferred indefinitely in 2009 due to the limited resources available. Following commencements of the full Act, the NCSE will be able to designate the school that a child with SEN will attend, bearing in mind the capacity of the school to meet the child's needs.

Griffin and Shevlin (2007: 2-4) describe the EPSEN Act as “enabling legislation” which “represents a significant shift in Government policy towards the creation of inclusive learning environments”. They also note how the Act provides that children and young people have the same right as others to attend their school of choice, and to have access to the same range of curricula and certification as their peers. Carey (2005: 149) believes this Act has “significant implications for children with special education needs”. He notes that the Act is based on the belief that children with SEN should, where possible, be educated in a mainstream setting and that the Act should protect those vulnerable children “whose rights are only vaguely protected under other educational legislation”. Section 2 of the Act does, however, recognise the rights of the group as well as the individual as it provides that a child with special educational needs shall be educated in an environment with children who do not have such needs unless the “nature or degree” of these needs is inconsistent with “the best interest of the child” or “the effective provision of education for children with whom the child is to be educated”.

#### **4.8 RESEARCHING APPEAL PROCEDURES**

From the beginning of 2000, the Department began to conduct research into how best to develop the Section 29 appeal procedures. A number of appeal procedures from other State Departments and other jurisdictions were researched and features of many of these appeal procedures were ultimately absorbed into the Section 29 appeal procedures. These appeal procedures are outlined in Appendix 17.

## 4.9 CONCLUSION

This chapter demonstrates the considerable autonomy that school authorities had prior to the introduction of the Education Act. Bourdieu and Passeron assert (1999: 99):

The misunderstandings which pervades pedagogic communication remains tolerable only so long as the school system is able to eliminate those who do not meet its implicit requirements and manages to obtain from the others the complicity it needs in order to function.

This assertion is relevant in the Irish context, as schools could enrol or exclude children without any form of redress for parents except the courts, and the courts had proven that they were reluctant to interfere in internal school matters. It is also likely that many parents did not have the economic capital to take court actions against schools. Thus, the so-called “legitimacy of the dominant culture” of schools, as described by Bourdieu and Passeron (1990) went unchallenged.

The need to move toward a more open culture in schools was clearly recognised in the early 1990s with the formulation of the Green Paper (1992), the National Education Convention (1993) and the White Paper (1995). Parents called for more accountability from schools through the national parents’ bodies and there was an increasing awareness in the Department of Education that many children and young people, particularly those who did not have the same cultural, economic and social capital as school personnel were often excluded or refused enrolment and that the practice of ‘cherry-picking’ was widespread. The chapter presents documentary evidence and evidence from interviews of a level of frustration within the Department of Education that a number of schools unfairly suspended or expelled students for minor breaches of discipline. These students were mainly those with low levels of social and cultural capital, who did not conform to the expected behaviours of middle-class schools. The Department of Education had no power to protect these children who were unfairly treated by schools. Therefore, the Department needed a mechanism to make schools more accountable for their actions. This mechanism was to take shape under Section 29 of the Education Act.

The drafting of the legislation around appeals demonstrates the tension within the State between making schools more accountable and not taking away all their

autonomy. Parents and some politicians wanted to introduce appeals in relation to a broader range of issues than those that eventually were legislated for. The introduction of other education legislation provided that schools had to become much more answerable and accountable in terms of the manner that they dealt with children. It remained to be seen if the education legislation, particularly around Section 29 appeals, would serve the twin aims of making schools more democratic and giving a voice to parents.

## **CHAPTER 5: THE DEVELOPMENT OF THE APPEAL PROCEDURES**

### **5.1 INTRODUCTION**

From February 2000, officials in the Department began to draft procedures to facilitate the setting up and operation of Section 29 appeals. Internal Department documents, analysed from that time, demonstrate that officials agreed that application for appeals would be made by parents on a standard form, there would be a request for all relevant documentation from the parties involved in the appeal to be provided prior to the appeal hearing, and appeal hearings would be conducted in independent venues. It was noted in one internal memo that these procedures would be reviewed after two years and therefore they constituted a two-year pilot project. This chapter presents an analysis of the documentary evidence in relation to the development of the appeal procedures. It also presents the views of Department officials and the education partners about the consultations relating to these procedures. The chapter examines the appeal procedures as they pertain to VEC schools and discusses the role of the National Educational Welfare Board (NEWB) in appeals.

The first draft of the appeal procedures (July 2000) (Appendix 18) proposed a four stage structure to appeals. The first proposals in relation to the appeal procedures are described in the next section.

### **5.2 DRAFTING THE APPEAL PROCEDURES**

#### **5.2.1 First Draft of Appeal Procedures**

##### ***(i) Stage 1 – Local Procedures***

The first draft of the appeal procedures proposed an amendment to Section 28 of the Education Act (Appendix 16). Section 28 provided for an appeal to a Board of Management against a decision of a teacher or other staff member in relation to grievances not covered by Section 29. Department officials wanted Section 28 of the Act amended to cover appeals in relation to enrolments and expulsions as well as other grievances. The amended legislation provided that, in the event of a decision to exclude or refuse enrolment to a pupil, the principal of a school and a Board of Management, should afford the parents of that pupil (or the pupil, where he/she has

reached the age of 18) the opportunity to make representations to the school on the sanction imposed (in the case of expulsion or suspension) or on the decision taken (in the case of refusal to enrol).

***(ii) Stage 2 – Lodging an Appeal***

The first draft procedures provided an opportunity for a school to reconsider its initial decision in relation to exclusion or enrolment. Therefore, subsequent to an appeal being lodged, a school would have one week to reconsider its original decision. If it chose to revise its decision, the Department would then inform the appellants of the revised decision, and would ask whether they wished to proceed with the appeal. If an appellant accepted the revised decision of a school, no further appeal could be lodged in relation to the case. If the appellant did not accept the decision of the school or if the school's decision was not revised, he/she could proceed to stage three of the appeal process.

***(iii) Stage 3 - Facilitation***

The draft procedures provided a mechanism for facilitation of appeals for all schools, except those operated by VECs, if an appeal committee considered that it might be possible for the parties to the appeal to reach agreement. Each appeal committee was to consist of one assistant principal officer (APO) and one inspector. The APO was to act as facilitator to an appeal case and arrange to meet both parties to the appeal in an attempt to broker an agreement between the parties. If an agreement could not be reached within a reasonable timeframe, the APO was to refer the case to the appeal committee for hearing and provide a report on the facilitation process to both parties to the appeal.

***(iv) Stage 4 – the Appeal Hearing***

If an agreement was not reached during facilitation there was to be a full hearing of the appeal by the two-person appeal committee. The inspector was to act as chairperson of the appeal committee.

Prior to the hearing, both parties to the appeal were to be informed of their right to be professionally represented or be represented by a relative, public representative, representative of a parents' association, trade union, management body or other body.

The draft procedures also outlined how the appeal committee could invite any relevant personnel/expert witnesses they required (e.g. an educational psychologist, health professional, legal expert) to attend the hearing. Parties to the appeal could also request the appeal committee to invite any relevant personnel/expert witnesses they wished to attend on their behalf.

The first draft procedures noted that the appeal committee in making its determination would pay “due consideration to the procedures used by the school when making its initial decision, the code of behaviour and the admissions policy of the school, and the views of those witnesses who may have attended”.

### **5.2.2 Drafts Two and Three of Appeal Procedures**

By the end of July 2000, a second version of the draft procedures was circulated within the Department. These revised procedures were broadly in line with the first draft. The revised draft outlined that all local grievance procedures would have to be exhausted before referral to the formal appeal process. The second draft also noted that the period of suspension of a student that could be appealed had not yet been defined. However, a third draft of the procedures outlined that the timespan for suspension was a period of more than five consecutive days, or a period which would bring the cumulative period of suspension to 20 school days in any one school year.

The second draft procedures stated that appeals would be determined by the appeal committee “in the light of all the facts presented to it, including the views of any witnesses, and having due regard inter alia, to:

- Whether, in the case of a refusal to enrol, such refusal was in accordance with the school’s published admissions policy under Section 15 (2) (d) of the Education Act, 1998
- Whether in the case of an expulsion or suspension, such expulsion or suspension was in accordance with school’s published policy on expulsion and suspension as provided for under Section 15 (2) (d) of the Education Act, 1998
- Whether the procedures used by the school in making its decision were fair and reasonable.

The draft procedures stated that a Board of Management of a school was bound by the directions of the Secretary General that were to be made as a result of the appeal hearing. The procedures also stated that consultation on Section 29 (d) would be commenced as soon as possible, but that the current appeal procedures provided only for appeals in relation to permanent exclusions, suspensions and refusals to enrol.

The draft procedures outlined that there would be no compulsion on parents to use the Section 29 appeals form when making an appeal, but it was preferable if they did. The right of both parties to representation was refined in the third draft of the procedures and these procedures now stated that: "Subject to notifying the Appeals committee in advance, the parties to the appeal may be represented or assisted at the hearing by such person as they consider appropriate." In addition, the procedures allowed for the appeal committee to "seek the views of any witnesses that may have been called". Draft three did not stipulate a specific timeframe for making the appeal but stated that an appeal would not be admitted where "an unreasonable amount of time has elapsed since the decision of the school was taken". The school development plan was added in the third draft to the criteria used by appeal committees when determining an appeal.

### **5.3 CONSULTATION WITH PARTNERS AND THE MAIN ISSUES IN NEGOTIATIONS**

It was agreed by the Department that consultation on the appeal procedures would commence by circulating the third draft of the appeal procedures to the education partners and inviting written comments within a two to three week timeframe. This would be followed by a multilateral meeting to which the main education partners would be invited in mid October 2000. The draft procedures would be amended, as appropriate, in the light of comments received and the revised draft would then be circulated for final consideration by the partners. Finally, the minister's approval of the procedures would be sought prior to their publication.

On 25 September 2000 the third draft of the procedures was issued to the partners seeking their views in advance of a meeting in October. Those partners invited to attend the consultations are named in Appendix 19. These education partners, as the



literature outlined, are those who are named in the Education Act. Bourdieu (1989) asserts that those who hold power possess enough economic and cultural capital to occupy dominant positions. It is evident that most of the education partners possessed the same cultural and social capital as schools, coming, as many did, from the same cultural paradigm. It was to be expected that many of these partners would not welcome changes to the status quo in education.

Two different viewpoints emerge from those interviewed in relation to the consultations about the Section 29 procedures. Department officials were of the view that the management bodies and unions were not over eager about the impending appeal process. Young's (2001) contention that policy makers often pay 'lip service' to closing the inequality gap in society is evidenced from the reluctance (noted by some DES officials in interview for this research) of some partners, particularly the management bodies and the second-level teacher unions, to come to the negotiating table. One official described how these stakeholders "would have been that bit slower to come to the table" saying that they probably would have preferred not to have Section 29, but they "certainly could not be seen to argue against it".

On the other hand, one partner representative, who was involved in the consultations<sup>16</sup>, stated that there was a:

general acceptance that appeals were correct procedure ... and there was a certain acceptance of the inevitability of the need, the appropriateness of it, the rightness of it and an element of comfort with it as it proceeded into the legislation.

DES officials recalled in interview that both National Parents Councils were very supportive of Section 29 "because that gave a very real appeal process in a situation where parents had felt powerless previously". All officials noted that while the NPC – Primary was the stronger of the two groups, neither groups were strong partners. One management body noted that "parents didn't really have an awful lot to say, they just were welcoming of it". Commentators such as Conaty (2002) and Lodge et al (2004) argue that parent representatives are overwhelmingly middle-class and therefore not fully representative of the wide range of parental experience. By implication this

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<sup>16</sup> Most of the partners interviewed for this research did not represent their organisations at the time of the consultations meetings

suggests that they may not be particularly interested in defending the rights of children who are more likely to be refused enrolment or excluded from schools. This view was articulated in interview for this research by one Department official who stated that parents:

rarely tend to have very strong views on issues of that kind...because bear in mind that the kid who typically is expelled doesn't have too many advocates.

The same official noted that for such children “the Department tends to be the only real advocate in these situations”. This suggests that the State saw itself as representing the voice of the marginalised in the negotiations on the appeal procedures.

The main issues in negotiations relating to Section 29 procedures, as outlined below, indicate the reluctance of many of the partners to accept any diminution to the power of school authorities to dismiss or to refuse enrolment to pupils. They also feared that parents and children would be given too much power by the legislation. In an effort to have a voice on the decision-making body, the appeal committee, the partners sought to have their own representatives on appeal committees. In addition, the documentation suggests that most partners were keen for issues in relation to enrolment and discipline to be resolved at local level through Section 28 of the Education Act, in the first instance, indicating reluctance to have power to suspend and expel removed from a school.

### **5.3.1 Loss of Power and Control by Schools**

Officials interviewed gave contrasting accounts of the attitude of the management bodies to the Section 29 appeal procedures during the consultation period. One official stated that the management bodies were unhappy to see the school’s capacity to determine enrolment and discipline “being eroded by the State”. However, another official noted how the management bodies could now “hide behind” the decisions of appeal committees and blame the committee for forcing schools to enrol or not exclude a pupil. This was because management bodies had issues “with their own people about summarily dismissal of pupils, so they were quite supportive”.

The JMB's written response to the appeal procedures criticised outright the procedures stating:

The framing and interpretation of Section 29 of the Education Act undermines management skills. The thrust of the document is that the DES would take the authority to suspend away from school management. Further, it shows no regard for the sensitive work already being done by school management for young people manifesting severe levels of emotional and psychological dysfunction. There is no acknowledgement in the Draft Document of the impact on school management, on classroom teachers, on other school pupils, of a school being forced to reinstate a seriously disruptive student.

The response of the JMB can be interpreted through the lens of power and cultural capital. Viewed through this lens, it can be suggested that the JMB wished the status quo to prevail and for member school authorities to continue to decide who should and should not attend these schools. Many of the written responses to the draft procedures suggest that most partners wished schools to retain the power to decide who to accept and who to exclude. One representative of a management body interviewed spoke about its concerns that Section 29 "would have taken away all the freedom of schools to determine their own enrolment policy and separately to manage disciplinary situations within their own schools". This interviewee also described a perception that there was "a bias in favour of the parent and the child".

An analysis of interview data also suggests that the unions wished the status quo to prevail and were reluctant to see power transfer to an independent appeal committee. One partner stated that unions were concerned "about the capacity for teachers to run their own disciplinary policy at classroom level and being held to account in a different way other than to their own manager and principal". Another partner representative noted that the unions were particularly anxious about appeals in relation to expulsions. This was confirmed by another partner who described the fear that appeals would:

reduce the power of schools to do what they want to do. I think what we really were saying was it will mean that we can't kick out pupils who were causing us grief.

### **5.3.2 Composition of Appeal Committees**

The documentary analysis reveals that there was much discussion during the consultations about the composition of appeal committees. Most partners wanted the

appeal committees to include representatives of their organisations or to include practising principals, deputy principals, or teachers. The Department did not concur with this view. Such representation was seen by the Department as detracting from the independence and impartiality of the appeal process. One official stated that:

if you have a representative forum determining appeals...effectively the independent chair tends to decide most of the cases because others can sometimes go into their own space. So, representative appeal forums are not a great idea.

One of the representatives from the management bodies described their concerns about the composition of the appeal committees. They saw the composition of appeal committees as being deficient because they did not contain personnel who worked in schools. Such deficiencies could lead to a different world view from that of the management bodies. They were also concerned because most of the post-primary inspectors did not have school management experience.

### **5.3.3 Issue of Legal Representation**

DES officials interviewed recalled that some partners, including one parents' council, argued that lawyers should be able to represent them at appeal hearings. A contrary view emerged in the written submission from the Conference of Religious in Ireland (CORI). CORI, demonstrating a real understanding of issues for marginalised people, was concerned that by allowing legal representation, privilege would be further rewarded. It wrote:

Children from affluent backgrounds would have professional or other relevant expertise available to them, an option which would not be available to children from poorer socio-economic backgrounds.

Some management bodies also opposed legal representation for fear that parents who had sufficient economic capital to employ lawyers to represent them would be more successful in appeals as a result. The NAPD in its submission stated that:

A successful appeal may well be dependent on the professionals an appellants may employ to plead their case and this is dependent on the amount of money available to them.

The education partners accepted that there should be an emphasis on the informality of appeal hearings. It was also accepted that while neither parties could be deprived of the right to bring a member of the legal profession with them to attend a hearing, that

person would not represent them and his/her involvement would be limited. The Department representatives suggested that a possible alternative would be to seek the consent of the appeal committee before allowing a legal representative to participate during a hearing.

#### **5.3.4 Cumbersome Procedures**

Contrary views also emerged in interview about the cumbersome nature of the appeal procedures. Some officials noted that a number of partners complained about the procedures being very cumbersome, while one official recalled that the “main challenge for us was to try and not get them wrapped up in a massive rigmarole of process that would go on and on and on”.

#### **5.3.5 Section 28 of the Education Act**

All partners felt very strongly that every effort should be made to resolve issues at local level first. The unions wanted the procedures prescribed under Section 28 to be put in place before Section 29 was commenced.

#### **5.3.6 Suspensions**

Different viewpoints can be observed in relation to the length of suspension before it could be brought to an appeal. The unions and management bodies believed that the 20 cumulative days' stipulation in relation to suspension was too short and should be increased to a much higher figure. Both parents' councils felt that the stipulated period for suspensions was too long.

#### **5.3.7 Role of Facilitator**

Many partners questioned the appropriateness of having the same person involved in the facilitation and the appeal hearing. It was suggested that he/she would already have formed a view on the case prior to the hearing and would therefore lack impartiality.

#### **5.3.8 Timeframe**

Many partners sought clarification as to the legal timeframe for appeals, and sought clarification about the meaning of ‘reasonable timeframe’.

### **5.3.9 Appeals Applications**

Some partners wanted appeal application forms used in all appeals, to reduce the need for subsequent clarifications and to eliminate false information. The Church of Ireland Board of Education suggested a fee to accompany the appeal application in order to prevent frivolous or vexatious appeals. This suggestion was dismissed as inappropriate by the Department, given that it could potentially exclude a large number of families who would not have the economic resources to make appeals.

### **5.3.10 Resources**

Some unions and management bodies stated that schools could not carry the administrative burden of responsibilities (such as the creation of school plans and policy documents) without the provision of administrative supports in terms of secretarial service, dedicated posts of responsibility and time for the performance of duties. The JMB stated that they would not implement the procedures until adequate supports were put in place to make them workable.

### **5.3.11 Revision of Decisions**

Some management bodies advised that the section in relation to the opportunity for the school to revise its decision should be removed, as decisions would not be taken lightly in the first instance. Others felt it would be prudent to allow boards the opportunity to revise their original decision as circumstances might have changed in the interim period. The Department agreed to look at this issue again.

### **5.3.12 Absence of Guidelines on Policy Development**

Some partners noted the absence of guidelines relating to the drafting of enrolment, suspensions and expulsion policies from either the Department or the NEWB and, therefore, argued that the establishment of the Section 29 appeal procedures was premature and should not be implemented until such procedures to guide schools were put in place.

### **5.3.13 Diminution of Rights of Other Pupils**

In its written submission, the JMB criticised the procedures for making “no reference to the rights of students whose learning is seriously undermined by the inclusion of a

seriously disruptive student”. Likewise, in their submission, the NAPD stated that the procedures tip “the balance against the rights of those who do what is right in schools and serve the common good” and stated that the procedures did not recognise the fact that indiscipline in schools had “real victims”. It could be inferred that, by invoking the rights of the compliant pupils not to be discommoded in school by the disruptive student, the management bodies were giving tacit support to the dominant ethos of the middle class, as the literature suggests that those who are disruptive are mainly from working-class backgrounds.

#### **5.3.14 Erosion of School Ethos**

The Church of Ireland Board of Education in its submission stated that the board of a particular school may refuse to enrol a pupil on the grounds that such enrolment would endanger the ethos/characteristic spirit of the school. The Board requested that the appeal committee would respect the policy of patrons and boards as to the ethos of particular schools. This view was supported by many other partners. The view could be interpreted as an attempt to protect the existing power relations in society, because by only accepting those who complied with the school ethos, no challenge to the status quo was likely. Thus, as asserted by Bourdieu (1989), the power and privilege of the middle classes would be reproduced.

#### **5.3.15 Freedom of Information**

Concern was expressed regarding the possibility of people seeking information supplied in connection to appeals under the Freedom of Information (FOI) Act. The Department indicated that, while it could not give an absolute guarantee that information would be protected from disclosure under FOI, information regarding Section 29 appeals would generally be provided in confidence and would generally be of a personal nature. These two factors provided grounds for non-disclosure under the conditions of the FOI Act.

### **5.4 DRAFT FOUR OF THE SECTION 29 PROCEDURES**

On 26 October 2000, draft four of the procedures, which had been amended in light of the various comments and views received by the partners, was issued to the partners. They were invited to submit their observations on this draft in advance of a meeting

on 13 November. In draft four, the requirement that Section 29 appeals would only be heard following the conclusion of an appeal or grievance procedure prescribed under Section 28 was replaced with the statement that:

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. Appeals will only be considered by an appeal committee under Section 29 where the parties are unable to resolve the issue at local level.

The Department's legal advisers had counselled that expulsion, suspension and enrolment issues were deliberately omitted from the issues that could be appealed under Section 28. Many interviewees expressed regret that Section 28 of the Education Act was not commenced at the same time as Section 29. One DES official recalled how:

we parked it because we wanted to bed down the initial stuff around the enrolment suspensions, expulsions and so on, so we kept very tightly to those parameters if you like. So the whole idea of parents appealing a decision of a school under Section 28 was kind of left in abeyance.

The redrafted Section 29 procedures stipulated that an appeal could be made in relation to suspension where a school suspended a pupil for a period which would bring the cumulative period of suspension to 20 school days in any one school year. The timeframe for appeals was set at four weeks from the date on which the decision of the board was notified to the parent or student concerned. However, a longer period for making appeals could be allowed as an exception where the Department was satisfied that circumstances did not permit the making of an appeal within the four week time frame.

The Department removed the section in the procedures which stated that an appeal committee could send a decision back to a Board of Management. The composition of appeal committees was confirmed at three - an inspector, another Department officer and another person who would act as chairperson of the committee. The chairperson would have the casting vote if there was an equal division of votes between the other two members. In addition, the facilitator was no longer to be a member of the appeal committee. It was established that, subject to the prior consent of the appeal committee, either party to the appeal could 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 (Draft Procedures).

Draft four of the procedures introduced the following criteria for determining appeals and these replaced the criteria stated in the previous drafts:

- 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 resource implications arising from the issues under appeal and
- where relevant, the policy of the patrons and the Board of Management in respect of the characteristic spirit/ethos of the school.

#### **5.4.1 Responses of Education Partners to the Draft Four Procedures**

A meeting was held between the Department and the education partners about this draft of the procedures. There were still objections by some partners about the number of people from both parties who could attend the hearing. Many partners, still wishing for insider representation on appeal committees, argued for one member of the appeal committee to be drawn from a panel of representatives of the teacher, management and partner bodies. The partners and Department eventually agreed that the appeal committee would comprise three people, all of whom would work in education, and one of whom would be an inspector. The proposal to have an APO on each appeal committee was abandoned. One official stated in interview that if APOs were on appeal committees:

you would probably end up with sometimes harsher decisions made which would come down to, did he comply with the rules or did he not, which might be very clean at one level, but could lead to the hard cases making bad law kind of thing.

The administrative burden that would be placed on schools as a result of appeals was restated by partners. After some further objections, the Department agreed to redraft the criteria that the appeal committees would take into account in making their determinations to include the educational interests of other children in the school. The Department also reiterated that the parties to the appeal would be asked to pursue the matter at local level in the first instance. As a general rule, cases would only go to a full hearing under Section 29 where it was not possible to reach an accommodation at

local level. A time limit of up to one week would be given for the local appeal which could be extended in exceptional circumstances.

#### **5.4.2 Appeal Procedures under Section 29 of the Education Act**

Once again, the Department redrafted the procedures and issued them to the education partners at the end of November 2000 for comment. In the letter accompanying these procedures it was stated:

these procedures should be viewed as an interim response to the requirements of the legislation and it is proposed that they would initially apply on an administrative, non-statutory basis. This will enable the procedures to be modified, as appropriate in the light of their operation over time and following consideration of related issues prior to the making of statutory regulations.

The timeframe for admitting an appeal was amended from the draft procedures to a maximum of 42 calendar days following the notification of its decision by the Board to the parent or student concerned. However, a longer period for making appeals was allowed as an exception where the appeals administration unit was satisfied that circumstances did not permit the making of an appeal within the 42 day limit. The procedures stated that appeals should be made on the Section 29 appeals application form.

The parents or the student (if over 18), and, where appropriate, a representative of the NEWB were permitted to attend the hearing as, or on behalf of, the appellant. Not more than one board member and the school principal could attend the hearing on behalf of the Board of Management. However, each party to the appeal could be accompanied at the appeal hearing by a maximum of two other persons. These other persons would not be allowed to make statements during the hearing except, in exceptional circumstances, where the appeal committee gave its consent.

New criteria for determining appeals were added to the existing criteria as follows:

- 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
- such other matters as the Committee considers relevant

### **5.4.3 Responses of Partners**

The JMB and some unions responded that it would not be possible for schools to comply with the requests by the appeal committees for information and documentation unless the Department gave a concrete commitment to provide additional resources for schools. They again expressed concern about the lack of guidelines on admission, suspension and expulsion issues. The JMB noted that the decision to allow the attendance of a representative from the NEWB, on behalf of the appellant, created the position whereby the NEWB was no longer an independent body. This issue is discussed later on in the chapter.

On 30 January 2001, the Department circulated the final version of the procedures to the partners. The *Appeal Procedures under Section 29 of the Education Act, 1998* as outlined in Circulars M48/01 and 22/02 (Appendix 1) describe the process of making an appeal to the Secretary General of the Department of Education. A briefing note for appeal committees (Appendix 20) outlines the process of conducting appeal hearings.

### **5.5 SECTION 29 (d)**

Section 29 (d) of the Education Act was included in the legislation, in the words of one official, to allow “for the possibility that other issues that could be life changing for a child” apart from enrolment, suspension and expulsion could be introduced into Section 29. However, there is no reference to Section 29 (d) in the appeal procedures. The documentary analysis indicates that some officials in the Department at the time argued for a less restrictive approach to the types of appeals that could be considered. This was because the proposals, as they were then formulated, would apply to less than ten per cent of the complaints that the Department received. It was stated in the documentation that in the period from 1 July 1998 to 30 June 1999 a total of 110 complaints had been received by the Primary Administration section of the Department. A total of 31 complaints related to bullying, eight related to professional competence and 71 related to breaches of the Rules of National Schools. Other officials, however, did not think it appropriate that Section 29 (d) would be used for general complaints or complaints against operational decisions taken by school management. It was agreed that it would be difficult prior to the 23 December deadline (the final date for implementation of procedures under Section 29) to get

agreement from the partners on matters other than Section 29 (a to c). It was therefore recommended that the appropriate sections of the Department would begin to seek agreement with the partners with regard to matters that could be included under Section 29 (d).

In interview, some DES officials stated that about five years previously they had given consideration to Section 29 (d) and what it might contain. One official said they were trying to “separate out the really big ticket items” such as refusal to enrol and expulsion, where a child’s education was at risk, from:

other more mundane things like I have a complaint around a teacher or I’m not happy with something within the school, but I’m still in the school and maybe 90% of my experience is okay, but there is a 10% bit here which isn’t happening and that those should be dealt with at a local level.

However, they “never actually came up against one that was sufficiently compelling to do that”. All of the interviewees considered that the grounds for appeals should not be widened. They believed that the critical issues of whether a child was or was not in school were within the remit of Section 29 and that this was correct. However, this position could be interpreted through the lens of power and control as a willingness to leave much of the existing power of schools intact.

## **5.6 VOCATIONAL EDUCATIONAL COMMITTEE (VEC) PROCEDURES**

The *procedures for determining and hearing appeals under Section 29 of the Education Act, (1998) in respect of VEC schools* (Department of Education and Science, Circular M48/01) outline how an appeal sub-committee will be formed by each VEC under the terms of Section 21 of the Vocational Education Act (1930). In the case of a school under the VEC, an appeal must be made in the first instance to the VEC and, if this is unsuccessful, afterwards to the Secretary General. The completion of the appeal procedures of the VEC is regarded as “meeting the provision in the Department’s procedures for local resolution and facilitation”. This is because of the restriction imposed by the 42 day timeframe for appeals.

In the case of VEC schools, appeals will generally not be admitted unless made within 14 calendar days after the Board of Management’s decision is communicated to the

parent or student concerned. The school principal must also notify the parent or student of their right of appeal to the VEC. The chief executive officer (CEO) may then decide whether or not to admit an appeal. “A maximum period of thirty days from date of receipt of the appeal by the CEO is allowable in the vocational sector for conclusion of the appeal process” (Department of Education and Science, Circular M48/01). A Board of Management is equally bound by the directions of the VEC sub-committee. However, the CEO must also advise the appellant of their right to further appeal to the Secretary General of the DES. The IVEA, in their submission to the Department about the procedures for Section 29 appeals (3 August 2007), called on the Department to specify in the procedures that the appeals to both the VEC and to the Secretary General are appeals against a decision of a school’s Board of Management “as some may interpret an appeal to the Secretary General (subsequent to an unsuccessful appeal to the VEC) as an appeal of the VEC’s decision”.

It was noted by representatives from the VEC sector, in interview, that the composition of a VEC sub-committee for hearing an appeal would generally comprise two or three members of the VEC; usually a local councillor, a principal of another school, and the education officer or CEO. The procedures for VEC schools state that no member of an appeal sub-committee “can also be a member of the Board of Management of the school which is a party to the appeal”. Interviewees noted that VEC appeal procedures try to “mimic” the appeals to the Secretary General.

There are no statistics available about the number of appeals upheld or not upheld at VEC sub-committee level. However, in interview, appeal committee personnel indicated their opposition to the appeal mechanism at VEC level. Some showed a lack of understanding of the rationale for separate procedures for VECs. One person called the system of Section 29 in VECs “another can of worms. I am totally opposed to the system in the VEC. It must have been political or something”. This person stated that some CEOs “seem to be out to defend the system and get the parent and the child no matter what”. These quotations suggest a belief that there is a power differential between the VEC authorities and parents and that there is a desire on behalf of some VECs to maintain the established order in schools.

## **5.7 ADMINISTRATION OF APPEALS**

Documentary evidence indicates that, in its effort to determine the number of staff needed to administer appeals, the Department tried to estimate the volume of appeals. It was estimated that at primary level there would be about 200 appeals annually once Section 29 was commenced, and that most of these would be in relation to refusals to enrol. It was estimated that at second level there would be about 400 appeals annually in relation to expulsion and suspension and an additional 200 appeals in relation to refusal to enrol.

A proposal emerged that there would be a permanent and centralised appeals administration section to administer appeals at both primary and second level. The section would have its own dedicated staff, comprising administration staff, appeals officers and inspectors. One official stated in interview that though the Act probably originally envisaged an appeals unit separate from the Department, “the Department, de facto, took on that role, in the absence of anybody else”.

In the very early days of Section 29, appeals in the primary sector were administered by the Primary administration section of the Department and appeals in the post-primary sector were administered by Post-primary administration section. According to one official, a decision was then taken in order to ensure consistency “that the two appeal systems would be amalgamated, it would be dealt with in one place”. Eventually, Post-primary administration section, based in Tullamore, took on the role of administering the appeals because, according to officials, they were the people who had traditionally dealt with placement cases, parental complaints etc., and the majority of appeals at this stage were post-primary appeals; “so it was the logical home”. A principal officer had overall responsibility for overseeing the smooth running of appeals and an assistant principal officer was given responsibility for resolving day-to-day issues relating to appeals.

## **5.8 THE ROLE OF THE NEWB IN APPEALS**

The NEWB has, by virtue of Section 26 of the Education (Welfare) Act (2000), the right to take an appeal under Section 29 on behalf of a student, or to make submissions to an appeal committee. Schools are required to report to the NEWB once they make a

decision to exclude a student. There is some NEWB involvement in most Section 29 appeals if the subject of the appeal is under 16. This involvement ranges from advising parents about the appeal process to attending the hearing as an advocate for the child. If a child is permanently excluded from school and the appeal committee does not uphold an appeal against the exclusion, it generally falls to the Education Welfare Officer (EWO) to find an alternative placement for the student. The EWO can also make recommendations to the Department about the sanctioning of home tuition when an appeal against exclusion has not been upheld.

Different interviewees expressed contrary views about the role of the EWO. While a Department official said that he was always “somewhat disappointed that perhaps the NEWB, and maybe it was largely down to resources, didn't take a more proactive role on behalf of parents”, some appeal personnel criticised the EWOs for speaking on behalf of parents at many appeals. These appeal personnel regarded this practice as being a conflict of interest. As noted by one appeal committee member, “some of them give the very clear impression that they are not just neutral but they are anti-school or anti the school management”. Another reported that: “Somehow the EWO thinks that they are entitled to be an advocate on the part of the parent. So you will end up with an imbalance there.” Some appeal personnel stated that EWOs spend much of their time encouraging parents to take appeals against schools as opposed to finding a school for the child. This was seen by committee members as “taking the easy option”. Two stated that the EWOs were often responsible for encouraging parents to take “futile appeals”.

The above interview data suggests that the NEWB was constructed by some as being an advocate for the disadvantaged and thus a potential challenger to the dominant cultural values of an excluding school. Some appeal personnel, it could be suggested, by viewing the NEWB as a nuisance or biased in its behaviour were supporting the cultural values of the excluding schools.

Despite the misgivings of appeal personnel, the NEWB representative, in interview for this research, asserted that their role is in fact to be an advocate for the parent:

Someone has to act for the parent and our role is to guide and advise parents that they are entitled to appeal...But that is our job, that is our role, to ensure the parent is aware of their rights.

Those education partners who spoke in interview about the NEWB were less critical of the NEWB than the appeal personnel. One organisation noted how EWOs are good at “helping to serve the parents who aren’t in the know” because “unless the education welfare officer does it on behalf of the parent it simply doesn't happen a lot of the time”. The cultural disparities between some parents and schools are evident from this comment on the role of the NEWB.

The ambivalent attitude of many appeal personnel to the NEWB indicates a lack of clarity about the role of the NEWB in appeals. It also indicates a perception of the power differential between appeal committees and the EWOs who attend committees. The discussion about the role of the NEWB demonstrates lack of recognition by some interviewees of the need for parents to have their voice represented at hearings. This need was recognised to a greater extent by some education partners than by some appeal personnel. This suggests that some appeal personnel lack understanding of the power differential inherent in appeals between appellants and schools, especially when the parents do not have the required linguistic and cultural capital to enable them to speak up for themselves.

## **5.9 CONCLUSION**

At one level it can be argued that there was a very robust model of partnership implemented in the negotiations over the Section 29 appeal procedures. The research undertaken for this chapter demonstrates that the main negotiating partners for the appeal procedures were the parents, unions and management bodies. At another level, it can be argued that those who were involved in face-to-face negotiations with Department officials were, in the words of Bourdieu (1989), the State nobility.

Most partners, as the literature suggests, brought their own social and cultural capital to the negotiating table. According to the evidence, the parents’ bodies did not become very involved in the negotiations, although they were welcoming of the procedures. This suggests that the parents’ councils represented the views of those with the most valued social and cultural capital, as opposed to those with less recognised capital – those most likely to be excluded from schools. Many partners were resistant to



change, fearing that schools would lose much of their power as a result of Section 29. These partners were reluctant to lose the right for schools to exclude a child or refuse enrolment to a child. They also feared bestowing too much power on parents, by giving them a right of appeal. This resistance to change was not surprising, given that those who negotiated the procedures on behalf of schools occupy what Bourdieu (1989) asserts are the dominant positions in society, and use a range of strategies to preserve and legitimise their power. The fact that many partners wished for representation on appeal committees indicated a lack of willingness to relinquish their control.

The Department itself did yield to some partners' requests, such as the dropping of the right of appeal if a student was suspended for more than five consecutive days. In addition, by setting aside the procedures that were being drafted at the time for the introduction of Section 28 of the Education Act and by not inviting a debate about Section 29 (d) of the Act, which would allow parents further rights of appeal, the Department, while focusing on the rights of parents in relation to refusals to enrol and discipline, ignored the myriad of other complaints that a parent might have against a school. The Department officials themselves, while attempting to represent the voice of the disadvantaged in the negotiations, actually reinforced the status quo in these regards. Further, by ensuring that only educationalists (all of whom are system insiders) sat on appeal committees it seemed likely that the cultural capital of schools, as described by Bourdieu and Passeron (1990) would be maintained.

The chapter also indicates different levels of awareness among education partners and appeal personnel of the difficulties faced by marginalised parents. This can be seen from the somewhat antagonistic attitude of some appeal personnel in particular to the role of the NEWB in appeals.

Following the negotiations about the Section 29 appeal procedures, the path was now ready for the introduction of appeals into the education system. The operation of these procedures is described in the next chapter.

## **CHAPTER 6 THE OPERATION OF SECTION 29**

### **6.1 INTRODUCTION**

This chapter portrays the views of the interviewees on the operation of Section 29 appeals from the local level appeal procedures through to the actual appeal hearing. It also presents a critical analysis of the outcomes of a sample of appeal determinations in 2004 and 2005. Included in the chapter is a comparison between Section 29 appeals and appeals in different jurisdictions within the United Kingdom. The chapter reveals power differentials at a range of levels: between the DES and appeal committees, between appellants and schools, between appeal personnel and appellants, and between appeal personnel and schools. Despite the insider status of appeal personnel, the increasing chasm noted between their viewpoints and the viewpoints of school personnel is also discussed.

### **6.2 APPEAL PROCEDURES IN PRACTICE**

#### **6.2.1 Early Days of Appeals**

By the time Circular M48/01 was published, which outlined the Section 29 appeal procedures, seven appeals had been processed by the DES. As the frequency of appeals increased, more committee members were recruited and more staff moved into the appeals section of Post-primary administration. During each hearing, one member of the administrative staff was present to record an aide memoir of the appeal hearing. Administrative staff also advised parents and school authorities about the various stages of the appeal process and organised venues, mainly hotels, for the appeal hearing to be held.

There was concern within the appeals administration unit, in the early years of the process that appeal committees were over reaching their power. DES officials who had been involved in the administration of appeals said in interview that initially they spent considerable time on interchanges with legal section in relation to decisions made by appeal committees. Officials frequently sought advice as to whether certain recommendations were within the remit of an appeal committee, given that the Secretary General had to sign off on all determinations. One official stated that the

Department received legal advice early on, that the appeal procedures only permit the Secretary General to give directions to a school when an appeal is upheld. Where the appeal committee does not uphold a complaint, the Secretary General must inform the appellant of the committee's determination and the reasons for it. This is the full extent of the Secretary General's power and is, therefore, the extent of the appeal committee's power.

The Department also received legal advice that if a school or appellant wished to bring a solicitor to an appeal hearing, the entire appeal committee and not just the chairperson had to make the decision as to whether or not to allow the solicitor to attend. The legal advisors to the Department also stated that submissions from sources other than appellants and respondents could not be accepted by appeal committees. Thus from the outset, the Department was seeking to establish the legal parameters of the Section 29 procedures and the scope of appeal committees.

### **6.2.2 Local Level Procedures**

Under the current procedures, parties to the appeal are generally given an initial ten days to resolve locally the matter which is the subject of the appeal. However, resolution at local level is rare. About eight per cent<sup>17</sup> of all appeals are resolved at this stage. Most of the interviewees stated that more should be made of this stage, but many appeal personnel noted a lack of desire among school personnel to invite parents to attempt to work out a solution with them. One committee member stated that "once the decision is made by the Board of Management to expel they don't see any reason why they should revisit it". Another said that the time gap allowed for local level procedures is a "waste of time", as it is not used. However, one management body representative believed that most schools already engage with parents at local level very well. This management body's policy was that if a Board of Management makes a decision affecting a student, it would advise the Board to offer the parents a right of appeal to the trustees. However, this interviewee noted that the likelihood of the trustees overturning the Board of Management decision was probably "slim enough". This is perhaps because the trustees of a school and the school's Board of

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<sup>17</sup> Appendix 21 presents statistics in relation to all appeals held between 2001 and 2011

Management have the same 'habitus' or cultural disposition described frequently in Bourdieu's works.

Interviewees acknowledged the reluctance of schools to attempt to broker local level agreements, especially in relation to appeals concerning refusal to enrol. In the words of one appeal committee member, the schools are "afraid to give a meeting to one parent about refusal to enrol because they see it as opening a floodgate". However, as noted by one parents' council representative, if more was made of trying to explain to parents the constraints on some schools in terms of enrolment "maybe it wouldn't go the next step, maybe it wouldn't cost money by having the facilitator and all of the people".

It was articulated by one of the management bodies that in appeals involving suspension and expulsion there was often a desire to move quickly to the actual hearing because people:

may not be able to be dispassionate as to the reason why the school is acting the way it was...So sometimes the quicker it goes to hearing and it is taken out of the hands of amateurs who are the individuals who are there, it is better to do that.

Another partner agreed saying:

People are so immersed and they are so entrenched and there is such history there, and such pain sometimes from everybody's point of view.

It was suggested by one appeal committee member that there should be an obligation for a report to be filed about what was done at local level to try to resolve the issue under appeal. This person suggested that this might encourage schools and parents to work harder at this level. Another suggested that the desire for local level resolution should be stressed in the documentation that is sent to parents and Boards of Management.

### **6.2.3 Facilitation**

Following local resolution stage, a period of up to one week is generally allowed for the facilitation process. Resolution during facilitation occurs in about 16% of all appeals. In addition, of the 20% of all appeals that are withdrawn by parents, 80% are withdrawn following facilitation. This suggests that such appeals are withdrawn

because of the facilitation process. Facilitation is thus an important step, as resolution is twice as likely at this stage than at the local level stage.

Most officials interviewed had a shared understanding of the purpose of facilitation, describing it as reaching an agreement, brokering a deal, and facilitating some kind of resolution between the parents and the school. One official described the facilitator “as a lone gun, there were no rules”. Another official talked about facilitation being “a half way house and it probably helps the parties to just step back a little bit from the conflict”. He said that:

The facilitator has the potential to do what the appeal committee should not be doing, the soft edges around the thing; the things that the human in you wants to suggest should be a solution here. That is what the facilitation is all about I think... Then when you come to the appeals end of it, it is more procedural, there are more high stakes at that stage.

There was evidence from the interview data that facilitators often brought their own cultural capital and viewpoints to bear on their work. Most appeal personnel spoke about different interpretations of the role among facilitators with general agreement that there is inconsistency in the way facilitators do their work. The vast majority of appeal committee members are also facilitators and all commented on their lack of training for the role of facilitator. One recalled reading a facilitation report, where it was obvious that:

this person lacked any understanding of national issues and of policy issues and came at it almost as a social worker...And I said to myself, how in the name of God are the Department going to issue that facilitator’s report?

The interview data suggests that some facilitators believe they can anticipate what will happen at an appeal hearing and therefore make personal judgements during the facilitation process and in the facilitation report. For example, some appeal personnel in interview stated that some facilitators try to tell parents and schools whether they will “win or lose” the appeal. Another facilitator said he might give a hint to parents or to a school as to the outcome by saying “look if this was a two horse race I wouldn't be betting on you. That is the strongest I would go...and I refuse to say if you go before the board you will lose this because the board is independent, the board aren't seeing what I am seeing”. This person commented that he would “love to be able to say to a parent you are wasting your time going ahead with this” but some of the

parents “are fired up by the EWO” who tells them that they have “nothing to lose” by taking the appeal.

Some committee members noted that parents are often happy to drop an appeal when a facilitator clarifies matters for them and shows how the school has acted reasonably. While there is no doubting the good intentions of facilitators who expressed a desire to direct parents in this way, such practice reflects the powerful position of the facilitator. Such practice may also act to further marginalise already marginalised parents, especially if they choose not to proceed with an appeal on the advice of the facilitator. A few facilitators criticised those who engage in such practice. One commented negatively on some facilitation reports saying: “It is almost as if they are trying to direct the committee as to which way the outcome should be and we would think that that is not appropriate.”

Committee members commented on the different styles of facilitators’ reports noting that some are very sketchy and others are much longer. This is clearly due to different interpretations of their role. One person commented:

Sometimes you will get people who will just give you a factual account of the interaction with the parents and the school and maybe haven't clarified the central issues in the thing.

DES officials and some appeal personnel noted that the role of facilitators changed somewhat after the establishment of the NEWB. Prior to its establishment, many facilitators took it upon themselves to find an alternative school placement for a child who had been refused enrolment or excluded from school. One official remarked:

And once the NEWB was established and education welfare officers were active on the ground, I think we basically directed or channelled that sort of creative approach more towards the role of the EWO than the facilitator.

All appeal personnel who had acted as facilitators remarked that facilitation is the most important part of the whole appeal process, as it can spare stress and trauma for parents in particular, if the appeal is resolved at this stage. Many facilitators noted that facilitation allows them to see first hand the difficulties experienced by some families. One person said the facilitator:

is the one person who gets to know intimately all sides of the story. You know what they eat for breakfast in the family. You're in the home, you see what

kind of chaos or order is in the place. You can readily identify disadvantage, or somebody who's a headbanger with a chip on the shoulder and so on.

Another said:

Sometimes, I feel during a hearing, in fact I would have said it at the end of a hearing, this case could have been sorted out at facilitation... and therefore saved everybody time and money and all the rest of it. It is not so much the saving to the State as much as not putting everybody through the agony of the hearing because a hearing is traumatic for both sides, particularly the families.

Another talked about seeing children who have been expelled or suspended saying:

And to be honest the fact that they go to school is an achievement. And it is difficult to convey that in a report, to try and be impartial at the same time. You don't want the school complaining that he only listens to one side of the argument. But really, when you visit some parents you'd wonder how they actually survived the five years at all in the school.

The lack of facilitation at VEC level was cited by all appeal personnel interviewed as being problematic, because if the appeal to the VEC sub-committee was not upheld, parents had to face another formal hearing. Given the formality of appeal hearings, this experience was seen by appeal personnel as being traumatic for parents, especially disadvantaged parents. However, it was noted by a number of interviewees that, in recognition of the fact that VEC committees cannot resolve disputes unlike a facilitator “who bargains”, some “enlightened” CEOs of VECs are now using facilitators before the hearing goes to the sub-committee. An appeal committee member, in criticising the lack of facilitation at VEC level stated:

It should be available to everybody and this is maybe a judgmental thing, but frequently the type of child that is going to be expelled from a VEC, the families may be needing facilitation to help them.

The facilitators cited above, perhaps because they directly see the impact of lack of economic, social and cultural capital on some families, interpret their role as to be an advocate for the children who are the subject of the appeal. However, an opposing viewpoint was expressed by some partners who criticised the solution-based focus of some facilitators. One former principal, when describing her experience of facilitation commented on how “people just wanted a solution very quickly” and described how she “felt really compromised...And there was language used at the time like, ‘exchange of prisoners’, and I really don't like that”. Most interviewees acknowledged that facilitation does provide parents and schools with an opportunity to voice their

opinions in a less formal environment than that of an appeal hearing and to an independent third party.

The interview data collected for this research indicates that facilitation was seen as being least likely to succeed when the issue under appeal was refusal to enrol in schools that were over-subscribed.

#### **6.2.4 The Appeal Committee**

An internal Department memo written on 1 September 2005 stated that those appointed to appeal committee and facilitator panels should be:

People with an intensive knowledge of the workings of primary and post-primary schools, (with a specific requirement for about 5 or 6 people with experience in the VEC sector). In practice most previous nominees have been retired Principals or VEC officials but it is important that the nominees have a balanced approach to the issues involved and will not be seen as 'insiders'. Section 29 committees are not supposed to be 'representative' of any sectional or organisational interest. Therefore, an independence of mind and an ability to appreciate all sides of the issues under consideration are important attributes for potential nominees. In order to avoid the situation of seeking nominations and then reviewing and possibly rejecting named individuals, great care should be taken in the first instance in deciding on the people to be approached. A desire to be involved in the section 29 appeal process is not in itself a sufficient reason for a nomination. A synopsis or summary of the reasons each person is considered suitable for nomination will be required. This should be a first step in advance of approaching the nominees.

As a result of this memo, it was decided that a small group of senior officials, mainly school inspectors would decide on suitable names for appeal panels. The chief and deputy chief inspectors were consulted about who they thought were suitable for these panels. One official said in interview that they looked for:

people who had retired recently who would potentially make good facilitators and committee members. People they felt were reliable and would be fair and wouldn't be swayed one way or the other.

This official commented that they did consider advertising for appeal committee members:

but we decided that it would just be such an elaborate system required and you would have to get into interviews and you would have to get into all sorts of things that it just wasn't going to work.



Committee members interviewed were uncertain about how they were nominated to appeal committees.

Appeal personnel and some partners criticised the fact that appeal personnel from primary backgrounds dealt with second-level appeals and vice versa although the contexts were completely different. One primary partner said:

We needed people with experience of the primary background and special ed. whereas second level were more focused on the expulsions and the suspensions and they wanted people who understood raucous teenage behaviour, they were the bigger issues.

The NEWB suggested (2007: 2) that persons from other backgrounds apart from teaching should be considered as members of the appeal committees; the suggestion being that because all those who sit on appeal committees have teaching backgrounds (even if they are now inspectors, retired principals, CEOs etc) they may have particular biases or views.

However, there was general agreement among those interviewed that the composition of appeal committees works. It was noted by one appeal committee member that some appeal personnel “brought a tremendous understanding of national issues and national negotiations...and there was a very legitimate basis on which decisions were made”. The management bodies stated that they were happy to have retired principals on appeal committees because of their understanding of schools. This attitude is in contrast to their attitude about the composition of appeal committees during the negotiations on the appeal procedures. The Select Committee on Education and Science’s discussions on the Education (Miscellaneous Provisions) Bill (2007) on 28 February 2007, debated the issue of placing serving teachers on appeal panels but the then serving Minister for Education, Minister Hanafin T.D. stated that there was never any criticism of the calibre of persons serving on appeal committees. It is possible that this lack of criticism arose because appointees to appeal committees are cultural insiders who therefore possess the same cultural and social capital and are part of the same cultural paradigm as school personnel and the wider education system. They have ‘insider’ status as educationalists and are familiar with the way schools operated.

Bourdieu (1986: 14) states that the “profits which accrue from membership in a group are the basis of the solidarity which makes them possible”. However, some appeal personnel indicated a lack of comfort with the manner in which some people who sit on appeal committees make known explicitly their insider status in education and reveal the fact that they share the same social and cultural capital as schools. One interviewee said he would always ask, when invited to chair a committee, who else will be on the committee:

Because it is just walking into trouble if you have such a person ... I really think it is a fundamental lack of appreciation or knowledge of what Section 29s are about and that it is not about looking at the particular school and taking pity on it or whatever else.

Another talked about some appeal personnel making:

inappropriate statements...about equality or about Travellers or about something. I know what your group feels about this sort of thing. And that would be inappropriate at best and it would be discriminatory, unintentionally.

Many committee members stated that it is often difficult to be truly independent as oftentimes committee members, by virtue of their insider status and social capital, know the school personnel facing them. As noted by one interviewee:

They may be friends with the people who are sitting across the table, they may have worked with them, they may have done some facilitation for them as retired principals. They may have given them some in-service on Section 29. So it can be a little bit cosy at the school and appeals committee.

Some committee members also displayed a sense of embarrassment about the behaviour of some appeal personnel whom they saw as almost flaunting their insider status. As stated by one person:

There were some people who didn't seem to have the cop on that as a committee we sit there and we're independent and you don't start talking about your own background and all the great things you did and your work and so on at a hearing, because first of all it is irrelevant, and secondly we're not supposed to declare who we are or where we've come from because that would maybe create a situation where parents could feel that this is all jobs for the boys. That crowd there are all principals together or the inspector or whatever.

One former appeal committee member speculated, in relation to principals who then became members of appeal committees:

to what extent it was realistic to expect a person to leave the baggage behind them in that very short period of time and take a more detached view of the issues.

He gave as an example a case where:

a student had been thrown out of a certain school and the mother... applied then to their nearest school which they had by-passed at the very start and now they came back in their hour of need and they appealed. And there was capacity in that school but the school refused. And I do remember a comment being made by a member of the committee before the hearing started, 'I have no time anyhow for parents who by-pass their local school and go on to another school and then try to come back.' And my immediate reaction was, I said, 'look I understand that you would have that view as the principal of the school but it wouldn't be acceptable as a member of a national appeals committee.' He was bringing baggage, there was capacity in the school and parents have the right to choose the school.

Another committee member gave an example of a refusal to enrol appeal where:

The argument was made by this person that first of all a person should not be allowed apply to a school in November. It would upset the class, it would upset the school and why should they have to accommodate somebody in November. So my view was a person is entitled to apply to a school in any of the 12 months of the year and obviously it will be dealt with by the whatever. The issue moved on from that to the next argument which was that that is a lovely school and why should a school like that be asked to accommodate a child with his difficulties. So that was as blatant an example as I have seen of somebody bringing personal... nothing to do with Section 29, it showed no understanding of what we were supposed to be about.

The need for appeal personnel not to bring their social and cultural capital to bear on appeals was articulated by one appeal committee member interviewed. This interviewee stated that appeal personnel should have:

No connection with the parties at all, no previous history, not have any professional connection or personal connection with any party. That is very, very important...And there is also the issue of actual transparency and perceived transparency as well where these committee members, as they are generally objective and have no vested interested, it is important that we don't engage with any chit-chat with either side, that it is, hello, nice day and goodbye afterwards. That those procedural aspects are all dealt with in a very systematic and standard way.

Department officials interviewed suggested that they had tried to balance the cultural insider status of some appeal committees by placing an inspector on each committee. The inspector was believed by these officials to bring knowledge of the Department's

policies to the appeal hearing. Inspectors who were interviewed noted that when on appeal committees they act independently. One stated that:

Inspectors always had that connection with schools and have a very good sense of what's going on in schools and how schools operate a lot of the time.

However, the insider knowledge by inspectors of schools, seen as an advantage by most of those who were interviewed, could be interpreted as perpetuating what Bourdieu (1990: 133) calls "the established order". The cultural insiders - the inspectors and the appeal committee members, saw their knowledge of the education system as being an advantage. This view was not shared by parents interviewed. Parents saw themselves as outsiders and understood the appeal committee as being made up of insiders who represented the powerful and the status quo. This is further discussed in Chapter 9.

An analysis of the responses of the interviews suggests that many appeal personnel are self-replicating of the cultural norm. Those nominated to appeal committees have the same level of social and cultural capital as those who run schools or are partners in education. In nominating such people to serve on appeal committees, the State has reproduced the conditions necessary for those with the most cultural capital to perpetuate their domination within the education system. It is hardly surprising that the partners now do not object to former principals sitting on Section 29 appeal committees, as they know they have a deep understanding of how schools operate. What is less clear is how much of an understanding these people have of the life of the marginalised in society. There is clearly a power differential inherent in the Section 29 appeal process with the result that many appellants may feel that they are fighting a system as opposed to facing an independent appeal committee, thus confirming Bourdieu's (1989) analysis that elite groups perpetuate their own elitism.

Some appeal personnel expressed concern that, because some members of appeal committees were long retired, they were not in touch with the reality of school life. One said:

concerns have arisen in relation to things like the conduct of the appeals, the chairing of the appeals, the with-it-ness or otherwise of retired people doing them. Some retired people are excellent and some retired people are not so excellent. Some even might have lost the grip. There is no getting off appeals,

how do you get off the appeals committees? And how do you get on them might be an interesting process as well.

This was reflected by one of the partners interviewed who stated that:

There was a perception that some people were sitting on appeals committees who had been out of schools for more than 15 years and they were people in their late 70s or whatever it was that were coming in and they had unrealistic expectations of what schools could do.

One committee member concluded that there is no method of monitoring the quality control of appeals. Disquiet was expressed by a number of appeal personnel about more recent nominations to appeal committees because of their perceived lack of knowledge about appeals and because of the way they conduct appeal hearings. One talked about:

a new cohort of people that came in a few years ago and I'm not quite sure if they really know what they are doing. They didn't bring the same richness of experiences.

Another discussed the need for proper debate when arriving at a determination, "and this is where perhaps the people, who don't carry the same amount of experience in their hand baggage with them to call upon, don't have it". This person said: "There are some who clock watch and feel it should be possible to make a decision and get the report written in half an hour."

There was general agreement by all appeal personnel that the quality of chairing of appeal committees varies enormously. Some reservations were expressed about the manner in which some appeal committees are chaired. For example, there was some criticism of chairpersons who give their opinion on the outcome of the appeal to the committee prior to asking their opinion, despite the fact that the chair is supposed to have the casting vote in cases of disagreement. It was noted by some committee members that certain people have a monopoly on chairing appeals.

All appeal personnel were critical of the absence of ongoing training for appeal committee members. Most said the training they did receive when they became involved in Section 29 was observing an appeal committee hearing although one recalled being asked to chair his first appeal without any training or shadowing. Two recalled "being sent to Tullamore", where appeals were administered at the time, with

six or seven new members and were given a talk by appeal personnel. This inevitably has led to lack of consistency of practice among appeal committees and this is discussed in the next section of this chapter.

### **6.2.5 The Terms of Reference for an Appeal Hearing**

All Department officials stated in interview that the main terms of reference for determining an appeal should be to focus on the application of fair and correct procedures by schools. However, they had different views about how far other issues could or could not be taken into account in reaching a determination. Some believed that appeal committees should focus on procedures only, whereas others believed that appeal committees should also focus on whether the decision to expel or refuse enrolment was fair or not in the first place. Some Department officials believed that appeal personnel, because of their insider status, use their knowledge of the education system to make decisions that schools see as fair. One official, noting that most of those who served on appeal committees were ex-school principals, said:

There was an unspoken understanding among the committee members of the difficulties that a school could be faced with. And I am sure there were situations where the committee felt that the school possibly hadn't followed procedure completely or fully or fairly but that their decision might have been justifiable based on what was presented to the committee.

Another official stated that:

Sometimes you have to recognise that there are hard decisions made by schools that mightn't be strictly within their rules but equally substantially did they make the right decision. And I think if somebody is the inspector or is of the great and the good of the education system in Ireland they probably have a greater sense of stepping back from the process and seeing in broad terms was this the right sort of decision. Is this a fair decision when you strip all of the rest of it away?

One official stated that appeal committees undoubtedly went outside of their remit when what they should have been doing was reviewing procedures. He stated that:

An appeal system should be one which essentially doesn't end up rehearing the whole thing but establishes whether process was followed and all the relevant steps were followed appropriately. And very often people don't get into the space I think and it can sometimes be a function of fuzzy thinking. They see their role as actually being essentially to revisit the whole thing de nova.

This official believes that the purpose of an appeal determination is:

not to actually supplant your judgement for the judgement of the people doing the job so it isn't the job of the appeals committee to supplant its judgement for the judgement of the school Board of Management. But it is to ascertain if the school Board of Management has given due attention to natural justice.

Appeal personnel had different views about the terms of reference for appeal hearings. Most of the appeal personnel interviewed suggested that ensuring that the school abided by its policy and procedures was the key to determining appeals, but also that other factors must also be taken into account. However, another said:

I think some appeals committees were focusing on the substance of cases, others were focusing more exclusively on procedures and there was always that tension, was it substance or procedures? Do we look at the merits of the case? Do we just look at the application, procedures and policies?

Some appeal personnel interviewed described how some members of appeal committee are "too anxious to find procedural defects of the smallest type to trip up either one side or the other, usually the school". This practice, often the result of appeal personnel believing that their role is to act as advocates for the appellants, was seen as being unfair on schools by those appeal personnel interviewed. For example, it was evident that some appeal personnel were cognisant of the future education of the child who was the subject of the appeal. One committee member stated that some appeal committees are:

particularly concerned I suppose if the student is out of school altogether even though it is not the substance of the appeal, it would be at the back of the mind that this child has no school at all and there are legal responsibilities etc.

Other appeal committee members also spoke about making decisions based on compassionate grounds saying "mind you now, making a decision based on compassionate grounds, where do you stop?" This is reiterated by another interviewee who said: "There is a danger, once you get into this whole area of compassion and discretion, there is a huge danger because that opens the flood gates for misuse of the procedures and appeals."

One committee member said that he had a rule of thumb that:

if there is a procedural defect, did it materially affect the outcome? Would this child have got a place if they had acted properly? Would this child not have been expelled if they had acted properly? That would be my rule of thumb. It wouldn't be everybody's.

This person went to say that in making a decision he is trying to:

do justice rather than doing law or whatever. In other words, has the school acted unfairly and has it deprived this child of being in an education... But if there are procedural defects, which if remedied would not have resulted in the child getting a place in the school, then I feel that it is unfair on other children and unfair on the school to insist that that child be jumped over everybody and given a place.... On the other hand, whether I am entitled to have that rule of thumb is another issue.

The High Court judgement (Judicial Review 2011: 266 JR), discussed in more detail in Chapter 8, was cited by an appeal committee member as being of significant importance in defining the scope of appeal committees. This interviewee described how the judgement allows for determinations to be made on the facts of the case, the procedures that were applied, due process and:

the other factors around that case, something that may explain the particular behaviour, the efforts of the school in the past to address it, track record of the pupil. Those other softer, but yet nonetheless significant aspects, that are taken into account.

Evidence from the above interview data suggests that appeal personnel, despite being cultural insiders, because of their backgrounds in education, did not allow this insider status to affect their determinations. In fact, the above evidence suggests that some appeal personnel become advocates for the appellant during the course of appeal hearings. It was noted by one Department official that one of the disadvantages of appeals was:

the freedom that the committees had to determine their own scope. And possibly as time went on and I suppose as confidence grew within individual committee members they may have, in some instances, slightly over reached.

Partners had varying views as to what the terms of reference for appeal determinations should be. Some accepted as legitimate the fact that appeal committees often look beyond procedures and ask the school what efforts at remediation have taken place to assist the child. However, most partners criticised the advocacy role of some appeal personnel. One noted that:

sometimes people's personal circumstances are taken more into account maybe than, I am talking in terms of family circumstances or family backgrounds of a child that might be excluded, they may have been taken into account when really those circumstances weren't as relevant as the actions of the child in the school might have been.



Another said:

They should see has there been fairness in what has been done? Is the sanction appropriate to the misdemeanour and was the process at school level open, transparent and clear to the parents coming before the Board of Management.

Evidence from interview data suggests that, by exercising an independent role, appeal personnel, who are cultural insiders because of their connections to schools, can be perceived as cultural outsiders by the school authorities, especially when they do not uphold the decision of the school authorities. The sense of appeal committees going outside of their remit was reiterated by almost all of the partners in their interviews. There was a suggestion by some interviewees that the failure of appeal committees to find in favour of schools, in some instances, was interpreted as a betrayal of their insider status and of not upholding the dominance of the cultural capital inherent in their insider status. One interviewee noted:

I certainly think there was a notion of a power thing...they did go beyond their remit at the time, it kind of got to a silly point really of pulling things apart, even just words. I really felt it got to that stage. Then you are into the win/lose, you are into the you and me, that is not a healthy process.

One of the interviewees, representing an organisation that initially wanted a serving teacher to sit on the appeal committees, stated that:

if teachers became associated with an appeals system that consistently overturned the decision of school boards on which teachers are represented it might not be such a nice comfortable position for us to be in.

At the time these interviews were conducted, clarity had been received from the Supreme Court (Chapter 8) in relation to the scope of an appeal. However, it is evident that there is confusion on the part of many interviewees as to what the terms of reference for appeals are. It is also evident that a power struggle between schools and appeal committees has emerged, given the perception by some interviewees that appeal committees have gone beyond their remit in terms of their scope.

### **6.2.6 Appeal Determinations**

A power struggle of sorts has also emerged between the Department and appeal committees, although the Department does not have the power to interfere with the determinations of appeal committees, despite not agreeing, in some instances with these decisions. Officials interviewed described a lack of consistency among appeal

committees in their determinations. They acknowledged that part of the reason for this is that they did not invest enough time in bringing appeal committees together to share their experiences and ensure consistency. One interviewee, commenting on the different interpretations by appeal committee members of their role, said:

But then we were on a learning curve too so we probably didn't appreciate as much that there could be these variations that might happen, and that different appeals committees might see things in different ways and maybe not fully understand the scope of where their powers lay.

One Department official noted that, although officials sometimes felt that the nature of the determination made no sense, there was never any attempt by a Secretary General to “actually change a decision or even change wording in a decision”. This was the case even if the decision was seen to be inappropriate because “the independence of the committee was protected scrupulously”.

The appeals administration unit tries to ensure consistency between committees in cases when a number of appeals are made against the same school. They do this by placing at least one person in common on all committees. However, despite this, a number of people recalled appeals in particular schools where there were “over five or six appeals with virtually identical circumstances, maybe three were upheld and two were not”. To avoid situations like this recurring, one Department official noted that they did consider having a smaller number of full-time appeal committees in order to decrease variation in appeal committee findings. However, this was rejected as they were reliant on retired people “who didn't want to work full time”.

Two appeal committee members noted that it was easier to have consistency in the early days of appeals as there were fewer committees and the members knew each other: “We tick-tacked on cases... But as the appeal committees grew that bond loosened.” However, most members noted that there was rarely a need for a chair to cast his/her vote in arriving at a determination as there was consensus in most cases.

It could be suggested that school personnel see the appeal process as a challenge to their authority to use their power unhindered. In this construct, schools view appeal committees as cultural outsiders. Some schools have complained about appeal committee members because of their aggressive attitudes to them during the hearing.

Committee members interviewed commented on different styles of interactions, different styles of questions and the different priorities of various appeal committees and some noted that criticisms about committees are often more about their attitude to people during the appeal as opposed to the actual determination. Many appeal personnel criticised the Department for its lack of follow-up to see if determinations have been implemented by schools. One suggested that schools should be asked to state formally that they have complied with determinations. This suggests that appeal personnel, perhaps because of their insider knowledge of schools, are aware that some schools might ignore the results of the appeal determination. It also indicates the interest that appeal personnel have in ensuring that justice is done for the child whose appeal has been upheld.

Some appeal personnel spoke of appeals that were based on differences of opinion between appellants and schools. An example was given of a family that claimed it had applied for a place in a school for their child. However, the school claimed that it never received the application. Another example was given of an expulsion case where there were no witnesses so that the appeal came down to a teacher's allegation and a student's denial. The Board of Management sided with the teacher's version of events, confirming Bourdieu and Passeron's view (1990) that the power of teachers has traditionally gone unquestioned in schools. The parents believed their son. One appeal committee member stated:

And here you have the life of two people, no witnesses, an allegation that can't be proved one way or the other and the appeals committee is asked to make a decision on that. How do you make a decision on something where there is no evidence whatsoever? What do you do in a case where you don't have evidence for or against? Do you say because there is no evidence for or against then we are going to uphold this, in other words the status quo? ...Because you have to play God, don't you, and make a judgement.

Some of the interviewees would, therefore, like to reintroduce the option where the appeal committee can send such cases where there is no direct evidence for or against a situation back to the Board of Management. One interviewee said:

I think if a committee is in a dilemma I feel there should be a way of saying we can't decide on this because we don't have evidence for or against so we have to kick it back and see if you can solve it yourselves.

Upholding an appeal in part has always been allowed for in the Section 29 legislation. However, it was only recently that it was used by an appeal committees following

advice to the Department from the Attorney General's office. This was in relation to a refusal to enrol where the school had mishandled certain aspects of its admission procedures. This had resulted in a child being placed very far down on a waiting list for the school. The appeal committee found that, even with the correct procedures being applied, the student would not have received a place notwithstanding the fact that his place on the waiting list of the school for admission would have moved up significantly as a result. In this case, the appeal was upheld in part, in that the student was moved from 75<sup>th</sup> to 13<sup>th</sup> on the waiting list. However, he didn't automatically get a place in the school. Not all committee personnel were aware of the possibility of upholding in part.

It is evident that there are many variations in the manner in which appeal committees reach their determinations during appeal committees. The different priorities and viewpoints of different appeal personnel often result in inconsistency of practice which frustrates schools, the Department and the appeal personnel themselves. The perception among schools that many determinations are unreasonable and that many appeal committees want to exert their power over schools is reinforced by a lack of clear terms of reference for appeal committees.

### **6.2.7 Administration of Appeals**

There was criticism by some appeal personnel interviewed of the current processes for administering appeals. In the early years, appeals were administered from the Department offices in Tullamore and those administering them were described by one committee member as being "really clued in and in my view operated absolutely professionally". However, over the years, personnel in the appeals administration section have changed. One committee member said: "The pity of it is that the expertise built up is not passed on." Another discussed how mistakes are made that are passed on due to factors such as "a fuzziness around who is allowed to attend and who is allowed to speak". One committee member described "a carelessness" about how appeals are processed. According to this interviewee, the fact that the appeals are now being administered from the Department offices in Mullingar and the officials in charge of appeals operate from the Department offices in Athlone is a difficulty.

One appeal committee member and one partner described how the 42 day timeframe for admitting and administering an appeal is not being adhered to by the section

administering appeals. The appeal committee member stated that the delay disadvantages children who had no school place:

So long as a parent has the paperwork into the Department, people in the Department are taking the decision about when they will admit it. Therefore, you could have two to three weeks before it actually moves on to facilitation and hearing.

An education partner, coming from a different perspective, also criticised this practice because of the upset experienced by schools when appeals are admitted after the timeframe has elapsed. Another partner, with a different perspective again, described how VEC appeals are frequently accepted outside the timeframe in order to take account of poor and marginalised parents who are often late in applying for school places. In discussing such parents, this person said:

We would have some of our principals in very disadvantaged areas who would keep places open even though the parents haven't come back because they would know well that come the 1st September that child will turn up even though they haven't put in an enrolment form. It is just the way it is, because if parents lives are in a bit of chaos, that happens.

The long delay between the actual hearing and the releasing of the determination by the Secretary General was also averted to by some appeal personnel as the delay can further disrupt a child's education.

Department figures indicate that there were 25 inspectors and 31 other ministerial nominees on a panel for Section 29 hearings as of November 2012. Most serve on appeal committees in the region where they live. This was perceived by some appeal personnel as problematic, because the likelihood of knowing the school personnel who are the subject of hearings increases if the appeal personnel live in the same region. Thus, the perception by parents that appeal personnel are insiders is reinforced.

The physical setting in which appeals take place was also of concern to some interviewees. Because of cost-cutting measures, appeals are now heard in Government offices, rather than in hotels, as was previously the case. Some interviewees interpreted this as reinforcing the belief by some parents that they are confronting the "established order" in State-owned buildings.

The Department authorities require that all appellants make their appeal applications, stating the reasons for their appeal, on a standard form. However, many interviewees reported that some marginalised parents do not have the insider knowledge or the cultural savvy to know what to include on the form. Some appeal personnel expressed the view that, when no reason for an appeal is given, the appeal should not be admitted. However, Department officials disagree, expressing awareness of the fact that some parents may be less articulate than others and may not have the skills to adequately record the grounds and reasons for their appeal on the form.

### 6.3 ANALYSIS OF APPEAL HEARINGS<sup>18</sup>

#### 6.3.1 Analysis of Appeals that were Upheld

An analysis was carried out of 64 appeal determinations made and upheld in 2004 and 62 appeal determinations made and upheld in 2005, to examine the issues that appeal committees took into consideration in reaching their determinations. Table 6.1 presents the results.

*Table 6.1: Analysis of appeal hearings that were upheld (2004 and 2005)*

	<b>Refusals to enrol</b>	<b>Suspension</b>	<b>Permanent exclusion</b>
<b>2004</b> (64 determinations analysed)	52	2	10
<b>2005</b> (62 determinations analysed)	46	4	12

In the early years of appeals, many schools lost appeals due to procedural inconsistencies. From an analysis of the determinations made in relation to appeals upheld in 2004, it is evident that many schools had not got their policies in order. Inadequacies of policies and/or procedures were cited as reasons for upholding the appeal in 28 determinations. In two determinations, it was stated that the school had no policy relating to the matter under appeal. In 34 determinations a recommendation was made that the school should review its policies and procedures. The fact that the school, which was the subject of the appeal, was the school of choice of the appellant

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<sup>18</sup> As noted in Chapter 2, the names of the schools and appellants were redacted in these determinations due to data protection issues.

was cited as a reason for upholding 25 appeals. The child's right to an education was cited as a reason for upholding 16 appeals.

In appeals relating to refusals to enrol, the appeal committees in three instances took into account a particular family circumstance to have a child readmitted to a school. In one such case, the school had fully abided by its published policy but the appeal committee argued that a particular circumstance warranted the child being given access to a school. In this instance, the Secretary General of the Department decided not to direct the school to enrol the student as the enrolment policy was not deficient and the school had followed its procedures. This was the only time that the Secretary General overturned a decision made by an appeal committee.

The analysis of appeal determinations shows that a large number of appeals relating to refusal to enrol were located in Limerick. This was because a considerable number of marginalised children could not find a place in any second-level school in Limerick, as the school which normally enrolled such children had closed. It is suggested that such refusals to enrol reflect Bourdieu's theory of cultural capital. The other schools in Limerick refused to enrol children who did not possess the cultural capital of their school communities. Thus, the self-perpetuating elite were maintaining their cultural hegemony and power.

A number of refusal to enrol appeals related to pupils with special educational needs (SEN). Nine appeals related to pupils with learning disabilities and five appeals related to pupils perceived as having behavioural problems or who were diagnosed as suffering from disorders such as ADHD. A review of the determinations in these cases shows that many schools refused enrolment to these pupils due to the nature of the SEN or behavioural difficulty as opposed to not having accommodation for the child. Many of these schools stated in their enrolment policies that pupils would not be enrolled until certain resources were put in place by the Department of Education. The appeal committees recommended in five cases that the enrolment of the student with SEN be deferred until the resources were put in place. A total of eight appeal determinations also recommended the continuation of home tuition for a period of time before the child was allowed to fully enrol in a school. These appeals demonstrate that some schools were unwilling to enrol children who were potentially

challenging to teach so that they could maintain the status quo in their schools by educating only those that they deemed educable. This again reflects the power differential in society. School authorities selected the children who most reflected the middle-class cultural values of the school.

Frequently the appeal committees tried to use their power to affect change at system as well as at school level. Many committees recommended to the DES, as a result of appeals relating to over-subscription, that issues such as the demand for places in certain areas of Dublin and other parts of the country be addressed. In nine appeal determinations, a request was made directly to the Department to respond as a matter of urgency to accommodation issues, refurbishment needs of schools or resource needs of pupils. There was also criticism in two determinations of the procedures used by two VECs in determining appeal hearings.<sup>19</sup>

Almost all of the appeals concerning exclusion and suspension related to boys, in keeping with patterns of exclusions in other countries. In exclusion appeals, the analysis indicates that the appeal committees sometimes imposed their own views on the views of the school in relation to what merited exclusion. There were four cases analysed where the appeal committees stated that the nature of the students' misbehaviour was not serious enough to warrant the ultimate sanction of exclusion even though the schools believed that it did. In two determinations the fact that the schools involved did not seek resources to manage the children's behaviour was given as a reason for upholding the appeals.

The appeal committees frequently recommended the convening of case conferences in appeals relating to exclusion that were upheld. This was in order to ease the student's transition back to school or to support the school in managing his/her behaviour. Eleven of the 64 appeals analysed recommended that such case conferences be convened. Committees mainly recommended that the NEWB convene these conferences and the committees also stipulated who should attend. They normally

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<sup>19</sup> It was noted by one committee member interviewed that the VEC procedures stipulate that two members of the Board of Management or the principal and one member of the board should speak at the full hearing. However, the interviewee stated that frequently the principal and the CEO appeared at the hearing without a member of the Board of Management.



requested that the local school's inspector, the local National Educational Psychological Services' (NEPS) psychologist and other personnel including, in some cases, the local gardaí, should attend these case conferences. They also requested that relevant resources be put in place to support the child. In a further eleven of the determinations analysed, the appeal committees recommended that a psychological assessment of the child be carried out prior to being readmitted in the school.

The analysis of the appeal determinations reveals inconsistency of practice among different appeal committees so that sometimes the same reasons were given for upholding and not upholding appeals. For example, health and safety concerns were offered as a reason not to uphold some appeals, yet two appeals were upheld despite health and safety concerns being mentioned. It was also evident that the appeal committees gave credence to parents' undertakings to support the school and to the views of the EWO. For example, in a determination relating to an exclusion, although the boy had a record of persistent misbehaviour, the appeal committee was "of the view that it is not of sufficient gravity to warrant expulsion" and accepted the report of the EWO that his behaviour might improve if given another chance in school. The appeal committees, in four instances, also noted the willingness of the parents to sign an undertaking of cooperation. In the two cases where there was a dispute about events in relation to enrolment procedures, the benefit of the doubt was given to the parents by the appeal committees. In these cases, the appeal committees appeared to act as advocates for the appellants.

Many of the issues mentioned above re-occurred in 2005. Inconsistency of practice among appeal committees continued. For example, some appeal committees used the failure of the school to notify parents of their right of appeal as a reason for upholding the appeal, while other committees just noted that this was a factor that was taken into account in arriving at the determination. Some appeal committees acknowledged that the school's discipline policy was adhered to, but still upheld the appeal on the grounds that not enough was done to support the child by the school. In refusal to enrol appeals, the fact that the school which was the subject of the appeal was the school of choice of the appellants, was frequently cited as a reason to uphold the appeal. Thus the dominance of the cultural voice of the school was being questioned. By accepting the right of parents to enrol a child in their school of choice, the appeal

committees were challenging the dominant cultural values of the school to accept only middle-class children. The appeal committees often ruled that a school which refused enrolment to a child had the capacity to enrol the child even though the school argued that it had not. In so doing, the appeal committees were challenging the power of schools to determine their own policies.

This analysis reveals that appeal committees frequently challenged school policies and procedures in relation to enrolment and discipline. It was evident that appeal committees, in many cases, believed that schools acted inappropriately in refusing to enrol or excluding pupils and mandated these schools to accept pupils that they heretofore would not have accepted. The cultural dominance of the middle-class schools was also challenged by appeal committees who believed, in many cases, that schools were not doing enough to support the vulnerable child. Frequently, they questioned the practices of schools and made decisions about who merited exclusion and who did not. As schools experienced a diminution of their power as a result of appeals, appeal committees tried to use their power to secure additional resources for schools, to convene case conferences and recommend the building of additional accommodation. The above analysis also indicates the non-inclusive practices in some schools, particularly schools that refused enrolment to marginalised pupils or pupils with SEN.

### 6.3.2 Appeals that were not Upheld

Table 6.2 indicates the number of determinations that were not upheld in 2004 and 2005.

*Table 6.2: Analysis of appeal hearings that were not upheld (2004 and 2005)*

	<b>Refusals to enrol</b>	<b>Suspension</b>	<b>Permanent exclusion</b>
<b>2004</b> (51 determinations analysed)	36	0	15
<b>2005</b> (96 determinations analysed)	47	2	47

In the majority of appeals that were not upheld in relation to refusals to enrol, the NEWB was asked by the appeal committees to assist the parents in securing alternative places for the children who were the subject of the appeal. The

determinations indicate that many EWOs recommended to appellants that they should lodge an appeal as a first course of action after being refused enrolment in a school. Parents of children, who were expelled from one school, often lodged appeals against another school, if that school refused to enrol them. In these instances, the schools often cited the student's behavioural record in his/her previous school as the reason for refusal to enrol. In addition, pupils who were not formally expelled from one school, but were advised against returning to the school because of their behavioural record, were often the subject of appeals in another school if they were refused enrolment there. This practice of 'de facto' exclusion is discussed in detail in the next chapter.

It is apparent from an analysis of the appeal determinations in relation to expulsion and suspension, that different appeal committees had different priorities and viewpoints and that they upheld or did not uphold an appeal depending on these priorities. Some committees looked only at the policy and procedures followed in making their determination while others did not. Appeal committees sometimes made no reference to the procedures and policy of the school when determining not to uphold appeals. Some determinations were more explicit than others in relation to what factors they took into account in reaching their determination than others. Some appeal committees did not uphold appeals despite ambiguities in policies, which were noted or taken into account. The analysis also indicates that many schools appeared to have supported the pupil who was the subject of the appeal in terms of interventions to manage his/her behaviour. This was cited as a reason in many cases for not upholding an appeal. In these schools, the "ethic of care" as described by Ryan (2004) was evidently prioritised because such schools went to great lengths to put resources and interventions in place to match the needs of individual pupils.

An analysis of Tables 6.1 and 6.2 indicates that in 2004 more appeals were upheld than not upheld, whereas in 2005 more appeals were not upheld than were upheld. The analysis of appeal determinations indicates that schools were getting better at documenting their practice. Not following procedures decreased as a reason for not upholding appeals. Once again, the vast majority of exclusion cases related to teenage boys. Some appeal committees went into great detail in their determinations while other determinations were very sketchy.

## **6.4 COMPARISONS BETWEEN APPEALS IN IRELAND AND OTHER JURISDICTIONS**

There are fundamental differences between the composition of appeal committees in jurisdictions in the U.K. and in Ireland. The composition and size of appeal committees depends on the nature of the appeal in other jurisdictions whereas in Ireland, the composition of appeal committees is the same for all types of appeals. In the U.K., lay members, who are non-educationalists, as well as parents and teachers, sit on admission appeals, whereas a head teacher, governor and lay member sit on exclusion appeals. All who sit on these committees must be completely independent of the school and of the LEA. The decision to form appeal committees independently of the LEAs was made because it was recognised that those who were appointed to appeal committees by the LEAs had the same cultural and social capital as the LEAs and hence could not be independent. Parents' representatives or practising teachers may not sit on appeal committees in Ireland, although most inspectors and committee members were practising teachers at some time in their careers. The Scottish Committee of the Council of Tribunals in a special report (2000) indicated awareness that members of appeal committees bring their own social and cultural capital to bear on appeals outcomes. It questioned (2000: 9) "whether membership of the committees is constituted in such a way as to assess fairly and properly the matter under appeal".

While there are many similarities between the manner in which appeals are conducted in England, Scotland, Wales and Northern Ireland and the Republic of Ireland, a fundamental difference is that the appeals are described as tribunals in all U.K. jurisdictions. In the U.K., in determining appeals in relation to admission, the appeal panels examine if the admission arrangements were properly followed and applied. However, Murray (2008) notes that "they will not look at whether they were the right arrangements in the first place". This is similar to Ireland in the sense that appeal committees may uphold an appeal in relation to enrolment if the school has not followed its policy and procedures, but the committees may not question the content of the actual policy.

As in Ireland, the outcomes of appeals in the U.K. are binding on both parties. Also, similar to other jurisdictions, multiple appeal hearings take place in Ireland.

The actual conduct of each hearing is broadly similar in all jurisdictions. However, appeal committees in the U.K. have a wider range of options in making their determinations than in Ireland. They can compel schools and LEAs to write letters of apology to the appellants, ask schools and LEAs to devise policies and arrange for training of staff in relation to certain issues.

Glendenning (2006a: 189) notes how in England, appeal boards are now mandated to not only consider the impact of the exclusion on the pupil concerned, but also to consider the impact on the other pupils in the school and on the persons teaching them, “so as to achieve a better balance between the interests of the excluded students and the interests of others in the school”. These appeal boards were previously required, when making their decisions, to consider only the impact of the exclusion on the pupil concerned. In Ireland there had been much criticism that the rights of the compliant majority of pupils in schools were not taken into account by appeal committees in making their determinations. This led to the drafting of a section of the Education (Miscellaneous Provisions) Act (2007) which amended the criteria that appeal committees must take into account in determining appeals. These new criteria include: “the educational interests of, and the effective provision of education for, other students of the school” and “the safety, health and welfare of teachers, students and staff of the school”. This Act is further discussed in Chapter 8. In U.K. jurisdictions, in situations where a school refuses to accept the determination of an appeal board, the parents or school may appeal to the local sheriff or ombudsman or, similar to here, the legitimacy of the decision can be brought for judicial review.

The issue of the lack of training of appeal committees is common to the U.K. and Ireland. So too is the issue of the lack of consistency of appeal committees. The report of the Scottish Committee of the Council of Tribunals noted a lack of consistency in terms of the decision-making processes of appeal committees. It noted that some decisions were taken on a “show of hands without discussion and without considering the facts of the case and adopting a structured approach to reaching a conclusion”. It also criticised the language of determinations, which it believed was too wordy and difficult for some marginalised parents to understand. A Code of Practice (2001) for hearing appeals was developed in Scotland by the Convention of Scottish Local Authorities (COSLA) as a result of this concern. Concern has also been expressed in

England and Wales about lack of consistency in the decision-making processes of appeal tribunals. Brown (2006: 3) notes that there is no communication between one local authority area and another in the way they conduct their appeals and no sharing of best practice. In Ireland, there has been very little training for appeal personnel and no specific training for chairs of committees. In addition, there are no opportunities to formally share good practice.

## **6.5 CONCLUSION**

Bourdieu (1990: 36) contends that a participant is governed in his/her actions “by a number of interests, purposes, and sentiments, dependent upon his specific position, which impair his understanding of the total situation”. This contention is verified by an analysis of the interview data in relation to appeal committees. While those who sit on Section 29 appeal committees or who act as facilitators were identified by the DES for their expertise and knowledge of education and their open minds, there are inherent difficulties evident in the composition of appeal committees. All members of committees are educationalists or former educationalists and this research suggests that the cultural and social capital of appeal committees can be powerful in determining the outcomes of appeals. Sometimes, by virtue of the fact that appeal personnel share the same cultural and social capital as the schools they are meeting at hearings, some are unable to be truly independent. Other facilitators and appeal personnel see their role as being to advocate for the marginalised and they too are unable to be truly independent. While all appeal committees are meant to be independent, the particular viewpoints and biases of some appeal personnel appear to dominate the manner in which many appeals are transacted.

The evidence in this chapter suggests that school personnel are often unwilling to engage with parents or pupils in an effort to resolve an issue before it goes to an appeal hearing. This may be because there is a lack of desire on the part of schools to broker an agreement at this level, possibly because school personnel are entrenched in their views about the child who is the subject of the appeal. Considering that the outcome of an appeal has a strong bearing on the life chances of a child, it is regrettable that more use is not made by schools and parents of the local level procedures. While the facilitation of appeals is more successful, it is evident that there

is a lack of a common understanding among facilitators about their role. VEC procedures are also revealed to be problematic, especially for those parents with less recognised social and linguistic capital who may have to face two different appeal committees, each made up of educationalists with much valued social, linguistic and cultural capital. Perhaps the biggest challenge for appeals is the different viewpoints and understandings by appeal personnel, partners and even DES officials as to the terms of reference for appeal hearings.

The evidence suggests an urgent need to clarify the terms of reference for appeal hearings and the purpose of facilitation. In addition, clear procedures need to be developed on charring appeals. A code of best practice in relation to the conduct of appeals would be worthwhile in Ireland. There is also a need for clear procedures in relation to how to administer appeals so that there are no unwarranted delays in processing appeals. Such delays could further disadvantage children, often from marginalised backgrounds who are already out of school.

## **CHAPTER 7: ENROLMENT AND EXCLUSION ISSUES: THE CULTURE OF SCHOOLS**

### **7.1. INTRODUCTION**

This chapter presents an analysis of data on the number of Section 29 appeals relating to refusals to enrol, suspension and exclusion. It indicates that the highest number of appeals relate to refusals to enrol. Many of these appeals are taken against schools that are over-subscribed. However, the documentary evidence and interview data indicate that many refusal to enrol appeals are taken by parents and guardians of children with special educational needs, and children who are marginalised. These children, many of whom do not have educationally beneficial cultural and social capital, sometimes have difficulty finding a school place due to the exclusive enrolment practices of some school authorities. These practices are described in this chapter. The chapter then discusses the relatively small number of appeals in relation to suspension compared with the other two grounds for appeal. It also considers the impact of suspension on a child's education. The chapter then turns to appeals in relation to expulsion. It presents evidence of some of the practices that lead to expulsion in many schools and the strategies that some school authorities use to maintain their power and social status. The practice of 'de facto' expulsion, used by some schools as a means of excluding students, and its impact on students and on schools, is then considered.

The chapter highlights the power differentials between schools as organisations and individual parents and pupils and the strategies that some school authorities use to maintain their power and social status.

### **7.2 SECTION 29 AND ENROLMENT**

#### **7.2.1 Refusal to Enrol Appeals**

Statistics from the DES presented in Appendix 21 indicate that the majority of appeals taken against schools between 2001 and 2011 related to refusals to enrol (a total of 2,177 appeals). Despite the fact that in 2011, there were 3,300 primary schools and



just 723<sup>20</sup> second-level schools in the country, 59% (1,287) of the appeals against refusals to enrol have been at second level with just 41% (890) of the appeals taken at primary level. This suggests that it is more difficult for a student to gain entry to a second level than to a primary school. The figures also show a steady increase in the number of appeals on a year-by-year basis. There were just twelve appeals in relation to refusal to enrol in 2001. In 2008, the figure peaked at 279 appeals and in 2011 there were 270 appeals. More appeals were not upheld than upheld at both primary and second level. A total of 293 (41%) appeals were upheld at second level compared to 414 appeals (59%) not upheld. A total of 198 (46%) appeals were upheld at primary level compared to 232 (54%) appeals not upheld.

Lodge and Feeney (2010), in an unpublished report commissioned by the DES<sup>21</sup>, conducted an analysis of the first 1,000 appeals taken between 2001 until 2006. Table 7.1 presents their findings in relation to the number of refusal to enrol appeals by school sector. They found that most refusal to enrol appeals at primary level were taken against denominational schools and that most at second level were taken against Voluntary Secondary schools. This is hardly surprising given that there are a greater proportion of both these schools types in Ireland. Lodge and Feeney describe how there was a significant number of refusal to enrol appeals, involving a small number of schools, reflecting insufficient school space in rapidly expanding urban areas. The relatively high rate of appeals in the Community and Comprehensive sector could be indicative of the fact that some of these schools experienced a large number of appeals in relation to refusals to enrol because they were over-subscribed.

Lodge and Feeney indicate that there was also a significant number of refusal to enrol appeals in Limerick in 2004. Most of these appeals related to children from marginalised families who experienced rejection from many schools because they did not fit in with the socialised norm. John Downes remarked in the Irish Times (15 March, 2005):

As the recent enrolment crisis in the Limerick area underlined, some schools also take more than their fair share of students from challenging backgrounds. This allows others to protect and enhance their reputation by ‘creaming off’ the

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<sup>20</sup> Source: DES: Key Statistics 2011/2012

<sup>21</sup> This report has remained unpublished due to data protection issues around naming of children in the report

most academically gifted students - and those less likely to create discipline problems.”<sup>22</sup>

This article reflects Bourdieu and Passeron’s (1990) description of the culture of many schools, which, they assert, is to conserve the social order and maintain the status quo by only enrolling those with similar cultural and social capital. The NEWB representative stated in interview for this research that there were 300 children in 2011, who had no second-level school place in August. This representative commented on areas of the country such as Limerick and Waterford where “you have children there that at the age of twelve have gotten rejection letters before they even begin second-level school”. Gordon Deegan, reported in the Irish Times on 10 October 2008 that the Bishop of Killaloe had endorsed a common enrolment policy for Ennis primary schools to “avoid the difficulties in other towns where each school caters for a different social class. The enrolment policy aims to guarantee twenty-five per cent of all new places for minorities - Travellers, and foreign nationals”. This article indicates how schools were socially stratified in Ennis, like in many other towns. Lodge and Feeney (2010) found that there were fewer appeals against refusals to enrol in designated disadvantaged schools than in other school types. This suggests that these schools are not over-subscribed and that their enrolment practices are more inclusive.

*Table 7.1: Appeals against Refusal to Enrol (Lodge and Feeney)*

<b>Post primary Sector</b>	<b>Number of appeals</b>	<b>Primary Sector</b>	<b>Number of appeals</b>
Voluntary secondary (54% of sector)	248	Denominational (94% of sector)	194
Community and Comprehensive (12.3% of sector)	127	Educate Together (1.7% of sector)	10
Vocational schools and Community Colleges (33.6% of sector)	51	Gaelscoileanna (4% of sector)	11
Gaelcholaistí <sup>23</sup> (6.8% of sector)	22		
<b>Total</b>	<b>448</b>		<b>215</b>

<sup>22</sup> As a result of this enrolment crisis all children at risk of not having a school place were accommodated within the city’s schools and a common enrolment form was developed and utilised by most Limerick schools, which helped to ensure that the same situation did not occur in subsequent years.

<sup>23</sup> Some Gaelcholaistí are under VEC control while others are part of the voluntary secondary sector. Hence, the figures add up to over 100%

### 7.2.2 Enrolment Criteria

Smyth et al (2009) report that 80% of schools enrol all children who present for enrolment. Therefore, only 20% of schools apply selection criteria in their enrolment policies. This suggests that one fifth or just over 800 of all schools, are potentially exclusive in terms of their enrolment criteria. Lodge and Feeney (2013: 47) show (Table 7.2) how schools prioritise applicants in their Admissions policies.

Table 7.2: *How schools prioritise applicants for enrolment (Lodge and Feeney)*

<b>Enrolment criteria</b>	<b>%<sup>24</sup></b>
Siblings	63.5%
Living in defined catchment area	44.0%
Attending named feeder school	39.0%
Relative of past pupil (e.g. child, younger sibling)	39.0%
Attending other preferred school (not defined as a feeder school but which has an established relationship with the school)	19.0%

A representative of one of the National Parents' Council's interviewed for this research stated that it would be very difficult to get all parents to agree about what constitutes good enrolment policies and criteria and to get consensus as to the enrolment criteria that should be applied in schools. The interviewee also believed that the very nature of enrolment policies, regardless of how much they espouse equality, are unequal because "by actual definition, once you come to enrolment, we will enrol you and we won't enrol you, it can't be equal to all". Likewise, in this research, there were different views expressed among those interviewed about the criteria currently applied by various schools in their admissions policies. These views are outlined in Appendix 22. Most interviewees believed that the fairest enrolment criterion related to the catchment area of the school. However, it was noted by the IVEA in its submission to the Department on the Proposals for the Establishment of a Regulatory Framework for School Enrolment (19 August, 2011), that "educating students from disadvantaged communities exclusively in the company of other students from those communities means that these students do not get an opportunity to mix with students from other communities". Most interviewees believed that the sibling criterion was legitimate,

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<sup>24</sup> The totals add up to more than 100% because many of these categories were found across multiple Admissions policies

except for the potential difficulty for the eldest child in a family to secure a place in a school in the first instance. The enrolment criteria relating to children of past pupils and children of staff were criticised by many because they were based on a child's lineage or cultural and social capital. Another enrolment criterion believed by interviewees to be discriminatory was the 'first come, first served' criterion. It was seen as particularly discriminatory against Travellers and non-nationals. In their equality audit, Lodge and Feeney (2013) refer to the DES *Guidelines on Traveller Education in Second-Level Schools* (2002: 26) which acknowledge that it is important that schools know in advance about future enrolments but also state that such practices can "indirectly act as a barrier to access" for Traveller young people or for other young people who have recently transferred into a locality. The views of the interviewees indicate that each enrolment criterion contributes in some way to what Bourdieu and Passeron (1990) describe as class reproduction in the education system.

Interviewees also commented on the exclusionary enrolment practices that are being implemented by some school authorities, skewing their intake and ensuring that those with the least valued economic, social and cultural capital are excluded. Some partners indicated that schools are still using academic entrance examinations in order to socially stratify their intake. A few appeal personnel indicated that some schools change their admissions criteria without giving sufficient advance warning to parents. This practice results in parents who believed their child was eligible for enrolment in a particular school, discovering at a later period that their child was no longer eligible for enrolment. Some appeal personnel also related the practice of many schools charging non-refundable admission application fees. One parents' council representative referred to the practice of many schools requesting high voluntary contributions from parents. Lynch (1999: 265) asserts that: "The fact that many secondary (free scheme) schools ask for a 'voluntary contribution' can also have a disincentive effect on low income families, especially if there are a number of children involved."

Section 7 (3a) of the Equal status Act states that a school does not discriminate if it has a tradition of admitting a student of one gender only and refuses to admit a student who is not of that gender. Despite this fact, an appeal committee upheld the appeal of the parent of a female student to be allowed enrol in an all boys' VEC school in Cork.

This was because the appeal committee said that the school's admissions policy did not explicitly state that the school was exclusively an all-boys' school. Riegel and Walshe, writing in the Irish Independent noted that: "The decision has major implications for all schools across the country with the IVEA signalling that all single-sex schools will now have to carefully review their admissions policy in light of the ruling" (www.independent.ie 12/9/2008).

### **7.2.3 Enrolment of Marginalised Pupils and Pupils with SEN**

It is open to a parent to bring an appeal to the Equality Authority subsequent to a Section 29 appeal. As reported in the Irish Independent by Gráinne Cunningham (17/2/2009), a student was suspended for having his hair too long and won his Section 29 appeal against suspension. A condition of the appeal determination was that his hair be groomed to collar length. Subsequently, he was refused re-admission to the school because it claimed his hair was still too long. His mother brought the case to the Equality Authority and the appeal was upheld.

The annual reports from The Equality Authority make specific reference to complaints about discrimination in schools and third-level institutions. These reports indicate that it is the marginalised that are most often excluded from education. The Equality Authority Annual Report (2003) demonstrates that disability made up the largest category of complaints in relation to discrimination against educational establishments<sup>25</sup> and being a member of the Traveller community made up the second largest category of complaints in 2003: "Issues of access to schools, harassment in educational establishments and failure to reasonably accommodate pupils with disabilities predominate in these case files" (*Equality Authority Annual Report 2003*: 31). A total of 74 cases of discrimination in relation to educational establishments in 2004 related to grounds of race and the Traveller community and 31% of the 2004 casefiles related to the disability grounds. In 2005, 64 casefiles related to educational establishments and in 2007, 61 casefiles related to educational establishments. More recent Equality Authority Annual Reports indicate that a large proportion of complaints to the Equality Authority still relate to educational establishments, and, in particular, to the disability ground. However, the number of casefiles regarding

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<sup>25</sup> The term educational establishments refers to schools and third-level institutions

education has reduced. There were 25 casefiles relating to education in 2010 and 39 in 2011 (www.equality.ie 31/12/2012).

The Department of Education and Science (2007a: 44) acknowledges that:

There is evidence that some second-level schools continue to have restrictive enrolment policies that lead to the effectual exclusion of children with special educational needs and those with other learning differences.... Some parents of children with special educational needs have experienced difficulty in relation to the enrolment of their child in the school of their choice.

This practice is another of the modes of reproduction described by Bourdieu (1989), which ensures that many schools maintain their status. The Department (2007a: 38) states unequivocally that it:

considers that the practice of selecting certain students for enrolment and refusing others so as to ensure that only a certain cohort of students is enrolled – for example those who are more able academically – is unacceptable and that where such practices exist they should be discontinued.

Lodge and Feeney (2013: 35-38) found evidence of policies considered uninclusive regarding admission of pupils with SEN and/or disabilities in 100 of the 156 schools in their equality audit. They noted that: “65 (42%) of the analysed Admission policies indicated that the school might have to defer the enrolment of a student with special educational needs pending the provision of the necessary resources by the Department of Education and Science.”

In 2008, the Department published a *Report on the Audit of School Enrolment Policies*. The Report found that some schools accept a disproportionate number of children from marginalised backgrounds and children with SEN than other schools in the same catchment area. The IVEA (2008) reported in its response to this report that: “The greatest pressure on the management authorities to keep a school as exclusive as possible is, in fact, likely to come from the parent of students in a school.” The IVEA in the same submission stated that:

School principals tend to feel pressurised by their teachers to avoid enrolling ‘more needy – less amenable’ students because they, the teachers, perceive that the enrolment of such students will make their jobs more difficult and, indeed, threaten the reputation of their schools.

Thus, as maintained by Bourdieu and Passeron (1990: 167), social stability is guaranteed through “the controlled selection of a limited number of individuals”. In a special Irish Times education report (4/12/2008) on the results of the Audit in 2008, Sean Flynn, reported on a “growing concern that some schools are excluding foreign nationals, Travellers and pupils with learning needs” and revealed “how in one Dublin area, fewer than 1 per cent of students in one secondary school have special learning needs compared with 17 per cent in neighbouring vocational schools”. The report goes on to state that in one Dublin Vocational school, some 26% of pupils are newcomers “compared to 0.1 per cent in an adjoining girls’ secondary school”. He reports that providing for special needs pupils, for children of immigrants and for Travellers at second level is largely left to “local vocational and community schools, with many voluntary secondary schools effectively opting out”.

Lodge and Feeney (2010) found that the most typical Section 29 appeal against special schools was a refusal to enrol (82% of 44 appeals) and that 23.5% of all appeals concerned children presenting with some type of SEN. Section 29 appeals relating to pupils with SEN were described by all appeal personnel in their interviews for this research to be very difficult for them and very traumatic for parents. Appeal personnel commented on the uninclusive practices of some schools when it came to enrolling pupils with SEN. Some interviewees stated that most appeals relating to special education in mainstream schools were because the school authorities contended that they didn’t have enough resources to provide for children with SEN. Appeal personnel also described appeals relating to special schools or special classes in a mainstream school. In many such cases, the school authorities stated that they catered for certain categories of disability, but not for the category that was the subject of the appeal. A number of committee members discussed how schools were “splitting hairs” to try to keep certain children out. Some said that school authorities put up barriers against enrolling a child with SEN as opposed to welcoming that child. The evidence from the interviews suggests that the ethic of care was missing from such schools.

#### **7.2.4 Enrolment Appeals in Over-subscribed Schools and Multiple Appeals**

Parents can sometimes experience difficulties in accessing schools for their children if there is insufficient school provision. This situation has occurred in recent years in certain, mainly urban areas of Ireland. Thus, where there has been a large population

growth in certain areas of suburban Dublin for example, parents have experienced considerable difficulty in enrolling their children in a local school. Most of those interviewed stated that Section 29 is not effective for refusal to enrol appeals in over-subscribed schools. A number of interviewees suggested that such appeals are a waste of school personnel's time and of State money. Yet, interviewees noted that a large proportion of appeals that relate to refusals to enrol are taken against over-subscribed schools. Examples were given in interview of schools that were full but had up to 100 additional applicants for places, all of whom were entitled to take a separate appeal. As stated by one partner in relation to a case where there were multiple appeals:

Short of waving a magic wand now to create another classroom and another teacher he just couldn't take them. I think they won all their appeals because it was a very cut and dried position. But like it cost him his entire July and August and it was the exact same, there could have been one appeal to do the whole lot of them.

Some committee members commented on the fact that committees are being asked by the appeals administration unit to work on a number of appeal hearings in one day, generally in relation to refusals to enrol and relating to the same school. There was general dissatisfaction expressed by appeal personnel with the format of these appeals because parents in particular were only given a limited amount of time to state their case. One interviewee said "the Department seems to think a refusal to enrol will be an hour". The arrangements in relation to these type of appeals suggests that those who organise the appeal hearings within the DES may fail to understand that parents have no other forum to challenge the policy of the school and that, as a result, they deserve sufficient time to make their case. One appeal committee member said that:

when you bring in a parent...they have things they want to say and half an hour will not do them...I was chairing and I didn't want to be seen from a justice and transparency point of view to be seen to say, look you have half an hour and get lost after that.

However, individual school authorities and appeal committees do not have the power to address the issue of parents being unable to access a school place for their child. This is a problem that needs to be resolved at system level.



Resolving appeals by examining the paperwork only as opposed to having an oral hearing was seen by some appeal personnel as a solution for some refusal to enrol appeals relating to oversubscription. One interviewee said that:

If there are multiple ones from the same school I think a committee of three should sit down, look at them, ring the school, ring the parents and say, look, we are recommending that this go no further. I think to set up hearings on these because parents think that they have a right to explain their case, I think is a waste of public money.

However, most appeal personnel were not in favour of determining appeals by reading the documentation only. One committee member said that:

if a committee is only looking at the papers, it may not make the right decision because if you think about it, when an appeals committee gets the papers, at the moment we go through it all, and you can think you know what it is all about and then somebody/something turns up at the hearing and it is all completely overturned.

Another stated: “I think you have to see the whites of the eyes of the parent and hear the case and take an oral thing”, indicating recognition, on the part of some appeal personnel, of the need to allow parents a voice at appeals.

Some interviewees were concerned about what they considered to be an anomaly in the appeal process. This anomaly is that if the parents of a child further down on a waiting list than the parents of other children takes a Section 29 appeal against a school and the appeal is upheld, that child automatically gains entry to the school. This disadvantages the child who had previously been higher on the school’s waiting list but did not appeal. One person said: “I always have a problem with that, even since day one, that someone is nineteenth on a waiting list, takes an appeal and jumps the queue.” This queue jumping as a result of winning a Section 29 appeal was viewed by some appeal personnel as encouraging more parents, usually those with most social capital, to take appeals in over-subscribed schools. However, this analysis by some appeal personnel indicates a lack of awareness of the fact that committees may uphold an appeal in part and so a child may move up a waiting list without necessarily gaining a place in the school.

### **7.2.5 Vexatious Appeals**

Some refusal to enrol appeals were described as vexatious by both appeal personnel and partners. These were appeals pursued by parents even when it appeared obvious that the schools had abided by their procedures. According to some appeal personnel and partners, these parents just wanted the opportunity to state their case as opposed to having a genuine grievance with the school. It was noted that the parents who tend to take these appeals are mainly middle-class parents who are very aware of their rights. Therefore, the interviewees believed that the voices of parents should be silenced in these instances as such appeals should not be admitted. One partner said: “It is not really that the school has breached fair procedures, it is just that the parent doesn't agree with what the school has decided.” One interviewee suggested that the EWO should advise parents not to go ahead with appeals in such instances. Other appeal personnel suggested that the Department should have some mechanism to decide if there are grounds for certain appeals, particularly in relation to enrolment.

### **7.2.6 Capacity Issues – When is a School Full?**

The analysis of the appeal determinations made in 2004 and 2005 indicates that many appeal committees imposed their views about what was an acceptable class size on the school authorities. This occurred more frequently in the case of enrolment appeals in second-level schools, where there are no official guidelines on class size<sup>26</sup>. However, the Department’s legal advisors have advised appeal committees that they have no right to question Boards of Managements’ decisions about class size. In commenting on second-level schools that cap the enrolment to individual classes at a figure below 30 pupils, one committee member said:

I can understand it from the woodwork, metalwork, home economics point of view but from academic subjects point of view I think that is pampering the school.

Some appeal personnel suggest that all schools should be required to enrol 30 pupils in each class. Most partners who commented on this issue felt it would be useful to define when schools are full as this would clarify matters for parents. One partner stated that schools:

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<sup>26</sup> Primary schools do not have similar leeway because the Department issues a schedule of staffing on an annual basis (e.g. Primary circular 0007/2012) and has a policy with regard to the minimum space required for each child to be safely accommodated.

should be more objective in terms of what defines a school being full as opposed to whatever they would like it to be. And parents would also be more accepting of the fact that the school is full, you can't take in more enrolments and I think it would bring clarity to the situation because at the moment it is very unclear.

The varying definition by schools of when a class group was full could be interpreted as another form of control and social stratification by schools. Those schools who enrol up to 30 pupils in each class group were seen by appeal personnel as being more inclusive than those who put a lower cap on their enrolments.

### **7.3 SECTION 29 AND EXCLUSION**

#### **7.3.1 Suspension or Fixed Term Exclusion Issues**

The NEWB's *Analysis of School Attendance Data for 2009/2010* (NEWB, 2012) (Appendix 23) indicates that most suspensions<sup>27</sup> occur at second level. Almost five per cent of second-level pupils were reported as having been suspended in 2009/10. Just 0.2% of primary pupils were suspended in the same year. In total, there were more than 14,000 suspensions in Irish schools in 2009/10. Given that the literature concludes that exclusion has a negative effect on those who are excluded, these figures suggest that there is a large number of pupils in the Irish education system in danger of falling behind academically and who have a negative experience of school as a result of being suspended.

A Section 29 appeal against suspension can only be taken when a pupil is suspended for a cumulative period of 20 days or more in any one school year. Appendix 21 outlines the figures for Section 29 appeals in relation to suspension from 2001 to 2011 at primary and second-level. These figures are much lower than those in relation to refusal to enrol appeals and expulsion appeals. There were 72 appeals (70%) against suspension at second level and 31 appeals (30%) against suspension at primary level. At second level, of the 44 appeals that went to full hearing, 26 (59%) were upheld, 17 (39%) were not upheld and one was referred back to the Board of Management. At primary level, of the 24 appeals against suspension that went to full hearing, 14 (58%)

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<sup>27</sup> The NEWB data in Appendix 23 relate to all suspensions as opposed to the ones that are can be appealed (suspensions that accumulate to 20 days or more in one school year).

were upheld and 10 (42%) were not upheld. Therefore, of the three categories of Section 29, the data indicates that those appellants who take an appeal against suspension are more likely to succeed than those who take appeals against refusals to enrol or expulsions.

Some partners stated in interview that suspension in schools is overused as a disciplinary tool. For example one partner representing a national parents' association acknowledged that while suspension and expulsion figures at primary level are very low, she believed that they should be zero "because the message that it is giving to a child of that age that these adults can't manage and support you is such a negative one at the age of seven and eight and ten". The NEWB was the only partner group interviewed that stated that the 20 days allowed before a parent can appeal a suspension is too long: "So if it is a child in fifth year who is aiming for Leaving Certificate I think we have really handicapped that child."

Appeals against suspensions were seen by some appeal personnel as problematic. One person described such appeals as a "waste of time because by the time they get to a hearing the suspension should be up...I don't see the purpose of them except somebody has accumulated maybe 60 days' suspension over the course of the academic year". This attitude suggests a lack of understanding of the negative impact of suspension on pupils. It also indicates that by the time an appeal against suspension has reached the appeal committee, it might be too late for the student who is the subject of the appeal, because months could have elapsed between the lodging of the appeal and the appeal hearing.

Suspension as a disciplinary tool is widespread in schools. Parents do not have the power to appeal suspensions where the resulting cumulative period of absence from the school for the year is less than 20 days. Therefore, school personnel have the power to suspend those who do not conform to their expectations without any redress through a formal appeal system. Nor is there any upper limit on the number of days that a school may suspend a student, even though a school is bound under the Education (Welfare) Act (2000) to notify the NEWB if a student is excluded for six or more consecutive days or 20 days cumulatively in a school year.

Lodge and Feeney's research (2010) indicates that appeals relating to suspension were most frequent in the Voluntary Secondary sector between 2001 and 2008, with a total of 22 such appeals taken. A total of twelve appeals relating to suspension were taken against the Community and Comprehensive sector while just two appeals relating to suspension were taken against the Vocational sector. There were just four appeals against suspension in the primary sector in the same timeframe, all of which were against denominational schools.

### **7.3.2 Appeals in Relation to Exclusion**

The NEWB's *Analysis of School Attendance Data for 2009/2010* (NEWB, 2012) (Appendix 23) indicates that expulsions are still quite rare in Ireland. At primary level, just four pupils were expelled in 2008/09 and ten were expelled in 2009/10. At second-level level, 128 pupils were expelled in 2008/09 and 148 pupils were expelled in 2009/10. These overall figures account for less than 0.05% of all pupils. Appendix 21 gives the figures for Section 29 appeals in relation to both expulsion and suspension from 2001 to 2011. The data suggests that about half of all expulsions are appealed whereas a very small percentage of suspensions are appealed.

There are many more appeals relating to exclusion at second level than at primary level. A total of 622 (91%) of the 683 appeals lodged in the system between 2001 and 2011 regarding expulsions were second-level appeals. At second level, of the 435 appeals that went to full hearing, 121 (29%) were upheld and 313 (71%) were not upheld. Of the 42 appeals that went to full hearing at primary level, 15 (35%) were upheld, and 26 (62%) were not upheld. This data indicates that second-level schools are more likely than primary schools to exclude pupils.

The primary partners who were interviewed displayed a keen awareness of their duty of care to pupils. One partner stated that all primary schools believe that they have:

a duty of care to all children and the only way you can actually remove a child from a school is if you can arrange for another school to take the child. You can't simply expel and leave to the high roads and byroads that pupil or that parent to find another school place...And there is a sense by most teachers in primary schools that these children, if a child is very, very troubled and very disruptive it is not their fault. And part of what it means to be a primary school is to provide a primary level of care. We are in loco parentis. And the way I look upon this it would be a massive sign of failure to want to expel a child in

primary school...I could tell you 100 stories of kids we had over the years in primary where they broke our hearts but we saw it as part of our function to deal with it to discover they are six months into secondary school and they are gone, they are suddenly out the door and those parents had no means with which they could actually deal with it....The secondary schools were a law unto themselves. To a certain extent they still are on some fronts.

The perception by some of the interviewees from the primary sector was that schools at second level did not try hard enough to support disruptive pupils. They suggested that these pupils were nurtured while in primary schools but were expelled, if they did not conform, at second level. From this perspective, there is an implication that school personnel at second level may contribute to the lack of success and poor behaviour of the child who is the subject of the appeal by making them feel like outsiders.

The fact that more appeals relating to expulsion are not upheld than upheld possibly indicates that there are some pupils in schools who are very disruptive and difficult for schools to manage. It could also suggest that appeal personnel, being from the same cultural and social paradigm as schools, share the same views as schools about children and pupils who do not conform to their expected standards. Thus, as indicated by Bourdieu (1989), by excluding the child, social order is maintained and social divisions are reinforced by these outcomes. Many of the partners and appeal personnel interviewed expressed concern at the lack of alternative educational provision for those who are excluded permanently from school. From the perspective of the power and control of schools, this could be interpreted as indicating a belief that schools need only cater for those pupils who share the same social and cultural capital as the schools and that other institutions should be established to deal with children who do not conform. One appeal committee member commented that:

If a kid is expelled in first year or indeed second year, up and down the country, there is nothing for them unless they take an appeal against another school and if the other school can prove that the kid is as insulting and as abusive and a threat to safety as he was in his previous school, they could very well win the appeal.

A representative from the ISSU stated in interview that instead of using expulsion, schools:

should try and tackle the root of the problem before just saying you are disruptive and you are giving me a headache and I am a year head I don't want to be dealing with you... Generally there is a reason why a student is disruptive or misbehaving, they usually have family problems, not always but

they may have family problems at home or emotional difficulties or maybe a learning difficulty. There is usually a reason for it; it is not generally that they are just 'bold'.

Another partner noted that sometimes schools make decisions to expel:

out of panic and hurry and having no good counsel with them and then they have started a course like Macbeth, isn't it, that they are so steeped in blood... But isn't it true? I think, whereas if they had good counsel and good advice maybe you wouldn't have to go that route at all.

An appeal committee member commented on what he saw as a difficulty in relation to the behaviour of new principals of schools in terms of disciplining pupils. He stated:

It is a phenomenon I have noticed in new schools or a school that has a new principal, the new broom...they start firing kids out in first year, often grossly disproportionately...I have had a kid who was expelled in the first week in school, and it wasn't as if he pulled a knife on a teacher or anything like that. He may have told a teacher to F off or something like that, and none of us would expect schools to put up with that but we would expect them to deal with it, short of expelling a child at 12 years of age or whatever it is.

Lodge and Feeney's (2010) analysis of appeals against expulsion (Table 7.3) indicates that the highest number of such appeals was taken against the Voluntary Secondary school sector. Lodge and Feeney also found that 59% of all appeals in relation to expulsion involved young people in first and second year of school. Furthermore, males were more likely to be the subject of appeals than girls. Their analysis found that 86% of all expulsion appeals, 78% of all suspension appeals and 67% of all refusal to enrol appeals involved males. They also found that there was a higher proportion of exclusion appeals in designated disadvantaged schools than in non-designated disadvantaged schools. It is likely that this indicates that more marginalised children, often children with least educationally beneficial cultural capital, attend these schools.

*Table 7.3: Appeals against Expulsion (Lodge and Feeney)*

<b>Second-level Sector</b>	<b>Appeals</b>	<b>Primary Sector</b>	<b>Appeals</b>
Voluntary secondary: (54% of sector)	192	Denominational (94% of sector)	15
Community and Comprehensive: (12.3% of sector)	77	Education Together (1.7% of sector)	0
Vocational schools and Community Colleges: (33.6% of sector)	30	Gaelscoileanna (4% of sector)	0
Gaelcholaistí:(6.8% of sector)	1		0

The analysis indicates that the Vocational sector was the second-level school sector that had the least number of appeals relating to expulsion. The same pattern can be seen in appeals relating to refusals to enrol and suspension. This suggests that the Vocational sector is more inclusive than other second-level school sectors.

In their discussion about Section 29 appeals relating to expulsion, some interviewees commented on the culture of schools. The ISSU representative, reflecting Bourdieu and Passeron's (1990) assertion that traditional teachers do not like their authority to be contested, believed that the culture of the school, its approach and ethos have a huge effect on the school's attitude to the student voice and student participation. The interviewee stated that:

Some schools would kind of see it as teachers make the decisions; that is the way it is, we know what is best for the students. Whereas other schools, it would tend to be a lot of newer schools, would be very much in favour of student voice and student participation and it would really depend on the culture of the school whether or not they'd be active or whether they'd be tokenistic.

Similarly, there was commentary by some management body representatives on the power and control of teachers. One interviewee stated that teachers in some cases needed:

a little bit of a hard skin and not to hear some of the things that are said on occasions and not going looking for trouble. Because in truth, if a teacher wants to set somebody up they can, like that will never be said formally, but ultimately you can put yourself in a situation where you press the right buttons knowing the response that you are going to get. And therefore you can look to try and create a confrontational situation which is in nobody's interest.

Another interviewee stated that:

Sometimes in schools, principals and deputy principals need support so that they don't end up bowing to the whims or the demands of their staff. Sometimes staff want to see things happen. For example, and I know this for a fact, where a teacher might think, well you have only suspended for two days, you obviously don't value me as a teacher. If you had suspended him for four days it would be a better sign of value to me.

One partner, reflecting the view outlined in the literature that teachers are always searching for the 'ideal student', noted that:



In many instances a lot of the problem is the teachers aren't willing to teach the children that are in front of them... I would always advocate that the teachers have to teach the students that are in front of them, not the students they would like to have in front of them.

The need for a broad and interesting curriculum to keep pupils engaged in school was noted by two management bodies. One interviewee, referring to the curriculum offered by some schools, stated that:

I think if it meets the needs of the students then that will keep them motivated and they will have a sense of loyalty and identity with the school. And oftentimes violence and misbehaviour and other things like that come around because the students can't identify with the school for whatever reason.

In an interview conducted by John Downes with Dr Maeve Martin for the Irish Times on 15 March 2005, at the time the work of the Task Force on Student Behaviour in Second Level Schools was underway, Downes reports that Dr Martin believes that a key characteristic of effective schools includes:

creative teaching and quality teaching, coupled with an appropriate curriculum. It is a critical factor that the teacher has to be a very engaging person to capture the interest of the students who are living very exotic out-of-school lives...Unless you can grab their interest via the lesson and via your teaching then indiscipline will set in.

Therefore, as asserted by many writers on this theme, the curriculum offered by some schools reflects the cultural values of the dominant group. This disadvantages some children who are alienated by a middle-class construct which they see as being of little relevance to their lives.

### **7.3.3 Suspending and Excluding Pupils with SEN**

Both NPC representatives stated in interview that Section 29 appeals were inappropriate for many SEN issues. One representative noted that some schools have gained a reputation for having adequate resources to manage SEN pupils. Other school authorities encourage parents of children with SEN to enrol in these schools. As a result there is a disproportionate number of students with SEN in these schools. This representative stated: "but we want every school in the country to take the certain number of special needs because if you have a smaller number it is easier to deal and get more out of them". This interviewee is reflecting the view that all school types do not share equally the responsibility for educating children with SEN. Furthermore, the culture and ethos of some schools act as disincentives in selecting these pupils for

enrolment. This is because the ethos of schools now refers to more than just religious identity. It also refers to issues such as the academic nature of the school as well as its attitudes and values.

A number of education partners highlighted what they saw as the failure of the State to provide adequate resources to assist schools in dealing with difficult behaviours. One partner spoke about wanting to see Section 29:

exposing the massive gaps that there are in schools for things like psychiatric care, mental health issues, really off the wall behaviours which you couldn't describe and you wouldn't describe to protect the child.

The lack of provision of adequate resources, described by these partners, highlights their view of a lack of recognition by the State that all individuals and groups, not just those with the most cultural capital, should benefit equally from education.

#### **7.3.4 De Facto Expulsions**

The term de facto or effective expulsion is used in this research to describe the situation when a school encourages a child to leave a school voluntarily rather than directly expel him or her. Many interviewees noted that schools contend that such exclusions are justified as disruptive pupils do not then have expulsion on their records. The ISSU representative described how: "People in my year in school were asked to leave in a sense that they weren't expelled but they were told politely that they were advised they were not to come back the next year." One interviewee, recognising that such practice further reinforces the marginalisation of some children and their parents, stated:

What record? I mean where is this record? These things are actually said really to intimidate and they wouldn't intimidate you or me because you know. But you say to the person who for example maybe is on social welfare and doesn't want their name out, or maybe the Traveller who doesn't want the Guards involved, or the international pupils who are here maybe under the radar themselves, that actually works miracles.

There is no mechanism to prevent schools excluding pupils in this way. The IVEA stated its concern about such practice in a press release ([www.ivea.ie](http://www.ivea.ie) 14/3/2006):

all schools must accept their responsibilities and adopt and fully implement a policy of inclusion. Currently the practice of 'effective expulsion' by some schools results in the Section 29 appeal system being abused by parents in order to appeal a refusal to enrol by their school of second choice. The Minister and her Department must decide if all sectors in the Irish education

system are to be heterogeneous and inclusive and treat them accordingly in legislation and practice.

It was stated by another partner that de facto expulsions are:

a source of huge irritation between schools. You put him out of your school and he applies to my school with all his history and his baggage and you don't put a tooth in it - you tell me how awful he is....And then I say no because we already have so many students with problems....Then he takes the appeal against me for non admission.

The management bodies, in particular, criticised the practice of de facto expulsions because of the fact that such pupils have to be enrolled in other schools. One management body, in interview, commented that Voluntary Secondary schools have always encouraged pupils they do not want, to apply to the local VEC school. The Voluntary Secondary school, according to this partner, allegedly says: "Look you are not getting on here you might be happier at another school. Or they have better resources, which is the traditional one, to cater for you up in another school." This was described as being very frustrating for VEC schools, particularly: "Because when times are lean then they will come into the catchment areas of VEC schools and cream off the better students. But if there are any difficulties with the students they will send them back." Thus, the evidence suggests that the ideal pupils are perceived in schools as pupils who share the same cultural capital as the schools – middle-class pupils at ease in a middle-class setting. The evidence also suggests that Voluntary Secondary schools in particular aspire to attracting these pupils, the corollary being that they do not seek out marginalised pupils or pupils with SEN.

One interviewee stated in interview that VECs are used as "dumping grounds" by Voluntary Secondary schools. However, not all interviewees agreed with this view. One management body believed that while VEC schools have always complained about being seen as "dumping grounds", some pupils simply select to attend VEC schools. Another management body stated that it is not just VEC schools that are used as "dumping grounds". This management body described receiving phone calls from parents seeking enrolment for children who have been asked to leave other schools although they have not been officially expelled. Many schools were described as being reluctant to enrol these children in the interest of "good order and discipline". The interviewee stated:

The relationship has been broken with the other school, it has been broken because the youngster has got into so much difficulty in that school. But moving into the neighbouring school is equally problematic for the neighbouring school if we know already that there are feuds or whatever. Because sometimes the youngster who is in difficulty is probably known to the school... Sometimes it is portrayed as the Voluntary Secondary school is cherry picking when it isn't necessarily.

The evidence from these interviews suggests that effective expulsions leads to resentment between schools and contributes to what Bourdieu and Passeron (1990) describe as the reinforcement of social divisions between schools.

In an article published in The Irish Times on 26 May 2012 entitled *Expulsion stories*, three adults recounted their experience of expulsion from schools. In two of the stories, the pupils were asked to leave the school. One was told:

in a very nice way that the school wasn't the right environment for me. The principal, in fairness to him, suggested I go to a Tech. That was the best thing that could have happened. I went from being the most troubled to the least troubled in the group.

The other was called aside by the principal one day and was told:

that if I didn't leave – I had been thinking about it anyway – he'd kick me out the following week... So I made up my mind to go to a different school. The fresh start helped.

These pupils were in many ways complicit in accepting the practice by some schools of reinforcing social divisions by reproducing likeminded people and classes of people and excluding those who do not have the same cultural and social capital. In this way such pupils and their parents accept the disparities of power between schools.

## **7.4 CONCLUSION**

The chapter discusses practices in schools relating to enrolment, suspension and expulsion. It presents a discussion on the enrolment criteria most typically applied by those schools that include such selection criteria in their enrolment policies. The evidence suggests that each enrolment criterion applied by schools and some schools' enrolment practices are potentially restrictive and exclusive and can contribute to social stratification by some schools who wish to maintain their social order. This leads to those with the least educationally beneficial economic, social and cultural

capital being excluded. Sometimes, the exclusive practice of such schools is supported by parents who wish to guarantee the maintenance of the social stability of the school. The consequences for other schools are that they enrol a disproportionate number of children from marginalised backgrounds and children with SEN. The evidence suggests that Voluntary Secondary schools are the most likely to adopt such exclusive practices.

The chapter presents the views of interviewees which indicate that Section 29 appeals relating to refusals to enrol in over-subscribed schools are an unnecessary draw on the State's resources, as many schools are unable to provide additional accommodation to cater for the number of students who apply to these schools. Therefore, the Section 29 appeal mechanism is not appropriate for the majority of these appeals. The evidence indicates that those parents with the most educationally beneficial cultural and social capital are more likely to invoke Section 29 appeals in relation to over-subscribed schools.

Commentators such as Munn et al (2000), Kilpatrick (1998) and Knipe et al (2007) demonstrate that suspension leads to students having a negative experience of school. The NEWB data suggests that almost five per cent of students are suspended from school at some time in their school lives. However, appeals against suspension can only be taken if a student is suspended for a cumulative amount of 20 days or more in a school year. It is therefore suggested that the 20 day stipulation regarding appeals against suspension is too long.

The interview data on the subject of expulsion accords with Bourdieu and Passeron's (1990) assertion that the practices of some teachers can lead to demands for expulsion because these teachers do not like to have their authority contested. The interview data also accord with Kilpatrick's (1998) view that some teachers only wish to teach those that conform to their expectations. Using the ultimate sanction of permanent exclusion indicates unwillingness by some schools and teachers to analyse the root causes of student misbehaviour. The lack of a broad curriculum in some schools to suit the needs of all pupils, as opposed to those students who reflect the cultural values of the schools, highlighted by writers such as Malone (2006), is also identified in this chapter

as a possible cause of exclusion. The evidence suggests that the victims of many of these uninclusive practices are marginalised children or children with SEN.

The evidence presented in this chapter accords with Bourdieu's (1989, 1990) belief about schools. It suggests that many school personnel wish to cater for those whom they believe conform to their expectations and who share the same social and cultural capital. Where the ethos of the school is largely middle class, some schools try to preserve their ethos, both formally and informally by labelling pupils who do not conform as troublemakers. In trying to protect their ethos, and to maintain their social and cultural norm, some schools resort to the mechanism of 'de facto' expulsion. The student is made to feel unwelcome, and, as evidenced in the interviews, is asked to leave the school voluntarily or is advised that another type of school would better suit his/her needs. Thus the student is made complicit in his/her own alienation. The reward offered to the student is that expulsion will not appear on his/her record. The reward for the school is the maintenance of its own ethos without facing a challenge by appeal committees.

The chapter demonstrates that the practice of effective or 'de facto' expulsion leads to resentment between schools and contributes to what Bourdieu in all his writings describes as the social divisions between schools.

## **CHAPTER 8: REACTION TO SECTION 29**

### **8.1 INTRODUCTION**

This chapter describes the reaction of school personnel, teacher unions and school management bodies to Section 29 appeals. It provides evidence that many schools struggled to accept the fact that Section 29 considerably curbed their autonomy and also forced them to be more inclusive. The factors that led to the establishment of the Task Force on Student Behaviour in Second Level Schools are then described and the submissions to the Task Force are considered. The submissions indicate that schools feared that they had lost much power and control as a result of Section 29 of the Education Act. The impact of the Task Force on Section 29 is also discussed in the chapter. The chapter then considers the outcomes of judicial reviews relating to appeals and describes the impact of these reviews on the Section 29 appeal process. The chapter concludes with a discussion of the partners' attitude to Section 29 appeals now.

### **8.2 THE ATTITUDE OF SCHOOLS TO SECTION 29**

The documentary analysis indicates that many partners were unhappy with many issues around appeals. For example, the ACCS wrote to the Department in 2002 requesting that, in light of appeal determinations, the review of Section 29 provided for in the Education Act would take place as soon as possible. The issues of concern to the ACCS were the appeal procedures themselves, the terms of reference of appeals and the undermining of the Deeds of Trust of schools. Thus from the outset, schools considered that their authority was being severely eroded by Section 29 of the Education Act.

DES officials interviewed for this research stated that schools and the partners that represented them did not welcome appeals. However, officials noted that although some partners might have preferred not to have an appeal mechanism, they could not be seen to argue against it. This suggests that there was a recognition by school authorities that the right of appeal was fair and just, but that the impact of appeals on schools was an intrusion. Officials and appeal personnel interviewed stated that

Section 29 was seen as a major impediment to the autonomy of schools. However, because it had the backing of legislation, the partners had no option but to cooperate with it.

There was general agreement among appeal personnel that some sectors objected more strongly than others to Section 29. Most felt that the Vocational and Community and Comprehensive sectors were more open to Section 29. The Voluntary Secondary school sector was seen by appeal personnel as being the least accepting of Section 29. Voluntary Secondary schools were seen as the least likely schools to have their procedures in place and the most likely schools to use expulsion. This belief is reflected in the literature that describes the Voluntary Secondary schools as being more selective about their intake and more exclusive than other sectors. Almost all interviewees commented that most Secondary schools now have good procedures in place for enrolment and discipline issues although one person stated that they still tend to be “a little more rigid” than other school sectors.

One management body representative noted the “changed world” for schools because of Section 29. However, all the management bodies stated in interview that they welcomed Section 29 as it obliged schools to put correct policies in place. This indicates the internal conflict that management bodies had about Section 29. On the one hand they criticised it because it considerably curbed schools’ authority, while on the other they saw the advantages of it in terms of ensuring that schools became more transparent and accountable.

The perceived loss of power that accompanied the introduction of Section 29 appeals is evidenced from examples given in interview of the attitude of schools to appeals. The appeal process was seen as directly challenging the heretofore unchallenged judgement and autonomy of the principal. Appeal personnel and some partners related that some principals took the loss of an appeal personally. One partner recalled how a principal of a school felt that losing a Section 29 appeal “was a slur on him and an assault on his integrity within the school”. Another noted that: “It is a bit of kick in the teeth because there is a sense of you being punished for trying to do what is right for the kids you have in the school already.” Another described:



An initial feeling I think of anger, disappointment, being let down by the system, that people who don't understand our particular circumstances have made decisions in relation to this matter. That they don't have to pick up the pieces, we do.

Department officials and appeal personnel commented that the whole appeal process can be, in the words of one official, a “chastening and a learning process for schools”.

The interviews give insight into the initial effect that an external appeal process had on schools. Appeals were seen as a challenge to the schools’ authority, being anti-school and creating turmoil within a school. Appeal personnel commented on the general sense in school communities that the vast majority of appeals were upheld. One stated: “It galloped all around the country that young fellows with axes hitting teachers in classrooms were appealing them and were winning them.” It was suggested that this led to a strong feeling that appeal committees were anti-school. Some appeal personnel, commenting on the culture and control of schools, noted that the attitude of schools to appeals was often a reflection of the school itself. They suggested that many schools did not like the new voice that was given to parents through appeals. According to a number of appeal personnel, some schools believed that if a child was expelled from a school he/she should remain expelled and Section 29 was interfering with that belief. As a result, some schools were described as being “scared stiff” of appeals.

One partner stated that “there was awful turmoil” in the early years of appeals. Two partners described the belief by schools that they were being put on trial. One said:

Certainly the Section 29 committee would have been seen as the enemy, there is no question about that. And, in fact many principals would have told me in the past... that they felt that they were on trial and they felt singled out so we would have all been petrified about it because obviously it was kind of an infectious fear.

The interview data shows that some school authorities construed their lack of compliance with their own enrolment and disciplinary procedures as being caught out on technicalities by appeal committees. One management body described the schools’ belief that appeal committees hadn’t “got an open mind” about appeals while another partner said “the perception was that the appeals were to catch people out”. One management body representative described being at a meeting, during which three

principals spoke of their experience of Section 29 hearings. All three principals had been dissatisfied with the outcomes of the appeals. This person recalls:

the room being aghast, first of all at the horror stories that they had to tell us about the behaviour of the particular students in the school... And because of some technicality, like that they had a discipline committee but that wasn't stated on their code of behaviour or something wasn't signed in the boy's school journal, some technicality is my memory of it. Because of that they were ordered to take this boy back and retain him in the school. That really frightened school principals. And it was an unfortunate start for the whole Section 29 appeals...So that a sort of a culture of unease grew up around Section 29.

Bourdieu and Passeron (1990) assert that the power of teachers has traditionally gone unquestioned in schools. This power can be seen from the description by some interviewees of the pressure exerted on some principals by teachers to expel a student. These interviewees discussed how some principals used the appeal committee to implement a decision that they would have liked to have made to reinstate a student had they not been put under so much pressure by their staff to expel the student. One appeal committee member commented that principals can be placed in difficult positions if they lose an appeal saying: "I think principals were in impossible positions trying to barter between their staff and the parents and the child, all good people in my view."

Some interviewees noted that when appeals were introduced, schools were also faced with the challenge of implementing a raft of other new legislation. The "bureaucratic" nature of appeals was also discussed by two partners. They commented on the amount of work involved in preparing for an appeal hearings and the amount of documentation now required by schools. This was a new experience for many schools, as they now had to be accountable to an external body, the appeal committee for their actions.

### **8.3 THE ATTITUDE OF THE UNIONS TO SECTION 29 APPEALS**

In the early years of Section 29 appeals, schools were unsuccessful in a considerable amount of appeal cases, often because they did not have their paperwork in order and did not have their codes of behaviour or admissions policies properly documented or ratified by their Boards of Management. Appendix 24 outlines the outcomes of appeals from their commencement in 2001 until 30 January 2004 and shows that the

majority of appeals in this period favoured the appellants. This led to resentment from schools and unions about the appeal process. All school types interpreted Section 29 as a challenge to their autonomy. The TUI in their draft policy paper, *An Approach to Discipline in Schools* (2004: 2) described the education legislation such as the Education Act and the Education (Welfare) Act as “student-centred and strongly assertive of the rights of individual students and their parents”. It stated that school managements were often afraid to exclude pupils because of the “distinct possibility” that such a decision could be overturned on foot of a Section 29 appeal and “that the school will be ordered to re-admit the student, with a consequent visible weakening of its disciplinary structures” (2004: 7). This suggests that schools were concerned at the erosion of their power to discipline students as a result of Section 29 appeals. It also reveals that the introduction of Section 29 posed a challenge to all schools in relation to how they dealt with pupils who were seen as disruptive.

The TUI asserted on its website and in its publications that the Education Act placed the rights of ill-disciplined pupils above the rights of the majority of pupils and above the rights of teachers to teach. At a consultative conference on school discipline on 4 December 2004, the President of the TUI stated that the union would be seeking legislative change and identified industrial action as an option unless there was a commitment from the DES to tackling this issue (TUI: 2004). At the same conference, a solicitor articulated the view that teachers, principals and school managements were confused since the enactment of the education legislation:

about the extent of their authority to assert and maintain school discipline and to sanction the ill-disciplined minority in any meaningful way. The effect of this is that school authorities feel hamstrung in their responses to incidents even of serious ill-discipline, teachers feel frustrated that their legitimate concerns and complaints about unruly individuals are being ignored, parents and compliant students feel that their needs are not being met by their schools, and the result is a general deterioration in the quality of life for all concerned, as well as a serious impairment of the educative work of the school (TUI: 2004).

The ASTI, in a survey on discipline in schools in March 2004, found that schools’ discipline policies were undermined by fears about legal repercussions for schools and recourse to external appeal procedures. The ASTI recommended that legislation be reviewed to ensure a proper balance be achieved to enable the right of the majority of pupils to learn in an orderly environment. The attitude of these teacher unions suggests

that Bourdieu and Passeron's (1990) assertion that schools promote cultural capital by contributing to the reproduction of the social structure is true in the Irish context.

## **8.4 THE TASK FORCE ON STUDENT BEHAVIOUR**

### **8.4.1 Motivation behind the Establishment of the Task Force**

The powerful voice of the teacher unions, as described by Drudy and Lynch (1993), and their symbolic capital, as described by Bourdieu (1989), can be seen from the fact that in January 2005, as a result of lobbying on the part of unions, a review of student behaviour in second-level schools was initiated by the then Minister for Education and Science, Mary Hanafin, T.D.

All officials interviewed commented on the reasons for the establishment of the Task Force. One commented on how teacher unions exerted pressure on the Department to introduce greater balance into Section 29 appeals because the unions argued that Section 29 was giving a "disproportionate weight to the entitlements of what they called the unruly or the uncontrolled". Another official commented that the unions and management bodies "wanted to trammel Section 29" as it stopped their:

freedom to, in particular, dismiss disruptive students or in some instances to refuse to enrol a student that the school felt was going to, for want of a better description, be more trouble than they were worth.

One management body representative said that the Task Force was established because of pressure from the TUI and the "fact that they were maintaining that law and disorder was the norm within the classrooms". The power of the education partners in effecting the establishment of the Task Force indicates what O'Sullivan (2005) describes as the dominant voices in education having the power to decide the "problems and priorities" in education at national level, and what should "command attention or excite emotions".

### **8.4.2 The Terms of Reference of the Task Force**

While Section 29 was not the reason for the establishment of the Task Force, it is evident from documentary analysis that there was much debate about appeals during the Task Force's deliberations. The terms of reference of the Task Force were:

- To examine the issue of disruptive student behaviour and its impact upon teaching and learning
- To consider the effectiveness of strategies at present employed to address it
- To advise on existing best practice, both nationally and internationally, in fostering positive student behaviour in schools and classrooms
- To make recommendations on how best to promote an improved climate for teaching and learning in classrooms and schools.

Membership of the Task Force comprised the coordinators of the School Completion Programme and Youthreach, practising teachers and principals, a solicitor and Dr Maeve Martin, a psychologist working in teacher education, who chaired the working group. Most persons appointed to the Task Force represented the educational community. Minority groups such as Travellers were not represented, even though some of its members did work with disadvantaged children. Even though there were teachers appointed to the Task Force, the teachers unions were not specifically represented.

#### **8.4.3 Submissions to the Task Force**

Written submissions to the Task Force were invited and the education partners were invited to make presentations at meetings of the Task Force throughout the course of 2005. The Task Force received 153 submissions from statutory agencies, advocacy groups, school groups comprising teachers, parents and pupils, and individuals, and met with eight of the education partners. The Task Force members also visited schools and centres for education and engaged in discussions with staff, parents and pupils. A documentary analysis of the presentations and submissions received by the Task Force provides evidence of the negative attitude of many to Section 29 appeals. All officials and partners interviewed agreed that the unions were the most vociferous group during the discussions and, as stated by one partner, were “dancing a jig on the behaviour, particularly the TUP”. It was noted by one interviewee that the submissions from the National Parents Councils were “terrible - no idea of what was happening”.

### **8.5 ANALYSIS OF SUBMISSIONS TO THE TASK FORCE**

#### **8.5.1 Erosion of Discipline in Schools**

Some written submissions indicated a desire to continue with the established traditions of schools, but also a need to understand the changing world of student life. For

example, the NAPD stated in its written submission to the Task Force on Student Behaviour:

At the beginning of the 21<sup>st</sup> century no school is immune to the increasing level of difficulty with student behaviour. Influences outside the school – changes in social mores, altered attitudes to authority and values – must, inevitably impact on the lives and attitudes of students (NAPD, April 2005 :3).

The ASTI noted that legislative and other regulatory measures had:

effected profound cultural changes both in our schools and in society's expectations of schools. In addition to providing a quality education to all students in an inclusive setting, the second level school is required to perform and extensive socialisation role for our young people...Allied to these social changes has been the emergence of a civic culture in which the emphasis is on the individual rather than the communal rights and increasing recourse by individuals to formal structures, including legal structures, to ensure enforcement of such rights (ASTI, March 2005: 4-5).

The traditional and unquestioned power of teachers, as described by Bourdieu, is evidenced from Dr Martin's description of how the teacher unions believed that:

Teachers are impeccable, teachers are very competent, bar none. Managements were interesting about saying that there were individual teachers in a school who caused persistent difficulty, not just for themselves and for the classes that they taught, but for their colleagues. And until there was some mechanism by which these people could be offered help or counselled out of the system the situation would persist. Now that was a marked contrast to the unions who were vehement about the wartime zones in which their members were working in.

This comment by Dr Martin reveals the culture of many schools, where teachers had the dominant and powerful voices which traditionally went unquestioned. It also reveals the growing recognition by management bodies that this culture of permitting the dominance of the teacher voice needed to be changed.

Dr Martin also described a National Council for Curriculum and Assessment (NCCA) submission which commented on the failure of the school curriculum to cater for all children, thus perpetuating social and educational inequalities. Dr Martin described how the NCCA's submission outlined that:

Disruption in schools was in a lot of cases attributable to unimaginative rolling out of the curriculum. In other words that the faulty boot did not all lie with the páistí but perhaps with some of the teachers and the reluctance of the teachers to acknowledge this.

A range of submissions voiced concern about how discipline was being undermined in schools due to fear of legal repercussions and appeals. The JMB, in its written submission (April 2005: 5), noted that “the fear of litigation can hamper school management in their efforts to maintain good order in school”. The IVEA, in its submission (April 2005: 2) noted the:

increasing minority of students who call teachers foul and abusive names, flaunt health and safety regulations by leaving classes and the school building, refuse to do any school work and whose parents/guardians refuse to take telephone calls or answer letters to help address these problems. The students are then fully aware that the school has only limited sanctions it can apply and the school management’s hands are tied by so many aspects of legislation: suspensions are limited and expulsions are often overturned on minutiae of procedure.

A submission by the TUI Westmeath Branch (4 April 2005) stated that:

Recent education legislation appears to protect the disruptive student – making it virtually impossible to deal with them in any meaningful manner. When legislation creates more problems than it solves its time to critically re-evaluate it and reframe it if possible.

From these submissions, one can note the main concern of school management bodies and unions. Some felt that recent educational legislation, such as Section 29 of the Education Act did not support the schools in their efforts to discipline and socialise certain young people.

In interview for this research one partner reflected that the real concern of schools and teachers was their inability to embrace change. This interviewee stated:

The discourse that both the ASTI and the TUI were having on student behaviour was actually a metaphor for a broader discourse on change in our education system...The teachers who are meant to love and care for their children would stand up in public conference and label them as blackguards, as hooligans, as bad mannered... I think if you go beyond that you will see that at a deeper level of meaning what was happening was that the teaching profession was struggling to cope with the fact that there was a fairly significant change in the composition of who went to school, who stayed on at school and what they wanted out of school. And I really think if you look at that whole discipline Task Force thing, the teachers found it very hard to cope with the fact that now, in the past you could get rid of the underperforming children or the badly behaved children or the Traveller children, you could dump them down the road to the local Tech. Nobody gave a damn; that was a dumping group. Now that you had your appeals sections, schools could not, it was a real statement, you have to be an inclusive institution, you must have very good reasons for getting rid of people... So while the discourse of the discipline submission was very much one, and properly so about the rights of

the majority, underneath that was also a huge social resistance by what is a traditionally very conservative, very middle class profession, to having to deal with huge social change in the type of kids they were teaching. I actually think it was a crisis almost like a society was moving from being authoritarian to being much less authoritarian... But I certainly think that we would have taken on this mantle of we don't like these appeals things because they undermine the authority of the school to dispose of children as it sees fit. But they were part of a broader pattern of the reorganisation of governance and education which I think has been, by and large, successful and necessary.

This comment reveals that some insiders in the education system were insightful enough to see that the authoritarian paradigm that had traditionally gone unquestioned in schools was being tested by Section 29 of the Education Act. Prior to this educational legislation, many schools demonstrated their power by teaching those they wanted to teach: those with the most cultural and social capital. They could impose sanctions and exclude other pupils who did not fit in with their view of the cultural norm. The introduction of Section 29 led to a reframing of this authoritarian paradigm by, for the first time, allowing for the traditional and exclusive practices of some schools to be challenged.

Dr Martin, in interview, commented that schools which were most successful in dealing with difficult students had a wider definition of success than a narrow academic definition. She noted that:

some schools were employing a range of strategies like counselling and anger management using funds say from the School's Completion Programme in imaginative creative ways to create care teams to bring into schools, personnel beyond the teaching force that might help eliminate or minimise. Quality of leadership, of course, was critical.

These schools were more likely to be low-excluding schools, as described by Munn et al (2000) because they tried to match the in-school resources to the particular needs of the difficult student.

### **8.5.2 Criticism of Section 29**

The impact of Section 29 on schools was a dominant theme in the submissions to the Task Force. These submissions demonstrate that schools were unhappy that their autonomy and power were being dissipated by the possibility of a Section 29 appeal. In her interview for this research, Dr Martin stated that:

the recurring theme from key players was Section 29... the then perception on schools' part that they were rendered powerless by it, that they were not in a



position to implement their code of behaviour; to show the high road to any persistently disruptive pupil...that they were absolutely fettered by this Section 29 which they perceived to be totally in favour of the student and their rights.

Dr Martin described how the unions and management bodies:

talked at length on how undermining it was for morale, somebody who had caused a lot of grief, coming back into the school, giving the school the two fingers saying, we took you to court and we won, kind of attitude.

It was also noted that many pupils, whose appeals were upheld and who were aggressive and disruptive in the first place, were even worse on re-admittance because they had faced the system and won. The above comments by Dr Martin indicate a 'them and us' attitude in many schools and a fear by schools that they would lose their power to students as a result of Section 29. She commented that: "Section 29 bedevilled it all, it was the big ticket, as it were... from all the partners." Dr Martin also noted that the unions and management bodies were the most vehement about Section 29. The TUI was most vociferous in expressing dissatisfaction with Section 29, stating in its submission to the Task Force that:

Teachers and management bodies are reporting that Section 29 of the Education Act, 1998, is causing paralysis in schools, strangling routine decision-making and the application of fair and reasonable sanctions (March 2005).

Some school principals wrote submissions in which they described their own experience of appeals. For example, one wrote:

We have found ourselves in a situation, where pupils expelled as a last resort and in order to safeguard the rights of other pupils all won appeals against their expulsions. It then became apparent to all pupils that the school is, in reality, powerless in the face of unrelenting non-cooperation. In all cases we were instructed to seek psychological assessments even though we could reasonably expect to have to wait months for such assessment. No resources whatsoever are provided to the school to support the appeal process and there is a presumption on the part of the DES that management can stretch their time to accommodate what is an extremely onerous duty. This can be done but only by diverting time and attention from pupils who may very well have needs that should be addressed but who are not actually disruptive (6 April 2005).

This comment suggests that this principal believed that pupils who were disruptive were not worth saving; implying that those with the same values or cultural and social capital as schools were worth saving. The IVEA described the negative effect on schools when appeals were upheld and pupils were returned to school. It noted "a

feeling of helplessness on the part of management and teachers and disappointment, if not fear, on the part of fellow students (www.ivea.ie 14/3/2006).

The dominant paradigm prior to Section 29 had been that schools had the autonomy to decide who they would teach and who they would expel. The evidence suggests that Section 29 challenged this paradigm. Schools now had to explain their actions and motivations and this clearly caused difficulty for many schools. Therefore, many of those who made submissions to the Task Force called for an immediate review of the Section 29 appeal legislation and/or process.

The NEWB's submission (April 2005) was one of the few submissions that supported Section 29 appeals. The NEWB's view was that Section 29 led to schools being forced to implement more fair and transparent procedures. It stated that:

It is the Board's view that the appeals system has been positive for schools, and for students. It has led to the strengthening of school policies, and enabled schools to ensure fair and transparent procedures...Consequently, as the body with legal responsibility for promoting school attendance; the Board would not favour any weakening of the legal access to redress, under Section 29 of the Education Act (1998).

### **8.5.3 The Rights of the Compliant Majority**

Many submissions to the Task Force emphasised the impact of poor behaviour on teaching and learning and the need to re-establish the rights of the compliant majority of pupils to an education free from disruption. Dr Martin noted in interview for this research:

The big recurring phrase that you must remember from the Task Force was "the rights of the compliant majority"...and the broad perception that their rights were being subjugated or being jeopardised in favour of the rights of the non-compliant minority who were assuming no responsibilities.

Appendix 25 summarises some of the submissions of unions and management bodies in relation to the rights of the compliant majority. These submissions articulate the viewpoint of schools that all pupils must act in compliance with the cultural and social capital of the school. Concerns were expressed to the Task Force about those pupils whose learning was being disrupted and about the weakening capacity of a school to enforce discipline effectively when it was forced to accept a student who had been excluded. It was noted regularly that the education system had become weighted in

favour of the miscreant to the detriment of the majority of good, interested pupils, who were seen as the losers as a result of Section 29.

By highlighting the rights of the compliant majority and the desire to ensure that their education should remain uninterrupted, the schools were implicitly giving support to their own dominant ethos and constructing disruptive students as not being worthy of them.

#### **8.5.4 Criticism of Bureaucracy and Timeframes for Appeals**

Some submissions received by the Task Force criticised the lengthy and time-consuming nature of the appeal process. There was a general view that Section 29 had generated a considerable amount of paperwork, recording and reporting for schools. This was as a result of the requirement on schools to be more accountable by documenting their actions and procedures in relation to suspension, expulsion and enrolment. Some submissions expressed concern that the holidays of principals and Board of Management members were being eroded, as appeal hearings often occurred during school holidays. They called for the legislation to be amended to exclude holidays or else refer to schooldays rather than days.

#### **8.5.5 Criticism of the Composition of Appeal Committees**

The desire to ensure that appeal personnel shared the same social and cultural capital as school personnel can be gleaned from some submissions. These submissions were highly critical of the composition of appeal committees in that there was “no formal provision for the viewpoint of the teacher or school principal to be represented” (ASTI, March 2005: 19). The ASTI, therefore, called for the introduction of practising teachers to be represented on appeal committees in order to “reassure teachers and school management authorities that decisions are made by persons with practical knowledge of the realities of school life and in accordance with objective criteria”. The JMB recommended the involvement of experienced principals in the composition of appeal committees: “This would be crucial in helping to restore confidence in the process and bring the experience of a current management practitioner to each case” (JMB, April, 2005: 8-9). The TUI noted in its submission that:

since January 2003, local authority appeals panels in Britain must include serving teachers; pupils will not be reinstated simply because of a procedural

mistake; and appeals panels are required to balance the interests of excluded pupils against the interest of others... TUI believes that, as in Northern Ireland, appeals boards should be required, in their terms of reference, to have regard to the interest of teachers too, when making decisions on individual pupils' appeals (TUI, April, 2005: 17).

These submissions reflect the view that it is the insider who best understands the education system and is in the best position to determine who should participate and who should be excluded from school.

#### **8.5.6 Criticism of Lack of Transparency of the Appeal Process**

Many submissions were critical of the fact that the Department was slow to publish statistics or information in relation to the outcomes of Section 29 appeals.

#### **8.5.7 Criticism of Lack of Consistency among Appeal Committees**

Inconsistency of practices by different appeal committees was another frequent criticism. The validity of the determinations made by some appeal committees was thus implicitly challenged. It was noted that some appeal committees upheld appeals on small technical and procedural issues, as opposed to what was best for the education of the individual child and the rest of the student body in the schools. As Dr Martin said:

Section 29 made people very angry...a lot of appeals were being won by appellants on procedural grounds. And even though maybe committees sat and looked and knew that the behaviour was, if I say monstrous, it was excessive, shouldn't be tolerated, that maybe there were procedural issues in processing the appeal or Board of Management minutes or not giving parents the right of making a pitch for the retention of their child in the school at the Board of Management. And some chairpersons at the time would automatically put down an appeal that the school would lose an appeal if the procedures were not followed to the letter.

#### **8.5.8 Criticism of the Education Welfare Officers**

The duality of roles of the EWOs in terms of their initial work with a school to enable the school to accommodate or retain a student and then their subsequent advocacy on behalf of a student at the appeal hearing was criticised by many partners.

### **8.5.9 Concerns about ‘de facto’ Expulsions**

Many partners in their submissions expressed concern that many schools adopted the practice of ‘effective expulsion’, advising pupils to apply elsewhere. If a parent then applied for enrolment for their child in another school and was refused enrolment, this frequently led parents to take an appeal against the second school, leaving the first school ‘off the hook’.

### **8.5.10 Concerns about Waiting Lists**

The issue of waiting lists was highlighted in one submission and the example given of one parent whose child was seventeenth on the school’s waiting list. This parent appealed the decision by the school to refuse enrolment and the child gained entry to the school.

### **8.5.11 Concern about Admission Practices**

The tension between opposing constructs of schools is made explicitly in some of the submissions. It was perceived that in some locations, certain schools did not have to concern themselves with the education of weaker pupils and pupils with less educationally beneficial cultural capital, and the greater burden fell to other schools that were perceived as being more appropriate for those with less valued cultural capital. This led to social stratification between schools. Partners representing the Community, Comprehensive and Vocational sector, in particular, noted that their sectors were called upon to provide an unduly large proportion of the care which is required to meet the needs of children with special educational and social needs. The IVEA spoke about its schools being “ghettoised” (IVEA, April, 2005: 1). The TUI stated that many schools “still operate a highly selective enrolment policy, often by suggesting to prospective parents that the type of learning support their child would need is available in the other local post-primary school, but, regrettably, not in theirs” (TUI, April, 2005: 9).

### **8.5.12 The Department’s View**

The Task Force met representatives from the Department in May 2005 to discuss the concerns of partners regarding Section 29. The Department presented the Task Force with statistics (Appendix 26) which showed that despite the partners’ view that it was almost impossible to expel a student, in fact more than two thirds of the appeals under

Section 29 were not upheld, resulting in these pupils being expelled. The Department officials stated at their meeting with the Task Force that those currently serving on appeal boards were retired principals, retired CEOs of VECs, and academics/educationalists, all of whom met the criteria of “requisite expertise, experience and independence”. It was further pointed out that the appeal procedures set out a number of bullet points which must be considered by each appeal committee in reaching a determination. Thus, the Department refuted many of the assertions made in the submissions to the Task Force.

## **8.6 THE REPORTS OF THE TASK FORCE**

### **8.6.1 The Interim Report of the Task Force**

The Task Force presented an Interim Report on Student Behaviour in Second Level Schools to the Minister in June 2005. The report concluded that there was a healthy teaching and learning environment in the majority of schools, especially:

where there is good leadership, quality teaching, supportive parental involvement, caring relationships and effective structures in place. However, the troubling reality is that there are schools in the system where teaching and learning are severely curtailed by disruptive student behaviour.

The Task Force report acknowledged the impact that Section 29 of the Education Act had on schools. It noted the perception among schools that:

when a student’s behaviour is such that it is resistant to all efforts to bring it within acceptable limits and is of a nature that it interferes with the learning opportunities of peers, school authorities are powerless to remove the student from the school.

The Task Force also referred in the report to the uninclusive nature of some schools that did not enrol the full spectrum of pupils from its catchment area. It commented on the consequent impact of this on other schools that were more willing to take pupils from challenging backgrounds or with challenging behaviours.

### **8.6.2 The Final Report of the Task Force**

The final report of the Task Force - *School Matters* was published in March 2006. The report noted that the most frequent issue that came before the Task Force was dissatisfaction with certain aspects of legislation and, in particular, with Section 29 of

the Education Act. The report stated (2006: 44) that schools needed support in implementing recent legislation and:

in maintaining a balance between the letter of the legislation and the human and moral enterprise that catering for large numbers of young people entails. There is an assumption that school authorities understand the full implications of the legislation and that they have the expertise to devise policies that are responsive to the aspirations of the legislation. The legislation has increased the workload and volume of paperwork for school staffs in ways that may not always be fully appreciated.

The report outlined how the most frequent issues raised by partners in relation to Section 29 were:

- the cumbersome nature of processing a Section 29 appeal
- the large investment of time and expense entailed
- the consequent inroads on a school principal's other more appropriate role-related work
- the experience of the actual appeal hearing
- the composition of the appeals' board
- the loss of morale for a school when an appeal is upheld
- the sense that schools are now becoming disempowered in their efforts to implement a rigorous code of behaviour
- the perception that the pendulum has swung too far in favour of the misbehaving student and away from the rights of the teacher to teach and the compliant students to learn (Department of Education and Science, 2006a: 134).

The report acknowledged that Section 29 had created considerable difficulties for schools. In the report, the tension between upholding the rights of those with the most educationally beneficial cultural and social capital to an education and the rights of those with less valued capital to participate fully in the education system is evident. The Task Force recommended that a review of Section 29 of the Education Act be considered by the Department "with a view to amending it in ways that are more protective of all the school community" (2006a: 135).

It also recommended:

- The amended legislation should seek to stress the rights of the compliant majority to learn while at the same time protecting the rights of the persistently disruptive student to an education
- A timeframe for the conduct of appeals which is less protracted than that which is currently in place should be stipulated

- School Boards should be helped in the preparation for an appeal, through the use of a protocol outlining the aspects that they need to attend to in advance of the process
- Improving the present educational provision for a student who is out-of-school pending an appeal
- Promoting the role of the Education Welfare Officer as agents of support and intervention both for families and for schools.

Speaking at the launch of *School Matters*, Minister Hanafin announced her decision to review existing legislation in order to take account of the Task Force recommendations. Most of the education partners welcomed the report and, in particular, the recommendation to review and amend Section 29 of the Education Act to incorporate the rights of the compliant majority.

## **8.7 THE IMPACT OF THE TASK FORCE**

In interview for this research, the following outcomes were highlighted by many interviewees as being important outcomes of the Task Force's deliberations:

- The establishment of the National Behavioural Support Service (NBSS)
- A heightened awareness of the rights of others in schools
- The development of the NEWB's (2008) Guidelines for Developing Codes of Behaviour
- The Education (Miscellaneous Provisions) Act (2007).

### **8.7.1 The Education (Miscellaneous Provisions) Act**

In August, 2006, Minister Hanafin announced that, as a result of the findings of the Task Force, the Government had approved the drafting of a Bill to amend Section 29 of the Education Act. The ensuing legislation, the Education (Miscellaneous Provisions) Act was introduced in 2007. Section 4 (Appendix 27) of this Act amends Section 29 of the Education Act. In an effort to balance the rights between the educational interests of the student who is the subject of a Section 29 appeal and the educational interests of the rest of the school community, it details the factors which an appeal committee must consider in appeals relating to expulsion and suspensions. The Act allows for appeal committees to refuse to hear appeals which they consider frivolous, vexatious or an abuse of process. In addition, an appeal committee can draw



inferences from the failure of a party to the appeal to comply with requirements in relation to requests for information.

This proposed legislation indicated that the education partners had been successful in influencing national educational policy through their submissions to the Task Force and that they were to regain some of the power they had lost as a result of appeals.

Most appeal personnel stated, in interview, that despite the inclusion of the broader criteria in the Education (Miscellaneous Provisions) Act, these criteria were, in actual fact, being taken into account when determining appeals. Likewise, one Department official stated that the Task Force was “largely an optics debate”:

It makes not a blind bit of difference truthfully. All we have done was we’ve expressed in law that which was actually happening in any event in the findings of the individual cases.

Revised Section 29 procedures were prepared on foot of the Education (Miscellaneous Provisions) Act. However, these procedures have not to date been implemented because, although the Act was signed by the President in April 2007, it has not yet commenced. In the Senate debate on the Education (Miscellaneous Provisions) Bill in March 2007 (<http://debates.oireachtas.ie> 18/11/2008), Minister Hanafin stated that the recommendation in relation to preparing a protocol for school boards would “be given effect in the revision of the procedures for hearing and determining an appeal”. She also stated that: “Consideration will also be given to putting the procedures into the more formally structured framework of a statutory instrument. Further consultations with all the education partners will inform this process.” To date, this has not happened.

### **8.7.2 Reaction to the Education (Miscellaneous Provisions) Act**

Most partners welcomed the amended legislation. The ASTI ([www.asti.ie](http://www.asti.ie)) issued a press release on 25 January 2007 to welcome the new Education (Miscellaneous Provisions) Bill stating that it would “help to assert the need for school communities to recognise that the education of the majority of well-behaved students should not be subverted by the minority of disruptive students”. However, some concern was expressed about the impact the legislation would have, especially on marginalised children. The NPC-Primary expressed concern at the “proposed weakening of the

appeals procedure” (www.npc.ie 12/9/2008). The Irish Independent reported on 16 April, 2007 (www.independent.ie 24/5/2007) that the CEO of the NPC-Primary stated: “The changes proposed by the Government run the risk of making the process both unfair and appear unfair.” The report recorded the views of the CEO of the NPC-Primary who said that the NPC was:

concerned about the implications of the proposed amendment for equality issues, for children with special educational needs and especially for children whose special needs include behavioural disabilities, and Traveller children....The changes in the Act will give schools more power to get rid of children who are experiencing difficulties.

The NEWB in their *Advices from the National Educational Welfare Board* to the DES regarding the *Procedures for hearing and determining appeals under Section 29 of the Education Act 1998* (2007: 8) expressed serious concern that the provisions of the Education (Miscellaneous Provisions) Act “may lead to a higher level of expulsions from schools”.

### **8.7.3 Reviewing Section 29**

The Section 29 legislation provides for a review of appeal procedures not more than two years after Section 29 has been implemented. The first review of Section 29 should have taken place in December 2002. In September 2003 the education partners were invited to make written submissions to the Department regarding Section 29. Subsequent to the submissions being received, meetings were then held with the teacher unions, and other stakeholders (the JMB, NEWB, NCSE and IVEA) to discuss their submissions. Department officials, in interview, stated that they wanted to await the outcome of the work of the Task Force on Student Behaviour in Second Level Schools before concluding the review.

Partners were again written to in May 2007 in relation to a consultation process which “arises from the passing by Dáil Éireann of the Education (Miscellaneous Provisions) Act 2007 and the amendments therein to section 29 of the 1998 Act”. Each organisation was invited to make a written submission on “possible alterations to the section 29 Procedures”. According to one DES official interviewed, no fundamental changes to Section 29 were recommended as a result of these submissions. It could be deduced from this that the proposed changes to appeals in the Education

(Miscellaneous Provisions) Act had the support of schools and that schools saw this legislation as a mechanism to regain some of the power that they had lost as a result of Section 29.

## **8.8 COURT ACTIONS IN RELATION TO SECTION 29 APPEALS**

Prior to the enactment of the Section 29 legislation, the only recourse that parents had to challenging the authority of schools was through the courts. The results of these cases indicated that the courts were unlikely to interfere with the discretion of school authorities in relation to internal matters such as discipline. Since the introduction of Section 29 appeals, school authorities and parents are told during each appeal hearings that they can apply to the courts if they are dissatisfied with the outcome of an appeal.

One DES official recalled the first three court cases in relation to appeals where schools refused to accept the determinations of the appeal committees: “I think two were taken by the school against us and one by us against the school... None of them saw the inside of the courtroom but of the three, we won two and lost one basically.” The official commenting on the autonomy of schools, noted how important these cases were for the DES to win:

Because if we didn't pursue a school, word of that would soon spread around; but schools will say ah it says it is legally binding in the Act but you know the Department won't go after you on this. You go can just see them down, go to the appeals committee, lose the appeals committee and still survive.

In the past few years, there have been a number of judicial reviews of Section 29 appeals. This section describes the outcomes of the first five judicial reviews that were heard in the courts<sup>28</sup>. Four judicial reviews were taken because schools did not accept the appeal determination and one was taken because the appellant did not accept the determination. In all five cases, the results of the judicial review overturned the recommendations of the appeal committees. The rulings that arose from the judicial reviews greatly changed the focus and role of Section 29 appeal committees and, for a while, considerably narrowed their scope. Appendix 28 outlines in detail the content of each of the judicial reviews referred to below. The DES appealed the results of one

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<sup>28</sup> A number of other judicial reviews in relation to appeals were settled before they went to court

of the judicial reviews to the Supreme Court and won, thus restoring much of the original power of appeal committees.

### **8.8.1 Judicial Review between the Board of Management of a National School and the Secretary General in Relation to a Refusal to Enrol Appeal (2008 593 JR)**

Ms Justice Irvine's High Court judgement (Government of Ireland, 2009) on the 17 February 2009 related to two determinations made by an appeal committee on 25 April 2008. The appeals were taken against a National School in County Dublin. The appeal committee in both appeals determined that the school had the capacity to accept two sisters as pupils and recommended that they be enrolled in the school with immediate effect, although the school had previously refused to enrol 41 other pupils who had not appealed. The Board of Management of the school made an application to quash the determinations of the appeal committee. It contended that the appeal committee had no jurisdiction to interfere with its decision, which it stated was a management decision made in accordance with a valid enrolment policy. It also contended that the appeal committee took into account matters which were irrelevant, failed to take into account matters which were important, and the ultimate decision was irrational.

Ms Justice Irvine concluded that a Board of Management, because of its composition and knowledge, was best positioned to make decisions about a school's capacity. She concluded that the power of the appeal committee under Section 29 was confined to a right to review the lawfulness and/or reasonableness of a board's decision to refuse enrolment and that the appeal committee acted ultra vires. She also concluded that the decision of the appeal committee was both unreasonable and irrational.

This was a landmark judgement as it was the first High Court judgement in relation to Section 29 appeals. It was the official interpretation of Section 29 by the courts and, therefore, all appeal committees were bound by the principles set out in the judgement. As a result of this judgement, the majority of appeals in the proceeding years were not upheld.

### **8.8.2 Judicial Review between Co. Westmeath VEC and the Department of Education and Science (2007 1564 JR)**

A Section 29 appeal committee had determined that a Community College should enrol a pupil who was enrolled in another second-level school in the town. This boy had been ‘de facto’ expelled from the second-level school due to his behavioural record. The Board of Management of the Community College had refused to enrol him on the grounds that its enrolment policy stated that the college did not accept transfers from pupils already enrolled in other schools in the locality.

The appeal committee upheld the parents’ appeal on four grounds: (1) the enrolment policy of the Community College was at variance with the rights of parents to enrol their child in the school of their choice; (2) the boy had no school placement following his withdrawal from his original school; (3) the college had capacity to take the boy and; (4) his level of misbehaviour did not warrant a refusal to enrol. County Westmeath VEC, as a result of this determination, applied for a judicial review.

The ruling of the judicial review was made on 10 July 2009 by Mr Justice Daniel O’Keeffe. He ruled that Section 15.2 of the Education Act (1998) “gives no absolute right to a parent to enrol a child in the school of their choice”. He also found that the appeal committee erred in upholding the parents’ appeal on the ground that the boy had no school placement, because the boy continued to be enrolled in his first school.

The result of this judicial review indicated that appeal committees were no longer permitted to substitute their decisions for those of a school’s Board of Management. In addition, the wish of parents to enrol their child in a school of their choice was no longer deemed an acceptable reason to uphold an appeal.

### **8.8.3 Judicial Review between a student and the Board of Management of a Secondary school (2007 No. 418 JR)**

This judicial review was taken as a result of a decision by the Board of Management of a Voluntary Secondary school to expel a student in January 2007. The subsequent Section 29 appeal was not upheld.

The applicant for the review, in this case the appellant, argued that the Board of Management of the school did not notify the EWO until after the decision to expel him was taken and thus the Board was in breach of its statutory duty under Sections 21 (4) and 24 (4) of the Education (Welfare) Act. The judge agreed, stating that Section 24 (4) of the Act clearly prohibits the expulsion of a student, without allowing a period of 20 days for the EWO to carry out his or her function. While he acknowledged that the reasons for the decision of the Board of Management to expel the applicant, and the subsequent upholding of this decision by the appeal committee may have been valid, the decision to expel was in breach of the applicant's statutory rights. Therefore, it was rescinded by the court.

The above ruling had major implications for the manner in which appeal committees reached their determinations. Schools now had to comply with the letter of the legislation and appeal committees had to ensure that they had done so.

#### **8.8.4 Judicial Review between a National School and the Department of Education and Science and others (2008 287 JR)**

This case related to a mainstream national school with an autism outreach unit attached. A child with a general learning disability, which was greater than mild, was refused enrolment to the autism unit on the basis that the enrolment policy stated that it would only enrol children with mild general learning disabilities. The parents appealed the decision under Section 29 of the Education Act. The appeal committee upheld the appeal.

In his ruling, Mr Justice O'Keeffe stated that an appeal committee could not "strike down or disregard a provision in the enrolment policy of a school and substitute what it may consider as appropriate". Furthermore, he ruled that the Education Act provides for "respecting the right of parents to send children to a school of the parents' choice, but it does not confer on a parent the right to send a child to the school of their choice".

This review had major implications for Section 29 appeals because the courts now ruled that appeal committees could not impugn the policies of schools even if such

policies were discriminatory. In addition, school of choice was once again cited as an invalid reason for upholding an appeal.

### **8.8.5 Changes to Section 29 Appeal Procedures as a Result of these Judicial Reviews**

The results of these judicial reviews impacted greatly on Section 29 appeals and on schools. Appeal committees, which heretofore could bring their own particular viewpoints on the rights and wrongs of schools' policies and procedures, lost much of their discretion in this regard. It was now perceived that school authorities had the autonomy to decide on the content of their enrolment and behaviour policies. Whether they were discriminatory or not, they could no longer be challenged by appeal committees. This greatly constricted the authority of appeal committees as they could now only have regard to the ensuring that schools followed appropriate procedures.

The law in relation to Section 29 was, for over a year, informed by the outcomes of the High Court judgements outlined above, and the effect of these can be seen in the major reduction in upheld appeals in both 2009 and 2010 (Appendix 21). Committees were confined to:

reviewing whether the Board of Management applied its policies correctly and lawfully and that means whether it did so in a reasonable and rational manner... Appeals must be limited to the facts and circumstances which existed at the time of the Board of Management's decision (Department of Education and Science: 2010).

Examining other issues, such as whether the school did in fact have accommodation for the student in the case of a refusal to enrol appeal, were no longer permitted. In effect, a committee could not impugn a school's policy; it could only review the decision of the Board of Management about the implementation of the policy. In addition, parental school of choice no longer constituted grounds for upholding appeals.

According to Riordan (2010):

The net effect...is to consolidate the role of a Board of Management in consultation with its patron as the main determinant of its admissions policy subject, of course, to compliance with the law... and it represents a significant constraint on the power of an Appeal committee under Section 29 of the Education Act.

An appeal committee had now three options open to it in determining appeals:

- Uphold the appeal when a school has breached its own policy
- Not uphold the appeal where the committee can find no basis to consider the school acted unreasonably or unlawfully
- Refer the decision of the Board of Management back to the board for review:

Where a committee considers that the Board have (sic) acted unlawfully and/or unreasonably, the Section 29 committee, especially in relation to management issues, is limited to a direction that the Board of Management re-considers its decision in a lawful/reasonable manner (DES, 2010).

In the latter instance, there was no legal requirement on the board to change its mind.

The appeals application form was amended to reflect the above changes. The *Procedures for Hearing and Determining Appeals under Section 29 of the Education Act, 1998* were also amended to reflect the results of the High Court ruling (Appendix 29). A briefing on the new procedures took place in the DES on 18 January 2010 with the majority of appeal personnel present. There was much disquiet among appeal personnel about the effect of these new procedures on the education system in general and on parents in particular. It was noted at this meeting that the pendulum had firmly swung to favour the institution rather than the individual, as the appeal committee had no scope to question the validity of a school's decision to expel. As a result of the judicial reviews, schools had their power almost fully restored. They could once again decide who to teach and who to expel without being questioned. Thus, the High Court determinations greatly reduced the power of appeal committees.

The fact that schools challenged the determinations of appeal committees in court could be interpreted as a determination to maintain and defend the dominance of their position. In addition, as noted by some appeal personnel in interview, some schools were more likely than other schools and some parents more likely than other parents, to have the economic capital to challenge appeal determinations in court. Thus, inequality in the education system can be seen as being perpetuated by judicial reviews.



Department officials who were interviewed for this research questioned the usefulness and power of appeal committees as a result of the court judgements. As noted by one official, the judicial reviews led to the appeal committees losing their power and losing control of Section 29. One official talked about appeal committees having:

Possibly over reached what schools felt they were prepared to put up with in some instances. And as a result of that, a number of court actions began to arise directly from the appeal system itself. So I suppose the initial benefit of reducing the recourse to the courts as the only or primary method of resolving disputes between parents and schools, that initial benefit that came from the introduction of the appeal system, by about six years into the system had actually begun to wear off. And you had schools then who were coming to the conclusion that they weren't prepared to accept particular findings by committees and as a result of that the schools were now prepared to challenge in court. So, almost the shoe had gone to the other foot.

Another official stated that if the High Court judgement had remained, he would advise a parent to take an Equal Status claim against a school as opposed to a Section 29 because:

At least that way you can challenge the policy. Whereas if you couldn't challenge the policy then it gives the school license to do whatever they like almost once they write it into a document somewhere...I mean I wouldn't feel very comfortable if I was on an appeal committee and the admissions policy says we are not admitting anyone who is black or who is gay or whatever the thing might be. And all I can do is say whether or not the school complied with this case, now that is the effect of what the High Court is saying. It would seem to suggest that you are entirely locked into something which you know is wrong.

Appeal personnel, like the Department officials, felt that the very basis of appeals was now in question. One person said: "I thought that the whole integrity of the Section 29 is now maybe at risk of being undermined and I went through a stage of thinking about packing it in."

#### **8.8.6 The Supreme Court Ruling – 23 November 2010**

The Department appealed the High Court ruling of one of the judicial reviews to the Supreme Court in an effort to restore the power of appeal committees. Mrs Justice J. Denham and others overturned the decision of the High Court on 23 November 2010. In her judgement, she stated that the word 'appeal' appears 21 times in Section 29 of the Education Act. Her judgement also stated that:

The appeals process enables the appeals committee to have a full hearing on the matter and if so determined to replace its judgement on the matter for that of the Board and to make such recommendations as it considers appropriate... Thus the jurisdiction of an appeals committee is not limited to a review, for example, of the lawfulness or reasonableness, of a decision by a Board of Management.

The judgement concludes that “the High Court erred in its interpretation of S.29 of the Act in determining that an appeal committee is limited to the review of the lawfulness and/or reasonableness of a decision of the Board of Management”.

This judgement restored considerable power back to the appeal committees. As noted in interview by one partner, without that judgement there would be “the death of appeals”. An email from the Department was issued on 13 December 2010 to each Section 29 committee member stating that: “The Committee are (sic) now in the position they were prior to the High Court decision. The Committees can no longer use the option of referring the matter back to the Board of Management.” However, what was not made clear was that an appeal committee still did not have the power to impugn a school’s enrolment or discipline policy.

#### **8.8.7 Judicial Review City of Waterford VEC v Department of Education and Science and Others (2011 266 JR)**

This case, outlined in Appendix 28, involved a first-year student who was expelled from a Community College. The family appealed the expulsion through the VEC and their appeal was not upheld. It was further appealed to the Secretary General where it was upheld. The school had just been granted a unit for difficult children, under the National Behaviour Support Service (NBSS). Although the student’s behaviour was poor, the appeal committee was of the opinion that the NBSS might be of support to him. In addition, the appeal committee said that it would be “nigh impossible to find another place in Waterford City”. Waterford VEC appealed this determination to the High Court. Mr Justice Charleton delivered his judgement on 27 July 2011. He set out in this judgement the factors that can be taken into account by a Board of Management and an appeal committee when considering an expulsion.

These are:

- The behaviour of the pupil and the effect of that behaviour on the school;
- The track record of the pupil up to the point of the precipitating issue or issues;
- The attempts by the school at diverting, correcting or checking the behaviour;
- The contrition or lack of contrition of the pupil.

Mr Justice Charleton then went on to note that a Board of Management and an appeal committee cannot take into account the alternative educational placements which the EWO “may be in a position to offer; the resources of the school; and external resources”. Mr Charleton concluded that the matter should be “remitted for a fresh hearing”.

This judgement gave clarity to appeal committees as to what they should consider in hearing appeals in relation to expulsions. It allowed appeal committees to hold a ‘de novo’ hearing of the matter under appeal. It also allowed appeal committees to examine the behavioural record of the student and the attempts by the school at diverting, correcting or checking the student’s behaviour in making its determination. This review was described, in interview, by one committee member as providing “great clarity and great certainty and has given more courage again to appeal committee members to make braver decisions”.

### **8.8.8 Impact of Judicial Reviews**

All interviewees agreed that the results of the judicial reviews were the single biggest influence on how appeals are now conducted. Partners welcomed the outcomes of the judicial reviews. Many interviewees noted that the power of appeal committees was still restricted, even since the Supreme Court ruling. Some recognised that committees could still not impugn schools’ policies while others believed that the full powers of appeal committees had been restored. Appeal personnel noted that the initial judicial reviews “had a very deflationary effect, I think, on the morale within committees at the outset”. One appeal committee member commenting on the first four judicial reviews stated that appeal personnel:

were horrified at the judicial reviews because they reckoned that the judge didn't know what he or she was talking about because they hadn't been present to know the nuances and all the other things they heard at the hearing or from the facilitator.

Some appeal personnel noted that the judicial reviews had some positive impact, especially for the work of appeal committees. One committee member articulated this view by saying they were:

a great assistance in clarifying the law, the powers of appeals committees and in upholding the rights of students, parents and the rights of schools. They have also served to vindicate the actions of schools in several incidences and we must remember that. Schools have been brave and have gone to the courts and have challenged decisions as well. And they have brought rigor to the work of appeals committees. They also underline the need for adequate time to be spent in considering and in writing the determination and for all findings to be supported by relevant facts.

Most appeal personnel stated that they are more careful since the judicial reviews as they know that their determinations can be challenged in court. It was noted by one committee member that some appeal personnel were now “afraid to make a decision because they think that the wrath of judicial reviews will heap upon their shoulders”. A partner in interview also noted that fear of judicial reviews has made committees “a bit more thorough and a bit more careful.” Another stated:

I don't think that you have as many daft decisions now as you might have had in the past as a result of the case stated and the willingness of the judges to take a level headed attitude to the role of the schools.

Some appeal personnel blamed the Department for the results of the early reviews “because again the Department in my view didn't challenge properly”. There was speculation that the Department failed to challenge some judicial reviews due to the cost factor involved. In addition, there was much criticism by appeal personnel of the failure of the Department to bring people together to discuss the recent reviews and their implications for the work of appeal personnel. However, some DES officials blamed the appeal committees for going outside their jurisdiction. One official stated that, given a chance, he would make sure that the Secretary General had more power in terms of being able to amend a decision by an appeal committee if needed “so that he/she would not be into having to rubber stamp a decision you are not happy with”. As a result of the judicial reviews, the Department is now constantly seeking legal advice as to what will or won't stand up to a High Court challenge. For example, it has received legal advice that using as reasons to uphold an appeal the failure by a school to give a copy of the enrolment policy to parents, or the failure by a school to advise parents of their right of appeal would not stand the test of a High Court challenge.

## 8.9 ATTITUDE TO SECTION 29 NOW

There was a strong sense articulated in interviews that Section 29 appeals are not a major concern for the education partners now. The anxiety articulated by many partners in relation to their attitude to Section 29 seems to have almost disappeared. This may be because partners realise that appeal committees are now much more circumspect about the determinations they make. The more positive attitude to appeals expressed by partners may also be because schools are more organised in terms of their policies and procedures than they were before.

According to some appeal personnel, many schools now see Section 29 in a positive light because “you are able to show to the parents that procedures are fair and that he [the student] was judged by other people to have been correctly dealt with by the school”. One partner stated in interview that:

Initially, the reasons why the cases went [in favour of parents] were lack of process, fairness of procedures, natural justice, inappropriate sanctions. I think if you look at the cases now they are more likely to go in favour of the school than the parent.

Another partner accepted the need for appeals to “ensure that people keep on their toes”. He also noted that “because of the type of vulnerable students involved, it has to be balanced a little bit in the benefit of making sure that the child gets an education”. In general, he welcomed “any type of regulation that is open, fair and transparent and anything that causes principals to realise that their actions can be reviewed”. Another partner described appeal committees as:

fair and just...And I would have to say that whilst every single appeal doesn't go our way I would understand why all decisions are taken. So I would have to say yes, I think appeals committees are working well within their brief now.

One partner stated that:

now there is a bit more calm about it...and that there is more of an acceptance that the school has to do the right thing in the full knowledge that it could result in a Section 29. And certainly my attitude would be, we do the right thing and we face Section 29 should it occur, rather than saying, oh no, we couldn't possibly do this lest it become a Section 29.

The changed attitude of schools and education partners to Section 29 appeals may be indicative of the fact that now, because many schools have got their policies and

procedures in order, more determinations favour schools. The changed attitude may also indicate a possible paradigm shift in attitude and culture by schools in that they are more accepting of the authority of appeal committees to make binding determinations.

## **8.10 CONCLUSION**

The belief among schools, management bodies and unions that Section 29 of the Education Act undermined the authority of schools was evident from the first implementation of the legislation. The evidence presented in this chapter suggests that all second-level unions and management bodies were equally vociferous in their attitude to Section 29 appeals. Because of the perceived loss of autonomy experienced by many schools as a result of appeals, schools soon came to believe that appeals were strongly weighted in favour of pupils. They did not welcome this new voice that was given to parents and pupils. The power exerted by some teachers, by pressurising school principals to expel certain pupils, exposes the uninclusive practices in some schools and the belief by some teachers, frequently referenced by Bourdieu (1989, 1990, 1991), that they need only educate those worthy of being educated – the pupils with the same cultural and social capital as themselves. These uninclusive practices inevitably lead to what Bissett (2000) describes as education being experienced differently by students from different social classes. The chapter also explored the power of the education partners in influencing Department policy. Pressure from these partners led to the establishment of the Task Force on Student Behaviour in Second Level Schools and ultimately led to the introduction of new legislation in relation to Section 29.

The frequent assertion that appeal committees should include practising teachers and principals reveals the desire for the status quo to be maintained by schools. The DES appointed personnel to sit on Section 29 appeal committees who had a knowledge and understanding of education. From the perspective of power, it can be argued that the DES appoints to dominant positions those with the same cultural and social capital as school personnel. However, even when this is the case, such personnel do not always align themselves with the schools' perspective, as can be seen from some of the determinations of appeal committees and the backlash of the education partners to the

appeal process. The fact that appeal committees make determinations which frequently do not uphold the schools' positions, as well as the commitment to advocacy of some of the appeal committee members who participated in this research, suggest that some appeal personnel understand the challenge of the marginalised, in particular, in trying to gain access to education.

The power exerted by the courts through their rulings on many judicial reviews also contributed to the re-establishment of a position of autonomous authority by schools. Many appeal committee members who participated in this research were concerned about the potential for judicial review. There was speculation that this may also feature as a matter of concern for the Department due to the associated costs. Some educational institutions have access to the economic and social capital to take judicial reviews against appeal committees (as do some parents), while many others (parents and schools) do not have access to the capital to enable them to formally challenge decisions. Thus the inequality evident in the education system is reinforced. However, it is important to note that the overall impact of judicial reviews was to give schools more power to challenge appeal determinations and to weaken both the power of appeal committees and the power of parents and pupils.

## **CHAPTER 9: THE IMPACT OF SECTION 29**

### **9.1 INTRODUCTION**

This chapter examines the impact of Section 29 of the Education Act on schools, parents and the education system. It outlines the views of interviewees on whether Section 29 has achieved its aims of making schools more accountable and democratic and of giving parents and pupils a stronger voice in the education system. It then examines in detail the impact of Section 29 on enrolment issues in schools.

Almost all of those interviewed agreed that Section 29 has had a significant impact on schools and on the broader education system. The following section outlines the views of the interviewees.

### **9.1 THE IMPACT OF SECTION 29 ON SCHOOLS**

#### **9.1.1 More Accountable and Democratic**

All appeal personnel interviewed agreed that Section 29 has brought more fairness, accountability and democracy to schools. Most partners, with the exception of the National Parents Councils also believed that it has made schools more accountable. One partner commented that:

Once we got over the fact that there was a new model of governance in education, and the State had the authority to impose external reviews of school decisions, which is what Section 29 is about, then the discourse that took over in the ASTI was a kind of inter-staff discourse of a lack of consistency in the application of policies.

The NPC-Primary representative stated in interview that Section 29 has had an impact on some schools but others are still encouraging pupils to go elsewhere. This representative said: “Section 29 has empowered parents at some level...but it has pushed some activities below the radar of enrolment procedures.” The NPC-Post-primary interviewee discussed how certain post-primary schools have fewer migrant children or children with SEN than others and that certain unwritten practices are still occurring, which prevent open access, including the use of entrance tests and the



demand for 'voluntary contributions'. This suggests that the uninclusive practices of some schools are still continuing despite Section 29.

### **9.1.2 Curbing Inappropriate School Behaviour**

Department officials stated that the fact that an appeal committee is set up "where you could actually hear what went on, make a decision and that decision would be legally enforceable" has had a significant impact on schools. As stated by one official in interview:

I have always had a view that you sometimes need powers and sanctions to discourage inappropriate behaviour, inappropriate practice, and the very existence of Section 29, I always saw as being a curb to people with authority at school level maybe behaving incorrectly - behaving without due regard to a balance of rights. And to some extent that was achieved actually, because schools thereafter had to be procedurally very careful, you know natural justice, hear the kid's side and so on and overtime they became very aware of that and rightly so. So, summary justice probably was one of the victims of the Section 29 process.

Partners also commented that Section 29 curbed the power of schools and teachers. One management body stated that Section 29 has killed the:

assumption amongst staff that they could willy-nilly get rid of somebody and it was the principal's problem, they just weren't having them in class and that was not their problem any longer.

### **9.1.3 Culture Change in Schools**

Department officials interviewed commented on a culture change in many schools, particularly at second level, as a result of Section 29. They noted that schools are not excluding pupils as much as they were. One official stated: "We had a situation where there was no real check on what a school could or could not do in terms of expulsion other than the courts, and we brought in a check and culturally that was very important."

One partner also stated that: "Section 29 has created a culture where there is more collective responsibility for dealing with discipline and there is more systematic discipline processes in place." One appeal committee member stated that if Section 29 was abolished "the culture of schools would very quickly go back again to being authoritarian institutes". This member hadn't "the slightest doubt that it wouldn't take ten years for the whole culture of schools to regress to the situation where things

would be done in a one-sided and cavalier fashion”. Some remarked on how schools have started to upskill teachers in dealing with difficult pupils as more such pupils are being retained in the education system. Section 29 was also seen as bringing “inter-school consistency” to the way issues around enrolment and expulsion were handled.

A management body representative commented on parents who, in the past, asked principals or board members to give priority treatment to their child in order to get him/her into a particular school. This person stated: “Now we can say, ‘look I would love to be able to help but it is out of our hands’.” Thus, it is evident that certain parents seek to use their cultural capital to get preferential treatment for their child and get them into a favoured school. This advocacy could result in some other child, most likely without as much cultural capital, being disadvantaged in not being able to get a place in that school. The Section 29 appeal mechanism was seen by this representative as giving protection to schools from such pressure from parents.

#### **9.1.4 Improvement in Policies and Procedures**

Many schools lost appeals in the early years because they hadn't their policies and procedures in place. All of those interviewed agreed that one of the biggest immediate effects of Section 29 was the impact it had in terms of schools developing written admissions and discipline procedures and policies. Officials stated that even the very threat of an appeal was “enough to ensure that schools got their procedures in order”. One management body representative noted that “initially a lot of schools lost their cases, but they lost their cases because of poor process and the lack of clarity around their code of behaviour or their admissions policy”. As a result of the published policies, parents had a clearer understanding of why their children might be refused enrolment in a particular school.

It was also noted by appeal personnel and partners that schools now document everything in order to protect themselves, and have become very careful about due process. One partner described such documentation as “the book of evidence”. Partners also noted that having to document matters in relation to enrolment and exclusion has increased the workload of principals.

### **9.1.5 Loss of Discretion**

Some officials interviewed expressed concern about a possible negative effect of the formal approach schools now adopt because of the introduction of Section 29. One noted that “the compassion of schools in dealing in their own way with particular ‘hard cases’ may have been lost, as schools had to treat every student the same”.

Another talked about a:

kind of a hardening of attitudes...that schools would be taking a more clinical approach...schools perhaps who would by nature take a softer approach to dealing with individual cases. They are probably now forced into a position of being absolutely consistent for fear they would be challenged.

In this sense, he thought the “human discretion” was taken away from schools. One appeal committee member said that:

By the very rigorous application of the policy, schools feel their discretion has been fettered by the requirements of Section 29. And it has, and I suppose one of the unfortunate consequences of the procedure is that in some cases where common sense could have solved a particular case, particularly the individual hardship cases, and schools feel they cannot now take that step and have to rigidly adhere to the policy.

However, this point of view supports an ad hoc, unregulated approach to admissions and expulsions. In such instances, supporting the human discretion of the principal as the sole arbiter of who should be admitted and who should be expelled has the potential to replicate and reinforce the existing power differentials in society, as not all school principals see themselves primarily as advocates for the marginalised. The person with the greatest human capital, in this instance the principal, would retain the power to decide who should and should not be taught in his/her school. This is a privatisation of a right, the right to an education, and such power, as existed prior to the introduction of Section 29, would assure the replication of the existing power differentials and social stratification in society.

### **9.1.6 Effect on Schools of Losing an Appeal**

In their submission to the Department on the Proposals for the Establishment of a Regulatory Framework for School Enrolment (19 August, 2011) the IVEA said:

where an appellant is unsuccessful, a young person’s future is put at risk and a family is devastated... On the other hand, oftentimes where an appeal succeeds, the school feels demoralised...The school also fears, and with good justification based on experience, that the behaviour of a successful appellant

will deteriorate even further and the outcome for the school will be worse than if the whole process had never been commenced.

Interviewees commented that it is more difficult for schools, in cases where appeals are upheld, to take back a child who was expelled than to enrol a child whom they had previously refused. Some committee members speculated that taking an expelled child back into school must be especially difficult if there was a specific teacher involved in a particular incident with that child. Some partners noted that a lot of staff fear that “this guy is going to come back here and he is going to be...all macho or whatever, thumbing his nose at people”. However, one Department official expressed the view that:

There are much worse things than having a judgement overturned. It is actually a fairly humbling and a good experience for people. Again, it is cultural you see. In schools the idea that this little gurrer somewhere who has really been difficult for us and has done something awful and we got rid of them. And now they are back and they are coming up the yard smiling and undermining authority and all of that – those are very Victorian concepts and people have to move on – that’s life.

#### **9.1.7 Legalisation of Expulsion**

Some partners noted that a side effect of Section 29 was that exclusion was now a legalised concept. As noted by one partner:

In an ironic sense, it has become easier to suspend and expel because we now have clearer guidelines on how and when and what circumstances you may do it.

#### **9.1.8 Public Attention to School Accommodation Issues**

Some appeal personnel noted, in interview, that a positive impact of appeals that related to refusals to enrol in over-subscribed schools was that greater public attention was drawn to the difficulties facing both schools and families where there were too few places available to cater for local need. Interviewees noted that in other cases, in situations where schools refused to enrol a large cohort of marginalised students, these situations were also brought to the attention of the Department. This situation was best exemplified in the case of the appeals in relation to refusals to enrol in Limerick in 2004.

## **9.2 IMPACT ON PARENTS**

Almost all interviewees agreed that Section 29 gives parents a voice and a form of redress where their child has been suspended, expelled or refused enrolment that they did not have heretofore. One official described Section 29 appeals as being empowering of parents as it gives parents clear procedures, with deadlines and a result that is binding, whereas, up to then, parents were “utterly at the control of the local school’s right to say yeah or nay, be it for enrolment or suspension or whatever”. Some appeal personnel noted that in the past, principals were “almost unanswerable to anybody”. Now parents can challenge a decision made about their child.

### **9.2.1 Winners and Losers**

Many interviewees commented that the very nature of Section 29 appeals is adversarial and leads to winners and losers. In addition, the IVEA, in its submission to the Department on the Proposals for the Establishment of a Regulatory Framework for School Enrolment (19 August 2011), stated that appeals, “irrespective of the outcome, by and large cause dysfunction within a school community” and “produce only losers”. Some interviewees commented that even if a parent wins an appeal, in a sense they are still losers, as appeals lead to fractured relationships with schools. One official commented on how “it is not very positive for a parent or school if their first experience of meeting each other is across a table at an appeal”. One parent representative articulated preference for a different forum “that would allow the parties to come to an agreement and there isn't a winner or loser”. She noted that “at the end of the day you win your Section 29 and then you are depositing your child in this school that has tried to exclude them”. She stated that she would like to see Section 29 being rewritten:

and a different system put in place completely that is more around arbitration and negotiation and developing a plan...I mean Section 29 now is just seen as an appeal, it is not seen as a solution focused section at all. It is seen as a right or a wrong, somebody wins, somebody loses...Regardless of how accessible it is to parents, even if every parent could access it, having a system that ultimately means that somebody has won and somebody has lost, the child is the only loser in that as I can see it.

This interviewee believed the appeal system needs to be more child-centred in the sense that the system should benefit the child as opposed to disadvantage him/her. The NEWB representative agreed with this view stating that:

I think for me to appeal to the Secretary General, to appeal to that process you are at such an awfully late stage and yet there is so much at stake here for the child. Like for me it is those lost days, those lost opportunities and there is a sense still in schools, like winning or losing. And I just feel when you get to a Section 29 stage, that is such a serious stage that you are at, then you need to have a really good process in place, but also I think we need to remind everyone why we are doing that.

It is obvious that some interviewees see the Section 29 appeal mechanism as adversarial and would like to see a more conciliatory system in place, so that there would not be winners and losers. In this regard, the local level procedures and the role of the facilitator may need to be revisited. However, where a child is expelled on the decision of the school authorities, there needs to be a mechanism whereby the parents can challenge this power vested in these authorities. It is constructed by the participants as winners and losers rather than as a mechanism whereby parents can have a human right vindicated – the right to an education for their child.

Another partner, the ISSU, commented that:

in an ideal society it wouldn't get that far, there would be measures in place to obviously try and cut down on the numbers of levels of expulsion and suspension but if it comes to it, an expulsion or a suspension, there should be a right to an appeal.

This representative stated that she would like to see more versions of Section 29, meaning different mechanisms to deal with different kinds of issues under appeal. She contended that:

you need different knowledge and different expertise I think for tricky situations. For example dealing with a child being suspended because of fighting in the yard and the history of the school or whatever is a very different conversation to be having with parents with the school principal and the board than let's say dealing with children with complex special needs trying to get into a special unit. Unless the panel are very, very, very broadly experienced you are going to have at least one person inside that room who doesn't fully get what is at stake here.

Lodge and Feeney (2010) followed up on a small number of appeals that went to full hearing. They sought to discover the whereabouts of the children who were the subject

of the appeal one year after the appeal determination. Of five upheld appeals against exclusion, they found that just one student lasted longer than one year in the school before leaving. The other four pupils were not in the school that was the subject of the appeal. However, in the two appeals upheld in relation to refusals to enrol, both children were still enrolled in the schools. This suggests that it may not be easy for children who are the subject of appeals against expulsion to reintegrate into school. The reasons for this difficulty have not been explored, but it is possible that they relate in part to the culture of power and authority within post-primary schools especially. There may also be broader issues relating to the need for high level support or ongoing intervention to enable the education of some young people who have special needs or who have experienced very severe difficulties in a range of aspects of their lives.

### **9.2.2 Power imbalance of appeals**

An interviewee from one parents' council noted the disparities of power between the educational insiders on the appeal committees and from schools, and the appellants, during appeal hearing. The interviewee noted that even the word 'inspector' has a terrifying connotation for people saying:

So you have got these educationalists and inspectors who are part of the system, as a parent would see, that has just rejected their child from the school. So it is not the fact that there is no transparency and there is not good decision making by the panel, I think it is the perception of the panel from a parent's perspective feels weighted... I think that the panel has to have a feeling of independence to it and for a parent the panel feels like the establishment.

This power disparity between appeal committee members and parents was referred to in interview by many appeal personnel. These interviewees implicitly understood the concept of a cultural insider who shared common views about schooling. One commented on some other appeal personnel who give in-service training to schools regarding appeals. She described this as a conflict of interest saying: "I think that militates grossly against the child with parents who wouldn't have access to privilege like that coming into a hearing."

Some Department officials referred in interview to the power imbalance of appeals for some vulnerable parents who find the appeal process very daunting. They commented on how these parents often find it difficult to be "up against experienced people in the system". They noted that the balance of power in appeal hearings "was very

considerably skewed in favour of the institution, the school". One parent representative, commenting on the insider status of appeal committees referred to parents in appeals:

complaining about the education system to people in the education system...Ultimately these were these people's colleagues, they might know them, they are part of it, they might go in and inspect the schools or they might have taught with them or been a principal. They are all part of the system that I have the complaint about. So I think there is a lack of a sense of transparency to that, to any parent.

This point is also made by another partner who stated in interview: "If educators are sitting on appeals on decisions made by other educators, maybe there could be cause for concern."

Despite the 'insider' status of appeal committees, some partners referred in interview to their belief that appeal committees are generally more favourably disposed to the parents. One DES official expressing awareness of the vulnerability of parents during appeals stated that:

We were conscious that in a lot of cases where schools and VECs were used to the system and I suppose, by virtue of their experience, were empowered, and that a parent, effectively, went through the system once unless they were very unlucky. And it was a daunting experience for a lay person, a person who is not maybe familiar with the education system or used to going into that almost semi-confrontational situation. And that we would always fully explain to a parent in those situations what their rights were and spend quite an amount of time explaining to them but we did not favour the parent as such. It was simply that, as public servants, our job was to serve the public. In this case the public was not just the school, but the parent and that they were entitled to, I suppose, full disclosure of what their rights would be and a detailed explanation of what the process would entail given that they were probably only going to go through it once.

Appeal personnel drew a distinction between articulate and often middle-class parents who are totally aware of their rights and have no problem dealing with appeals and other parents who "can barely read and write". They noted that for the latter group, the prospect of going to an appeal must be particularly daunting, as it involves stating their case in front of professionals on the committee and from schools. One gave the example of a woman who was:

a nervous wreck and she sat there and after all the introductions we said, 'over to you now Mrs. Murphy,' or whatever. And she said, 'I want my son in school, that is it, I want my son in school.' And I said, 'are you not going to tell



me why?' So it went on and on and eventually she said a few things but I mean five minutes would have done her.

Many appeal personnel commented on the bureaucratic and formal nature of appeals. Appeal personnel also noted the disparities of power inherent in some of the cases taken to appeal, particularly when a parent did not have the same level of linguistic capital as the other participants. A DES official cited as an example “if someone says at an appeal, 'that is a quasi legal point,' well the appeals committee may or may not understand what the person is saying but certainly the parent won't”. One parent representative described Section 29 as being:

wordy, it is legalistic, even without it being in the courts, it is quite intimidating and you need to have a certain level of articulation and all of the other things to engage in it at any level.

It was noted by many interviewees that many of the pupils who are the subject of Section 29 appeals are often disadvantaged. One official remarked that appellants have “children who are in trouble, children who are at risk, people from minority groups, people from Traveller groups, people from non-nationals”. Many of the appeal personnel who sit on appeal hearing remarked on the disempowerment of many of these parents in the formal setting of an appeal hearing. One noted that such parents are generally not affluent and “may not have much premium on school”. Another committee member remarked that for some of the pupils who are the subject of an appeal “the fact that they go to school is an achievement”. While parents may bring an advocate such as the EWO with them to speak on their behalf,<sup>29</sup> officials noted that these parents are largely reliant on the personal commitment of such advocates to the child who is the subject of the appeal. One committee member suggested that marginalised or disempowered parents should be able to bring in a ‘critical friend’ as opposed to just a ‘friend’ “who would have a bit more weight, who would have, if you like, the eloquence and literacy levels to argue the case”. Implied in this comment is the need to provide disadvantaged parents with a means of bringing someone with cultural capital equal to that of the school personnel to the appeal. Otherwise the disadvantage associated with having less beneficial cultural capital would be reinforced. It was also noted that schools sometimes bring solicitors to appeal hearings

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<sup>29</sup> Section 25 of the appeal procedures states: “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.”

and they have “distorted the tone of the appeal and the way it is being conducted. Because it is not meant to be a court forum and it is meant to be more informal than that”. Such comments from appeal personnel highlight issues associated with power and privilege. Appeal personnel also recognise that many parents are disadvantaged during appeal hearings as they do not have the linguistic skills needed to argue their case.

### **9.2.3 Marginalised Parents**

Questions were raised by some interviewees about whom Section 29 appeals actually serves. These interviewees recognised that it serves the middle classes as they are the ones with the cultural capital to access appeals and to know their rights. But what about the marginalised parents in Irish society? Two Department officials noted the lack of awareness of the right of appeal among many parents, especially newcomer parents to Ireland. The students’ body representative and both Parents’ Councils contested that some schools do not inform parents of their right of appeal. Therefore, as one of these interviewees stated, Section 29 “serves a certain cohort and excludes a huge cohort”. This interviewee did not think that Section 29 was a good mechanism, because the parents who need Section 29 most find it most difficult to access.

One interviewee commented that sometimes schools refuse enrolment to the least empowered or most marginalised families. This person stated:

So the very parents that maybe this is affecting most are the very parents that can't access the language and the requirements of filling in forms and all of those kinds of things that are required to actually engage in the appeals process. So there is a difficulty there.

This interviewee points to a further layer of disadvantage in this comment. She is referring to those parents who do not have the linguistic or social capital at all to take an appeal. Such parents are disempowered in that they cannot complete the mandatory application form required to commence the appeal process. As this application form is only available in English and Irish, parents without the linguistic capital to understand these forms are at a further disadvantage. This again reflects the view that privilege perpetuates itself and that those with the least valued cultural and social capital are also the least likely to be in a position to challenge the dominant hegemony of the

already privileged, and are therefore the most likely to find themselves excluded from school.

### **9.3 IMPACT ON PUPILS**

Some DES officials interviewed referred to the positive impact of Section 29 on pupils. They noted that prior to the introduction of appeals, those who did not conform to a school's particular way of managing behaviour were easily excluded by some schools. Now, they were not so quickly dismissed. One stakeholder stated that Section 29:

protects the principal, it protects your Board, primarily that is really, really important, it protects the child, it protects the family, it protects the staff, you know from the baying, bring us Barabbas.

However, some partners noted the difficulties experienced by pupils who won appeals against their expulsions, in settling back into school. One commented that some of the children whose appeals were upheld got on well once they were back in the school, but for others the difficulties were just too great. Many partners also described schools that enrol children who were expelled from other schools. Some of these worked out successfully and others didn't.

The ISSU, commenting on the low levels of educationally beneficial social and cultural capital of students who are most likely to be excluded from school, stated:

They may not even know that we exist and that is why we probably wouldn't hear from students like that. Unfortunately the majority of students that come through our doors or that come through our organisation are generally more academic, more focused students.

## **9.4 THE IMPACT OF SECTION 29 APPEALS IN RELATION TO ENROLMENT ON THE EDUCATION SYSTEM**

### **9.4.1 Continuing Discriminatory Enrolment Practices**

Many interviewees believed, in keeping with research by Lodge and Feeney (2013) and other writers, that Voluntary Secondary schools in particular still operate discriminatory enrolment practices, despite Section 29 appeals. Such practices described by interviewees included schools stating that they will accept a child but that

his/her subject preferences will not be accommodated, schools offering an “overly narrow academic curriculum” without offering practical subjects or a broader curriculum that might attract the “more needy students”, schools not replying to parents who have applied for a place for their child and schools not telling parents that they have a right of appeal. One Department official asked:

Has it [Section 29] solved the issues of the cherry picking or the VEC getting lumbered with all the newcomers and the special needs, and the academic Voluntary Secondary schools cherry picking all the kids who are going to go to medicine next year? No, I suppose it hasn't.

The ISSU representative also acknowledged that VEC schools:

are more accepting of difficult students...I know I went to a VEC school myself and we had students that had been 'asked' to leave other schools or expelled from other schools and we would have accepted them in, whereas other schools in the locality which would have been Voluntary Secondary wouldn't have accepted them.

In 2002, the Department of Education and Science consulted the education partners on their view about introducing Ministerial regulations on enrolment procedures. However, there was not an overwhelming demand for new guidelines or regulations or a clear consensus about what they should contain and so it was decided not to pursue the regulations at this time. When asked about this, a Department official, replicating the view of writers such Drudy and Lynch (1993) and others said:

A lot of things don't tend to get tackled for years and things that need doing sometimes can go years without being done because bringing about change in the education system, you have some powerful vested interests, most of whom will tend to like the status quo. People are less threatened by the status quo than by change and to basically bring about change you have to be extraordinarily tactical about the timing of that.

An official, in commenting that Section 29 has been weaker on enrolment than exclusion, remarked that this is partly because:

There is not a set of national principles agreed by the partners guiding enrolment which the appeals committee could refer to and they are either in breach of those or they were not. And it would make it easier, both for the judiciary who review the process within the court system, and also the appeals committees themselves.

#### **9.4.2 Discussion Paper on a Regulatory Framework for School Enrolment**

Most interviewees stated that appeals are no longer effective for refusals to enrol, especially when schools are genuinely full. In these cases, as noted by one DES official:

Their enrolment policies are not the issue...The issue has always been what is permissible or not to have in an enrolment policy and once we define that, and the enrolment policy then operates, then once that happens there should not really be an appeal because it is simply a matter of fact that the place is full so the only issue really is did the enrolment policy operate effectively and in a sense what we were doing was we were looking at the symptom rather than the disease by putting enrolment into Section 29.

Another official stated that:

The timing is right now on the enrolment and probably has been for a little time and there is recognition now that a number of things have come together – the focus on and much greater emphasis on inclusion of kids with special needs, and a range of Section 29 type judgements. Probably a view that really enrolment is not something that should really ever have been in 29 - that it needed a different process.

In June 2011 the DES published a *Discussion Paper on a Regulatory Framework for School Enrolment*, inviting comments on the options for the regulation of school enrolment outlined in the paper. The Discussion Paper examines the fairness or lack of fairness of a range of selection criteria used by schools. It suggests several possible options for the Department in terms of remedying situations where there are unfair enrolment practices. The Discussion Paper (2011: 16) states that despite Section 29 of the Education Act, there are still difficulties and limitations in relation to enrolment in schools. It notes that: “In 2010, there were 295 appeals admitted against refusals to enrol; an increase of 76% since 2006 and a 750% increase since 2002.” Most of these appeals were against schools where demand for places exceeded supply. The Discussion Paper notes the burdensome process of Section 29 appeals, the continued lack of awareness among parents, particularly among newcomer communities of Section 29, the adversarial nature of the appeal process and the fact that around 60% of appeals against enrolment are not upheld. It describes such appeals as “futile” and suggests that they might not have been lodged:

if there was greater transparency about how a school deals with oversubscription both in terms of setting criteria in an enrolment policy and the process applied to rank applicants against those criteria.

In such a situation there would only be a need for an “external appellate process in those cases where a pupil can get no place at all”.

Most interviewees recognised that this further paradigm shift in relation to admission issues in schools is required. Effectively, in this new paradigm, power vested in the school principal or Board of Management in relation to determining the content of their own enrolment policies would be reduced. Any decision not to enrol would be measured against a set of principles commonly held and agreed and not against the private decision of the principal or Board of Management. All officials agreed that a regulatory framework for admissions would be very useful in curbing the selective practice of some schools in relation to enrolment. One official stated that:

It isn't acceptable that an entity that is entirely State funded pretty much should actually have within its own gift decisions as to who gets in or not – we wouldn't accept that anywhere else.

This official also noted that there will be sanctions for schools that do not abide by the regulatory framework and that the sanction will be that: “Ultimately a school will lose its right to enrol if it transgresses. ... That will never have to be done. It will be done once, just once, and it will never be done again.”

All appeal personnel interviewed welcomed the discussion document on enrolment as it was seen to address many of the issues that they had concerns about. However, one appeal committee member noted that the document refers to the common enrolment policy in Limerick as if this was a solution to enrolment issues in other areas. This person commented that the situation is almost as bad as it ever was in Limerick in the sense that some schools are still managing to “manoeuvre it so that they are still cherry picking people”. Although the situation has improved, the interviewee noted that “there is still a considerable disparity among the schools in terms of intake and how they do it”. This ‘subliminal filtering’, referred to by Bourdieu (1989, 1990), and still occurring in some schools and areas such as Limerick, was also mentioned by other interviewees.

Not all interviewees were accepting of a paradigm shift regarding enrolment. While partners welcomed some aspects of the document, they were uneasy about other parts of it. It was described by one partner as “a sledgehammer to crack a nut”. This partner

stated that the majority of schools are “abiding by the letter and spirit of the enrolment policies”.

## **9.5 CONCLUSION**

Section 29 was introduced into the Education Act to make schools more publicly accountable for their actions in terms of their admissions and discipline practices and policies. One of the aims of this research was to determine if the Section 29 process is robust in terms of enabling greater democratic engagement in schools by parents/guardians and young people. The research also aimed to determine if Section 29 has served the need of all parents and young people or if it has favoured those with the relevant social, cultural and economic capital to access it and benefit from it.

The findings of this chapter suggest that the introduction of Section 29 appeals did curb the power of some schools to do as they pleased in terms of refusing enrolment to children and expelling and suspending them. It has been successful in making schools more accountable to parents and to the DES and it has made schools ensure that they have followed due process before refusing enrolment to, suspending or expelling students. It also has had the effect of discouraging some teachers from demanding unfair and unreasonable punishments of students for relatively minor misdemeanours. Section 29 has also made schools more careful to document and publish their procedures and policies in relation to expulsion and enrolment. The fact that parents can appeal against a school’s decision to refuse enrolment or to suspend or expel has empowered certain parents and given them an opportunity to voice their concerns about schools’ processes and procedures.

Section 29 has clearly been less successful about enrolment than exclusion issues. This is partly because a large proportion of appeals against enrolment are in relation to schools that have been over-subscribed. In addition, the evidence suggests that some schools are still using insidious means to cherry pick certain students and refuse others. It seems that the proposed Regulatory Framework for School Enrolment will be more powerful in restricting the selective practices of some schools in relation to enrolment.

While Section 29 has served a certain cohort of parents and given them a stronger voice, the extent that it has given a voice to the marginalised sections of society is questionable. The evidence from the interview data suggests that not all parents and students are aware of their right of appeal. They rely on the school from which their child has been excluded to inform them of this right. Some parents, especially newcomer parents to Ireland, may not share the mother tongue. They are further disadvantaged, as they may not be aware that an appeal process exists. Their lack of cultural and linguistic capital restricts the options open to them in challenging schools' decisions about refusals to enrol, suspension or expulsion. The fact that the appeals documents are available in English and Irish only, suggests the power of the dominant paradigm as a definition of reality, where persons sharing the dominant paradigm may not even be aware how disempowering it is not to be able to read or understand the language of appeals. This reinforces the fact, noted by writers such as Lynch and Lodge (2002), that those who are marginalised are seen as "other" by the dominant group in society. Insiders remain as insiders and outsiders remain as outsiders in Irish society. The cultural capital of the middle classes is reproduced as it is so embedded that it is considered a reality.

Even when marginalised parents do take an appeal, the interview data indicates that many do not have the recognised linguistic or social capital to participate comfortably in the appeal. They may not be able to complete the mandatory application form required to commence the appeal process or they may be disempowered by the prospect of facing an appeal committee and school personnel during the appeal hearing. The evidence indicates that their experience of the appeal hearing is possibly very daunting because of the obvious power differential that exists. For such parents lacking in educationally beneficial social and cultural capital, Section 29 more than likely serves to reinforce the social divisions that exist in society. Thus Section 29 has been successful in giving a strong voice to some parents: those with the cultural, social and linguistic capital to access appeals in the first place. From this perspective, Bourdieu's (1991: 24) assertion that the education system prevents "those who benefit least from grasping the basis of their own deprivation" is reaffirmed.



## **CHAPTER 10: SCHOOLS IN A CHANGING CULTURAL PARADIGM**

### **10.1 INTRODUCTION**

At the core of this dissertation is the argument that the education system and the personnel who work in it (national education authorities, school management bodies, individual school authorities, teachers and the stakeholder organisations that represent teachers and school leaders) embody power and influence. It also contends that school personnel, their representative organisations, school management bodies and the State apparatus that funds, structures and controls education are reluctant to share or surrender their powerful positions. It is argued that parents whose children are required to attend these schools often find the multiple layers of professional and institutional power difficult to challenge. The study reported in this dissertation considered this hypothesis through researching the development of the Section 29 appeal mechanism from its inception, through its enactment in 2000 and for an eleven year period to 2011. This research considered the reaction of school personnel, their representative organisations, school management bodies and other powerful educational stakeholders to the Section 29 appeal process over the same period. The examination of the development and operation of, and resistance by powerful bodies to the Section 29 appeal mechanism facilitated an analysis of the operation of power within Irish education. The research drew on a range of literature that focused on the theme of the power of schools and the education system, and on inequality issues in schools and in the wider education system. The work of key policy and social analysts, particularly Apple, Ball, Bourdieu and Lynch, was especially useful in enabling the development of a conceptual framework for understanding unequal power relations and influence within Irish education.

According to Bourdieu (1989, 1990, 1991), those who work in education draw very effectively on their particular social and cultural capital to reinforce social divisions in schools and society as a whole, and use this capital to their own advantage. Throughout this thesis, the researcher has argued that schools are powerful institutions within society, and the professionals who work in them, namely school leaders and teachers, have the capacity to exert considerable influence in terms of their ability to affect the life-chances of the children and young people they teach. The powerful

position of teachers as a profession has been well documented in the Irish system over a long period of time (Drudy and Lynch, 1993; O’Sullivan, 1995). The powerful position of the teaching profession in the Irish education system is actively supported by the State. Teachers and their representative bodies are recognised in the Education Act as key stakeholders in Irish education at both local and national level as discussed in Chapter 3 of this dissertation.

The commitment to engagement by the State with recognised education partners and stakeholders has been in evidence since the Education Convention held in 1993. This consultative gathering represented a significant change in the approach to policy development in Irish education. For the first seven decades after the foundation of the State, the development and enactment of education policy reflected a symbiotic relationship between the State and the Roman Catholic Church in control of education (Drudy and Lynch 1993; Inglis 1998). However, as the power of the Roman Catholic church began to wane in Irish society, its influence as a key State partner in the provision and governance of both education and healthcare in Ireland reduced and began to be challenged in public discourse. At the same time, commitment by the State to parental choice and to facilitating partnership with parents began to gain ground. This reflected, in part, a growing commitment to parental choice and marketization in the UK with regard to education (e.g. Gewirtz, Ball and Bowe 1995; Ball 2003; Lynch and Moran 2006). It also reflected the changing nature of Irish society itself where a more educated population expected and demanded greater engagement and consultation in decision-making on important issues such as schooling. The changing nature of State regard for parental voice and rights is evident in relation to school admissions. In Section 6 (e) of the Education Act (Government of Ireland, 1998) the right of parents to opt for a school of their choice for their children is balanced against the right of the school patron to uphold the school ethos. In the current proposals on changes to school admissions policies (Department of Education and Skills, June 2011) the key focus is on upholding parental choice and it can be argued that school ethos has been relegated to a secondary place. The development of an appeal mechanism was part of a movement by the State to prioritise the views and needs of those utilising rather than those providing education services.

It is crucial from the point of view of this dissertation to state that parents are a widely disparate group – their access to economic, social and cultural capital varies very significantly (Lyons 2003; Ball 2013b and Ball 2013c). As Devine et al (2004) argue the focus on parental engagement in operation in Irish education, whether in relation to participation in consultative activities or in informed decision-making, assumes an equal capacity on the part of all parents to do this. Lynch and Moran (2006) outline how advantaged parents use their access to both economic and cultural capital to buy educational advantage through the purchase of private educational services. O’Brien (2008) documents that social class differences impact on mothers’ capacity to make educational choices for their children. Increased privatisation of educational provision in the UK has widened the gap between the advantaged and disadvantaged parents. Ball (2013b and 2013c) argues that only certain advantaged groups of parents actually have any real choice.

The introduction of an appeal mechanism into the education system in the form of Section 29 of the Education Act (1998) challenged the power of school personnel to act unilaterally as the sole arbiters of who should or should not be admitted to their schools. This in its turn had implications for who should or should not have access to an entitlement to an education. There is evidence that the appeal mechanism has caused certain positive changes in school policy-making and operation. However, the manner in which school personnel, their representative bodies and school management bodies view the Section 29 appeal process and have resisted its operation is indicative both of their powerful positions as education stakeholders and their reluctance to share that power with other stakeholders. It also provides an insight into the complex relationship that State bodies such as the Department of Education and Skills have with the schools which they fund. It gives an indication of how an institution of the State handles the conflicting interests of the other recognised education stakeholders, both the service-providers and the service-users.

## **10.2 THE POWER AND CONTROL OF SCHOOLS**

### **10.2.1 The Power and Control of Schools Prior to the Introduction of Section 29 Appeals**

There is evidence, as presented in Chapter 4 of this dissertation, that prior to the

implementation of the Education Act (1998), schools had considerable autonomy and power in their day-to-day operations. The interview data, in particular, show how schools could, prior to the introduction of the Section 29 appeal process, unilaterally suspend, expel or refuse enrolment to students. There was no mechanism in place by which parents could challenge such decisions made by a school, unless they had recourse to the courts. As reported in Chapter 4, DES officials interviewed commented on their experience and perception that prior to the introduction of Section 29 appeals, school authorities could behave unilaterally when it came to issues such as enrolment, suspension and expulsion of certain students. These school authorities were reported in some cases to be of the view that they could pick and choose those they could enrol or expel without any sanction from the Department notwithstanding the fact that many of these schools were entirely funded by the State.

Documentation dating from the 1990s and concerned with the Green Paper on Education, the National Education Convention and the White Paper on Education reveals a growing awareness, especially within the Department of Education, of the need to ensure equity and accountability in schools' decision-making processes. There was evidence in this documentation of an increasing recognition by the Department of Education of the need to ensure equity and fairness in relation to enrolment and exclusion issues in particular, especially because of the Department's growing awareness that some schools appeared to exclude certain types of students. According to the interviewees, such students were often marginalised children who did not share the same cultural and social capital as the school personnel. Parents of such marginalised children were largely powerless in seeking redress for unreasonable behaviour by school authorities. Such parents did not have the economic capital to take court actions against schools. Furthermore, as Glendenning (1999) and Craven (2006) show, the courts were unlikely to interfere in what they saw as a school's autonomy to manage its own affairs. This reflects how the courts supported the dominant paradigm in society and thus supported the schools' autonomy in maintaining and reproducing the existing power relationships in society. As a result, the authority of professionals in schools was largely unchallenged, with the exception of a few high profile cases that related to special educational needs. Thus, in accordance with the views of many writers on the theme of the power and control of schools (e.g. Bourdieu 1989; Bissett 2000; Kilpatrick 1998; Lynch and Lodge 2002;

Ball 2003, 2013b; Apple 2013) many schools, particularly those that catered for a middle-class intake, maintained their own social and cultural exclusivity by excluding those children, frequently marginalised children or children with SEN, who did not conform to their expectations. In so doing, schools could be seen as one of the main agents by which the existing social and class divisions in society were replicated and maintained.

The evidence presented in this dissertation reveals how the Department of Education recognised that there was a need for schools to be more answerable for their actions to students, their parents and to the State. This need for accountability was one of the reasons for the introduction of a legislative framework to govern the Irish education system. The first such piece of legislation was the Education Act (Government of Ireland: 1998). This was followed by the Education (Welfare) Act (Government of Ireland: 2000) and the Education for Persons with Special Educational Needs Act (EPSEN) (Government of Ireland: 2004). While not primarily concerned with education, the Equal Status Acts (Government of Ireland: 2000 and 2004) focused in part on schools and other educational institutions as service providers. Section 29 of the Education Act was introduced to meet the rights of parents and of children who had reached the age of 18, by allowing them to appeal decisions of school authorities in relation to enrolment, suspension and expulsion. Section 29 ensured, for the first time, that schools were publicly accountable for their actions to those characterised as service users.

The research demonstrates that the introduction of Section 29 appeals into the education system challenged the power of educational institutions and key education stakeholders such as their representative organisations. The Department, through the appeals mechanism was able to challenge the power of those schools who acted, or were perceived to act, unilaterally in their admissions and exclusion processes. Likewise, parents/guardians and young people aged 18 and over could now challenge the power of such schools. The research indicates that in some instances, as a result of the appeals mechanism, a power struggle emerged between different parties. In some instances, there was an impact on the relationship between schools in a specific locality as a result of the perceived exclusive practices of some schools and the way in which these impacted on neighbouring schools. In other cases that power struggle

occurred within individual schools where pupils were admitted or re-admitted following the overturning by a Section 29 appeal committee of a school decision to refuse enrolment, suspend or expel. Such power struggles occasionally became highly visible where individual schools (or appellants) took judicial reviews when they were unhappy with the outcome of specific appeals.

### **10.2.2 The Diminution of the Power of Schools**

Numerous Irish commentators [Drudy and Lynch (1993), Lynch and Lodge (2004), Devine et al (2004) and O'Sullivan (2005)] assert that those who have a voice in defining educational policy exert significant influence in the education system at both local and national level. They also contend that those who have a recognised voice, in particular the institutional partners named in the Education Act, wish to maintain the power structures within schools. The groups with recognised input into education policy making in the Irish context include the teacher unions, school management bodies, parents' bodies (although it is clear from this research that the parents' bodies were not seen as powerful forces by some partners and Department officials) and the Department of Education and Skills itself. This hypothesis is explored through an analysis of the negotiations relating to the introduction of the appeal procedures that took place over the course of 2000 (Chapter 5). The main education partners invited to participate in discussions relating to the drafting of an appeal mechanism were the teacher unions, the management bodies representing the different school sectors and the National Parents' Councils.

The interview data and documentary analysis (Chapter 5) demonstrate that the teacher unions and school management bodies, in particular, contested the introduction of an appeal system. Among the main issues of contention that these education partners had with the proposed appeal procedures included the reduction of the power of schools to expel, suspend or refuse enrolment to students; the composition of appeal committees; the cumbersome nature of the proposed procedures; the lack of resources to implement revised admissions policies and codes of behaviour; the diminution of the rights of other students. It can be argued that their anti-appeal stance reflected their desire to maintain the power and control of school personnel and school management within individual institutions. The interview data and the documentary analysis of the negotiations relating to appeals indicate that the partners who represented the school

authorities and teachers contested what they saw as an erosion of their power to unilaterally determine their enrolment and discipline procedures. The data also reveals the fear of the school authorities that, by having an appeal mechanism, too much power would be handed over to parents.

In negotiations relating to the appeal procedures in 2000 the teacher unions and school management bodies tried to exert their control in a number of ways. To ensure that the power of school authorities would be maintained, they sought to have teacher or principal representation on appeal committees. This was because of a suspicion that appeal committees would be biased in favour of parents and pupils. However, it can be argued that their power was circumscribed by dint of the fact that Section 29 was enshrined in legislation and they were obliged to operate within this legislative framework.

Subsequent to the introduction of appeals, school personnel experienced a considerable perceived loss of power and autonomy with regard to enrolment and discipline issues. The interview data and the data in terms of appeals outcomes (Chapter 6) indicate that schools lost a significant number of appeals in the early years of appeals. The interviews and documentary analysis also indicates that many school authorities disagreed with the determinations of the appeal committees. The impact of Section 29 on schools was a dominant theme in the submissions to the Task Force. An analysis of these submissions and the interview with Dr Maeve Martin (Chapter 8) indicates that schools were unhappy that their autonomy and power were being dissipated, not only by the possibility of a Section 29 appeal but often as a result of the appeal outcomes. The evidence demonstrates that appeal committees were challenging the previously unquestioned power of schools to determine their own policies and procedures. The exclusionary behaviour of certain schools with regard to equal educational access and participation was also being challenged by appeal committees. Some appeal determinations stated that schools were not doing enough to support the vulnerable child.

Through the Section 29 appeal process, parents or guardians now had the power to challenge a school if they believed that their child was unfairly treated by the school in terms of being refused enrolment, being suspended or excluded. The research

evidence examined for this study indicates that some school principals, members of Boards of Management and teachers, as well as their representative bodies, contested the shifting of power to parents. This was particularly manifest in the submissions by school principals, teacher unions and management bodies to the Task Force on Student Behaviour in Second Level Schools. The evidence from these submissions and from the interviews with those who contributed to the Task Force indicates that Section 29 appeals were seen as eroding the authority of professionals working in schools. School authorities and teachers saw their power being dissipated by the very possibility of a Section 29 appeal, as their power to decide unilaterally whom they should teach and whom they should exclude was being questioned. The submissions provide evidence that many personnel working in post-primary schools in particular wanted to retain the power to determine their own discipline policies without interference from an external appellate body. In addition, many post-primary schools wanted to continue the practice of socially stratifying pupils based on social background, perceived academic ability and ability/disability. The range of submissions from the second-level teacher unions and management bodies suggests that school authorities were prepared to look after the 'compliant majority' of students, but the evidence suggests that many schools were less eager to cater for difference or diversity from this perceived cultural norm.

Resistance to the determinations made by appeal committees continued. This found expression when a small number of school authorities and, in one case, an appellant took judicial reviews against the determination of some appeals. The impact of the judicial reviews was significant. Resulting from the outcome of the judicial reviews, the scope of appeal committees was considerably weakened in 2009 and 2010 in particular. During this time period, appeal committees could no longer challenge the content of schools' enrolment policies and codes of behaviour, nor could they challenge the decisions of Boards of Management unless these decisions were regarded as irrational. The power of schools to act unilaterally was largely restored and school authorities regained much of the power which they had lost when appeals were first introduced. Despite the ruling of the Supreme Court in 2010, which overturned one of the outcomes of the judicial reviews and restored much of the scope of the appeal committees, there is evidence from interview data that some appeal



committees are now much more circumspect in their determinations, as they fear being the subject of a judicial review.

Those education partners interviewed as part of this study, who represent school authorities, are no longer as critical of Section 29 as they were when they made their submissions to the Task Force on Student Behaviour in Second Level Schools. This may reflect the reality that school personnel and their representative organisations have accepted the authority of appeal committees to make binding determinations. This may be because schools have accepted the need to document their policies and procedures in a transparent manner (Ball et al, 2012) and they have become more familiar with the operation of appeals. It may also be because Section 29 has become a less mysterious and challenging process than was the case in the early years of appeals. If this is the case, it indicates a possible paradigm shift by schools in their attitude to appeals. It may also be a result of the perceived diminishing of the power of appeal committees as a result of a number of high profile judicial reviews.

### **10.2.3 The Power of Teachers**

Many commentators, including Bourdieu and Passeron (1990), Willis (1997), Lynch and Lodge (2002), discuss the dominance of the position that teachers hold over students. According to the literature, this is particularly evident in more traditional schools where the voice of students is not welcomed and where teachers assume that their power should never be questioned. Bourdieu (1989) and other commentators [Malone (2006), Bissett (2000), Kilpatrick (1998) and Munn and Lloyd (2005)] assert that teachers tend to favour those with who have similar social and cultural capital to them and who, therefore, conform to their expectations, because there is congruence between the world view of the teacher and the world view of the pupil. Ball (2013a: 97-98) contends that within the education world and the practices of schools and teachers “the normal family has become increasingly directly tied to the paradigm of the middle-class, and to the moral attribute of ‘deserving’”. Therefore, many teachers act in a manner that reinforces inequalities in society. Those children without shared middle-class cultural capital, mainly marginalised children, are more likely to have negative experiences of schools, as their world view differs significantly from the world view they experience in school.

Bourdieu (1989) asserts that rather than being agents of liberation, school personnel often reproduce and legitimise the domination of the middle classes leading to inequality of access and outcome. There is much evidence from this research that Bourdieu's argument has relevance in Ireland. A range of commentators [Derman-Sparks (2002), Malone (2006), Young (2006) and Lyons et al (2006)] contend that some school personnel blame students for their lack of success and fail to problematise their own policies and practices to see if they are contributing to the lack of success of these students. Students who do not meet the required standards of schools are often labelled as different and may be regarded as troublesome. The marginalised in society, such as Travellers, children from ethnic minorities, and the poor are, according to writers such as Lodge and Lynch (2004) and McDonagh (2006), particularly isolated in schools. This results from a lack of understanding by some teachers of such children's culture and a lack of flexibility by some schools in accommodating their needs.

Apple (2012: 38) suggests that schools and teachers are agents in the creation and maintenance of a dominant culture: "They teach norms, values, dispositions and culture that contribute to the ideological hegemony of the dominant group." The evidence from this research indicates that in many post-primary schools in particular, there is a perception that only those who are compliant are worthy of being taught. Ball et al (2012: 126) describes this as the 'good student' discourse which is premised on "having the right attitude manifested in classroom behaviour and work habits in and out of school". Ball (2013a: 108) describes how schools act strategically to avoid enrolling students who they deem unworthy of investment. He describes these students as being perceived as 'lepers'. They are seen, according to Ball, as: "costly and unproductive students – those with special needs, behavioural difficulties, unsupportive parents, or another mother tongue". They are "shunned and feared and exiled, their behaviour or 'character' is seen as detrimental to learning...they are seen as threats to performance and the raising of standards".

While it is acknowledged that many students who are the subject of appeals, especially appeals relating to expulsion and suspension, are disruptive and difficult to teach, the interview data indicates that prior to the introduction of appeals, some schools were excluding students for even minor breaches of discipline. The evidence also suggests

that some teachers pressurise school principals to maintain the social status of their schools by urging them to avoid enrolling more needy or more difficult students. Such behaviour on the part of teachers, as Kilpatrick (1998) Denman-Sparks (2002) and Young (2006) indicate, leads to a feeling of social isolation on the part of the student and contributes to disruptive behaviour. This is also well documented in the research by Smyth et al (2004, 2006, 2007) and by Byrne and Smyth (2010) who emphasise the importance of the social climate of schools in shaping students' attitudes to school. Where they found more positive student-teacher interaction, students had more positive views of their school and their teachers, and had "more positive academic self-image, reduced feelings of isolation and anxiety, and higher educational aspirations" (Smyth et al, 2006: 188).

The interview data for this research indicates that pupils who are marginalised are mainly the subject of Section 29 appeals in relation to enrolment and suspension. The evidence from this research indicates that schools, because they were obliged by the Section 29 appeal process to implement transparent policies and procedures<sup>30</sup> in relation to enrolment and discipline, have become more consistent in the implementation of these policies. Most schools now document the steps they take in terms of managing their students. As a result, it has become more difficult to exclude students at the sole discretion of a teacher, principal or Board of Management.

The documentary analysis and interviews indicate that some schools are better than others at serving the needs of all their students and that many are welcoming of all students. The analysis of appeal outcomes in 2004 and 2005 indicates that many schools have an 'ethic of care' and work hard to develop systems and procedures to help the more needy students. The research also indicates that schools that have effective pastoral care systems and have effective leadership are better at managing students with challenging behaviour. In addition, the research indicates that inspirational leadership is necessary to change the attitude and behaviour of some teachers. However, the research also indicates that schools sometimes use more subtle means to exclude students. They do this by keeping certain students out of their schools by imposing high voluntary contributions or by emphasising the academic

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<sup>30</sup> It is likely that external evaluations of schools also contributed to schools having transparent policies and procedures

nature of the school (also reported by Lynch and Lodge 2002) or by pushing certain students out of their school through, for example, the use of de facto expulsion (also reported by Bissett 2000).

### **10.3 INCLUDING AND EXCLUDING STUDENTS**

#### **10.3.1 Power Struggles between Schools Leading to Exclusion**

The Report on The National Education Convention (1994: 107) acknowledged the frequent competition between schools for pupils, and how this competition has created a division between post-primary schools' curricular provision, academic intake and social status clientele. The evidence in this research (Chapters 7 and 9) demonstrates that this situation persists. It indicates that some school authorities, rather than going through a formal expulsion process for disruptive pupils, use informal or 'de facto' expulsions. This dissertation presents evidence that such practice particularly disadvantages marginalised students who are encouraged to leave their current school and to enrol in another school rather than having formal expulsion on their school record. Whatever the reasons for 'de facto' expulsions, the results of such practice, as evidenced from this research, is that one school is requested to enrol a student deemed undesirable by another school in the same locality. Such practices are often resented by the second school and social divisions are reinforced between schools. The resentment is further compounded when a parent may then take an appeal against the refusal to enrol by the second school, leaving the first school unchallenged, even though it succeeded essentially in excluding the student through the process of 'de facto' expulsion. Interviewees asserted in this research that they had most frequently come across this practice being used by the Voluntary Secondary school sector.

Research in the U.K. indicates that those who are most frequently excluded from schools are teenage boys, those from ethnic minorities and those who are marginalised. The negative effects of exclusion have also been well documented in other countries. Munn et al (2000), Devine (2004) and Rustique-Forrester (2005), in their research, found that schools with low rates of exclusion had better systems and structures in place to focus on individual student's needs, had good leadership and had developed a collective sense of responsibility among staff.

The evidence in this research indicates that similar to other jurisdictions, teenage boys are the most likely to be excluded from Irish schools. Research by Smyth et al (2006, 2007) and Byrne and Smyth (2010) indicates that working-class boys are more likely to have negative interactions with their teachers. Their findings indicate that such negative experiences are particularly prevalent for boys allocated to lower streams in schools that practice streaming, especially in schools that serve disadvantaged communities. Smyth et al (2006: 86) report that misbehaviour is particularly common “among male students and those from semi-unskilled manual backgrounds”. McCoy, Quail and Smyth’s (2012) findings in the Growing Up in Ireland National Longitudinal Study of Children (nine-year-old cohort) indicates that boys as young as nine are more likely than girls to externalise behavioural difficulties. The Growing Up in Ireland’s research findings in relation to thirteen-year-olds also indicate that thirteen-year-old boys are less positive about school than girls and that “almost two-thirds of boys (64%) had been reprimanded by their teachers for misbehaviour compared with less than half of the girls (46%)” ([www.growingup.ie](http://www.growingup.ie)).

The research in this dissertation shows that while rates of permanent exclusion are low in Ireland, the rates of suspension are higher. Suspension is used as a disciplinary tool by many schools but one can only utilise the Section 29 appeal mechanism if the suspension is longer than 20 days in one school year. A gap of 20 days in one year is significant and could cause serious disruption to a child’s education. This disruption is further compounded if there is a delay in processing the appeal. The effects of exclusion and suspension are severe. Commentators such as Munn et al (2000) and Kilpatrick (1998) demonstrate how suspension and exclusion fractures students’ educational progress and thus compound and exacerbate their social exclusion in society, as educational credentials are a requirement of progression through the education system. Byrne and Smyth (2010: 113) note how a significant proportion of the early school leavers in their research had been suspended from school at some stage.

### **10.3.2 Inequality of Access to Schools**

There is well documented international and Irish evidence of inequalities that exist between schools in terms of their social intake [Bourdieu (1989, 1990, 1991), Lynch and Lodge (2002), Lynch and Moran (2006) and Tuohy (2008)]. Schools that charge

fees, have high voluntary contributions and require the payment of other fees, implicitly exclude those who have diminished economic capital, namely the marginalised. This results in a largely homogenous school population sharing the same economic, social, cultural and linguistic capital. In an effort to ensure a homogenous school population, some schools practise other methods to promote exclusivity. Some school authorities suggest that they only accept those who subscribe to the existing ethos of the school. This ethos may mean something other than religious identity. It could, for example, mean the academic nature of a school or the middle-class clientele in a school. As a result, many second-level schools in particular are socially stratified. Voluntary Secondary schools are identified in the literature and in the interview data as the schools that usually have students possessing the most social status and Vocational schools generally have a higher intake of students from disadvantaged backgrounds.

Currently, schools have considerable power in relation to the admission of pupils. School authorities can prioritise who they select for admission once an admission policy is approved by a Board of Management. This can be particularly problematic where there are fewer places on an annual basis than the number of applicants seeking those places. Policies that a Board of Management may see as just and equitable, such as preserving the ethos of the school, or a rigid adherence to a 'first come first served' policy, may, de facto, result in the exclusion of certain students who might be considered not to share this ethos or to have joined the queue for admission later than others. Some interviewees suggest that the admission policies of some schools can be particularly exclusionary of newcomers, Traveller pupils or pupils with special educational needs. The research indicates that these schools still socially stratify their intake thus ensuring that those that do not conform to their expectations or who have different economic, social or cultural capital are excluded. Interviewees in this study observed that in their experience a variety of implicit exclusion practices are used. These include charging non-refundable admission application fees, non-accommodation of subject preferences, offering narrow academic curricula, not replying to parents who have applied for a place for their child and not telling parents that they have a right of appeal if they refuse enrolment to their child. The current proposals by the Department on the introduction of a regulatory framework in relation to schools' admissions policies aim to challenge some of these practices. The

framework proposes regulations to “focus on two key areas to bring greater consistency, transparency and accountability to the enrolment of pupils to schools”. These areas are the content of a school’s enrolment policy “including, in particular, the over-subscription criteria that a school may or may not use when demand for school places exceeds the supply available”, and “the operation of the enrolment policy by a school, including timelines, and provision for processing appeals from applicants that are refused enrolment by the school” (Department of Education and Skills, 2011: 27).

The exclusionary practices of some schools, particularly post-primary schools, as outlined in this research, in applying their enrolment criteria or in suggesting to parents that their child would benefit more in a different school with more resources, indicate unwillingness by some schools to embrace diversity. In addition, the power of post-primary schools to restrict their intake in any particular year group creates inequalities between schools. It is clear from this research that parents of pupils with SEN often struggle to find a school that will welcome their children. Instead of welcoming and cherishing these children, the evidence suggests that some schools actively try to exclude them. It is evident from this research that Section 29 has not resolved this issue. Furthermore, some post-primary schools continue to cherry pick some applicants for school places and exclude others, and there are still some children who have not secured a place in school by the end of August each year.

There are also issues at system level, outside the control of individual school authorities, which lead to a large number of appeals. These issues generally relate to insufficient school places being available in developing urban areas for a number of children needing to be enrolled in a school. The evidence from this research indicates that the Section 29 appeals mechanism is not effective in situations where a school is over-subscribed. Yet, the evidence suggests that a large proportion of appeals that relate to refusal to enrol are taken against schools that are over-subscribed. Individual school authorities and appeal committees are not in a position to address the difficulties facing those who cannot access a school place due to lack of adequate local provision. This issue is a matter for planning authorities, the DES and others. The evidence in this dissertation suggests that it is mainly parents with more educationally beneficial social and cultural capital who take appeals that relate to refusal to enrol due to over-subscription.

### **10.3.3 The Organisation of the Curriculum**

Many researchers, including Malone (2006), Young (2001), Drudy and Lynch (1993) and Hargreaves, Earl and Ryan (1996), assert that inequality in education is reproduced inter alia by the manner in which the curriculum is organised and offered in schools. They point out that the curriculum, as it is currently offered by some schools, does not cater for diversity, but only for those with the most valued social and cultural capital. The result is that a large number of students, mainly those who are disadvantaged, disengage from learning and from school as they fail to see its relevance to their lives. Irving and Parker-Jenkins (1995: 3) argue for the creation and delivery of an alternative curriculum which those pupils deemed to be at-risk would find relevant and interesting and that could lead to pupil compliance as opposed to disengagement. Smyth et al (2006: 86) record “some evidence that students with the lowest reading scores experience the greatest increase in negative interaction with their teachers”. These students are more likely to be placed in lower streams where they are offered a more restricted curriculum. Studies by Smyth et al of the experiences of students from first to third year (2004, 2006, 2007), as well as research by Byrne and Smyth (2010), show that students in lower streams are much more likely to disengage from school life than students in mixed ability and higher stream classes. Byrne and Smyth (2010: 180), point out that it is, therefore, crucially important to provide all children and young people with high quality learning environments, as students’ experiences of school at both primary and junior cycle level influence their later decisions about staying on in school or leaving school early.

State policy in relation to education in England is criticised by various writers, including Rustique-Forrester (2005), Munn et al (2000), Apple (2000) and Ball et al (2012) because they see the operation of this policy as leading to exclusion of some groups of students. Such policies include national assessment tests, league tables and OFSTED inspections. The emphasis on testing a narrow range of academic skills and basing comparisons between schools on the results of such tests, leads schools to seek to attract more academically able students, always those with more valued and valuable social, economic and cultural capital and leads to what Ball et al (2012) describe as schools constantly looking over their shoulders to see how their



neighbouring schools are doing. Ball et al maintain that it also leads to schools putting their own interests, as opposed to the interests of their students, first.

As this research indicates, factors that lead to exclusionary practices in Ireland include competition between schools in terms of high achievement in State examinations and competition between schools in local areas for ‘good’ students of high academic ability. This sometimes leads to schools offering an academic curriculum that serves the needs of the middle-class pupils as opposed to a broader-based curriculum that may serve the needs of all. A number of interviewees discussed the need for schools to offer a broad and interesting curriculum to keep pupils of all abilities and interests engaged in school. These interviewees recognised that the curriculum offered by some second level schools reflects the cultural values of the dominant group in the school. This disadvantages some young people who may not see the curriculum as relevant to their lives, and thus they may be at risk of disengaging from school.

#### **10.3.4 The Cultural, Social and Economic Capital of Parents**

Commentators, such as Apple (2004), Lyons et al (2003), Drudy and Lynch (1993) and Lodge et al (2004,) argue that middle-class parents bring their social, economic and cultural capital to bear on schools, and are in a significantly better position to manipulate the education system to their child’s advantage. Such parents are more likely than working-class parents to engage with schools and influence school decisions. These parents often subscribe to the dominant ethos of the school and want to see the status quo reproduced in schools in terms of the type of children who attend the school that their child attends. Ball (2013a: 112) describes such parental behaviour as “the neo-liberal logic of parental choice”. He notes how such parents have enough social, economic and cultural capital to be “resourceful and well-resourced... enabling them to avoid ‘contamination’ and untoward mixes” with other students who do not share the same capitals. Apple (2013: 6-7) refers to the growing body of international research that “documents how middle-class parents are able to use choice plans for their own advantage”. He, like Ball, goes on to describe how such choice plans “are able to protect their children and themselves from the body and culture of the ‘polluting Other’”.

McCoy et al's findings from the Growing Up in Ireland National Longitudinal Study of Children (2012) indicate that the higher the educational level of the child's mother, the better the nine year old child performed in Vocabulary and Maths tests. Their findings (2012: 61) also indicate that:

Children from more advantaged backgrounds (in terms of parental education, educational resources in the home, income and social class) were more engaged in structured activities, particularly the sorts of cultural activities which are likely to equip them with the kinds of knowledge and competencies ('cultural capital') that advantage them within the educational system. ...Children from one parent households, from immigrant families and those with a learning disability were less likely to be involved in cultural activities than other children, which again is likely to have implications for their longer term cognitive and educational development.

This is replicated in Nixon's findings in the Growing Up in Ireland National Longitudinal Study of Children (2012: 58) which suggest that "economic hardship and a lack of relational resources may impair the family's ability to provide nurturant parenting and positive parenting and positive relationship experiences for children, which cascades into negative influences on children's wellbeing". Such parents are hardly likely to be in a position to exploit the education system to their child's advantage. The findings from the study of the thirteen-year-old cohort ([www.growingup.ie](http://www.growingup.ie)) indicate that children from low-income families reported having more negative interactions with their teachers than those from higher-income families.

The evidence in this research suggests that the economic, cultural and social capital of parents leads to exclusionary practices. Many such parents do not judge schools on values such as how welcoming they are or how successful they are in dealing with low performing pupils or pupils with SEN. They judge them on examinations results and on the social class profile of the school intake. Therefore, schools seek to enrol pupils who will enhance their reputation and their prestige. Ball et al (2012: 25) describe how managing a school's intake so that it is seen as an asset by middle class parents often "shapes policy activities in a school". Apple (2013: 6) contends that school choice policies "often involve schools choosing students and parents as much as parents choosing schools". As the voice of middle class parents in Ireland is largely the voice that shapes public debate about education in Ireland, the voice of middle-class parents in representing the views of their children is strong. These parents do not want to change the status quo or to represent the voices of the under-privileged, as it is

to their advantage that their children are in the more elite schools, in the higher ability and achieving classes and are more successful in accessing the curriculum. As noted from this research, such parents are often the most influential in ensuring that school enrolment policies remain elitist and exclusive.

## **10.4 THE POWER DIFFERENTIALS EVIDENT FROM APPEALS**

### **10.4.1 The Cultural and Social Capital of Appeal Personnel**

The research indicates that the personnel involved in facilitating appeals, hearing Section 29 appeals and administering Section 29 appeals bring their own particular social and cultural capital to bear on the manner in which the appeal process is transacted. There is not a unified understanding of the function of appeals. For example, the research indicates that there is no shared understanding of the purpose of facilitation. Some facilitation personnel see it as their task to resolve the matter being appealed, while others believe their purpose is simply to report on the views of both parties without having to propose a solution. There is evidence that some facilitators see themselves as advocates for the child who is the subject of appeals and work to broker a solution to the matter under appeal. Others believe they have a duty to advise parents or schools on the likely outcome if the appeal goes to full hearing, and in doing so suggest a course of action based on a presumption of knowing the possible outcome of the appeal process. The research also indicates that there is not a unified understanding of the terms of reference for hearing appeals. Some appeal personnel indicated that ensuring that a school abided by its policy and procedures was the key to determining an appeal whereas others indicated that they would take other factors into account in reaching a determination.

The Section 29 legislation stipulates that an appeal committee shall comprise an inspector and two other persons who, in the opinion of the Minister, have the requisite expertise, experience and independence to serve on the appeal committee. In practice, only those with experience of working in education have been appointed to appeal committees. Most are former teachers and many are former school principals. Therefore, it can be argued that those who sit on appeal committees are ‘insiders’ who possess the same cultural and social capital as those who work in schools and in the wider education system. The research suggests that some of these ‘insiders’ display a

bias in favour of the school during appeal hearings and, thus, support the school's position. It also reveals an acknowledgement on the part of many appeal personnel that it can be difficult to be independent when they know the school personnel who are involved in the appeal hearing. However, the research demonstrates that many others, although 'insiders' in the sense that they worked in education, are to a large extent viewed as 'outsiders' by those who work in schools. They are seen as outsiders by school personnel when they do not uphold the initial decision of the school authorities. This is because these appeal personnel have made conscious efforts not to allow their insider status to affect their independence of judgement. The research indicates that many appeal personnel draw on their insider status and in-depth system knowledge to address issues where practices in schools may not be adequate. The lack of clear consistency between appeal outcomes has been commented on by interviewees in this research as well as by the various stakeholder bodies who contributed to the Task Force on Student Behaviour in Second Level Schools (Chapter 8).

The research indicates that even the manner in which appeal hearings are administered can reinforce social divisions. For example, the requirement that all appellants must make their appeal in writing on a mandatory application form disadvantages some parents who do not have the skills, either through limited literacy or through lack of English language proficiency, to articulate the grounds for their appeal. Some interviewees suggested that the fact that appeals take place in Government buildings alienates some parents and also reinforces their belief that they are confronting the State authorities.

#### **10.4.2 The Cultural and Social Capital of Appellants**

The evidence from this research indicates a power disparity during appeal hearings between many appellants on one side and appeal committees and school personnel on the other side. Many interviewees indicated that parents of students involved in appeals view the appeal committees as insiders who represent the establishment and the status quo in society. The power differential between some parents and that of school personnel during the appeal process has been documented in this research. Such power differentials are highlighted when parents who do not have the same linguistic or cultural capital as school and appeal personnel try to articulate arguments in support of their child during the appeal hearing.

Interviewees suggested that many parents, whose children are the subject of appeals, are themselves marginalised and often vulnerable. Such parents have to interact with professionals, all from an educational background, who may know each other and who are often more articulate than they are in the specific formal context of the appeal hearing. The research indicates the concerns expressed by some appeal committee members that this may lead to an exacerbation of the sense of being marginalised that such parents may already feel vis-à-vis their child's education. The concern expressed by some of the appeal committee members who contributed to this study is that such parents may feel that they are being confronted by two groups of professionals, the appeal committee and the school authorities, who share the same value system, and who ultimately make decisions that affect the life chances of their child.

The social and cultural capital of the middle-class parents who take appeals, usually in relation to refusal to enrol in a preferred school tends to be very different from that of disadvantaged parents, who may have more limited formal education. The research findings indicate that the formal language of appeal hearings is not perceived by the appeal committee members as being so intimidating for middle-class parents, who have the linguistic capital to negotiate such language. However, for marginalised parent, such language may compound their sense of facing the 'system' and of being disempowered. It is therefore argued by appeal committee members that appeals appear to be more effective in serving the needs of middle-class parents rather than those of newcomer or marginalised parents.

## **10.5 A CHANGING PARADIGM FOR SCHOOLS**

The research in this dissertation demonstrates that, as a result of Section 29 appeals, schools have experienced an erosion of their power. It also demonstrates that the Section 29 appeal process has had a major impact on the way schools now transact their affairs. Whether they like it or not, schools and their representative organisations now have to "demonstrate a degree of compliance" as a result of the appeal legislation in keeping with the "conflicting choices and pressures" that Ball et al (2012: 119) describe between policy enactments at State level and what is happening at the chalk face in schools. Interviewees suggested that the possibility of a Section 29 appeal in

itself seems to be a sufficient deterrent to ensure that schools follow the rules of natural justice and implement fair procedures and practices. Since the introduction of appeals, school authorities seem to have lost some of their sense of autonomy, and individual members of staff seem no longer to assume that they can demand as a right the suspension or expulsion of a student. New processes and procedures have been put in place in schools and the evidence suggests that there is a greater sense of collective responsibility among staff. Section 29 has resulted in a new paradigm of schools becoming more professional regarding their procedures. Schools are now more likely to document and clarify the steps they take to integrate marginalised students. Section 29 has also empowered more advantaged parents as it has enabled them to see if published procedures are being followed and has allowed them to challenge decisions of schools that were heretofore unchallenged. While schools initially complained about increased workload as a result of Section 29, because they were required to document their processes, this increased accountability and openness has been an advantage to many, including the schools themselves.

Section 29 was an attempt to empower parents and pupils by giving them a voice to raise concerns about practices by some schools in relation to enrolment and exclusion issues. However, this research suggests that not all parents are equally able to access appeals. For example, those who are most marginalised may not be able to fill out the mandatory application form. There is also evidence that many are not told by school authorities about their right of appeal in the first place. It is suggested that there is a need to make it mandatory for schools to inform all parents of their right of appeal.

School authorities still have the power to suspend and expel as they deem necessary. It is only if a parent or guardian decides to take an appeal that the decision is challenged. Section 29 was initially resisted by some school authorities, as it required them to be more accountable to State authorities who had for decades taken quite a *laissez faire* approach to the operation of voluntary secondary schools in particular. Schools can still have inequitable admission and exclusion policies but these will not be challenged unless a parent takes an appeal against the school. Commentators such as Smyth et al (2004, 2006, 2007) and Byrne and Smyth (2010) demonstrate the importance of positive teacher-student relations and of a positive school climate. As Smyth et al (2006: 190) point out, many sanctions employed by schools, including suspension, are

seen as ineffective by many students. Byrne and Smyth advocate the promotion of positive reinforcement and the rewarding of positive behaviour as a better tool for dealing with discipline issues. These commentators also demonstrate the importance of schools and teachers being supported in finding ways to organise students' learning in order to combat disengagement by some students from schools. However, the evidence presented in this research suggests that exclusionary practices still remain in some schools, and making schools more inclusive is more complex than the procedures provided for in Section 29 appeals. It involves a further paradigm shift in the way in which many schools transact their duties. As noted by Ball et al (2012: 15) "schools are 'not of a piece', and as such, it is not surprising that they are made up of competing and conflicting values, principles and desires."

Some interviewees suggested that even when a parent's appeal is upheld and their child is enrolled or re-enrolled in a school, such parents are ultimately the 'losers' as they have to enrol or re-enrol their child in the school that rejected him/her. Interviewees suggested that the power of school personnel is such that the success of that child in the school is dependent on the attitude of the teachers to that child on entry or re-enrolment.

## **10.6 THE CULTURAL AND SOCIAL CAPITAL OF POLICY MAKERS**

This dissertation contends that school authorities, teachers, the stakeholder organisations that represent them, and the education system at national level, embody power and influence, which they are reluctant to surrender. Drudy and Lynch (1993: 27) argue that the education system "plays a significant part in the reproduction of the social relations of production. This refers to the way in which social structures are passed on and endure from one generation to another". Likewise, Bourdieu and Passeron (1990) argue that the education system legitimates the capitalist and economic order and reproduces class inequalities. This is because those who possess the most beneficial social and cultural capital promote these values and exploit their positions thus ensuring the domination and succession of their values. Apple (2012: xvi) argues that "powerful groups within government and the economy redefine the terms of debate in education and other areas of common good". He (ibid: 40) suggests

this is because schools define students as “normal or deviant and these definitions of deviance roughly correspond to the needs of the economy outside the school”.

As this dissertation has shown, in an Irish context, the State, through the Department of Education and Skills, aimed to create greater openness and accountability across the education system and to give parents a greater opportunity to challenge certain school decisions. However, by limiting the decisions on which schools could be challenged to enrolment, suspension and exclusion issues, it can be argued that the State is failing to make all parents true partners in education. The first Education Bill (1997), which was drafted by a coalition Government, provided for education boards to set up appeal panels for hearing appeals against a broader range of decisions by schools than ultimately was introduced in the Education Act. A subsequent amended Bill, drafted by a Fianna Fáil led Government, which had been returned to power following an election, abolished education boards and confined appeal procedures to exclusion, suspension and refusal to enrol. Therefore, the rights of parents to take appeals against schools in relation to other issues that affected the education of their child disappeared. The parliamentary debates indicate that there had been disagreements between the education partners in relation to the scope of appeals. Parents sought a broader basis of appeals in relation to other areas of school life but so far they have been unsuccessful in this demand. Neither Section 28 nor Section 29 (d) of the Education Act have to date been invoked, so parents can still only make an appeal in relation to issues relating to their child’s entrance or potential exit from a school, as opposed to issues relating to their child’s experience in school. Young (2006) argues that such practices by policy makers pay “lip service” to the idea that education will “close the inequality gap” in society.

Drudy and Lynch (1993: 106) note the power of teachers’ unions, “not only because of their numerical strength and increasing willingness to work collectively to influence educational policy and members’ conditions but also because of the consultative nature of their roles”. Their power and influence can be seen in this research from the level of consultation with them by the State in relation to the development of the appeal procedures under Section 29 of the Education Act and in relation to the Task Force on Student Behaviour in Second Level Schools. While the education partners could not resist the Section 29 legislation, they had a considerable influence in shaping



the appeal procedures. This research shows the resistance to change among many of the education partners throughout the appeal negotiations and afterwards and their underlying fear that schools would lose much of their power and autonomy as a result of appeals. While the State, through the Department of Education did not yield to many of the partner's requests, they did yield to some, such as agreeing that students could only appeal if they were suspended for twenty days or more in a school year. In addition, by ensuring that only cultural insiders, namely educationalists, sat on appeal committees, the State continued to reproduce the dominant paradigm and to maintain the cultural hegemony of schools and society. This is in keeping with Drudy and Lynch's (1993: 113) argument that "while resistance (on the part of the alienated) can and does occur in education, it is often counter-resisted by the mediators of educational services, whose own power and influence is dependent on recycling resistance into institutionally non-threatening forms." Drudy and Lynch also suggest that those who influence educational policy perpetuate their own class power to try to maintain "the educational status quo". They further note that this is particularly true in the Irish context in the sense that the partners in education influence State policies on education "to counter-resist changes they may regard as undesirable". As noted in Chapter 8, the pressure exerted by some of these partners led to the establishment of the Task Force on Student Behaviour in Second Level schools and ultimately led to the introduction of new legislation in relation to Section 29.

This research also demonstrates the power of the judiciary in maintaining the status quo in schools. This can be observed firstly through the many court cases that found in favour of schools. It is also evident in the findings of the Judicial reviews of Section 29 appeals that, in the main, found in favour of schools. The judiciary is, by and large, made up of those who benefited most from the education system and, as this research shows, there has been little desire on its part to challenge the authority of schools. Apple (2012: 50) observes that middle-class managers, Government employees etc "see the school positively...and use it for the reproduction of their own credentials, positions and privilege..." As a result: "Particular kinds of state intervention, therefore, arise in part from this conjecture." As observed by Bourdieu (1989: 4-5) "Between the judge and the judged, in the form of the unconscious of the "subject" of the judgement, there intervenes the structure of the distribution of

economic and cultural capital and the principles of perception and appreciation that are its transformed form.”

It can be argued that the State is willing to allow certain groups more leeway than others to play a central role in education because there is a complicit, if unacknowledged, desire to maintain existing patterns of privilege. Those who occupy powerful positions within the State are those who are given a voice in shaping educational policy among the education partners. They have a united wish to maintain the cultural hegemony in education and have little desire to seek radical change. The research shows that the parent negotiating bodies, at the time that appeals were being developed, also did not voice strong opinions in relation to appeals. This is because those who participate in national parents’ bodies generally come from the middle classes and wish to maintain the status quo in schools. In the interviews conducted for this research, some of the negotiators from the Department of Education saw themselves as representing the views of those parents who do not have a voice in education. However, as noted by O’Sullivan (2005: 551): “Rather than an interpretation of what the people want, the state’s engagement with society could aspire to being more dialogical and generative. Generative dialogue between state and society lies outside the interest group/corporatist spectrum.”

There have been few attempts to include other groups that represent minorities in policy-making terms in recent years. As a result, the dominant dynamic in terms of determining educational policy is rarely challenged. Lynch and Lodge (2002) assert that there is a need to challenge common practices in schools that benefit the middle classes at the expense of others. This involves changing the power differentials in schools and in the wider education system. They argue that this will only be achieved through giving a voice to those who heretofore had no voice in society. Bourdieu (1990) asserts that legitimate power lies in the hands of a few, and that the agencies they represent possess the symbolic capital that leads to their recognition by the State. They also, he suggests, have the linguistic as well as cultural capital to make their viewpoint heard.

The partners in the Irish education system all represent certain interest groups, and the State itself, through the Department of Education and Skills has certain vested interests. This profits the middle classes, as recognised by Bourdieu and other writers on this theme, because the middle classes have a vested interest in maintaining the educational status quo. Marginalised groups do not have a voice at national level and this tends to be replicated at school level. There is little evidence at national level of any concerted desire to give voice to the marginalised or working classes. The aim of those with a voice in education, according to Bourdieu (1991), O’Sullivan (2005) and others is to legitimate and perpetuate the established order. Therefore, the values of those with the most valuable social and cultural capital dominate the education system and society at large. Apple (2013: 23) contends that education is “intimately connected to multiple relations of exploitation, domination and subordination”. Such is the power of this paradigm that it is accepted as normal and remains largely unchallenged. Nor is there any desire to change the composition of the dominant voices in education. Commentators such as Young (2001), Devine et al (2004b), Gash and Murphy Lejeune (2004) argue that in order to strive towards true social inclusion, those who are marginalised or seen as ‘other’, must be afforded a place at the negotiating table and facilitated in having their voices heard, as opposed to either being excluded or being advocated for by the powerful who purport to represent their views. Apple (2012: 26-27) argues that the State is “a site of conflict among classes and class segments” and therefore should “continuously integrate many of the interests of allied and even opposing groups under its banner”. He (ibid: 157-158) goes on to argue for the education of members of unions, ‘rank and file’ educational groups and others “on the issues of increasing corporate control, cultural, political and economic democracy, and, especially, alternatives to existing forms of economic and political organization”. He suggests that working-class parents and young people should become involved in “the articulation and criticism” of proposals by educationalists. Commentators such as Apple are not advocating that only marginalised groups be included in negotiations about State policy but, rather, they argue that the State representatives should gather a broader spectrum of views when seeking to develop State policy. Apple (2012: 27) notes that this will involve “a continual process of compromise, conflict and active struggle” to eventually gain consensus. In reflecting on the manner in which adults view the rights of children in society, Parker-Jenkins (1999: 175) suggests that we need to “move beyond children’s rights as a concept or

ideology towards one of reality”. In order to do this, she suggests that “Rather than viewing the giving of rights to children as possibly denying rights of adults, we need to recognise that everyone in the community has rights and consider how these can realistically be balanced, and situations where right conflict can be reconciled.”

Apple (2012: 51) argues that through funding projects to help children defined as deviant and to support teachers in helping these children, such supports “actually defuse the debate over the role of schooling in the reproduction of the knowledge and people ‘required’ by society.” It does this “by defining the ultimate causes of such deviance as within the child or his or her culture and not due to, say, poverty, the conflicts and disparities generated by the historically evolving cultural and economic hierarchies of society etc.” The research shows that Section 29 has served a certain cohort of parents in allowing them to challenge certain decisions made by schools. However, it has not have given a voice to certain marginalised sections of society. Many marginalised parents are not aware of their right of appeal or do not know how to go about lodging an appeal. Even when they are aware of this right, certain newcomer parents are disadvantaged by the fact that the appeals applications forms are only available in English and Irish. There is a lack of awareness at State level of the fact that such practices disempower certain groups who cannot read or understand the language of appeals. For those parents who are aware of Section 29 appeals and proceed with appeals, the evidence suggests that Section 29 can serve to reinforce social divisions because of the obvious power differentials, as previously described, that exist at appeal hearings.

This research shows that the introduction of Section 29 of the Education Act has created a greater awareness among schools of the need to develop fairer policies and procedures when it comes to enrolment and exclusion practices. The research also shows that the introduction of the Section 29 appeal mechanism has not stopped many schools using subtle means to cherry pick certain students and to refuse enrolment to others. The State has been slow to interfere with the power of schools to develop their own enrolment policies and practices, some of which are restrictive and exclusive and contribute to social stratification by some schools. The consequence for other schools is that they enrol a disproportionate number of children with special educational needs or children from marginalised backgrounds which creates further inequality within the

education system. The State's proposed Regulatory Framework for School Enrolment has the potential to be powerful in restricting the selective practices of some schools in relation to enrolment (Department of Education and Skills, 2011). Whether or not the State will ensure that its proposed enrolment legislation will reduce inequality and uninclusive enrolment practices remains to be seen, but it is to be hoped that it will have greater success than the current appeal mechanism in ensuring equality of access to schools by all parents.

O'Sullivan (2005: 196-197) refers to the Education Commission of the Conference of Major Religious Superiors (CMRS) which recognises that "the circumstances of poor people will not change unless the circumstances of people who are not poor also change". This suggests a need for a further paradigm shift which involves empowering those who are marginalised in ways that will "enable them to challenge the unjust structures which give rise to inequality and disadvantage in our society". Such change crucially requires an openness and generosity on the part of the privileged to share educational benefits with others in society, including those who they regard as being of lower status to themselves and their children. This is not impossible but it does require a significant paradigm shift in social thinking with a focus away from individual, meritocratic achievement to a concern for the development of a society built on the common good.

## **10.7 CONCLUSION**

This chapter commences by describing the autonomy and power that schools had prior to the introduction of Section 29 appeals. School authorities, if they so wished could unilaterally decide who they could enrol, suspend or expel without any redress for parents except the courts. The Department of Education, despite providing funding to these schools in the form of teachers' salaries and, in most cases, capitation grants, were powerless when it came to sanctioning schools for unfair exclusion of, or refusal to enrol pupils or students. Therefore, it was hardly surprising that there would be an element of resistance to any mechanism that sought to curb the power of school authorities in this regard. The introduction of an appeal mechanism into the education system in the form of Section 29 of the Education Act (1998) challenged the power of school personnel, especially in the voluntary Secondary sector, to unilaterally suspend,

expel or refuse enrolment to students. It particularly challenged those school authorities who had maintained their own social and cultural exclusivity by excluding children who were marginalised or who had special educational needs. I have argued that, through these practices, such schools were therefore maintaining the existing social, cultural, class and ability divisions in society.

The chapter describes the resistance by school authorities, teachers and their representative bodies to the introduction of the appeals mechanism and their subsequent challenges to the appeals system particularly in the post-primary sectors. It outlines their reasons for this resistance. It suggests that the manner in which educational institutions, school management bodies, school personnel and groups representing these personnel view Section 29 and have resisted its operation is indicative of their powerful positions within the education system. It also explores the apparent desire of these bodies to maintain the status quo in an unequal education system. It presents evidence that many school personnel, representative bodies and educational institutions sought to retain the right to decide without external interference as they perceived it, who should be included in, and who should be excluded from, particular schools.

The chapter indicates that the appeal mechanism appears to have affected certain positive changes in the manner in which many schools, management bodies and education personnel operate certain aspects of their admissions and disciplinary policies and practices. This change has been particularly noticeable at post-primary level. It can also be argued that the appeal mechanism also seems to have caused schools to be more consistent and transparent in the implementation of admissions and discipline policies. It also demonstrates that many schools work hard to be inclusive and caring of all pupils. However, the research also indicates that some schools have continued to operate exclusionary practices. For example, schools still have considerable power in the manner in which they select students for admission. Some schools' admission policies are particularly exclusionary of marginalised students, indicating unwillingness on the part of particular schools to embrace diversity.

The chapter indicates that while Section 29 has given a voice to parents and young people in challenging enrolment and exclusion issues in schools, it has been more

successful in giving this voice to appellants who possess the social, linguistic and cultural capital to access appeals. The chapter suggests that marginalised parents are not as well served by Section 29 as are middle class parents, as many such marginalised parents are unable to access the appeals process. Even where marginalised parents may access the appeal system, it can prove very challenging given the absence of formal, structural support to facilitate their genuine participation. Therefore, the research provides evidence that the Section 29 appeals mechanism has, in certain regards, reinforced the power differentials already in place in society.

The chapter supports the argument that schools and their representative organisations are powerful institutions within society and have been given a strong voice by the State through the partnership process. Further, it supports the argument that the education system and the State reproduce class inequalities. This is because those who are consulted about policy issues possess the same cultural and social capital that is reflected in the values, practices, curriculum and personnel of schools. The chapter argues that there should be a broadening of the basis of decision-making in relation to policy issues at national and at school level. The creation of a truly inclusive society requires genuine structurally-supported power-sharing between all classes in society, so that all have a genuine voice in determining educational policy.

## **CHAPTER 11: SUMMARY FINDINGS AND RECOMMENDATIONS**

### **11.1 INTRODUCTION**

The purpose of this research was to engage in an in-depth analysis of the development of the legislation and procedures that govern the operation of the Section 29 appeal process from its origins in the 1990s to the end of the first decade of its operation in 2011. In doing this, the research aimed to determine the success of Section 29 in terms of achieving its aims of:

- (a) making schools more democratic and more publicly accountable for their actions in terms of admission and exclusion
- (b) serving the needs of parents/guardians and pupils/students who were not being treated equitably by some schools, especially in terms of their admission and exclusion practices.

One of the core purposes of this research was to use the Section 29 appeal process to facilitate a critical analysis of the power differentials evident in Irish education. The research explored how certain socially advantaged groups use their cultural and social capital to perpetuate their group's educational advantage and have a recognised voice in schools and in the wider education system.

### **11.2 THE IMPACT OF APPEALS**

This dissertation concludes that the Section 29 appeal mechanism has been a powerful force in requiring school personnel to document and implement transparent admission and behaviour policies. There is now a greater recognition among school personnel of the need to be seen to deal fairly with students who misbehave in schools or parents/guardians who apply on behalf of children and young people for enrolment in schools. The research also indicates that Section 29 has empowered many parents/guardians, as it has enabled them to challenge decisions of schools that heretofore were unchallenged.

However, this research suggests that not all parents are in a position to either access or benefit equally from the appeal process. Evidence was reported in Chapter 9 that



some are not told by school authorities about their right of appeal in the first place. Evidence was also reported in Chapter 9 that many parents, particularly marginalised parents, lack the linguistic capital to articulate their views in front of an appeal committee. Many such parents may be of the view that they are facing the ‘establishment’ during these appeal hearings. Some parents, particularly newcomer parents, have difficulties filling in the mandatory appeals application form. Some of those interviewed (representatives of stakeholder bodies, Department of Education and Skills officials, and appeal personnel) saw the Section 29 appeal mechanism as adversarial and a system that led to winners and losers. The research indicates that even if an appeal is upheld, and the child who was the subject of the appeal is enrolled or re-enrolled in the schools, the success of that child in the school is dependent on the attitude of the teachers to that child on re-enrolment.

Evidence was presented in Chapter 7 that the Section 29 appeal process is not an appropriate mechanism for appeals that relate to over-subscription of schools in areas with an insufficient supply of school places to meet growing demand. Neither school authorities nor appeal personnel are in a position to address the systemic difficulties in these situations. The research also suggests (Chapter 7) that the stipulation that a parent cannot appeal a school’s decision to suspend unless the cumulative period of suspension is 20 days or more in a school year may also be problematic as the period of the suspension is very lengthy.

Section 29 (d) of the Education Act, which allows for the Minister to consider other issues for appeal, has never been invoked. Nor are there agreed procedures in relation to Section 28<sup>31</sup> of the Act. Therefore, parents have no voice to appeal matters other than issues to do with enrolment or discipline, despite the fact that there were calls by the parents’ bodies and others for a broader canvas for appeals, as outlined in Chapter 4.

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<sup>31</sup> Section 28 allows for procedures to be provided for parents or a student over the age of 18 to appeal against a decision of a teacher or other member of staff of a school in relation to matters not covered by Section 29

It is therefore recommended that:

- The Department of Education and Skills should consider how best to ensure that all parents, especially marginalised parents, are aware of their right of appeal.
- Consideration should be given to broadening the purpose of facilitation to include a greater emphasis on trying to broker a solution to the matter under appeal. This approach might reduce the number of appeal hearings and the difficulties faced by marginalised parents, in particular, in terms of participating in a formal appeal hearing.
- The Department of Education and Skills should consider the introduction of support mechanisms to assist marginalised appellants. Such appellants could use an advocate to assist in the filling out of appeal application forms and to accompany them to the hearing to represent their views if necessary and to facilitate them to speak for themselves.
- Evidence reported in Chapter 5 indicates that there may be confusion regarding the role of the EWOs at Section 29 appeal hearings. Interviewees reported that some EWOs perceive themselves as advocates on behalf of parents. It is important that the NEWB (which employs EWOs) should clarify their role at appeal hearings and should ensure that policy regarding this role is disseminated to all involved in appeals.
- The Department should consider the re-introduction of the practice of using neutral venues in which to hold appeal hearings rather than holding all appeals in State-owned official buildings.
- The Department should ensure that the appeal application forms are available in languages other than English and Irish.
- The planning authorities and DES should be more proactive in avoiding situations in certain parts of the country where a large number of students are unable to access school places due to insufficient school accommodation.
- The Department should consider the drafting of procedures for the introduction of Section 28 of the Education Act and/or Section 29 (d) of the Act to give parents a voice in challenging decisions of schools that relate to other issues apart from enrolment and discipline or that relate to periods of suspension shorter than 20 cumulative days in one school year.

### **11.3 THE OPERATION OF APPEALS**

Chapter 6 of this dissertation reported certain problematic issues with the operation of appeals. The research indicates that local level resolution of appeals is rarely used as a first stage of the appeal process. The research also indicates that the purpose of facilitation was never defined when the appeal procedures were drawn up and has never since been defined. As a result, different practices around facilitation exist. While facilitation has been more successful than local level resolution, the research indicates that facilitation is rarely successful in enrolment appeals. There is evidence that the terms of reference for hearing an appeal are perceived differently by different appeal personnel. This leads to inconsistency of practice and frustration among schools. The research also indicates that there is lack of consistency of practice in the chairing of appeals.

There are separate procedures for hearing VEC appeals. Chapter 5 of this research reports apparent confusion about the purpose of an appeal to the Secretary General, subsequent to an appeal to the VEC. There are apparent procedural difficulties in relation to the representation of the VEC at appeals to the Secretary General, as the stipulation that two members of the Board of Management or the principal and one member of the board should speak at the full hearing seems to be rarely observed.

The research indicates (Chapter 6) gaps in the knowledge of some appeal personnel about specific matters relating to appeals. For example, some appeal personnel were unaware that appeals can be upheld in part. The research also indicates a level of dissatisfaction with the manner in which appeals are administered by the section within the DES. For example, there was dissatisfaction expressed regarding lack of awareness of the impact of delays in admitting appeals and delays in releasing determinations. The moratorium on recruitment to the public service may possibly have an impact on such delays.

The research indicates in Chapter 6 that the system of recruiting appeal personnel onto appeal committees remains ad hoc. There are no explicit criteria documented for the recruitment of appeal personnel. Appeal personnel do not have to formally apply for the role of facilitator or for membership of an appeal committee, nor do they have to

interview for these roles. There are no indicators as to when appeal personnel should conclude their engagement with the Section 29 appeal process. There is no means of monitoring the quality of appeal personnel.

The evidence indicates that there is a power imbalance in the make-up of appeal committees. Membership of such committees is made up of inspectors and educationalists, most of whom are former teachers and principals, some of whom may be perceived as lacking appropriate levels of independence from the schools against which appeals were lodged. The legislation in relation to Section 29 states that “persons as the Minister considers appropriate” may be appointed to appeal committees. This suggests that there is nothing precluding the Minister from appointing other appropriately qualified persons to serve on appeal committees.

The evidence in the research (Chapter 8) suggests that there is still confusion among appeal personnel about the implications of the results of the judicial reviews on the work of the appeal committees. While the research indicates that the judicial reviews have benefited the appeal mechanism in that they have clarified certain issues around the terms of reference of appeals, evidence also suggests that some appeal personnel do not believe that the Department is adequately challenging judicial reviews taken by schools in relation to appeals.

It is therefore recommended that:

- More robust local level procedures should be stipulated by the Department to ensure that schools and parents do not bypass this stage. It is suggested that schools and parents could be required to certify that local level procedures took place prior to the appeal moving to the next stage. Guidance on the type of local level procedures that might be appropriate would also be useful in this regard.
- There is a need for greater clarity regarding the terms of reference of their work for facilitators. There is also a need for training for facilitators to explain the purpose and scope of their role.
- The purpose of facilitation for enrolment appeals should be reviewed; especially if a school is full and there is evidence of a dearth of school places in a locality.

- Guidelines should be drawn up in relation to the terms of reference of appeal committees and the factors that they may or may not take into account when making their determinations.
- The Department should specify that the appeals to both the VEC and to the Secretary General are appeals against a decision of a school's Board of Management. It should further specify who can attend from the school's side at a VEC appeal to the Secretary General.
- The operation of the appeal process, including the decision-making process of the appeal committee, should be transparent so that all parties can see and understand how the appeal committee reaches its decision. As a result, case studies of appeals should be published on a regular basis while exercising due diligence with regard to obligations under Data Protection legislation. The Department should follow up on a number of students who were the subject of appeals, to chart their educational progress in the year(s) subsequent to the appeal hearing.
- Guidelines on best practice in chairing an appeal hearing should be developed to ensure consistency of good practice in this regard. A code of best practice in relation to the overall conduct of appeals would also be helpful for appeal personnel.
- Training of appeal committees and ongoing quality assurance of appeal personnel is called for to ensure that all are aware of the scope of appeals and the implications of relevant legislation. In this regard, training should take place on at least an annual basis. DES officials should also monitor a proportion of the work of appeal personnel by accompanying them on facilitation or to hearings.
- Consideration should be given to appointing appeal personnel to appeal committees based on their specialist knowledge of the issue under appeal. Therefore, for example, a person with specialist knowledge about SEN should be appointed to appeal cases that relate to SEN.
- There is a need for training for and quality assurance of those administering appeals to ensure clarity about their work.
- The Department should publish clear and transparent criteria for recruitment of appeal personnel.
- The Department should indicate that there is a specific timeframe for working

on appeal committees. The six-year maximum time-frame<sup>32</sup> for serving on the board of the NCSE could be replicated in this regard.

- The Department should consider recruiting onto appeal committees those who are not from an educational background but who represent other viewpoints including the viewpoints of those who are marginalised.
- Appeal personnel should be reminded of the need for their total independence when working on appeals. There is a need for members of appeal committees to be required to declare any prior involvement with parties to the appeal before sitting on an appeal hearing or being involved in facilitation.
- The Department should communicate to appeal personnel the work it is doing in relation to challenging judicial reviews. It should also clearly communicate the implications of the outcomes of each of the judicial reviews to appeal personnel so that all personnel have a unified and consistent approach to their work on appeal committees.

#### **11.4 PERSISTING INEQUALITIES IN IRISH EDUCATION**

The findings of this research indicate that while the introduction of an appeal mechanism has impacted positively on the culture and practice of many schools, it has not significantly changed the culture of other schools. Inequalities still exist within and between schools that lead to the unequal treatment of some students, and this appears to impact disproportionately on those who are marginalised. The research indicates (Chapter 7) that some second-level school authorities, especially Voluntary Secondary schools, adopt the practice of ‘de facto’ expulsion to encourage pupils, who do not fit in with their view of the cultural norm, to move to another school. The evidence suggests that such practice particularly disadvantages marginalised students who are encouraged to leave their current school and enrol in another school rather than having formal expulsion on their school record.

Chapter 7 of this research reports on other practices which lead to inequalities within the education system. These include some schools asserting that they offer an ‘academic’ curriculum and, thus, implying that they are only suitable for ‘academic’

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<sup>32</sup> The NCSE board allows for membership for an initial three-year term, with the possibility of renewal for a further three years

children. In addition, some schools appear to channel certain applicants, for example those with disabilities, to other schools. Some schools charge high voluntary contributions and other fees, including enrolment fees, which excludes those with limited access to economic capital. This leads to social stratification between schools, because students, who are not welcomed by one school, inevitably enrol in another school. These schools may, as a result, have to cater for a considerable number of challenging behaviours or for a greater proportion of children with SEN. The *Discussion Paper on a Regulatory Framework for School Enrolment* is, therefore, a welcome development. If the proposals in the Discussion Paper are implemented, a new principle-based approach to enrolment will be introduced. This will lead to decisions not to enrol being measured against a commonly held and agreed set of principles, as opposed to being at the sole discretion of the school authorities.

The evidence in this research (Chapter 7) demonstrates that some second-level schools are able to decide on the number of students they will enrol in a given class or year group. This leads to unequal practices between schools. Some second-level schools enrol up to 30 pupils in each class group, while others cap their numbers at a much lower figure.

The international research indicates that in schools where there is effective leadership, there is a greater sense of collective responsibility among all staff regarding the need to cater for the diverse needs of the student population in the school. However, there is evidence presented in Chapters 8 and 9 of this research that some teachers prioritise the needs of learners who have the same social and cultural capital as they themselves have. These students are generally the more diligent and docile members of the learning community.

This research indicates that those who have a say in educational policy in Ireland are those with the most recognised and valued cultural, linguistic and symbolic capital. As a result, the dominant dynamic in terms of determining educational policy at school and at system level is rarely challenged. The evidence suggests that those education partners who are consulted by schools and by the DES all represent certain interest groups who wish to maintain the educational status quo. This representation is

accepted as normal and has never been challenged. The consequence is that the marginalised have no voice in determining educational policy.

It is therefore recommended that:

- The Department should introduce regulations to preclude the practice of ‘de facto’ expulsion. While it is acknowledged that the implementation of these regulations by schools would be difficult to police, such regulations would raise awareness of the negative consequences of this practice on children and other schools alike.
- The Department should consider introducing similar guidelines around maximum class size and space requirements for second-level schools as already apply in the primary sector.
- Initial teacher educators and those who provide continuing professional development in schools should have a role both in supporting teachers in gaining an understanding of the needs of different learners and enabling them to understand their duty to all learners. Ongoing training in school leadership is needed to ensure that school principals are equipped with the skills and knowledge to manage the entire student population and facilitate the voice of all students and parents in schools.
- An alteration in the current make-up of those who are consulted about educational matters should take place to ensure that all views are represented and not just the views of those with the most valued cultural and social capital. In this regard, schools should actively encourage more marginalised parents and students to become members of students’ and parents’ councils and the DES should actively encourage groups that represent the marginalised to participate in policy-making terms.

### **11.3.5 CONCLUSION**

This dissertation argues that the Section 29 legislation has been successful in making the majority of schools more democratic and more publicly accountable for their actions in terms of admission and exclusion. It has also served the needs of some parents/guardians and some pupils/students by giving them a voice to challenge schools in terms of their admission and exclusion practices. However, the introduction of an appeal mechanism has not addressed the power and inequality



issues that still persist in Irish schools. Section 29 appeals best serve the needs of those parents and students who have most advantageous cultural and social capital. This dissertation also asserts that there are fundamental difficulties with the operation of Section 29 appeals. Because the appeal system developed in an ad hoc manner, different practices among appeal personnel persist. There is an apparent need for ongoing training of appeal personnel and those who work in the section of the DES that administers appeals to ensure that all who work in appeals are fully aware of the terms of reference of appeals and execute their role equitably and fairly. All of those working on appeals should be particularly aware of the rights and needs of marginalised groups.

The dissertation argues that Section 29 has not solved the inequality issues that exist in many schools which lead to social stratification between schools and within schools. It maintains that those who are the most powerful in determining policy at school and at system level are the middle classes. The middle classes have the cultural, linguistic and social capital to make their viewpoints heard. These viewpoints suit the middle classes but do not accommodate the viewpoints of the marginalised. Those who administer, operate and evaluate the appeal process, as well as those who make policy decisions about appeals, belong to the advantaged groups in society. Thus, as asserted by Bourdieu (1989), the continued domination and perpetuation of social privilege in society is assured. While the evidence in this research indicates that some appeal personnel and other educationalists are aware of inequality in the Irish education system, the extent to which these personnel are either willing or able to challenge this inequality is less obvious. A limitation of this study is that it only engaged with these advantaged groups or their representatives, because these are the people who either worked on or influenced the establishment and operation of the appeal process.

Further research is needed to establish the views of those appellants and school personnel who have participated in appeal hearings. Such research should include the views of those appellants who are marginalised, in order to establish their experience of appeals and in order to ensure that their voices can be heard with regard to further developments of this process. This might assist in challenging the power inequalities that this research has highlighted.

## BIBLIOGRAPHY

ACCS (2005) *Submission to the Task Force on Student Behaviour in Second Level Schools* Unpublished submission to the Task Force on Student Behaviour in Second Level Schools. Department of Education and Skills, Off-Site Storage, Tullamore.

Achilles, G. McLaughlin, M. Croninger, R. (22 March 2007) *Sociocultural correlates of disciplinary exclusion of students with emotional, behavioural and learning disabilities in the SEELS national dataset. (School Emotional Environment for Learning Survey)* Journal of Emotional and Behavioral Disorders (internet: 20/4/2009)

Allred, P. and Gillies, V.: Eliciting Research Accounts: Re/Producing Modern Subjects in M. Mauthner, M. Birch, J. Jessop and T. Miller (eds) (2008) *Ethics in Qualitative Research* London: Sage Publications

Allen, M. (1998) *The bitter word: Ireland's job famine and its aftermath* Dublin: Poolbeg

American Educational Research Association (2000) *Ethical Standards of the American Educational Research Association* www.aera.net (internet: 2/1/2013)

Andrews, R.; (2003) *Research Questions*: London: Continuum

Apple, M. (2004) Foreword in J. Deegan, D. Devine and A. Lodge (2004) (eds.) *Primary Voices: Equality, Diversity and Childhood in Irish Primary Schools*. Institute of Public Administration: Dublin

Apple, M. Creating Difference: Neo-Liberalism, Neo-Conservatism and the Politics of Educational Reform. *Education Policy (2004) 18.12 pp 12-44*

Apple, M. (2012) *Education and Power* New York: Routledge Press

Apple, M. (2013) *Can Education Change Society?* New York: Routledge Press

ASTI (March 2005) *Submission to the Task Force on Student Behaviour in Second Level Schools* Unpublished submission to the Task Force on Student Behaviour in Second Level Schools Department of Education and Skills, Off-Site Storage, Tullamore.

Association of Secondary Teachers of Ireland [www.asti.ie](http://www.asti.ie) (internet: 25/7/2009)

Ball, S. (2003) *Class Strategies and the Education Market: the middle class and social advantage*. London: Routledge Falmer

Ball, S.J., Maguire, M and Braun, A. (2012) *How Schools Do Policy: Policy Enactments in Secondary Schools*. London: Routledge Press

Ball, S.J. (2013a) *Foucault, Power, and Education*. New York: Routledge Press

Ball, S.J. (2013b) Education, justice and democracy: The struggle over ignorance and opportunity *London: The Centre for Labour and Social Studies* (internet: [www.classonline.org.uk](http://www.classonline.org.uk))

Ball (2013c) Free schools: our education system has been dismembered in pursuit of choice *The Guardian*, Wednesday 23 October 2013

Bell, L. and Nutt, L. Divided Loyalties, Divided Expectations: Research Ethics, Professional and Occupational Responsibilities in M. Mauthner, M. Birch, J. Jessop and T. Miller (eds) (2008) *Ethics in Qualitative Research* London: Sage Publications

Bernstein, B. (1990) *Class Codes and Control Vol 4. The Structure of Pedagogic Discourse* Routledge and Kegan Paul

Binchy, W., (2006) The School's Duty of Care to Its Pupils: Recent Developments in the Law in D. Glendenning and W. Binchy (eds) *Litigation Against Schools: Implications for School Management* (2006) First Law Ltd.

- Bissett, J. (2000) *Waiting for the Great Leap Forward: An Ethnography of the Educational Process in a Working Class Dublin School* Unpublished PhD thesis: University College Dublin
- Boldt, S. (1997) *Hear My Voice: A longitudinal study of the post-school experiences of early school leavers in Ireland* Dublin: Marino Institute of Education
- Boldt, S. (2000) *Powerful Hopes: An in-depth study of the potential of young people from the inner city of Dublin* Dublin: Marino Institute of Education
- Borg, W.R. and Gall, M.D. (1989) *Educational Research: An Introduction Fifth Edition* Longman: New York
- Bottomore, T. (1976) Foreword in P. Bourdieu, and J.C. Passeron (1990) *Reproduction in Education, Society and Culture* Sage Publications, Second edition
- Bourdieu, P. (1967) *Systems of Education and Systems of Thought* in M.F.D. Young (Ed.) *Knowledge and Control: New Directions for the Sociology of Education* (1971) London: Collier-Macmillan
- Bourdieu, P. (1968) *Intellectual Field and Creative Project* in M.F.D Young, (ed.) *Knowledge and Control: New Directions for the Sociology of Education* (1971) London: Collier-Macmillan
- Bourdieu, P. (1986) *The Forms of Capital* in J. Richardson (ed.) *Handbook of Theory and Research for the Sociology of Education* (New York, Greenwood), 241-258.
- Bourdieu, P. (1989) *The State Nobility: Elite Schools in the Field of Power* Stanford University Press, Stanford, California 1989
- Bourdieu, P. and Passeron, J.C. (1990) *Reproduction in Education, Society and Culture* Sage Publications, Second edition
- Bourdieu, P. (1991) *Language and Symbolic Power* Polity Press, Cambridge, UK

- Bourdieu, P. and Wacquant, L. (1992) *An Invitation to Reflexive Sociology*  
Chicago: University of Chicago Press.
- Brannan, J. (2005) *Mixed Methods Research: A discussion paper*. ERSC National Centre for Research Methods NCRM/005
- British Educational Research Association (2004) *Revised Ethical Guidelines for Educational Research* www.bera.ac.uk (internet: 2/2/2013)
- Brock-Utne, B. (1996) Reliability and Validity in Qualitative Research Within Education in Africa. *International Review of Education* 1996, Volume 42, Issue 6
- Brown, M. (2006) Schools Admission and Exclusion Appeals – the need for a panel member forum (July, 2006) (internet:12/11/09)
- Bruner, J. (1996) *The Culture of Education*, Massachusetts: Harvard University Press
- Bruner, J. (2003) *The Process of Education*, Massachusetts: Harvard University Press
- Bucher, R. Fritz, C.E. and Quarantelli, E.L. *Tape Recorded Interviews in Social Research* in American Sociological Review, Vol. 21, 1956 pp. 359-364
- Burke Johnson, R. and Onwuegbuzie, A. J. (2004) Mixed Methods Research: A Research Paradigm Whose Time Has Come. *Educational Researcher* Vol. 33 No. 7 (Oct. 2004) pp. 14-26
- Byrne, D. and Smyth, E. (2010) *No Way Back? The Dynamics of Early School Leaving*. Dublin: Liffey Press in association with the Economic and Social Research Institute
- Carey, D. (2005) *The Essential Guide to Special Education in Ireland*. Primary ABC

Cochran-Smith, M. and Lytle, S.L. *Inquiry as Stance: Practitioner Research for the Next Generation* United States: Teachers College Press

Conaty, C. (2002) *Including All: Home school and community in united education* Dublin: Veritas Publications

Convention of Scottish Local Authorities (COSLA): Revised Code of Practice for the constitution and procedures of education appeal committees in Scotland (July 2001) [www.north-ayrshire.gov.uk](http://www.north-ayrshire.gov.uk) (internet: 2/2/2013)

Corbin, J. and Strauss, A. (1990) Grounded Theory Research: Procedures, Canons, and Evaluative Criteria: *Qualitative Sociology Vol. 13, 1990, pp3-21* in N. Fielding (2003) *Interviewing, Volume iv* London: Sage Publications

Coupal, L. (2005) Practitioner-Research and the Regulation of Research Ethics: The Challenge of Individual, Organizational, and Social Interests, Forum: Qualitative Social Research volume 6, No 1, article 6 January 2005 [www.qualitative-research.net/index.php/fqs/article/view/528/1144](http://www.qualitative-research.net/index.php/fqs/article/view/528/1144) (internet: 20/11/2012)

Craven, C. (2006) Bullying and School Discipline in D. Glendenning and W. Binchy (eds) *Litigation Against Schools: Implications for School Management* First Law Ltd.

Darlington, Y. and Scott, D. (2002) *Qualitative Research in Practice Stories from the Field* Philadelphia: Open University Press

Dean, J.P. and Foote Whyte, W. *How Do You Know If the Informant is Telling the Truth?* Human Organization, Vol. 17 1958 pp 34-38

Deegan, J. Devine, D and Lodge, A. (2004) (Eds) *Primary Voices: Equality, Diversity and Childhood in Irish Primary Schools* Dublin: Institute of Public Administration

Denscombe, M. (2003), *The Good Research Guide for Small -Scale Social Research*. Second Edition, McGraw Hill, England: Open University Press

Denscombe, M. (2008) *The Good Research Guide for small-scale social research projects* (third edition) Open University Press- England McGraw-Hill

Department of Education, (1965) *Rules for National Schools*. Dublin: Department of Education

Department of Education, Circular 32/85 *Report of the Committee on Discipline in Schools*: Dublin: Department of Education

Department of Education, Circular 24/88, *Code of Discipline for Post-Primary Schools*: Dublin: Department of Education

Department of Education, Circular 20/90, *Guidelines Towards a Positive Policy for School Behaviour and Discipline* Dublin: Department of Education

Department of Education, Circular M33/91 *Guidelines Towards a Positive Policy for School Behaviour and Discipline, A Suggested Code of Behaviour and Discipline for Post-Primary Schools*. Dublin: Department of Education

Department of Education and Science, Circular 51/93 *Selection Procedures for the Enrolment of Pupils in Second-Level Schools* Dublin: Department of Education and Science

Department of Education (February, 1994): *Report on the Working Group to Review the Operation of School Attendance Legislation*. Department of Education and Skills, Off-Site Storage, Tullamore.

Department of Education Northern Ireland (1994) Regulation 4, Circular Number 1994/3 *Expulsion of Pupils/Appeals Tribunals Regulations* [www.deni.gov.uk](http://www.deni.gov.uk) (2/1/2013)

Department of Education *Principles Underpinning Section 29* (undated and unpublished) Department of Education and Skills, Off-Site Storage, Tullamore.

Department of Education and Science (1998) *Adult education in an era of lifelong learning* (Green paper on adult education). Dublin: Stationery Office

Department of Education and Science Circular M18/99 *Guidelines on Violence in Schools* Dublin: Department of Education and Science

Department of Education and Science Circular M48/01 *Appeal Procedures under Section 29 of the Education Act* Dublin: Department of Education and Science

Department of Education and Science, (2002) *Guidelines on Traveller Education in Second-Level Schools* Dublin: Department of Education and Science

Department of Education and Science Circular 22/02 *Appeal Procedures under Section 29 of the Education Act*. Dublin: Department of Education and Science

Department for Education and Skills (27 May 2004) National Statistics, First Release

Department of Education and Science (2005) *Interim Report Task Force on Student Behaviour in Second Level Schools* Dublin: Department of Education and Science

Department of Education and Science (2006) *School Matters: The Report of the Task Force on Student Behaviour in Second Level Schools* Dublin: Department of Education and Science

Department of Education and Science (2007a) *Inclusion of Students with Special Educational Needs: Post-Primary Guidelines* Dublin: Department of Education and Science

Department of Education and Science (2007) *Guidelines on Identifying Young People at Risk of Early School Leaving* Dublin: Department of Education and Science

Department of Education and Science (2008) *Report on the Audit of School Enrolment Policies*: Department of Education and Science



Department of Education and Science (2010) Letter to appeal committee members outlining a summary of the effect of recent High Court Judgements for the work and scope of section 29 committees (unpublished)

Department of Education and Skills (2011) *Discussion Paper on a Regulatory Framework for School Enrolment*: Department of Education and Skills

Department of Education and Skills Circular 0007/2012 *Staffing arrangements in Primary Schools for the 2012/13 school year*

Department of Education and Skills, [www.education.ie](http://www.education.ie) *Key Statistics 2011/2012* (internet: 10 October 2012)

Derman-Sparks, L. (2002) *Disadvantage and Diversity. Untangling Their Roles in Children's Development* in Primary Education: Ending Disadvantage July 1-5, 2002, St Patrick's college, Drumcondra, Dublin

Devine, D. (2004) School matters-listening to what children have to say in J. Deegan, D. Devine and A. Lodge (eds) *Primary Voices: Equality, Diversity and Childhood in Irish Primary Schools* Dublin: Institute of Public Administration

Devine, D. Kenny, M and McNeela, E. (2004a) Experiencing racism in the primary school – children's perspectives in J. Deegan, D. Devine and A. Lodge (eds) *Primary Voices: Equality, Diversity and Childhood in Irish Primary Schools* Dublin: Institute of Public Administration

Devine, D. Lodge, A. and Deegan, J. (2004b) Activating voices through practice: democracy, care and consultation in the primary school in J. Deegan, D. Devine and A. Lodge (eds) *Primary Voices: Equality, Diversity and Childhood in Irish Primary Schools* Dublin: Institute of Public Administration

Drever, E. (1995) *Using Semi-structured Interviews in Small Scale Research – A Teacher's Guide* Mc Graw Hill, England: Open University Press

Drudy, S and Lynch K (1993) *Schools and Society in Ireland* Dublin: Gill and MacMillan

Education Act (1980) [www.educationengland.org.uk](http://www.educationengland.org.uk) (internet: 2/1/2013)

Education Act (1993) [www.educationengland.org.uk](http://www.educationengland.org.uk) (internet: 2/1/2013)

Education for a Changing World (1993) Submission by the National Parents Council Primary on the Education Green Paper Dublin: National Parents Council-Primary

Equality Authority: Annual Report (2003) [www.equality.ie](http://www.equality.ie) (internet: 24/11/2009)

Equality Authority: Annual Report (2004) [www.equality.ie](http://www.equality.ie) (internet: 24/11/2009)

Equality Authority: *Schools and the Equal Status Act* (2005a) Dublin: Equality Authority

Equality Authority: Annual Report (2005) [www.equality.ie](http://www.equality.ie) (internet: 24/11/2009)

Equality Authority: Annual Report (2007) [www.equality.ie](http://www.equality.ie) (internet: 24/11/2009)

Equality Authority: Annual Report (2010) [www.equality.ie](http://www.equality.ie) (internet: 31/12/2012)

Equality Authority: Annual Report (2011) [www.equality.ie](http://www.equality.ie) (internet: 31/12/2012)

Fagan, H. (1995) *Culture, Politics and Irish School Dropouts* Westport CT/London: Bergin and Garvey

Fielding, N. (2003) *Interviewing, Volume iv* London: Sage Publications

Flynn, S. *New Guidelines for Schools on Enrolment Policies*: The Irish Times 4/12/2008

Fox, R. and Buchanan, N. (April, 2008) *School Choice in the Republic of Ireland: An Unqualified Commitment to Parental Choice* (internet:13/7/09)

Freire, P. (1972) *Pedagogy of the Oppressed* Great Britain: Penguin Books

Gash, H. and Murphy Lejeune, E. (2004) 'Intentionally or Otherwise:' children and diversity in statutory and policy discourses in Ireland in J. Deegan, D. Devine, and A. Lodge (eds) *Primary Voices: Equality, Diversity and Childhood in Irish Primary Schools*. Dublin:Institute of Public Administration

Gewirtz, S, Ball, S. and Bowe, R. (1995) *Markets, Choice and Equity in Education*. Buckingham: Open University Press.

Glendenning, D. (1999) *Education and the Law* Ireland: Butterworths Ireland Ltd

Glendenning, D (1999a) 'The Impact of Section 29 of the Education Act 1998 in Primary Schools: Paper delivered in Trinity College at conference entitle 'Suing Primary Schools: Strategies for Managers and Principals to Reduce the Risk of Liability, 9 October 1999

Glendenning, D. (2006a) School Discipline: Balancing Individual Student Rights and the Common Good in D. Glendenning and W. Binchy (eds) *Litigation Against Schools: Implications for School Management*. First Law Ltd.

Glendenning, D., (2006b) The Delivery Of Minimum Education And The Common Good in D. Glendenning and W. Binchy W. (eds) *Litigation Against Schools: Implications for School Management*. First Law Ltd.

Golafshani, N. (2003) Understanding Reliability and Validity in Qualitative Research *The Qualitative Report* Vol. 8, No. 4 December 2003 pp. 597-607

Government of British Columbia: Student Appeal process (internet, 12/9/2008) [www.studentappeals.gov.bc.ca](http://www.studentappeals.gov.bc.ca))

Government of Ireland (1930) *Vocational Education Act*: Dublin: Government Publications

Government of Ireland (1988) *Data Protection Act*: Dublin: Government Publications

Government of Ireland (1997) *Freedom of Information Act*: Dublin: Government Publications

Government of Ireland (2003) *Data Protection (Amendment) Act*: Dublin: Government Publications

Government of Ireland (1992) *Education for a Changing World: Green Paper on Education*: Dublin: Government Publications

Government of Ireland (1994) *Report On The National Education Convention*. Dublin: Government Publications

Government of Ireland (1995) *Charting Our Education Future: The White Paper on Education* Dublin: Government Publications

Government of Ireland (1997) *Education Bill*: Dublin: Government Publications

Government of Ireland (1997) *Education (No. 2) Bill*: Government Publications

Government of Ireland (1998) *Education Act*. Dublin: Government Publications

Government of Ireland (2000) *Education (Welfare) Act*. Dublin: Government Publications

Government of Ireland (2000) *Equal Status Act*. Dublin: Government Publications

Government of Ireland (2000) *The National Children's Strategy. Our Children – Their Lives*. Dublin: Government Publications

Government of Ireland (2004) *Equal Status Act*. Dublin: Government Publications

Government of Ireland (2004) *Education for Persons with Special Educational Needs Act*. Dublin: Government Publications

Government of Ireland (2007) *Education (Miscellaneous Provisions) Act*  
Dublin: Government Publications

Government of Ireland website: [www.oireachtas-debates.gov.ie](http://www.oireachtas-debates.gov.ie) (internet: January-December 2011)

Government of Scotland website [www.scotland.gov.uk](http://www.scotland.gov.uk) Press Release (26/1/2009)  
*Minister comments on school exclusion figures* (internet: 2/4/09)

Griffin, S. and Shevlin, M. (2007) *Responding to Special Educational Needs: An Irish Perspective*. Dublin: Gill and Macmillan

Growing Up in Ireland Key Findings: 13-Year-Olds. No.1. *School Experiences among Thirteen-Year-Olds*. November 2012 (internet. [www.growingup.ie](http://www.growingup.ie))

Hanafin, J., O'Donoghue, T., Flynn, M. and Shevlin, M (2009) The Primary school's invasion of the privacy of the child: unmasking the potential of some current practices  
*Educational Studies* 36: 2 143-152

Hargreaves, A, Earl, L and Ryan, J (1996) *Schooling for Change: Reinventing education for Early Adolescents* London:Falmer Press

Hodgson, P. and Webb, D. (Feb, 2005). Young People, Crime and School Exclusion: A Case of Some Surprises *The Howard Journal*, 44(1) 12-28

Holden, M.T. and Lynch, P. (2004) Choosing the Appropriate Methodology: Understanding Research Philosophy (RIKON Group). *The Marketing Review*, 4. pp. 397-409.

Howe, K. and Moses, M. (1999) Ethics in Educational Research. *Review of Research in Education*. Vol. 24 pp. 21-60

Hyland, A. *Looking to the Future – Ending Disadvantage?* in Primary Education: Ending Disadvantage July 1-5, 2002, St Patrick's College, Drumcondra, Dublin

Inglis, T. (1998) *Moral Monopoly: The Rise and Fall of the Catholic Church* in Modern Ireland. Dublin: University College Dublin. pp 243 – 259 – Chapter 10.

Ipsos Mori. Publications and Archive 27 [www.ipsos-mori.com](http://www.ipsos-mori.com) 27 March 2000 (internet: 2/4/2009)

Irish Independent [www.independent.ie](http://www.independent.ie) (internet: 24/5/2007) Headline and author unknown

Irish Independent [www.independent.ie](http://www.independent.ie) *Meagan's first day at all-boys school after appeal victory* (internet 12/9/08), article by R. Riegal and J. Walshe

Irish Independent [www.independent.ie](http://www.independent.ie) (internet 17/2/2009), article by G. Cunningham  
Headline unknown

Irish Times [www.nuim.ie/academic/education/news](http://www.nuim.ie/academic/education/news) (internet: 15 March, 2005) article by J. Downes  
Headline unknown

Irish Times [www.irishtimes.com](http://www.irishtimes.com) (internet: 10 October, 2008) article by G. Deegan  
Headline unknown

Irish Times (26/5/2012) *Expulsion Stories* Irish Times Supplement. Author unknown

Irving, B. A. and Parker-Jenkins, M. Tackling Truancy: An Examination of Persistent Non-Attendance Amongst Disaffected School Pupils and Positive Support Strategies: *Cambridge Journal of Education* June 1995, Vol. 25: Issue 2

IVEA (April 2005) *Submission to the Task Force on Student Behaviour in Second Level Schools*. Unpublished submission to the Task Force on Student Behaviour in Second Level Schools. Department of Education and Skills, Off-Site Storage, Tullamore.

Irish Vocational Education Association [www.ivea.ie](http://www.ivea.ie) (internet: 14 March, 2006)

IVEA (3 August 2007) *Submission To Department Of Education And Science Re: Procedures for Hearing and Determining Appeals under S. 29 of the Education Act 1998*: IVEA

IVEA (6 June 2008) *Response to DES Audit of Enrolment Policies*: IVEA

IVEA (19 August 2011) *Submission to Department of Education and Skills on Proposals for the Establishment of Regulatory Framework for School Enrolment*: IVEA

JMB (April 2005) *Submission to the Task Force on Student Behaviour in Second Level Schools*. Unpublished submission to the Task Force on Student Behaviour in Second Level Schools. Department of Education and Skills, Off-Site Storage, Tullamore.

Judicial Review: 2007 1563 County Westmeath VEC v Department of Education and Science and Ors

Judicial Review: 2007 418 Timothy O'Donovan and The Board of Management of De La Salle College Wicklow

Judicial Review 2008 287 Lucan Education Together National School v Department of Education and Science and Ors

Judicial Review: 2008 593 Board of Management of St Molaga's School v Secretary General of the Dept. Of Education and Science and Ors

Judicial Review: 2011 266 City of Waterford VEC v Department of Education and Science and Ors

Keane, R. (November, 2005) in Meaney et al, *Special Educational Needs and the Law* Dublin Thomson Round Hall 2005

Keddie, N, (1971) *Classroom Knowledge*, in M.F.D Young (ed.) *Knowledge and Control: New Directions for the Sociology of Education* (1971) London: Collier-Macmillan

Kellaghan, T. (2002) *Approaches to Problems of Educational Disadvantage in Primary Education: Ending Disadvantage* July 1-5, 2002, St Patrick's college, Drumcondra, Dublin

Kilpatrick, R. (August, 1998) *Exclusion from School: The Why and Wherefore Paper presented at the British Educational Research Association Annual Conference, Queen's University of Belfast, Northern Ireland, August 27th to August 30<sup>th</sup> 1998*

Knipe, D. Reynolds, M. and Milner, S. (December 2007) *Exclusion in Schools in Northern Ireland: the pupils' voice. Research Papers in Education 22(4) pp 407-424*

Krueger, RA. and Casey, MA (2000) *Focus Groups: A Practical Guide for Applied Research, 3<sup>rd</sup> Edition*. Thousand Oaks. California: Sage Publications in Rabiee, F. (2004) *Focus Group Interview and Data Analysis Proceedings of the Nutrition Society (2004) 63: 655-660*

Le Compte, M.D., and Goetz, J.P. (1982) *Problems of Reliability and Validity in Ethnographic Research Review of Educational Research* Spring 1982, Vol. 52, No. 1 pp. 31-60

Lodge, A. and Lynch, K. (2004) *Diversity at School* Dublin: Institute of Public Administration for the Equality Authority



Lodge, A. Devine, D and Deegan, J Equality, (2004) diversity and childhood in Irish primary schools in J. Deegan, D. Devine, and A. Lodge (eds) *Primary Voices: Equality, Diversity and Childhood in Irish Primary Schools* Dublin: Institute of Public Administration

Lodge, A. and Feeney, M. (2010) Review and Initial Evaluation of the Section 29 Appeal Process 2001-2006. Unpublished report

Lodge, A. and Feeney, M. (2013) *Equality Assessment of Admission Policies in Second-Level Schools*: Equality Authority

Lynch, K. *The Hidden Curriculum: Reproduction in Education: a Reappraisal* in S. Drudy and K. Lynch (1993) *Schools and society in Ireland* Dublin: Gill and MacMillan

Lynch, K. (1999) *Equality in Education* Dublin: Gill and MacMillan

Lynch, K. and Lodge, A. (1999) Essays on School in K. Lynch (1999) *Equality in Education* Dublin: Gill and MacMillan

Lynch, K. and Lodge, A. (2002) *Equality and Power in Schools: Redistribution, recognition and representation* London: RoutledgeFalmer

Lynch, K. and Moran, M. (2006) Markets, schools and the convertibility of economic capital: the complex dynamics of class choice. *British Journal of Sociology of Education* Vol. 27, No. 2, pp 221-234

Lynch, K and O'Neill, C. (1999) Researching Inequality in Education: Issues to be Addressed in K. Lynch (1999) *Equality in Education* Dublin: Gill and MacMillan

Lynch, K. and O'Riordan, C. (1999) Inequality in Higher Education: A Study of Social Class Barriers in K. Lynch (1999) *Equality in Education* Dublin: Gill and MacMillan

Lyons, M. Lynch, K. Close, S. Sheerin, E. and Boland, P. (2003) *Inside Classrooms: The Teaching and Learning of Mathematics in Social Context* Dublin: Institute of Public Administration

MacRuairc, G. 'Big mad words' – schools, social class and children's perceptions of language variation in J. Deegan, D. Devine, and A. Lodge (eds) *Primary Voices: Equality, Diversity and Childhood in Irish Primary Schools* Dublin: Institute of Public Administration

McCoy, S. and Byrne, D, (2011) 'The sooner the better I could get out of there': barriers to higher education access in Ireland. *Irish Educational Studies* 30:2 141-151  
24 June 2011

McCoy, S., Quail, A. and Smyth, E. (2012) Growing up in Ireland National Longitudinal Study of Children: Growing Up in Ireland: National Longitudinal Study of Children: Influences on 9-Year-Old's Learning: Home, School and Community  
Dublin: Government Publications

McDonagh, W. Travellers and education: a personal perspective in J. Deegan, D. Devine, and A. Lodge (eds) *Primary Voices: Equality, Diversity and Childhood in Irish Primary Schools*. Institute of Public Administration: Dublin 2004

McLoughlin, O. (2004) Citizen Child – the experience of a student council in a primary school in J. Deegan, D. Devine, and A. Lodge (eds) *Primary Voices: Equality, Diversity and Childhood in Irish Primary Schools*. Dublin: Institute of Public Administration

McVerry, P. *The Troublesome Student: A Prophet in Our Education System* (2009). Paper given in Kilkenny Education Centre 10 October 2009 (internet 4/2/2010)

Malone, R. (2006) 'Tumbling Out' or 'Hanging In'? *The Implications of Curricular Reform for the Prevention of Early School Leaving* Unpublished Ph.D thesis: University College Dublin

- Mauthner, M.; Birch, M.; Jessop, J.; and Miller, T. (editors) (2008) *Ethics in Qualitative Research* London: Sage Publications
- Meaney, M. Kiernan, N, and Monahan, K. (2005) *Special Educational Needs and the Law* Dublin: Thomson Round Hall
- Mehra, B. (2002) Bias in Qualitative Research: Voices from an Online Classroom. *The Qualitative Report*, Volume 7, No. 1 March 2002
- Mertens, D.M. (2005) *Research and Evaluation in Education and Psychology, 2<sup>nd</sup> Edition* United States: Sage Publications
- Mertens, D.M. (2010) *Research and Evaluation in Education and Psychology, 3<sup>rd</sup> Edition* United States: Sage Publications
- Miller, T. and Bell, L. Consenting to What? Issue Of Access, Gate-Keeping And ‘Informed’ Consent in M. Mauthner, M. Birch, J. Jessop, J and T. Miller (eds) (2008) *Ethics in Qualitative Research* London: Sage Publications
- Morse, J.M., Barrett, M., Mayan, M., Olson, K. and Spiers, J. (2002) Verification Strategies for Establishing Reliability and Validity in Qualitative Research *International Journal of Qualitative Methods* 1 (2) Spring 2002
- Munn, P. Lloyd, G and Cullen M.A. (2000) *Alternatives to Exclusion from School* London: Paul Chapman Publishing Ltd
- Munn, P. and Lloyd, G. (April, 2005) Exclusion and Excluded Pupils *British Educational Research Journal* 31(2) pp 205-221
- NAPD (April 2005) *Submission to the Task Force on Student Behaviour in Second Level Schools* Unpublished submission to the Task Force on Student Behaviour in Second Level Schools. Department of Education and Skills, Off-Site Storage, Tullamore.

National Council for Curriculum and Assessment (September 2007) *ESRI Research into the Experiences of Students in the Third Year of Junior Cycle and in Transition to Senior Cycle: Summary and Commentary* [www.ncca.ie](http://www.ncca.ie)

National Education Convention: Presentation of National Parents Council-Primary (October 11 1993) Department of Education and Skills, Off-Site Storage, Tullamore.

National Educational Welfare Board (April 2005) *Submission to the Task Force on Student Behaviour in Second Level Schools* Unpublished submission to the Task Force on Student Behaviour in Second Level Schools. Department of Education and Skills, Off-Site Storage, Tullamore.

National Educational Welfare Board (2008) *Developing a Code of Behaviour: Guidelines for Schools*: National Educational Welfare Board

National Educational Welfare Board (2007) *Advices from NEWB* National Educational Welfare Board

National Educational Welfare Board (2012) *Analysis of School Attendance Data for 2009/2010*: National Educational Welfare Board

National Parents Council *NPC.ie* (internet 12/9/2008)

Nixon, E. (2012) *Growing up in Ireland National Longitudinal Study of Children: How Families Matter For Social and Emotional Outcomes of 9-Year-Old Children*, Child Cohort Report 4 Dublin: Government Publications

Noddings, N. (1992) *The Challenge to Care in Schools: An Alternative Approach to Education*. New York: Teachers College Press

O'Brien, M. (2008). Gendered capital: Emotional capital and mothers' care work in education. *British Journal of Sociology of Education*, 29(2), 137-149.

Olsen, W. (2004) *Triangulation in Social Research: Qualitative and Quantitative Methods Can Really Be Mixed* <http://research.apc.org/images/5/54/Triangulation.pdf> (internet 15/9/2013)

O'Sullivan, D. (2005) *Culture, Politics and Irish Education since the 1950s* Dublin: Institute of Public Administration

Parker-Jenkins, M. (1999) *Sparing the Rod: Schools, Discipline and Children's Rights* London: Trentham Books

Plummer, K (1983) *Documents of Life: An Introduction to the Problems and Literature of a Humanistic Method*. London: George Allen and Unwin in J. Wellington (ed) (2000) *Educational Research: Contemporary Issues and Practical Approaches*. Continuum: London and New York

Presentation Order Education Officer (November 2005) *Submission to the Task Force on Student Behaviour in Second Level Schools* Unpublished submission to the Task Force on Student Behaviour in Second Level Schools. Department of Education and Skills, Off-Site Storage, Tullamore.

Principal: Community School (March 2005) *Submission to the Task Force on Student Behaviour in Second Level Schools* Unpublished submission to the Task Force on Student Behaviour in Second Level Schools. Department of Education and Skills, Off-Site Storage, Tullamore.

Quinn Patton, M. (1987) *How to use Qualitative Methods in Evaluation* California: Sage Publications

Rabiee, F. (2004) Focus Group Interview and Data Analysis *Proceedings of the Nutrition Society (2004) 63: 655-660*

Raftery, D. and Kilbride, C. (2007) *Choosing A School: Second-Level Education in Ireland* Cork: Mercier Press

Riordan, L. *Legal issues relevant to Admissions Policies* Paper presented to conference organised by the National Association of Principals and Deputy Principals (NAPD) entitled Education Law Update 25 February 2010

Rustique-Forrester, E. (2005, April 8). Accountability and the pressures to exclude: A cautionary tale from England. *Education Policy Analysis Archives*, 13(26).

Ryan, C. A partnership of care: an evaluation of a Department of Education and Science initiative to combat early school leaving – the 8 to 15 Early School Leavers Initiative in J. Deegan, D. Devine, and A. Lodge (eds) *Primary Voices: Equality, Diversity and Childhood in Irish Primary Schools* Dublin: Institute of Public Administration

Schools Standards and Framework Act (1998) [www.legislation.gov.uk](http://www.legislation.gov.uk) (internet: 25/6/2012)

Seale, C. (1999) *The Quality of Qualitative Research* London: Sage in Silverman, D. (2006) *Interpreting Qualitative Data* (Third edition) London: Sage Publications

Select Committee on Education and Science (2007): Discussions on the Education (Miscellaneous Provisions) Bill (2007)

Share, P. Tovey, H. and Corcoran, M.P. (2007) *A Sociology of Ireland*. Dublin: Gill and MacMillan

Silverman, D. (2006) *Interpreting Qualitative Data* (Third edition) London: Sage Publications

Smyth, E (1999) *Do Schools differ? Academic and personal development among pupils in the second-level sector* Dublin: Oak Tree/Economic and Social Research Institute

Smyth, E., McCoy, S. and Darmody, M. (2004) *Moving Up: The Experiences of First Year Students in Post-Primary Education*. Dublin: Liffey Press in association with the Economic and Social Research Institute

Smyth, E., Dunne, A., McCoy, S. and Darmody, M. (2006) *Pathways Through the Junior Cycle: The Experiences of Second Year Students*. Dublin: Liffey Press in association with the Economic and Social Research Institute

Smyth, E., Dunne, A., Darmody, M. and McCoy, S. (2007) *Gearing Up For The Exam? The Experiences of Junior Certificate Students*. Dublin: Liffey Press in association with the Economic and Social Research Institute

Smyth, E., Darmody, M.; McGinnity, F and Byrne, D. (2009) *Adapting to Diversity: Irish Schools and Newcomer Students*: Economic and Social Research Institute

Special Educational Needs Tribunal Regulations [www.legislation.gov.uk](http://www.legislation.gov.uk): (internet: 25/6/2012)

Special Report by the Scottish Committee of the Council on Tribunals on Education Appeal Committees in Scotland (2000) (internet: 17/9/2008)

Supreme Court Ruling: November 2010 – Board of Management of St Molaga’s National School and The Secretary General of the Department of Education and Science etc

Teachers’ Union of Ireland (2004) *An Approach to Discipline In Schools*: Teacher Union of Ireland

Thompson, J. B. Foreword in P. Bourdieu (1991) *Language and Symbolic Power*, Polity Press, Cambridge, UK

TUI News (December 2004) Volume 27/No. 3 Teachers Union of Ireland

TUI (April 2005) *Submission to the Task Force on Student Behaviour in Second Level Schools* Unpublished submission to the Task Force on Student Behaviour in Second Level Schools. Department of Education and Skills, Off-Site Storage, Tullamore.

TUI (Westmeath Branch) (April 2005) *Submission to the Task Force on Student Behaviour in Second Level Schools* Unpublished submission to the Task Force on Student Behaviour in Second Level Schools. Department of Education and Skills, Off-Site Storage, Tullamore.

Tuohy, D. Catholic Schools: Schools for Catholics? in F. O'Donoghue (ed) *Studies An Irish Quarterly Review* (summer 2008) 97.386 pp125-136

Wacquant, L.J.D. Foreword in P. Bourdieu (1989) *The State Nobility: Elite Schools in the Field of Power* Stanford University Press, Stanford, California 1989

Wellington, J. (2000) *Educational Research: Contemporary Issues and Practical Approaches*. Continuum: London and New York

Willis, P. (1977) *Learning to Labour: How working class kids get working class jobs*. Saxon House, Teakfield Limited, England

Winch, C. (2002) Accountability and Relevance in Educational Research in M. McNamee and D. Bridges (eds) (2002) *The Ethics of Educational Research* UK: Blackwell Publishing

Wrigley, T. (August, 2008) School Improvement in a neo-liberal world *Journal of Educational Administration and History* 40 (2), pp129-148

Young, I.M. (1990) *Justice and the Politics of Difference* Princeton University Press

Young, I.M. (2001) An Interview with Iris Marion Young by Sardoc, M. and Shaughnessy, M.F. *Educational Philosophy and Theory*, Vol. 33, No. 1, 2001



Young, I.M. (2006) Education in the Context of Structural Injustice: A Symposium Response. *Educational Philosophy and Theory*, Vol. 38, No. 1, 2006

Young, M.F.D. (Ed.) *Knowledge and Control: New Directions for the Sociology of Education* (1971) London: Collier-Macmillan

## **APPENDICES**

### **Appendix 1: Appeal Procedures under Section 29 of the Education Act 1998 (Circulars M48/01 and 22/02)**

#### **Circular letter M48/01**

##### **To Management Authorities of Second Level schools**

##### **Appeal procedures Under Section 29 of the Education Act, 1998**

- 1) 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 Board of Management, or a person acting on behalf of a board, to the Secretary General of this Department.
- 2) The following decisions may be appealed viz.
  - i) Permanent exclusion from a school,
  - ii) Suspension for a period which would bring the cumulative period of suspension to 20 school days in any one school year, or
  - iii) Refusal to enrol.
- 3) Appeals must generally be made within **42** calendar days from the date the decision of the school was notified to the parent or student. Accordingly, schools should advise parents of this right of appeal and associated timeframe when informing them of any of the above categories of decisions.
- 4) The detailed procedures are outlined in the appendix to this Circular. In brief, there are three layers to these procedures viz.
  - a) Both parties will be asked in the first instance to see if an accommodation can be reached at local level;

- b) Should that fail, and where the Appeal committee considers that it may be possible to facilitate agreement between the appellant and school, a facilitator will be appointed to contact the parties at the earliest opportunity;
  - c) Finally, an appeal may be referred for hearing by an Appeal committee established by the Minister for Education and Science.
- 5) This appeal mechanism became effective from 23 December 2000. To date, seven appeals have been processed by the Department, all of which, apart from one, have been successfully resolved at local or facilitation level without referral to an appeal hearing.
- 6) Please provide a copy of this circular to the appropriate representatives of parents and teachers for transmission to individual parents and teachers.

John Dennehy,  
Secretary General.  
August, 2001.

### **Circular letter 22/02**

#### **To Boards of Management and Principals of National Schools Appeal procedures under Section 29 of the Education Act, 1998**

##### **1. 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 Board of Management, or a person acting on behalf of a board, to the Secretary General of this Department.

##### **2. Decisions which may be Appealed**

Currently, Section 29 of the Education Act provides that the following decisions may be appealed to the Secretary General:

- (i) Permanent exclusion from a school;

- (ii) Suspension for a period which would bring the cumulative period of suspension to 20 school days or longer in any one school year; or
- (iii) Refusal to enrol.

It should be noted that the procedures have been designed to deal specifically with the three issues identified at (i) to (iii) above. The procedures are not designed for and cannot be invoked to deal with matters that do not come within these three categories. Furthermore an appeal to the Secretary General under the Section 29 procedures cannot be made, and will not be accepted, until all procedures at local level have been exhausted. In effect, the matter that is the subject of the appeal will have had to have been referred to the Board of Management of the school and the Board will have had to issue its decision in the matter.

### **3. Timeframe for making Appeals**

Appeals must generally be made within 42 calendar days from the date the decision of the school was notified to the parent or student. Accordingly, schools should advise parents of this right of appeal and associated timeframe when informing them of any of the above categories of decisions.

### **4. Procedures to be followed**

The detailed procedures that apply to all appeals to the Secretary General under Section 29 of the Education Act 1998 are outlined in the appendix to this Circular. In brief, there are three layers to these procedures:

- a) Both parties will be asked in the first instance to see if an accommodation can be reached at local level;
- b) Should that fail, and where the Appeal committee considers that it may be possible to facilitate agreement between the appellant and school, a facilitator will be appointed to contact the parties at the earliest opportunity;
- c) Finally, an appeal may be referred for hearing by an Appeal committee established by the Minister for Education and Science.

## **5. Queries**

Any other queries relating to the Appeals Procedure outlined in this circular should be directed to Post Primary Administration, Department of Education and Science, Tullamore, Co. Offaly (Tel. (057) 93 24377. Finally all references in the attached Appendix to the Appeals Administration Unit should be regarded as a reference to Primary Administration Section 2 until further notice.

This circular together with the Irish version is available on the Department of Education and Science website at [www.education.ie](http://www.education.ie)

The Section 29 Appeals Application Form is also available on this website

D Ó Ríain

Principal Officer

September 2002

### **Appendix to Circular Primary 22/2002**

#### **Procedure 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 appeal 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 appeal committee under section 29 where the parties are unable to resolve the issue at local level.

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 appeal hearings. The Act has not yet been commenced. Notwithstanding this, provisions have been made in the following procedures for the role of the Board, and such provisions will apply once the relevant sections of the Education (Welfare) Act, 2000 have been commenced.

The Department is establishing an Appeals Administration Unit to administer the new appeal 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, Marlborough Street, Dublin 1].

### **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 or longer 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 enclosed] and addressed, by signed letter or fax, 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 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 Appeal committee**

16. An Appeal 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 Appeal 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.

### **Appeal 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 Appeal committee and a report of the facilitation process will be provided to the Appeal 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 Appeal 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 no later than 3 days before the hearing 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 Appeal 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.

## **Appendix 2: Description of Organisations represented by Interviewees**

- *Association of Community and Comprehensive Schools (ACCS)* - the national representative for the 91 Community and Comprehensive second-level schools in the country
- *Association of Secondary Teachers of Ireland (ASTI)* - the largest second-level teachers' union in Ireland. It represents teachers who, in the main, work in Voluntary Secondary schools, i.e. schools that are run by religious orders
- *Catholic Primary Schools' Management Association (CPSMA)* represents the school management authorities of all Catholic primary schools
- *Irish National Teachers' Organisation (INTO)* - the largest teachers' trade union in Ireland. It represents teachers at primary level in the Republic of Ireland and at primary and second-level level in Northern Ireland
- *Joint Managerial Body (JMB)* – represents the school management of all Voluntary Secondary schools
- *National Association of Principals and Deputy Principals (NAPD)* - the professional association for second-level school leaders in Ireland
- *Irish Vocational Education Association (IVEA)* - represents the interests, at national level, of Ireland's Vocational Education Committees (VECs)
- *Irish Primary Principals' Network (IPPN)* – the professional association for primary school leaders in Ireland
- *Irish Second-Level Students' Union (ISSU)* - provides second-level students with support for voicing their views and opinions
- *National Parents' Council – Primary (NPC-P)* – the organisation representing parents of children attending early and primary education
- *National Parents' Council – Post-primary (NPC-PP)* – the organisation representing parents of children attending post-primary schools
- *National Educational Welfare Board (NEWB)* – has the statutory function of ensuring that every child either attends a school or otherwise receives an appropriate education

### Appendix 3: List of Interview Questions/Topics

#### A. Questions in relation to the origins of appeals?

What was the rationale for having an appeal system?
When do you recall the idea of appeals being first proposed?
What were the original expectations of the appeal process?
Were other countries appeals' systems researched in the drafting of Section 29 appeals? If yes, which ones?
What were the challenges when drafting the appeal procedures?
What were the stumbling blocks during the negotiations on the appeal procedures?
Which of the partners had the most influence on determining the shape of the procedures and in what way? And why?
Which of the partners objected most to the procedures? Why? How were these objections expressed?
Was there ever a review of the procedures?
What was the original intention of facilitation?
Prior to the advent of appeals, what were the procedures, if any, for resolving disputes?
Why did the first education bill (section 55) determine that a student over sixteen could appeal and why was this subsequently changed to 18?
Why was Section 55 changed from originally allowing appeals where a decision of a teacher or other member of staff of a school materially affects the education of a student to confining appeals to refusals, suspensions and expulsions?
Why was Section 29(d) never invoked?

## **B. Questions in relation to impact of Section 29 appeals**

What has been the impact of legislation such as Section 29 on schools?
Why do you think the results of the appeals often went against schools initially?
Why has this changed?
What was the motivation in having the task force on student behaviour established?
What were the major issues that partners had with appeals during the work of the task force on student behaviour?
Have the Task Force recommendations been implemented?
Why has the Education (Miscellaneous Provisions) not yet been commenced in relation to appeals?

## **C. General Questions in relation to Section 29 appeals**

In your opinion have the procedures changes much from their original intention?
In your view are appeals serving their intended purpose?
Are there difficulties with the current appeal procedures in your opinion? If yes, what are they?
In your opinion are there benefits resulting from the appeals? If yes, what are they?
Are there drawbacks? If yes, what are they?
Is there more accountability? If yes, why do you think this is the case?
Is the system for determining appeals transparent and consistent in your view?
What is your opinion of the criteria for determining appeals?
Is there a need to broaden the remit of the appeals? If yes, why?

## **D. Questions in relation to now**

What happens if a school refused to accept the determination?
Are you happy with the composition of appeal committees? If no, who / what other groups should be included?
Do you think the judicial reviews have had an impact? If yes, what?
Would you change aspects of the appeal procedures? If yes, what and why?



## Appendix 4: Sample Labelling and Categorisation of Key Themes

### Attitude of partners and schools to Section 29

#### Intrusion

**DES 1-** schools and partners were **not particularly welcoming** of appeals. However, although they might have preferred not to have it they certainly could not be seen to argue against it. - Section 29 was seen as a major impediment to the autonomy of schools but because it had the backing of legislation the partners had no option but to cooperate.

**Appeals** - many comments on increasing pressure on schools to develop and implement a range of policies and as a result they felt that their autonomy was being challenged.

**Mgt 3** secondary schools in particular objected to Section 29 as an **“intrusion”**.

**Mgt 4** - “a huge degree of concern about them, because obviously this was the first time that anything that happened inside of school was being referred to an outside body. So there would have been a **lot of concern** about it and I suppose people didn't know what way it was going to be”.

**Mgt 1** **“changed world”** for schools because of Section 29.

#### Taking appeals personally

**Appeals 1-** principals took losing appeals **personally**

**Mgt 3** school principals could **“sulk”** if they lost an appeal.

**Mgt 2** example of a principal of a community school who felt that losing the Section 29 “was a **slur** on him and an assault on his integrity within the school, ... and that the Department was being unreasonable and the appeal committee were being unreasonable”.

**DES** -whole appeal process can be a **chastening and a learning process** for schools and that schools should learn from losing an appeal to put correct procedures in place.

**Mgt 2** “this is the **new world** in which we live in which ultimately we can all benefit from.”

### Appeal committees are anti-school

**Appeals 2** “it galloped all around the country that young fellows with axes hitting teachers in classrooms were appealing them and were winning them”.

**Appeals 1** - sense that appeal committees were **anti-school**.

**Appeals 3** - attitude of schools to appeals was often a reflection of the school itself - many **did not like the new voice** that was given to parents through appeals. There was a sense in schools that if a child was expelled they should remain expelled and Section 29 was interfering with that right. As a result schools were “**scared stiff**”.

**Appeals 4** - “we came out of it feeling great, feeling listened to”.

**Appeals 5** - still **angry** about it ten years later.

**Appeals 6** - “You ask challenging questions but there is always a **way of asking a challenging question without insulting the person**”.

**Mgt 3** “there was **awful turmoil** in the beginning” - feeling by schools of being put on **trial**

**Mgt 1**- the appeal committees **hadn't “got an open mind”** about appeals.

**NEWB** - “schools became really preoccupied with the notion that they were **on trial**, there was a **real fear** around it.” - “the perception was that the appeals were to catch people out” “Certainly the Section 29 committee would have been seen as **the enemy**, there is no question about that. And in fact many principals would have told me in the past before I ever took over this role that they felt like it, they felt that they were on trial and they felt singled out so we would have all been **petrified about it because obviously it was kind of an infectious fear.**”

**Mgt 4** - remembers “the room being **aghast, first of all at the horror stories** that they had to tell us about the behaviour of the particular students in the school... And because of some **technicality**, like that they had a discipline committee but that wasn't stated on their code of behaviour or something wasn't signed in the boy's school journal, some technicality is my memory of it. Because of that they were ordered to take this boy back and retain him in the school. That really frightened school principals...So that a sort of a **culture of unease grew** up around Section 29”.

**Mgt 5** - “was **weighted heavily towards** parents”.

**MM** - perception “may have sprung up around...some celebrated cases ... when schools were **brought to their knees**. So there was a general disregard for them”.

**Appendix 5: Educational Transitions: Differential Participation and Achievement Rates by Fathers' Socio-Economic Group: Clancy, P.; in D O'Sullivan (2005)**

Fathers' socio-economic group	% reaching Leaving Certificate level	Of those reaching Leaving Certificate level, % with at least 5 passes	Of those reaching Leaving Certificate level, % with at least 2 Cs at honours level	Of those with at least 5 passes in Leaving Certificate, % enrolled in higher education	Of those with at least 2 Cs at honours Leaving Certificate level, % enrolled in higher education
Farmers	88.8	95.9	67.8	63.5	78.5
Other agricultural	71.7	90.4	52.2	54.8	79.6
Higher professional	92	99	86.9	77.2	83.3
Lower professional	93.8	95.7	82.3	73.7	78.9
Employers and managers	90.7	95.6	67.5	63	78.1
Salaried employees	89.7	97.9	69	66.9	82.7
Intermediate non-manual	83.8	96.5	69.2	62.3	78.5
Other non-manual	76.7	91.1	47	48.6	77.6
Skilled manual	79.8	94.8	55.4	49.7	72.6
Semi-skilled manual	75.1	89.9	47.1	38.1	60.7
Unskilled manual	65.4	87.9	43	38.1	68.5
Total	80.6	94.2	60.2	56.2	76.4

## Appendix 6: Overview of Status Variables Associated with Dropout

(Department of Education and Science: *Guidelines on Identifying Young People at Risk of Early School Leaving* - 2007)

Age	Students who drop out tend to be older compared to their grade-level peers
Gender	Students who drop out are more likely to be male. Females who drop out often do so due to reasons associated with pregnancy
Socio-economic background	Dropouts are more likely to come from low-income families
Ethnicity	The rate of dropout is higher than average for minority groups
Native language	Students who come from non-English speaking backgrounds are more likely to have higher rates of dropout
Region	Students are more likely to dropout if they live in urban settings as compared to suburban or non-metropolitan areas
Mobility	High levels of household mobility contribute to increased likelihood of dropping out
Ability	Lower scores on measures of cognitive ability are associated with higher rates of dropout
Disability	Students with disabilities (especially those with emotional/behavioural disabilities) are at greater risk of dropout
Parental employment	Dropouts are more likely to come from families in which the parents are unemployed
School size and type	School factors that have been linked to dropout include school type and large school size
Family structure	Students who come from single-parent families are at greater risk of dropout
Grades	Students with poor grades are at greater risk of dropout
Disruptive behaviour	Students who dropout are more likely to have exhibited behavioural and disciplinary problems in school
Absenteeism	Rate of attendance is a strong predictor of dropout
School policies	Alterable school policies associated with dropout include raising academic standards without providing supports, tracking and frequent use of suspension
School climate	Positive school climate is associated with lower rates of dropout
Parenting	Homes characterised by permissive parenting styles have been linked with higher rates of dropout
Sense of belonging	Alienation and decreased levels of participation in school have been associated with increased likelihood of dropout
Attitude toward school	The beliefs and attitudes (e.g. locus of control, motivation to achieve) that students hold towards

	school are important predictors of dropout
Educational support in the home	Students whose families provide higher levels of educational support for learning are less likely to dropout
Retention	Students who dropout are more likely to have been retained (held back) than students who graduate
Stress life events	Increased levels of stress and the presence of stressors (e.g. financial difficulty, health problems, early parenthood) are associated with increased levels of dropout

**Appendix 7: Reasons for Exclusion as Reported by Primary and Post-primary Schools (Munn et al: 2000)**

<b>Reason for exclusion</b>	<b>Primary</b>	<b>Secondary</b>
Fighting or assault	40-45%	10-15%
Disruptive behaviour	20-25%	15%
Failure to obey rules	10-15%	10-15%
Abuse or insolence	5-10%	10-15%
Threatening behaviour	5-10%	5%
Vandalism	5%	5%
Bullying/extortion	3%	3%
Truancy	0%	3%
Theft	1%	3%
Drugs/drink/gambling	0%	5%
Indecent behaviour/harassment	0%	5%

## Appendix 8: Differences between High and Low Excluding Schools

(Munn et al: 2000)

High excluding schools	Low excluding schools
Narrow definition of teacher's job focused on subject knowledge and exam results	Wide remit, including personal and social development of students and exam results
Academic goals prominent	Social and academic goals
Acceptable pupils were those who arrived willing to learn and came from supportive homes	Acceptance of a wider range of pupils including those with learning and other difficulties
Academic curriculum-pressure on pupils and lack of differentiation	Curriculum flexible and differentiated
Personal and social development curriculum lacks status	Personal and social development curriculum highly valued
Potential of informal curriculum for motivating less academic pupils not realized	Informal curriculum, lively and covering a wide range of activities i.e. sport, drama, art, working in the local community
Parents expected unquestioningly to support the school	Time and effort spent involving parents in decision making about their children
Hierarchical decision making separating pastoral support staff from those with responsibility for maintaining discipline	Decision informed by a network of staff with a range of perspectives on the pupil
Tariff systems leading to automatic exclusion	Flexible system, behaviour evaluated in context
Pastoral support staff expected to meet needs of pupils	Pastoral support staff an information source on decisions
Learning/behaviour support expected to remove troublesome pupils and solve problems	Learning/behaviour support a source of support and ideas for mainstream staff.

## Appendix 9: Department of Education Circulars Relating to Discipline

Circular number and title	Purpose of Circular
<p>Circular 32/85 <i>Report of the Committee on Discipline in Schools</i> (issued to all schools)</p>	<p>This committee recommended alternatives to corporal punishment which had been abolished in 1982 and their report made reference to suspensions and expulsions of pupils. It recommended that:</p> <ul style="list-style-type: none"> <li>▪ When prolonged suspension is imposed, the Board of Management of the school should meet to consider the matter and to afford the parents/guardians the right to appeal the suspension.</li> <li>▪ Expulsion “should only be considered when the behaviour of the pupil clearly puts the safety of others at risk or where the behaviour is so disruptive as to interfere substantially with the constitutional right of others to education”.</li> <li>▪ Expulsion should only be imposed “when all other disciplinary procedures have been totally exhausted.”</li> <li>▪ Prior to an expulsion, a period of suspension should be imposed while the Board of Management gives consideration to the expulsion of the child.</li> <li>▪ The Board of Management should allow parents/guardians of the child under threat of expulsion a fair hearing at an appeal.</li> </ul>
<p>Circular 24/88 <i>Code of Discipline for Post-Primary Schools</i></p>	<p>This circular gives guidelines to post-primary schools about their Codes of Discipline. It notes that:</p> <ul style="list-style-type: none"> <li>▪ Expulsion should be resorted to “only in the most extreme case of indiscipline and only after every effort at rehabilitation has failed and every other sanction has been exhausted”.</li> <li>▪ Schools should “notify the Department of Education of any case of expulsion, or of suspensions for a period exceeding five school-days”.</li> </ul>
<p>Circular 20/90 <i>Guidelines Towards a Positive Policy for School</i></p>	<p>The circular stresses the importance of a high level of co-operation between the whole school community and parents. It notes how</p> <ul style="list-style-type: none"> <li>▪ In situations of “gross misbehaviour, or repeated instances</li> </ul>



<p><i>Behaviour and Discipline (National Schools)</i></p>	<p>of serious misbehaviour” the school may consider suspension as a sanction.</p> <ul style="list-style-type: none"> <li>▪ In extreme cases it can also consider expulsion in accordance with Rule 130 (6) of the <i>Rules for National Schools</i> (1965).</li> <li>▪ This rule states that “No pupil shall be struck off the rolls for breaches of discipline without the prior consent of the Patron and unless alternative arrangements are made for the enrolment of the pupil at another suitable school.”</li> </ul>
<p>Circular M33/91 <i>Guidelines Towards a Positive Policy for School Behaviour and Discipline, A Suggested Code of Behaviour and Discipline for Post-Primary Schools</i></p>	<p>The circular stresses the need for cooperation between school and home in dealing with difficult behaviour. It notes how when imposing sanctions:</p> <ul style="list-style-type: none"> <li>▪ Schools should ensure that “the rules of natural justice apply”.</li> <li>▪ This requires that before sanctions are applied, a school should inform the pupil and, depending on the nature of the action which the school proposes to take, his/her parents/guardians, of the complaint and be given every opportunity to respond.</li> <li>▪ Expulsion should be resorted to “only in the most extreme cases of indiscipline and only after every effort at rehabilitation has failed and every other sanction has been exhausted.”</li> </ul>
<p>Circular M18/99 <i>Guidelines on Violence in Schools (all schools)</i></p>	<p>The circular stressed:</p> <ul style="list-style-type: none"> <li>▪ The need for close interaction between school management with staff and parents in developing effective school policies on school discipline, bullying and health and safety.</li> <li>▪ The duty of school management “to provide a safe environment for employees and other persons present in schools”.</li> </ul>

**Appendix 10: Court Cases Relating to Exclusion Prior to the Education Act**  
(Glendenning, 1999 and Craven, 2006)

*Murtagh v Board of Management, St Emer's National School* (1991), where the parents objected to the three-day suspension of their child for insulting a teacher during supervision, the judge, J. McCarthy stated “The enforcement of discipline in a National School is a matter for the teachers, the principal teacher, the Chairperson of the Board of Management and the board itself; it is not a matter for the Courts, whose function, at most, is to ensure that the disciplinary complaint was dealt with fairly” (Glendenning, 1999: 328).

*The State (Smullen v Duffy)* (1980) where the fairness and validity of a school’s suspension procedures were challenged by two students in a Dublin school who had become involved in a fight with other students outside the school gates. Following an investigation, the principal suspended eight students. He then wrote to the parents to inform them of this and stated that they could appeal to the Board of Management. Craven states:

The High Court was satisfied that the arrangements for dealing with expulsions and suspensions of boys who had been involved in a violent incident outside the school were proper, just and equitable. Furthermore, the court was satisfied that, if those arrangements were properly complied with and implemented in a *bone fide* manner, proceedings or consequences resulting from them could not be said, under any circumstances, to be contrary to natural justice.

Craven comments that implications of the judge’s ruling was that “Failure to act decisively may open a school and its Board of Management to actions in negligence and breach of duty, where steps are not taken to prevent a foreseeable risk of injury or harm.” (Craven, 2006: 167 – 169)

*Student A and Student B v. Dublin Secondary School* where two Leaving Certificate teenagers were expelled after it was found that they had smoked cannabis at a private party after school hours. The school operated a policy of “zero tolerance” towards drugs. Craven states:

The parents relied on Department of Education guidelines regarding a code of discipline and behaviour for schools; these stated that sanctions to reflect disapproval of students’ behaviour should contain a degree of flexibility and that expulsion should be resorted to only in the most extreme circumstances –

after other sanctions and efforts at rehabilitation were exhausted. It was maintained that the penalty imposed was “savage” and that the boys had been expelled even before they had a chance to confirm that they did have the cannabis or were even spoken to. The court was only concerned with whether there was a reasonable basis for the school to regard cannabis use as constituting a serious offence, as it was also a criminal offence. The trial judge was of the view there could be no doubt the school was entitled to take an extremely severe line on drug use because any slippage of discipline could have the most deleterious implications for student users, other students and the school generally.

In the same case, Kearns J. noted:

I have the greatest difficulty in accepting the proposition that it is necessary to have any specific rules or Code of Conduct in a school which would emphasise to the parents or pupil that drug abuse is considered a serious transgression by a school authority. It cannot be seriously argued in my view that where a serious transgression occurs which is not addressed by school rules, either because they do not exist or make specific reference to the transgression in question, that the school as a result can take no steps to discipline the offender. There may be grey areas where particular concerns of a school authority should be spelled out in the school rules to ensure that parents and students are fully aware both of a rule and the disciplinary procedure. However, the kind of offence in the instant case must be regarded as falling into the category where both parents and pupil alike must reasonably expect a school authority to take serious action in the event of the transgression.

Kearns J. also stated:

Once a court decides that a school has in general terms been fair I would take the view that it should not lightly interfere with the autonomy of the school or do anything which might have the effect of damaging its capacity to discipline its students, given that the school, with its vast experience and knowledge of its pupils usually knows best. (Craven, 2006: 170-171)

*Wright V. Board of Management of Gorey Community School (2000)* where two brothers were allegedly involved in drug use during an all night charity hockey marathon in the school. One of these two brothers had previously been suspended for bringing cannabis into the school and sharing it with others. At that time, in order to allow him back into the school, the student and parents signed an agreement that if a similar recurrence occurred he would be permanently excluded. The Board of Management then decided that one brother would be expelled and the other suspended for three months. The family applied for an injunction seeking their immediate reinstatement into school. Judge J. O’Sullivan stated that:

in the case of a school, the requirement of maintaining discipline and authority

means that the requirement of fair procedures does not demand something approaching the formality of a courtroom situation even where expulsion, which is the ultimate sanction with very serious consequences for the person expelled, is open for consideration. (Craven, 2006: 173-174)

**Appendix 11: Department of Education Circular Relating to Schools Admissions Procedures**

Circular number and title	Purpose of Circular
<p>Circular 51/93 <i>Selection Procedures for the Enrolment of Pupils in Second-Level Schools</i></p>	<p>The circular acknowledged that a school enrolment policy is largely a matter for each school but described how:</p> <ul style="list-style-type: none"> <li>▪ The Minister and school management associations have agreed that “selection on the basis of academic ability must be discontinued by schools”.</li> <li>▪ The Minister and school managerial associations have also agreed the importance of each school disclosing the contents of its enrolment policy and the criteria it uses in selecting students for enrolment.</li> </ul> <p>The circular stated that</p> <ul style="list-style-type: none"> <li>▪ Parents “<i>will</i> thus be fully informed” of the selection procedures used by schools and this would help to allay fears of discrimination against their children</li> <li>▪ “A common enrolment date should obtain for all schools in a particular catchment area”</li> <li>▪ Entrance exams should not be used for awarding places</li> </ul> <p>The circular also placed emphasis on schools catering, in the first instance, for children from their own communities and catchment areas.</p>

## Appendix 12: Overview of Appeal Procedures in other Jurisdictions

Legislation	Jurisdiction	Stipulation
<i>Education Act 1980</i>	England and Wales	Provided for appeals to determine parents' choice of school
<i>Education Act 1987</i>	England and Wales	Included appeals against permanent exclusion
<i>Education Act 1993</i>	England and Wales	Parents aggrieved by Local Education Authority (LEA) decisions could appeal to local appeal committees and then to the Secretary of State
<i>The School Standards and Framework Act 1998</i>	England & Wales	The appeal committees in England and Wales became known as Admissions and Exclusions Panels Established Special Educational Needs Tribunal
Circular Number 1994/3	Northern Ireland	Outlines the regulations for appeal tribunals in relation to the expulsion of pupils from grant-aided schools

### Focus of appeals

Country	Focus	Process
British Columbia	Suspension Expulsion Decisions re individual education plans	<ul style="list-style-type: none"> <li>▪ Parents or students of any age make their appeal in the first instance to the local board of education.</li> <li>▪ The board may or may not decide to hear the appeal.</li> <li>▪ In either instance the parent or student may appeal the decision to a superintendent of achievement.</li> <li>▪ The appeal must significantly affect the education, health or safety of a student.</li> <li>▪ The superintendent of achievement may refer the appeal for mediation, dismiss the appeal or refer it for adjudication.</li> <li>▪ The adjudicator's decision is binding.</li> </ul>
England Scotland Wales	Admission authority's decision to refuse their child admission to a school.	<ul style="list-style-type: none"> <li>▪ For community and voluntary controlled schools, the LEA is the admission authority.</li> <li>▪ For voluntary aided, foundation and trust schools, the school's governing body is the admission authority.</li> </ul>
England	Exclusion	<ul style="list-style-type: none"> <li>▪ Children cannot be suspended from schools</li> </ul>

<p>Wales Scotland Northern Ireland</p>	<p>including fixed-term exclusions (known here as suspensions) and permanent exclusion.</p>	<p>indefinitely but must either be suspended for a fixed period of no more than five consecutive days and no more than fifteen days in any one term or else expelled.</p> <ul style="list-style-type: none"> <li>▪ Once a child is suspended, the school must inform the parents, the school's board of governors or relevant authority.</li> <li>▪ Parents, or pupils who are over eighteen, have a right of appeal against expulsion and a right of appeal against fixed-term exclusions of fifteen days or more in a term.</li> </ul>
<p>England Scotland Wales</p>	<p>Exclusion</p>	<ul style="list-style-type: none"> <li>▪ Appeal committees will either uphold the exclusion or order the school to reinstate the pupil.</li> <li>▪ Each LEA has established its own local procedures for dealing with appeals to exclusions. For example, some LEAs have separate panel members for dealing with different types of appeals and some LEAs arrange for multiple appeals to be heard at the same time if they are similar.</li> <li>▪ Parents must generally lodge their appeal within fifteen days of the notification to exclude and the independent appeals tribunal generally meets within fifteen days of the receipt of the appeal.</li> <li>▪ The decision of the appeals tribunal is binding on all parties.</li> <li>▪ In considering an appeal against exclusion, the appeals panel must consider whether the child was responsible for the behaviour complained of and whether exclusion was a reasonable response to that behaviour.</li> <li>▪ Parents may opt to submit written evidence rather than attend the appeal themselves.</li> <li>▪ The head teacher, a representative from the school's disciplinary committee and an LEA officer will also attend the hearing and witnesses, either adults or</li> </ul>

		pupils, may also be called to the appeal, as may the alleged victim.
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### Processing Appeals

Jurisdiction	Focus	Process
England and Wales	Admissions	<ul style="list-style-type: none"> <li>▪ Education Appeals clerk may arrange for one appeals panel with the same members to consider all the appeals for that school.</li> <li>▪ An education appeals clerk may also turn down an appeal rather than submitting it to the appeals panel if he/she thinks it is not one that the appeals panel has power to deal with.</li> <li>▪ Parents can appeal an admission appeal if they feel that the admissions criteria haven't been followed. An Admission Authority is obliged to reply in writing to an appeal made by a parent.</li> <li>▪ In multiple appeals the presenting officer from the Admission Authority must present the case in respect of the school in the presence of all the parents.</li> <li>▪ If the Appeal Panel concludes that prejudice existed, the appeals of all parents are then heard individually and decisions will not be taken until all the appeals are heard.</li> <li>▪ The appeals panel must make its decision after the hearing(s), must record its decision in writing and include, if the decision is not unanimous, the reasons for the minority's dissent.</li> <li>▪ Therefore, if a parent feels that the admissions criteria that are in place for a school are unlawful, he/she may appeal to a school adjudicator. LEAs are also required to refer the admission arrangements to the school adjudicator if it appears that the criteria do not comply with the law. The school adjudicator's determination is final and all parties</li> </ul>



		are required to implement that determination.
Northern Ireland	Expulsions	<ul style="list-style-type: none"> <li>▪ Two or more appeal tribunals may sit at the same time so that if the issues are “substantially similar or connected the board may determine that those appeals be combined and dealt with in the same proceedings” (<i>Regulation 4, Circular Number 1994/3</i>).</li> <li>▪ The appeal tribunal must allow the appellant to be accompanied by a friend or to be represented, to make written representations and to make oral representations during the tribunal hearing.</li> <li>▪ The expelling authority may make written and oral representations.</li> <li>▪ In considering the appeal the appeal tribunal must take into account these representations and must also consider whether the procedures in relation to the expulsion were properly followed.</li> <li>▪ The decision of the appeal tribunal’s members is decided by a majority of votes cast in the event of disagreement among the members of an appeal tribunal.</li> <li>▪ The decision of an appeal tribunal and the grounds on which that decision was made are “communicated by the tribunal in writing to the appellant and to the expelling authority.” (<i>Regulation 4, Circular Number 1994/3</i>).</li> </ul>

### Composition of Appeal Boards

Jurisdiction	Focus	Process
England and Wales	Admissions	<ul style="list-style-type: none"> <li>▪ Between three and five members appointed by the LEA including one lay member who has no personal experience in the management of any school.</li> <li>▪ At least one member must have experience in education or be a parent of registered pupils in a school.</li> <li>▪ Teachers may be on panels but not if they work at the school that is subject to the appeal.</li> <li>▪ The appeal panel must give the parent an opportunity to appear and make oral representations; it should also allow the parent to be accompanied by a friend or to be represented.</li> <li>▪ The suggested order of an appeal hearing is that first the case of the admissions authority is presented, then parents may question the admissions authority representatives, next the case of the parents is presented and this is followed by questions from the admission authority.</li> <li>▪ Finally, the admissions authority sums up its case followed by the parents summing up their case.</li> </ul>
England & Wales	Exclusions	<ul style="list-style-type: none"> <li>▪ Appeal panel is independent of the LEA</li> <li>▪ Comprised of three people: generally a head teacher (not working in a school of the particular LEA), a governor and a lay person that is completely independent of the school and the LEA.</li> </ul>
Northern Ireland	Exclusions	<ul style="list-style-type: none"> <li>▪ Each appeal tribunal consists of three or five members selected by the Education and Library Board for the area in which the excluding school is situated.</li> <li>▪ The chief executive of the board or his/her nominee, from a panel of persons appointed by the board, may also select the appeal panel members.</li> </ul>

		<ul style="list-style-type: none"><li>▪ The membership of each appeal panel must include:<ul style="list-style-type: none"><li>(a) a representative of the interests of controlled schools in the area</li><li>(b) a representative of the interests of voluntary schools in the area</li><li>(c) a person with experience in education who is acquainted with the educational arrangements in the area or is a parent of registered pupils at a school.</li></ul></li><li>▪ However, the appeals panel shall not include any person employed by the board other than a full-time teacher.</li><li>▪ Each appeal panel must include at least one person from each of the three categories mentioned above.</li></ul>
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### **Appendix 13: Section 55 of the First Education Bill (January 1997)**

Where a decision of a teacher or other member of staff of a school materially affects the education of a student—

(a) the parent of the student, and

(b) in the case of a student who is 16 years of age or older, the student or the parent of the student or both the student and the parent, may, within a reasonable time from the date that the student or the parent is informed of the decision, appeal that decision to the board.

Where a Board of Management refuses to enrol a person as a student or makes a decision which materially affects the education of a student

(a) the parent of the person or the student, and

(b) in the case of a person or student who is 16 years of age or older, the person, or the student or the parent of the person or student or any of them, may within a reasonable time from the date that the person or student or the parent is informed of the refusal, decision or the determination, appeal that decision or determination to the education board.

For the purpose of hearing appeals an education board shall establish a committee, in accordance with the directions of the Minister, (in this section referred to as the “appeal committee”) and any such directions shall determine which classes of appeal shall be by way of a full re-hearing and which classes of appeal shall be confined to determining whether the procedure adopted by the board in reaching a decision or conducting an appeal was fair and reasonable and in the case of appeals relating to enrolment or permanent exclusion of a student from school, such appeals shall be by way of a full re-hearing. The appeal committee shall notify its decision to the appellant and the board in writing and where an appeal is upheld in whole or in part and the matter is to be remedied the committee shall inform the board of the measures to be taken. Where a Board of Management does not remedy the situation the appeal committee may refer the matter to the Minister who shall consider the matter and hear such representations as she thinks appropriate and give the board such directions, if any, as are necessary to remedy the matter.

(Education Bill January 1997)

## **Appendix 14: Section 29 of the Education (No 2) Bill (1997)**

Section 29 of the Education (No 2) Bill (1997) outlines:

(1) Where a board -

(a) permanently excludes a student from a school, or

(b) suspends a student from attendance at a school for a period to be prescribed for the purpose of this paragraph, or

(c) refuses to enroll a student in a school for reasons other than the unavailability of accommodation in the school, or

(d) makes a decision as shall be agreed from time to time between patrons, national associations of parents, recognised school management organisations, recognised trade unions and staff associations representing teachers, and the Minister –

(i) the parent of the student, or

(ii) in the case of a student who has reached the age of 18 years, the student,

may within a reasonable time from the date that the parent or student was informed of the decision, appeal that decision to the Secretary General of the Department of Education and Science and that appeal shall be heard by a committee appointed under *subsection (2)*.

(2) For the purposes of the hearing and determination of an appeal under this section, the Minister shall appoint one or more than one committee (in this section referred to as an “appeal committee”) each of which shall include in its membership an Inspector, a practising barrister or solicitor of not less than ten years standing and such other persons as the Minister considers appropriate.

(3) Where a committee is appointed under *subsection (2)* the Minister shall appoint one of its number to be the chairperson of that committee and who, in the case of an equal division of votes, shall have a second or casting vote.

(4) In hearing and determining an appeal under this section an appeal committee shall act in accordance with such procedures as may be determined from time to time by the Minister following consultation with patrons, national associations of parents, recognised school management organisations and recognised trade unions and staff associations representing teachers and such procedures shall ensure that—

(a) hearings are conducted with the minimum of formality consistent with giving all parties a fair hearing, and

(b) appeals are dealt with in the shortest time possible.

(5) On the determination of an appeal made under this section, the appeal committee shall send notice in writing of its determination of the appeal and the reasons for that determination to the Secretary General.

(6) Where—

(a) an appeal committee upholds a complaint in whole or in part, and

(b) it appears to the appeal committee that any matter which was the subject of the complaint (so far as upheld) should be remedied,

the appeal committee shall make recommendations to the Secretary General as to the action to be taken.

(7) As soon as practicable after the receipt by the Secretary General of the notice referred to in *subsection (5)*, the Secretary General—

(a) shall, by notice in writing, inform the person who made the appeal and the board of the determination of the appeal committee and the reasons therefor, and

(b) in a case to which *subsection (6)* applies, may in such notice give such directions to the board as appear to the Secretary General (having regard to any recommendations made by the appeal committee) to be expedient for the purpose of remedying the matter which was the subject of the appeal and the board shall act in accordance with such directions.

(8) The Minister, in consultation with patrons of schools, national associations of parents, recognised school management organisations and recognised trade unions and staff associations representing teachers, shall from time to time review the operation of this section and *section 28* and the first such review shall take place not more than two years from the commencement of this section.

(9) In the case of a school which is established or maintained by a vocational education committee an appeal against a decision of the board of such school shall lie, in the first instance, to the vocational education committee and thereafter to the Secretary General in accordance with *subsection (1)*.

(10) The Minister shall, from time to time, following consultation with vocational education committees, national associations of parents and recognised trade unions and staff associations representing teachers, prescribe—

(a) the procedures for appeals under this section to vocational education committees, and

(b) which appeals shall inquire into whether the procedure adopted by a board in reaching a decision or conducting an appeal was fair and reasonable and which appeals shall be by way of a full re-hearing.

(11) The Secretary General may, in accordance with sections 4 (1) (i) and 9 of the Public Service Management Act, 1997 , assign the responsibility for the performance of the functions for which the Secretary General is responsible under this section to another officer of the Department of Education and Science.

## **Appendix 15: Section 29 of the Education Act (1998)**

**29.**—(1) Where a board or a person acting on behalf of the board—

(a) permanently excludes a student from a school, or

(b) suspends a student from attendance at a school for a period to be prescribed for the purpose of this paragraph, or

(c) refuses to enroll a student in a school, or

(d) makes a decision of a class which the Minister, following consultation with patrons, national associations of parents, recognised school management organisations, recognised trade unions and staff associations representing teachers, may from time to time determine may be appealed in accordance with this section, the parent of the student, or in the case of a student who has reached the age of 18 years, the student, may, within a reasonable time from the date that the parent or student was informed of the decision and following the conclusion of any appeal procedures provided by the school or the patron, in accordance with *section 28*, appeal that decision to the Secretary General of the Department of Education and Science and that appeal shall be heard by a committee appointed under *subsection (2)*.

(2) For the purposes of the hearing and determination of an appeal under this section, the Minister shall appoint one or more than one committee (in this section referred to as an “*appeal committee*”) each of which shall include in its membership an Inspector and such other persons as the Minister considers appropriate.

(3) Where a committee is appointed under *subsection (2)* the Minister shall appoint one of its number to be the chairperson of that committee and who, in the case of an equal division of votes, shall have a second or casting vote.

(4) In hearing and determining an appeal under this section an appeal committee shall act in accordance with such procedures as may be determined from time to time by the Minister following consultation with patrons, national associations of parents, recognised school management organisations and recognised trade unions and staff associations representing teachers and such procedures shall ensure that—

(a) the parties to the appeal are assisted to reach agreement on the matters the subject of the appeal where the appeal committee is of the opinion that reaching such agreement is practicable in the circumstances,



(b) hearings are conducted with the minimum of formality consistent with giving all parties a fair hearing, and

(c) appeals are dealt with within a period of 30 days from the date of the receipt of the appeal by the Secretary General, except where, on the application in writing of the appeal committee stating the reasons for a delay in determining the appeal, the Secretary General consents in writing to extend the period by not more than 14 days.

(5) On the determination of an appeal made under this section, the appeal committee shall send notice in writing of its determination of the appeal and the reasons for that determination to the Secretary General.

(6) Where—

(a) an appeal committee upholds a complaint in whole or in part, and

(b) it appears to the appeal committee that any matter which was the subject of the complaint (so far as upheld) should be remedied,

the appeal committee shall make recommendations to the Secretary General as to the action to be taken.

(7) As soon as practicable after the receipt by the Secretary General of the notice referred to in *subsection (5)*, the Secretary General—

(a) shall, by notice in writing, inform the person who made the appeal and the board of the determination of the appeal committee and the reasons therefor, and

(b) in a case to which *subsection (6)* applies, may in such notice give such directions to the board as appear to the Secretary General (having regard to any recommendations made by the appeal committee) to be expedient for the purpose of remedying the matter which was the subject of the appeal and the board shall act in accordance with such directions.

(8) The Minister, in consultation with patrons of schools, national associations of parents, recognised school management organisations and recognised trade unions and staff associations representing teachers, shall from time to time review the operation of this section and *section 28* and the first such review shall take place not more than two years from the commencement of this section.

(9) In the case of a school which is established or maintained by a vocational education committee an appeal against a decision of the board of such school shall lie, in the first instance, to the vocational education committee and thereafter to the Secretary General in accordance with *subsection (1)*.

(10) The Minister shall, from time to time, following consultation with vocational education committees, national associations of parents and recognised trade unions and staff associations representing teachers, prescribe—

(a) the procedures for appeals under this section to vocational education committees, and

(b) which appeals shall inquire into whether the procedure adopted by a board in reaching a decision or conducting an appeal was fair and reasonable and which appeals shall be by way of a full re-hearing.

(11) The Secretary General may, in accordance with sections 4 (1) (i) and 9 of the Public Service Management Act, 1997 , assign the responsibility for the performance of the functions for which the Secretary General is responsible under this section to another officer of the Department of Education and Science.

(12) For the purposes of *subsection (1)(c)*, “*student*” means a person who applies for enrolment at a school and that person or his or her parents may appeal against a refusal to enroll him or her in the same manner as a student or his or her parents may appeal a decision under this section.

## Appendix 16: Legislation Relevant to Section 29 Appeals

The Education Act (1998)	Stipulation
	Sets out “to make provision in the interest of the common good for the education of every person in the state, including any person with a disability or who has other special educational needs ... to ensure that the education system is accountable to students, their parents and the state for the education provided.”
Section 9	A school must “establish and maintain an admissions policy which provides for maximum accessibility to the school”.
Section 15.2 (d)	Outlines how a Board of Management must publish its policy in relation to “admission to and participation in the school, including the policy of the school relating to the expulsion and suspension of students and admission to and participation by students with disabilities or who have other special educational needs, and ensure that as regards that policy principles of equality and the right of parents to send their children to a school of the parents’ choice are respected”.
Section 28	<p>The Minister following consultation with relevant partners may prescribe procedures with which—</p> <ul style="list-style-type: none"> <li>(a) the parent of a student or, in the case of a student who has reached the age of 18 years, the student, may appeal to the board against a decision of a teacher or other member of staff of a school,</li> <li>(b) grievances of students, or their parents, relating to the students’ school (other than those which may be dealt with under <i>paragraph (a)</i> or <i>section 29</i>), shall be heard, and</li> <li>(c) appropriate remedial action shall, where necessary, be taken as a consequence of an appeal or in response to a grievance.</li> </ul> <p>(2) In prescribing procedures for the purposes of this section the Minister shall have regard to the desirability of determining appeals and resolving grievances in the school concerned.</p>

<b>The Education (Welfare) Act (2000)</b>	<b>Stipulation</b>
Section 19(1)	A Board of Management shall not refuse admission to any child unless in accordance with the school's published admissions policy
Section 19(3)	A board must respond in writing to an application by a parent for admission not later than twenty-one days
Section 21(4)	<p>the principal must inform, in writing, the educational welfare officer if:</p> <ul style="list-style-type: none"> <li>a) a student is suspended from a recognised school for a period of not less than six days</li> <li>b) the aggregate number of schools days on which a student is absent from a recognised school during a school year is more than 20 days</li> <li>c) a student's name is, for whatever reason, removed from the school register by the principal of the school concerned, or if</li> <li>d) a student is, in the opinion of the principal of the recognised school at which he or she is registered, not attending school regularly.</li> </ul> <p>In the case of (b), the absence of twenty days or more may arise in whole or in part because of suspensions.</p>
Section 23	Stipulates that schools must prepare and publish a Code of Behaviour for the school in consultation with the principal, teachers, parents and the educational welfare officer (EWO) and in accordance with any guidelines that may be issued by the National Educational Welfare Board (NEWB), which was established under the Act.
Section 23 (2)	<p>The Code of Behaviour must specify:</p> <ul style="list-style-type: none"> <li>(a) the standards of behaviour that shall be observed by each student attending the school;</li> <li>(b) the measures that may be taken when a student fails or refuses to observe those standards;</li> <li>(c) the procedures to be followed before a student may be suspended or expelled from the school concerned;</li> <li>(d) the grounds for removing a suspension imposed in relation to a student; and</li> <li>(e) the procedures to be followed relating to notification of a child's absence from school.</li> </ul>

Section 23(4)	The school principal must provide the parents of newly registered children to the school with a copy of the code of behaviour and may, as a condition of registering the child, require his or her parents “to confirm in writing that the code of behaviour is acceptable to them”.
Section 23 (5)	On the request of a registered student or parent of the student, the school must provide the student or parent with a copy of the code of behaviour.
Section 24 (1)	Where a Board of Management “is of the opinion that a student should be expelled from that school, it shall, before so expelling the student, notify the educational welfare officer to whom functions under this Act have been assigned, in writing, of its opinion and the reasons therefore.” The educational welfare officer shall then “make all reasonable efforts to ensure that provision is made for the continued education of the student”.
Section 24 (4)	“A student shall not be expelled from a school before the passing of 20 school days following the receipt of a notification under this section by an educational welfare officer” although a board may take “such other reasonable measures as it considers appropriate to ensure that good order and discipline are maintained in the school concerned and that the safety of students is secured.” Such reasonable measures may include suspending the student for this time.
Section 26 (1)	The NEWB “may appeal a decision or make submissions to an appeal hearing” under Section 29 of the Education Act

<b>The Equal Status Act (2000 and 2004)</b>	<b>Stipulation</b>
Section 7	<p>Provides that schools shall not discriminate in relation to</p> <ul style="list-style-type: none"> <li>(a) the admission or the terms or conditions of admission,</li> <li>(b) the access of any student to any course, facility or benefit,</li> <li>(c) any other term or condition of participation,</li> <li>(d) the expulsion of a student or other sanction.</li> </ul>
Section 7(3)	<p>“An educational establishment does not discriminate under subsection (2) by reason only that -</p> <ul style="list-style-type: none"> <li>(a) where the establishment is not a third-level institution and admits students of one gender only, it refuses to admit as a student a person who is not of that gender</li> </ul> <p>where the establishment is a school providing primary or post-primary education to students and the objective of the school is to provide education in a environment which promotes certain religious values, it admits persons of a particular religious denomination in preference to others or it refuses to admit as a student a person who is not of that denomination and, in the case of a refusal, it proved that the refusal is essential to maintain the ethos of the school.</p>

<b>The Education for Persons with Special Educational Needs Act (2004)</b>	<b>Stipulation</b>
	<p>Aims to “make further provision for the education of people with disabilities, to provide that, to the greatest extent practicable, people with disabilities shall have the same right to avail of, and benefit from, appropriate education as do their peers who do not have disabilities”.</p>
Section 2(b)	<p>“A child with special educational needs shall be educated in an inclusive environment with children who do not have such needs unless the nature or degree of those needs of the child is such that to do so would be inconsistent with</p> <ul style="list-style-type: none"> <li>(a) the best interests of the child...</li> <li>(b) the effective provision of education for children with whom the child is to be educated”.</li> </ul>

## **Appendix 17: Documents Consulted by DES in Drafting Section 29 Appeal Procedures**

- The Eastern Health Board – *Complaints and Appeals Service* In these procedures, appeals had to be lodged within three weeks and an appeals officer could involve relevant professionals in giving information about the appeal
- Garda Síochána (*Complaints*) Act, 1986. In their procedures, a facilitator is appointed who submits a report to the appeal board. The appeal board consists of chairman and two ordinary members. If facilitation is not agreed the case is considered through documentary evidence or a full hearing
- Department of Agriculture, Food and Forestry – Headage and Premia Appeals Unit. These appeals are heard by an assistant principal office and an inspector. Each party to the appeal states its case in the presence of the other party and can question each other
- Social Welfare appeals – In these appeals documentary evidence can be included to support the case of either party and appeals can be determined on documentary evidence without an oral hearing
- Industrial Relations Act, 1990
- Ombudsman Act, 1980
- Appeal procedures – Revenue
- The Citizen’s Charter Complaints taskforce – Good Practice Guide – June 1995 (UK)
- Devising a Complaints System-Guidance on Good Practice – The Commission for Local Administration in England (The local Government Ombudsman)
- *The Parents’ Charter for Northern Ireland-Appeal procedures*  
<http://www.deni.gov.uk/parstu/parchart.htm> 24/3/00
- Other legislation from the England and Northern Ireland relating to appeal procedures.

The main documents used as a basis of Section 29 appeal procedures were the first three documents cited above.

**Appendix 18: Draft 1 of Section 29 Appeal Procedures (July 2000)**  
**Appeals to the Secretary General of the Department of Education and Science**

**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 to the Secretary General of the Department of Education and Science. Initially only decisions relating to pupil expulsions and suspension and refusals to enrol a student may be appealed.

Section 26 (1) of the Education (Welfare) Act, 2000 amends Section 29 of the Education Act, 1998, and provides that the National Educational Welfare Board may also appeal those same categories of decisions made by a school.

Hereunder are the procedures governing the hearing of appeals by the Department of Education and Science:

**Amendment of Procedures under Section 28 of the Education Act, 1998**

The procedures provided for in Section 28 (1) (a) of the Education Act, 1998, are amended to include the following:

1. Where a Principal intends to exclude a pupil from school, whether such exclusion is by way of suspension, expulsion or refusal to enrol, the Principal must provide the parents of that student (or the student, where he/she has reached the age of 18) with an opportunity to make representations to him/her on the substance of the case before deciding the matter
2. Where a Principal, with the approval of the Board of Management, decides to exclude a student, the parents (or student, where he/she has reached the age of 18) should be informed in writing of the decision taken, and the reasons therefore. In such cases, the Board of Management must then provide the parents of that student (or the student where he/she has reached the age of 18) with an opportunity to make representations on the sanction imposed (in the case of expulsion or suspension) or on the decision taken (in the case of a refusal to enrol)



3. The parent, or student, should be informed by notice in writing of the decision of the Board of Management, and reasons therefore. The Board of Management is required in such a notice to inform the appellant of their right of further appeal to the Secretary General, and to provide them with the standard Department of Education and Science Appeal Application Form.

### **Lodgement of an appeal to the Department of Education and Science**

4. An appeal may be made in respect of a decision by school to expel or suspend a pupil [Period of suspension to be defined] or where a school refuses to enrol a child. An appeal may be lodged 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 such is established
5. Only those appeals relating to decisions taken by a school on, or after, the 23<sup>rd</sup> of December, 2000, may be lodged to the Department of Education and Science
6. An appeal must be lodged within a reasonable amount of time
7. Appeals should be lodged in writing preferably on the Department of Education and Science Appeal Application Form, and may be submitted by signed letter, fax or e-mail
8. If clarification is required before determining whether to admit and appeal, such clarification should be sought immediately

### **Admittance of an appeal**

9. The Appeals Application Form should be completed in full. An appeal will not be admitted where the appellant does not:
  - a) Clearly specify the decision being appealed

- b) Clearly specify the grounds on which the decision is being appealed
- c) Include details of all relevant proceedings at school level
- d) Provide his/her full name, address
- e) Provide the full name and address of the school concerned
- f) Provide the name of the principal of the school and/or the chairperson of the board

In such cases the parent/student will be requested to complete and Appeal Application Form, including such information listed above, and resubmit it to the Department of Education and Science

For the purposes of Section 29(4) (c) the date on which the Appeal Application Form is resubmitted will then be considered to be the date of receipt.

- 10. An appeal may only be admitted where it relates to the expulsion or suspension of a student, or the refusal of a school to enrol a student, and where the educational institution concerned is a 'school' under the terms of the Education Act.
- 11. An appeal will not be admitted if has not been lodged by the parent of the student concerned of whom the decision of the school was made, the students, where the students has reached the age of 18 or the National Educational Welfare Board, when such has been established.
- 12. An appeal will not be admitted if it does not relate to a decision of a school taken on or after the 23<sup>rd</sup> of December 2000, or where an unreasonable amount of time has elapsed since the decision of the school was taken.
- 13. Where the parent (or students, where he/she has reached the age of 18) was not provided with an opportunity to make representations to either the Principal or the Board of Management as provided for under Section 28 procedures, or did not avail of such opportunities, the appeal may be disallowed. Both parties will be advised that the matter will have to be dealt with in accordance with such procedures in the first instance. This of course will not prejudice the right of

the parent (or student) to lodge the appeal at a later date, once such local appeal procedures have been exhausted.

14. Where an appeal not admitted, a letter to that effect will issue forthwith, stating clearly the grounds on which the appeal is not being admitted.

#### **Notification of receipt of an appeal and revision of a decision**

15. If an appeal is admitted, a letter of acknowledgement will issue to the appellant forthwith, asking the appellant to submit any additional documentation relevant to the appeal to the Department without delay.
16. A letter will also issue simultaneously to the school, informing it of the appeal, the grounds on which it has been lodged, and the school will be given 1 week to reconsider and, if it so chooses, to revise its decision. The school will be asked to submit any documentation relevant to the appeal without delay
17. Where a school revises its decision, the revised decision must be communicated in full to the Department without delay. The Department will then inform the appellant of the revised decision, and will ask whether they wish to proceed with the appeal, or whether the matter has been resolved to their satisfaction.
18. Where the appellant does not wish to proceed with the appeal, a record will be kept of the revised decision of the school and the appellant's acceptance of same.
19. Where an appellant accepts the revised decision of a school, no further appeal may be lodged to the Department of Education and Science in respect of the original decision of the school which formed the basis of the appeal in the first instance.

20. Where the school does not revise its decision, or where an appellant rejects the revised decision, the appeal will then be referred to an Appeal committee for consideration.

### **Facilitation process**

21. Where the Appeal committee considers that it may be possible for the parties to the appeal to reach agreement, there will be a facilitation process.
22. One member of the committee will arrange to meet the parties at the earliest opportunity, at a venue convenient to both parties. Where the Appeal committee considers it desirable, the Education Welfare Officer with responsibility for the school in question may be requested to attend the facilitation meeting.
23. The committee member will attempt to broker an agreement between the parties.
24. Where agreement is reached, the Committee Member will provide both parties with a copy of the agreement. A report of the facilitation process, including a copy of the agreement, will be kept on file.
25. Where an appellant accepts the agreement reached during facilitation, no further appeal may be made to the Department of Education and Science in respect of the original decision of the school which formed the basis of the appeal in the first instance.
26. Where agreement cannot be reached within a reasonable time, the committee member will refer the case for hearing by the Appeal committee.

### **Appeal hearing**

27. When the committee member notifies the Department of Education and Science Appeals Unit to convene an appeal committee and will provide a report of the facilitation process to the Unit and to both parties concerned.

28. The Unit will arrange a date, time and venue for the hearing convenient to all concerned and will notify both parties and the Appeal committee of same. Where the National Educational Welfare Board is not a party to the appeal, and where the appeal relates to an expulsion or a refusal to enrol, the Board will also be notified of the appeal hearing.
29. Both parties 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 Department). In the case of appeals relating to expulsion or refusal to enrol, the National Educational Welfare Board will be invited to make a written submission should it wish to do so.
30. Both parties have the right to be professionally represented, or to be represented by a relative, public representative, or a representative of a parents association, trade union or management body, as the case may be. Both parties will be informed of this right and it will be made clear to them that they do not have to be legally represented.
31. In advance of the hearing both parties and the members of the committee should be provided with a complete set of documentation submitted in relation to the appeal in question.
32. The Committee at this stage will invite any relevant personnel/expert witnesses they may require (e.g., an educational psychologist, health professional, legal expert) to attend the hearing. Parties to the appeal may request the Appeal committee to invite any relevant personnel/expert witnesses they wish to attend. Such an invitation will issue at the discretion of the Appeal committee.
33. Where either, or both, of the parties to the appeal are prevented from attending the hearing, they should contact the Department of Education and Science Appeals Unit at the earliest opportunity prior to the hearing, so that the hearing may be rescheduled.

34. At the hearing both parties will be given an opportunity to present their case. Both will have the right of reply and the right to question the other through the chair.
35. The Committee will then question both parties, and seek the views of any witnesses that may have been called.
36. Following consideration of the matter, in the light of the appeal hearing, and paying due consideration to the procedures used by the school when making its initial decision, the code of behaviour and the admissions policy of the school, and the views of those witnesses who may have attended, the committee will then notify the Secretary General, or an officer specified by the Secretary General of its recommendations as to the action to be taken and such recommendations will also be recorded on the file kept in relation to the particular appeal.
37. Where either, or both, of the parties to the appeal fail to attend the hearing, without having given prior notification to the Department of Education and Science Appeals Unit, the hearing may proceed.
38. All reasonable efforts will be made to contact them on the day of the hearing to ascertain the cause of their absence. Where it is satisfied that such absence may arise from extenuating and unforeseen circumstances, the Appeal committee may at its discretion, adjourn the hearing until a later date.
39. Where the Appeal committee has reasons to believe that one or other of the parties has deliberately absented themselves from the hearing, due account of this fact will be taken by the Appeal committee when determining the appeal.
40. The Secretary General, [or officer] will notify both parties of the determination of the appeal, the reasons therefor and will issue any necessary directions. Both parties will be informed of their right to contact the Office of the Ombudsman.

## **Appendix 19: Partners Consulted about Section 29 in 2000**

- National Association of Principals and Deputy Principals (NAPD)
- The Association of Secondary School Teachers of Ireland (ASTI),
- The Association of Community and Comprehensive Schools (ACCS)
- The Church of Ireland Board of Education
- The Catholic Primary School Managers' Association (CPMSA)
- The Joint Managerial Board (JMB)
- The Irish National Teachers' Organisation (INTO)
- The Teachers' Union of Ireland (TUI)
- The National Parents' Council Primary (NPC-P)
- The National Parents' Council Post-primary (NPC-PP)
- The Irish Vocational Education Association (IVEA)
- Educate Together
- An Foras Pátrúnacha.

## **Appendix 20: Briefing Note for Appeal Committees (circa 2000)**

### **1. Timeframe**

The Act specifies that the full appeal process must be ‘dealt with’ within a period of 30 days from the date of receipt of the appeal by the Department, except where, on the application in writing of the Appeal committee stating the reasons for a delay in determining the appeal, the Secretary General consents in writing to extend the period by not more than 14 days.

In practice this means that Admin will endeavour to set the date for the appeal hearing at the outset when the appeal is received and that date will initially be set within the 30 days. Admin will, with the consent of the chairperson of the committee, formally seek the permission of the Secretary General to extend the time period available by 14 days.

### **2. Composition of Appeal committee**

Each appeal committee must consist of three people appointed by the Minister viz.

- Inspector
- Two others with requisite expertise, experience and independence – one will act as Chairperson

### **3. Steps To be Taken by Appeals Admin Unit Prior to Hearing**

- a) Seek report from Facilitator
- b) Arrange date, time and venue for Appeal hearing in consultation with school, parents and Committee members;
- c) Furnish available documentation to Appeal committee members;
- d) Parties will be advised to submit additional documentation to the Unit within sufficient time to allow it to be passed to side no later than three days before hearing;
- e) Notify National Educational Welfare Board of appeal to see if it wishes to make a submission



- f) Parties to advise the Unit of representation at hearing within same timeframe – see Para 4 below;
- g) Check with Appeal committee to see if they wish to invite any people to attend hearing;
- h) Admin Unit will advise both parties and Committee members of representation, including people specifically invited by Committee, and furnish with complete set of documentation no later than three days before hearing;
- i) Rearrange hearing in the event of cancellation by any party while ensuring that the time frame for dealing with the appeal is not exceeded.

#### **4. Steps to be taken by Appeal committee Prior to Hearing**

- a) On foot of initial documentation decide whether to invite Persons with relevant expertise to attend
- b) Decide whether to agree to any request for additional representation by either party –see 5 (b) below

#### **5. Representation at Hearing**

##### a) Parents

Student

National Educational Welfare Board if Section 26 of the Ed Welfare Act (2000) applies

Two members of Board of Management *or* one member and school principal

- b) With the prior consent of the Appeal committee – Not more than two other persons nominated by them for this purpose – **not permitted to make statements at the hearing, save in exceptional circumstances with the consent of the Appeals Committee.**

## **6. Conduct of Appeal hearing**

### **a) Representation**

Where either, or both parties fail to attend, without prior notification to the Appeals Admin Unit, the hearing may proceed in their absence at the discretion of the Appeal committee;

If either party brings additional representation 5 (b) above these will not be permitted to make statements at the hearing, save in exceptional circumstances with the consent of the Appeal committee

### **b) Format of the Hearing**

- Chairperson of the Appeal committee will begin by introducing the membership of the Committee and other parties present;
- S/he will indicate if the committee proposes to call any people, other than the parties to the appeal;
- S/he will then outline the procedures to be followed during hearing as outlined hereunder and reiterating that additional reps with either party may not contribute to the hearing, save with express permission of the Committee;
- Both parties will be given an opportunity to present their case – parents first, and then school.
- Both will then be given the right to reply – again, parent first, followed by the school
- Appeal committee will then ask questions, seek clarification as required
- Both parties will have the right to question each other **through the chair;**

Once the introduction has been made the Chairperson will then

- Detail the appeal as outlined in the Appeal Application Form;
- Outline the grounds from that form;
- Ask the parents to present their case...
- Then the school...etc

### **Possible Adjournment**

The Chairperson may decide to adjourn the hearing if, for example, some crucial evidence is brought forward to the hearing and requires further investigation/consideration

Likewise, the Chairperson may decide to adjourn the hearing to allow either side an opportunity to provide some further documentation

**However, the Committee needs to be aware of the overall timeframe for completing the appeal to the stage of submission to the Secretary General**

### **c) Determination of Appeals**

Appeals will be determined by the Committee in the light of all the facts presented to it and having regard to:

- Established 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 – see Para 7 below;
- Educational interests of the student who is the subject of the appeal;
- Educational interests of all other students in the school;
- 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;
- Such any matters as the Committee considers necessary.

## **7. Outcome of Appeal**

The Appeals (sic) shall, in writing, notify the Secretary General of its determination of the appeal, the reasons therefore and its recommendations as to the action to be taken. The Secretary General in turn shall notify both parties of the determination of the appeal, the reasons therefore and, where necessary, will issue such directions to the school's Board of Management as s/he considers necessary for the purpose of remedying the matter. The Board of Management will be bound by such directions.

## **8. DES Circular M33/91 – Guidelines towards a Positive Policy for School Behaviour and Discipline**

This Circular (copy enclosed) outlines the guiding principles expected of schools in devising their individual school policies.

It outlines the respective responsibilities of school management, principal, staff, students and parents.

It also outlines the types of sanctions which may be imposed, making a distinction between the minor and more serious misbehaviour.

In particular it states that the rules of natural justice must apply. The circular states, "Before sanctions are applied the pupil and depending on the nature of the action which it is proposed to take, his/her parents should be advised of the nature of the complaint and be given every opportunity to respond. Parents should also be informed of their right of appeal to the next level of authority."

The circular goes on to state, "Before resorting to serious sanctions, e.g. suspensions, the normal channels of communication between school and parents will be utilised. Parents will be involved and their active co-operation sought at an early stage, rather than as a last resort.

Communication with parents will be verbal or by letter, depending on the circumstances... Where there are repeated instances of serious misbehaviour, the parents will be requested in writing to attend at the school to meet the manager or Principal. If the parents do not give an undertaking that the pupil will behave in an acceptable manner in the future, the pupil may have to be suspended for a temporary period. In the case of gross misbehaviour, the Management Authority shall empower the Principal to sanction an immediate suspension, pending a discussion of the matter with the parents"

The Circular also states, “expulsion should only be resorted to in the most extreme cases of indiscipline and only after every effort at rehabilitation has failed and every other sanction has been exhausted.”

## Appendix 21–Appeals 2001-2011 (DES)

### Appeals relating to refusals to enrol: Post-primary sector

Year	Withdrawn	Local Resolution	Facilitator Resolution	Upheld at Hearing	Not Upheld at Hearing	referred back to BOM	Totals
2001	1	1	5	2	2		11
2002	5	0	7	3	5		20
2003	29	0	7	14	8		58
2004	27	10	20	31	30		118
2005	18	39	13	31	36		137
2006	25	8	3	30	27		93
2007	27	3	9	44	25		108
2008	16	16	22	30	45		129
2009	41	19	33	42	68		203
2010	49	15	21	20	111	13	229
2011	60	3	15	46	57		181
<b>Total</b>	<b>298</b>	<b>114</b>	<b>155</b>	<b>293</b>	<b>414</b>	<b>13</b>	<b>1,287</b>

### Appeals relating to refusals to enrol: Primary sector

Year	Withdrawn	Local Resolution	Facilitator Resolution	Upheld at Hearing	Not Upheld at Hearing	referred back to BOM	Totals
2001	0	0	0	0	1		1
2002	3	2	3	3	4		15
2003	13	3	9	18	5		48
2004	20	3	11	29	11		74
2005	7	10	15	24	14		70
2006	27	5	9	20	13		74
2007	35	17	48	28	60		188
2008	33	15	32	28	42		150
2009	30	12	14	19	40		115
2010	19	3	12	7	21	4	66
2011	35	1	10	22	21		89
<b>Total</b>	<b>222</b>	<b>71</b>	<b>163</b>	<b>198</b>	<b>232</b>	<b>4</b>	<b>890</b>

**Appeals relating to expulsion: Post-primary sector**

<b>Year</b>	<b>Withdrawn</b>	<b>Local Resolution</b>	<b>Facilitator Resolution</b>	<b>Upheld at Hearing</b>	<b>Not Upheld at Hearing</b>	<b>Referred back to BOM</b>	<b>Total</b>
2001	3	3	7	2	2		17
2002	4	0	11	13	4		32
2003	3	1	8	8	14		34
2004	8	1	16	10	17		52
2005	9	1	6	10	42		68
2006	9	2	9	21	43		84
2007	17	0	3	11	40		71
2008	3	2	2	19	46		72
2009	13	0	4	7	32		56
2010	16	2	4	5	35	1	63
2011	18	0	2	15	38		73
<b>Total</b>	<b>103</b>	<b>12</b>	<b>72</b>	<b>121</b>	<b>313</b>	<b>1</b>	<b>622</b>

**Appeals relating to expulsion: Primary sector**

<b>Year</b>	<b>Withdrawn</b>	<b>Local Resolution</b>	<b>Facilitator Resolution</b>	<b>Upheld at Hearing</b>	<b>Not Upheld at Hearing</b>	<b>Referred back to BOM</b>	<b>Total</b>
2001	0	0	0	0	0		0
2002	0	0	0	0	0		0
2003	0	0	1	0	0		1
2004	0	0	0	0	2		2
2005	4	0	2	3	3		12
2006	2	0	0	2	3		7
2007	0	0	1	2	2		5
2008	1	0	0	5	6		12
2009	3	0	0	2	3		8
2010	1	0	2	0	2	1	6
2011	2	0	0	1	5		8
<b>Total</b>	<b>13</b>	<b>0</b>	<b>6</b>	<b>15</b>	<b>26</b>	<b>1</b>	<b>61</b>

**Appeals relating to suspension: Post-primary sector**

Year	Withdrawn	Local Resolution	Facilitator Resolution	Upheld at Hearing	Not Upheld at Hearing	referred back to BOM	Total
2001	0	0	0	0	0		0
2002	1	0	4	2	0		7
2003	1	0	1	2	1		5
2004	2	0	0	1	2		5
2005	3	0	0	4	4		11
2006	1	0	1	0	2		4
2007	2	0	3	2	2		9
2008	1	1	2	6	3		13
2009	0	0	2	2	3		7
2010	0	0	0	1	0	1	2
2011	2	0	1	6			9
<b>Total</b>	<b>13</b>	<b>1</b>	<b>14</b>	<b>26</b>	<b>17</b>	<b>1</b>	<b>72</b>

**Appeals relating to suspension: Primary sector**

Year	Withdrawn	Local Resolution	Facilitator Resolution	Upheld at Hearing	Not Upheld at Hearing	referred back to BOM	Totals
2001	0	0	0	0	0		0
2002	0	0	0	0	0		0
2003	1	0	0	0	0		1
2004	0	0	0	1	1		2
2005	0	0	0	1	1		2
2006	1	0	0	1	2		4
2007	0	0	0	1	1		2
2008	0	2	2	3	2		9
2009	1	0	0	0	0		1
2010	0	0	0	2	1	0	3
2011	0	0	0	5	2	0	7
<b>Total</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>14</b>	<b>10</b>	<b>0</b>	<b>31</b>



## **Appendix 22: Views of Those Interviewed on Selection Criteria Used by Schools**

### ***Catchment areas***

The overall sense from those interviewed was that this was the fairest criteria. A complication cited by appeal personnel was the place of residence requirement in some admissions policies, which was seen as being misused by some parents who use a particular address that is not theirs to get into a school. One management body noted how some schools have difficulty interpreting their own enrolment policies because although they say that they take everybody from the catchment area or the traditional feeder schools, they don't define what the catchment area is or what the schools are. A number of people interviewed were very critical of the policy of one school which states that you have to live south of the Liffey to get a place in their school.

### ***Children of past pupils***

One primary partner interviewed was adamant that enrolment “shouldn't be based on your parentage or your lineage or how long you have been in the local GAA club or whatever it is”. Likewise, another primary partner believes that it is unfair that parents' attendance at a school might be a criterion for enrolment. Many appeal personnel also stated the belief that it is wrong that “somebody who lives 100 yards away from the school can't get in. But because I have a sibling or I am a past pupil and I live 40 miles away I am entitled to go to the school”. Other policies that gave preference to brothers, sisters, uncles, aunts, even granduncles of students were criticised.

### ***Children of staff***

This criterion was criticised by many appeal committee members, especially if a school was oversubscribed. One management body called such a criteria “a modern form of manipulation”.

### ***Feeder primary schools***

One management body expressed annoyance over the fact that some primary schools tell students where they should apply for their second-level education.

### ***First come first served***

Another management body commented on the “borderline ethnic bias” of this criterion and many interviewees referred to the fact that it discriminates against non-nationals and Travellers in particular. Some partners and appeal personnel also noted that this criterion poses problems for those who move areas for work purposes or other reasons. As stated by one interviewee: “If you are paying taxes or if you are a citizen of the State you should have some form of equitable access to schools”. Another partner concurs with this view stating that first come, first served “advantages the native population and it advantages the people who have been within the education system or who are better off, who know the rules and regulations”.

Some appeal personnel noted that the principle of first come first served is a recipe for mistakes as trying to keep track of hundreds of applications going back over a number of years is almost impossible. It was also noted that a person could apply to a school ten years ago or more and still be waiting a decision from a Board of Management regarding admissions to a school. One interviewee noted how: “This gives rise to a lot of uncertainty which results then in ... parents applying to lots and lots of schools.” Many appeal personnel criticised the policy of some schools in allowing applications for places almost from or even before birth.

### ***Sibling Clause***

Most partners believe that the siblings’ clause is legitimate. Likewise, appeal personnel had no problem with the sibling clause although it was recognised as a potential difficulty for the eldest child in a family to get into a school in the first instance. However, it was seen as sensible that children from the same family should attend the same school. One person said he was in favour of the sibling clause if the student had a brother or sister currently in the school but not if they had already left the school.

### ***Ethos or religion of school***

One management body representative stated that it was “crazy” that staff can be hired on the basis of their religion or that students can be given priority because of their religion. This interviewee stated: “We live in a country steeped in history based around division and sectarianism and religious bitterness and we are actually building

amendments to our Equality Act that allows for the same sectarianism when it comes to educating our kids...The idea of actually making provision within your equality legislation to allow for such bigotry or whatever you want to call it, sectarianism, is quite shocking”. Another partner commenting on how some Catholic schools prioritise Catholics and others do not stated:

I think parents need to see a bit of consistency because they do talk to each other. I mean if you have a child who is refused admission to a Catholic school because they are way down the list because religion has been counted and they have a cousin down in Cork who got into a school no problem, they will say, well what is going on here. It can be just a factor of numbers but try and explain that to people in a situation like that and they will see it as religious discrimination rather than a numerical discrimination.

### ***Entrance exams***

Two partners referred to fee-paying schools in particular that make their prospective students sit an entrance test before a place is formally offered. One commented on how primary schools are “preparing their boys and girls to do the entrance test for lots of schools in the area”.

### ***Lottery system***

The potential for such a system to be abused was noted by some. Some appeal committee members spoke about the “dilemma of triplets” in lottery systems. “Do you put all three names in the hat or do you put individual names in the hat and run the risk of not all getting in?” one asks. Reference was made to a school losing an appeal “because they only put in one name on the basis that if that name comes out all three will get a place. But the committee thought that everybody is entitled to a place in the school on their own individually. After all they had three application forms”.

### ***Irish language competence criteria***

The Irish language competence requirements placed on parents in some admissions policies for entry to all-Irish schools was seen by some appeal personnel as wrong as it is “difficult to see how that can be rigorously applied and it can be unfair to some parents”.

**Appendix 23: Expulsions and Suspensions 2005/06 to 2009/10: Analysis of School Attendance Data (NEWB: 2012)**

<b>Primary</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>	<b>2009/10</b>
<b>Schools</b>	3,106	3,155	3,117	3,081	3,100
<b>Students</b>	435,208	456,643	465,124	469,794	493,435
<b>Expulsions</b>	15	12	15	14	10
	0.003%	0.003%	0.003%	0.003%	0.002%
<b>Suspensions</b>	1,135	1,146	1,143	1,086	1,051
	0.3%	0.3%	0.2%	0.2%	0.2%

<b>Post- primary</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>	<b>2009/10</b>
<b>Schools</b>	646	672	664	657	678
<b>Students</b>	276,173	290,222	288,520	288,986	301,548
<b>Expulsions</b>	118	151	136	128	148
	0.043%	0.052%	0.047%	0.044%	0.049%
<b>Suspensions</b>	14,291	15,857	15,915	14,235	14,162
	5.2%	5.5%	5.5%	4.9%	4.7%

**Appendix 24: Appeals Statistics from Commencement until 30 January 2004  
(DES)**

<b>All Schools</b>	<b>Appeal Pending</b>	<b>Withdrawn</b>	<b>Local Resolution</b>	<b>Facilitator Resolution</b>	<b>Upheld at hearing</b>	<b>Not Upheld at Hearing</b>	<b>Total</b>
Permanent Exclusion	3	11	4	30	22	19	89
Refusal to Enrol	5	63	13	31	42	26	180
Suspension	0	3	1	5	4	1	14
<b>Totals</b>	<b>8</b>	<b>77</b>	<b>18</b>	<b>66</b>	<b>68</b>	<b>46</b>	<b>283</b>

**Appendix 25: Extracts from Statements made by Unions and Management Bodies Regarding the Rights of the Compliant Majority during Discussions of Task Force on Student Behaviour in Second Level Schools**

ACCS, March 2005, :10-11	“There is serious concern that the application of Section 29 appeals unduly distorts the balance between the rights of the individual and the rights of the student body in general.”
NAPD, 2005, :12	“NAPD suggests a review of the impact of recent legislation [in particular Section 28 and Section 29 of the Education Act, (1998 and Section 24 of the Education (Welfare) Act, 2000] in order to re-establish the rights of the majority of students in our schools.”
ASTI, March 2005 : 13	“The ASTI believes that the legislation, by according wide-ranging entitlements to individuals, undermines the collective entitlement of the student community to a safe, orderly and harmonious learning environment.”
JMB, April 2005, : 8-9	“While it is understandable that the interests of the student, on whose behalf the appeal was taken, must be given serious consideration, it is the J.M.B. opinion that not enough weighting is given to the rights of all the other parties involved in the process.”
IVEA, April 2005 :1-2	“Current legislation is imbalanced in that the rights of the undisciplined minority outweigh the rights of the majority who also have a right to education.”
TUI, April 2005 : 17	“Education legislation (particularly sections 28 and 29 of the Education Act, 1998) is student-centred and asserts strongly the rights of individual students. TUI is concerned that this is at the expense of concepts of rights within a community of rights, within the school community, which comprises all the partners to education – students, teachers, parents and management”.

**Appendix 26: Appeals Lodged against Schools under Section 29 of Education Act 1998: 2001-2005 (DES)**

**2001 Post Primary**

	<b>Withdrawn</b>	<b>Resolved at local level</b>	<b>Resolved at Facilitation</b>	<b>Upheld at hearing</b>	<b>Not upheld at hearing</b>	<b>No of appeals received</b>
<b>Permanent Exclusion</b>	3	3	7	2	2	17
<b>Suspension</b>	0	0	0	0	0	0
<b>Refusal to enrol</b>	1	1	5	2	2	11
	4	4	12	4	4	28

**2001- Primary**

	<b>Withdrawn</b>	<b>Resolved at local level</b>	<b>Resolved at Facilitation</b>	<b>Upheld at hearing</b>	<b>Not upheld at hearing</b>	<b>No of appeals received</b>
<b>Permanent Exclusion</b>	0	0	0	0	0	0
<b>Suspension</b>	0	0	0	0	0	0
<b>Refusal to enrol</b>	0	0	0	0	1	1
	0	0	0	0	0	1

**2002 Post Primary**

	<b>Withdrawn</b>	<b>Resolved at local level</b>	<b>Resolved at Facilitation</b>	<b>Upheld at hearing</b>	<b>Not upheld at hearing</b>	<b>No of appeals received</b>
<b>Permanent Exclusion</b>	4	0	11	13	4	32
<b>Suspension</b>	1	0	4	2	0	7
<b>Refusal to enrol</b>	5	0	7	3	5	20
<b>Total</b>	10	0	22	18	9	59

**2002 Primary**

	<b>Withdrawn</b>	<b>Resolved at local level</b>	<b>Resolved at Facilitation</b>	<b>Upheld at hearing</b>	<b>Not upheld at hearing</b>	<b>No of appeals received</b>
<b>Permanent Exclusion</b>	0	0	0	0	0	0
<b>Suspension</b>	0	0	0	0	0	0
<b>Refusal to enrol</b>	3	2	3	3	4	15
<b>Total</b>	3	2	3	3	4	15

**2003 Post Primary**

	Withdrawn	Resolved at local level	Resolved at Facilitation	Upheld at hearing	Not upheld at hearing	No of appeals received
Permanent Exclusion	4	1	9	7	13	34
Suspension	1	1	1	2	1	6
Refusal to enrol	41	0	8	16	9	74
<b>Total</b>	46	2	18	25	23	114

**2003 Primary**

	Withdrawn	Resolved at local level	Resolved at Facilitation	Upheld at hearing	Not upheld at hearing	No of appeals received
Permanent Exclusion	0	0	1	0	0	1
Suspension	1	0	0	0	0	1
Refusal to enrol	13	3	8	18	5	47
<b>Total</b>	14	3	9	18	5	49

**2004 Post Primary**

	Withdrawn	Resolved at local level	Resolved at Facilitation	Upheld at hearing	Not upheld at hearing	No of appeals received
Permanent Exclusion	7	1	16	10	18	52
Suspension	2	0	0	1	1	4
Refusal to enrol	15	10	21	31	29	106
<b>Total</b>	24	11	37	42	48	162

**2004 Primary**

	Withdrawn	Resolved at local level	Resolved at Facilitation	Upheld at hearing	Not upheld at hearing	No of appeals received
Permanent Exclusion	0	0	0	0	2	2
Suspension	0	0	0	1	1	2
Refusal to enrol	19	3	11	35	11	79
<b>Total</b>	19	3	11	36	14	83



**2005 (as of 25 Aug 2005) Post-primary**

	<b>Withdrawn</b>	<b>Resolved at local level</b>	<b>Resolved at Facilitation</b>	<b>Upheld at hearing</b>	<b>Not upheld at hearing</b>	<b>No of appeals received</b>
<b>Permanent Exclusion</b>	4	0	4	7	26	41
<b>Suspension</b>	2	0	0	3	3	8
<b>Refusal to enrol</b>	8	25	10	3	3	85
<b>Total</b>	14	25	14	28	53	134

**Primary**

	<b>Withdrawn</b>	<b>Resolved at local level</b>	<b>Resolved at Facilitation</b>	<b>Upheld at hearing</b>	<b>Not upheld at hearing</b>	<b>No of appeals received</b>
<b>Permanent Exclusion</b>	1	0	1	0	1	3
<b>Suspension</b>	0	0	0	0	1	1
<b>Refusal to enrol</b>	7	9	11	11	8	46
<b>Total</b>	8	9	12	11	10	50

## **Appendix 27: Section 4 of Educational (Miscellaneous Provisions) Act (2007)**

4.—Section 29 of the Act of 1998 is amended—

(a) in subsection (1)—

(i) by substituting the following paragraph for paragraph (c): “(c) refuses to enrol—

(i) a student in a school, or

(ii) a student to receive instruction on the curriculum through Irish in a school, if that school provides for the teaching of subjects on the curriculum through Irish for some or all of its students, or”

and

(ii) by inserting “, subject to subsection (4D),” after “Department of Education and Science and”

(b) by substituting the following subsections for subsection (4) and subsection (4A) (inserted by the Act of 2000):

“(4) In hearing and determining an appeal under this section against a decision to which subsection (1) (a) or (b) applies an appeal 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,

(b) the reasonableness of any efforts made by the school to enable the student to whom the appeal relates (the ‘student concerned’) to participate in and benefit from education,

(c) the educational interests of the student concerned and the desirability of enabling the student as far as practicable to participate in and benefit from education with his or her peers,

(d) 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 among the students of the school and ensures continuity of instruction provided to students in any classroom concerned and the school,

(e) the safety, health and welfare of teachers, students and staff of the school,

(f) the code of behaviour under section 23 of the Act of 2000 and other relevant policies of the school and—

(i) in the case of that code of behaviour, the extent to which it is in compliance with that section 23 and any guidelines issued under subsection (3) of that section, and

(ii) in the case of those other policies, the extent to which each of them is implemented, promotes equality of access to and participation in education and is in compliance with—

(I) any enactment that imposes duties on schools or their boards,

(II) any relevant guidelines or policies of the Minister,

(g) the duties on schools or their boards imposed by or under any enactment,

(h) guidelines issued pursuant to section 22(7) of the Act of 2000, and

(i) such other matters as the appeal committee considers relevant.

(4A) Nothing in subsection (4) affects the obligation of an appeal committee to uphold a complaint in relation to the permanent exclusion of a student from a school if the parent of the student or the student, as the case may be, shows that subsection (1) or (4) of section 24 of the Act of 2000 has not been complied with in relation to that exclusion.

(4B) In hearing and determining an appeal under this section an appeal committee shall act in accordance with such procedures as may be determined from time to time by the Minister following consultation with patrons, national associations of parents, recognised school management organisations, recognised trade unions and staff associations representing teachers, and such other persons as the Minister considers appropriate, and such procedures shall—

(a) provide that the Secretary General may require one or more of the parties to the appeal to furnish to the committee, within a period specified in the requirement, such information as the Secretary General specifies in the requirement,

(b) provide that the Secretary General may stipulate, as a condition for the committee proceeding to hear and determine the appeal, that a requirement made of a parent or student by the Secretary General in accordance with procedures under paragraph (a) has been complied with, and

(c) ensure that—

(i) the parties to the appeal are assisted to reach agreement on the matters the subject of the appeal where the committee is of the opinion that reaching such agreement is practicable in the circumstances,

(ii) hearings are conducted with the minimum of formality consistent with giving all parties a fair hearing,

(iii) the appeal is determined within a period of 30 days (the ‘relevant period’) from—

(I) save where clause (II) applies, the date of the receipt of the appeal by the Secretary General, or

(II) if a requirement, in accordance with procedures under paragraph (a), is made of any of the parties to the appeal, the date on which the period specified in the requirement for furnishing the information concerned expires, unless the Secretary General extends the relevant period (which the Secretary General has, by virtue of this subparagraph, power to do) where he or she is of opinion that an extension is necessary in all the circumstances of the case (but the period of that extension may not exceed 14 days).

(4C) An appeal committee may draw such inferences as it considers appropriate from any failure of a party to an appeal to comply with a requirement made of the party in accordance with procedures under subsection (4B)(a).

(4D) An appeal committee may refuse to hear, or continue to hear, an appeal under this section if—

(a) it is of opinion that the appeal is vexatious, frivolous, an abuse of process or without substance or foundation, or

(b) it is satisfied, having regard to the grounds of appeal and any attempts to facilitate agreement between the parties or any subsequent steps taken by the parties, that in the particular circumstances the appeal should not be considered further.

(4E) At the hearing of an appeal against a decision to which subsection (1) applies, the National Educational Welfare Board and the National Council for Special Education may each make such submissions, if any (whether in writing or orally), as it considers appropriate to the appeal committee”

(c) in subsection (7)(b), by inserting “, within such period (if any) as may be specified by the Secretary General in that notice,” after “and the board shall”, and

(d) by adding the following subsections: “(13) Notwithstanding subparagraph (iii) of subsection (4B)(c), the Minister may provide by regulations that no appeal under this section shall be heard during a specified period in any year, being a period in that year in which schools are closed; any period that is specified in such regulations for the time being in force shall not be reckoned in calculating the period referred to in that subparagraph (iii) that is applicable to the appeal concerned.

(14) If, in the circumstances of the particular matter, an issue relating to the refusal of a particular school to enrol a student or the exclusion by a particular school of a student from it would (if this subsection had not been enacted) be capable of—

(a) being the subject of an appeal under this section, and  
(b) being, in substance, contested in an appeal under section 10 of the Education for Persons with Special Educational Needs Act 2004, then, in those circumstances, an appeal may be made by a person under one or other of those sections (being whichever of them the person proposing to appeal opts for) but not both of those sections.

(15) For the purposes of the application of subsection (14), but only for those purposes, a student and his or her parents shall be treated as the one person; for the purposes of that subsection and this subsection, subsection (12) applies in relation to the construction of ‘student’.”

## **Appendix 28: Details of Judicial Reviews in Relation to Section 29 Appeals**

### **Judicial Review between the Board of Management of a National School and the Secretary General in relation to a refusal to enrol (2008 593 JR)**

On the 17 February, 2009 Ms Justice Irvine delivered her High Court judgement (Government of Ireland, 2009) in relation to two decisions made by an appeal committee on 25 April 2008 against a National School in Co. Dublin. The appeal committee in both appeals determined that the school had the capacity to accept two sisters as students and recommended that they be enrolled in the school with immediate effect, although the school had previously refused to enrol 41 other students who did not appeal. The Board of Management of the school made an application to quash the decisions of the appeal committee on the following basis:

- (a) the appeal committee in reaching its decision acted *ultra vires* in that it exceeded its jurisdiction under section 29 of the Education Act in purporting to conduct the type of wide ranging investigation which it carried out. In other words, the “appeal committee had no jurisdiction to interfere with its decision which it contends was a management decision made in accordance with a valid enrolment policy and based upon management considerations.”
- (b) notwithstanding that, the committee took into account matters which were irrelevant, failed to take into account in its considerations matters which were important and the ultimate decision was irrational.

The respondents (i.e. the DES) asserted that Section 29 appeals were not:

confined to providing a method whereby a decision of a Board of Management can be reviewed. The respondents further submitted that the appeal committee is not bound by the terms or confines of a particular enrolment policy. Not only is it entitled to look at the lawfulness of that policy and whether it was applied correctly but it may also consider all of the circumstances surrounding a refusal to enrol... (2008 593 JR)

They submitted that Section 29 of the Act was intended to give parents, for the first time, a right to challenge a school’s decision not to enrol their child as a pupil irrespective of whether or not the decision was made by the lawful application of a valid enrolment policy.

Ms Justice Irvine noted in her judgement that the court was of the view that any decision as to a school's capacity should not be simply calculated by applying a mathematical formula or examining the physical dimensions of a classroom.

Such a decision must involve the consideration of a wider range of issues which include the Board's obligations under health and safety legislation, its responsibility as the employer of its teaching staff, its obligations regarding both the extent and the standard of education to be delivered, the requirements of the Department regarding the curriculum as well as the physical and emotional welfare of its students.

She further noted that:

The issue as to the school's capacity could be continually altered by ongoing decisions of various appeal committees exercising power under s. 29 of the Act. ...It appears to this Court that a board could spend its entire time defending such appeals in a scenario where one appeal committee on one day could decide that a school had no capacity to enrol a particular student only for the same or a different committee to come to an alternative conclusion the following day in relation to a different student, thus rendering it impossible for a board to manage its school on a day to day basis or plan for its future.

Ms Justice Irvine concluded that "it was never intended that the s. 29 appeal committee would involve itself in making decisions which were destined to find places for students in local schools. This is a problem which is addressed by s. 27 of the Education (Welfare) Act 2000." She went on to state that a Board of Management, because of its composition and knowledge, is best positioned to make decisions about a school's capacity.

Further, if the Court, were to construe s. 29 in the manner contended for by the respondents, the appeal committee could force a Board of Management, who has no appeal from its decision, to enrol more students than it considered was safe, thus potentially exposing the board to litigation in respect of which the committee would undoubtedly content it had no liability... I reject the respondent's submission that s. 29 provides a broad and flexible remedy which allows the appeal committee substitute its own judgment on a management issue such as the capacity of a school for that of the Board itself.

She concluded that:

The power of the appeal committee under s. 29, in the opinion of this Court, was one intended to be confined to a right to review the lawfulness and/or reasonableness of a board's decision to refuse enrolment and that the appeal committee acted *ultra vires*.

Ms Justice Irvine then considered all the issues taken into account by the appeal committee in making its decision. For example, the appeal committee took into

account the fact that the school was the school of choice of the appellants' families, that it was the nearest school to the family home and that the appellants were concerned for their children' future education. She stated that these had no relevance to the issue as the school did not have capacity. She concludes that the decision was both unreasonable and irrational:

The decision of the committee excluded significant matters which it should have considered and failed to consider other matters which it ought to have considered to the extent that the ultimate decision flies in the face of reason and common sense and has no valid basis.

### **Judicial Review between Co. Westmeath VEC and the Department of Education and Science (2007 1564 JR)**

A Section 29 appeal committee had determined that a Community College should enrol a pupil who was enrolled in another second-level school in the town. This pupil's parents had been told by the authorities in the second-level school that if they did not withdraw him from the school he would be expelled, due to his ongoing discipline problems. The Board of Management of the Community College had then refused to enrol him as its enrolment policy stated that the college did not accept transfers from pupils already enrolled in other schools in the locality.

The appeal committee upheld the parents' appeal on four grounds (1) the enrolment policy of the Community College was at variance with the rights of parents to enrol their child in the school of their choice; (2) the boy had no school placement following his withdrawal from his original school; (3) the college had capacity to take the boy and; (4) his level of misbehaviour did not warrant a refusal to enrol. County Westmeath VEC as a result of this determination applied for a judicial review.

The ruling of the judicial review was made on 10 July 2009 by Mr Justice Daniel O'Keeffe. He ruled that Section 15.2 of the Education Act (1998) "gives no absolute right to a parent to enrol a child in the school of their choice". He also found the appeal committee erred in upholding the parents' appeal on the ground that the boy had no school placement because the boy continued to be enrolled in his first school. The judge found that the appeal committee's findings in relation to the other two grounds were "neither irrational nor unreasonable". Liam Riordan, in a paper presented at a conference on educational legislation in February 2010 noted that "the



judgement in this case, clearly limits an Appeal committee dealing with an S. 29 appeal to acting within the same parameters as the Board of Management at the time of the original decision having regard to the same facts and circumstances that obtained at the time the decision was made.”

This result was in keeping with the Irvine ruling because it implied that the remit of an appeal committee was to ensure that the enrolment policy of a school was adhered to but disallowed an appeal committee from substituting its opinion or decision for that of the school’s Board of Management. Therefore, a parents’ wish to enrol their child in a school of their choice was no longer deemed an acceptable reason to uphold an appeal.

**Judicial Review between a student and the Board of Management of a secondary school (2007 No. 418 JR)**

This judgement was delivered by Mr. Justice Hedigan. It was taken as a result of a decision by the Board of Management of a secondary school to expel a student in January 2007 as a result of a particular disciplinary incident in the school. The subsequent appeal was not upheld.

The applicant for the review argued that the Board of Management of the school did not notify the EWO until after the decision to expel him and so was in breach of its statutory duty under sections 21(4) and 24(4) of the *Education (Welfare) Act*. The respondent (the Board of Management) conceded that this did not happen but argued that this was “of little consequence in the circumstances of the case”. The applicant also argued that the appeal committee based its decision not to uphold the expulsion on matters that were not relevant. He cited in particular the committee’s taking into account the Equality Authority’s Code of Practice on Sexual Harassment and Harassment at work and the fact that he had later enrolled in another school. The applicant also cited other breaches of fair procedures by the school; in particular, the fact that the board did not allow him or his parents to make representations at a board meeting held in December 2006, although this was remedied when they were invited to a subsequent meeting. The applicant also pointed out that the board failed to notify his parents in writing of the proposed sanctions to be imposed as a result of his behaviour. For their part, the appeal committee contended that any oversights which

did occur in relation to procedure on the part of the Board of Management were “insufficient to warrant the setting aside of the first named respondent’s decision”.

Mr Justice Hedigan stated that the fact that the applicant and his parents did attend a Board of Management meeting was sufficient for him not to make a ruling based on the lack of fair procedures. However, he cited section 21(4) of the *Education (Welfare) Act* (2000) which states that a principal must inform an EWO in writing if a student is suspended from a school for six days or more. He also cited how the same Act describes the duties of the EWO to consult with the student or his parents and make “reasonable efforts to ensure that provision is made for the continued education of the child” once they are notified of a long-term suspension or expulsion. The judge stated that what was of particular importance was “the clear prohibition in section 24(4) against the expulsion of a student, without allowing a period of twenty days for the educational welfare officer to perform his or her function.” He further noted that “The statutory procedures relating to the educational welfare officer were plainly ignored by the first named respondent. I cannot accept the submission that this default of procedure was inconsequential”. He concluded that “the applicant’s expulsion was therefore achieved in plain violation of statutory procedure”. The judge also made the point that in his view the incident did not amount to sexual harassment. While he acknowledged that the reasons for the decision of the Board of Management to expel the applicant and the subsequent upholding of this decision by the appeal committee may have been valid the decisions were in breach of the applicant’s statutory rights and therefore the expulsion was quashed by the court.

### **Judicial Review between a National School and the Department of Education and Science and others (2008 287 JR)**

This case related to a mainstream national school with an autism outreach unit attached. A child with a general learning disability greater than mild was refused enrolment to this unit. The school’s admissions policy specified that the unit would not accept enrolment from any applicant with a general learning disability greater than mild. The parents appealed the decision under Section 29 of the *Education Act*. The Appeal committee upheld the appeal, finding that the Board’s decision to refuse to enrol overrode the right of the parents to enrol their child in a school of their choice.

The committee also stated that this school's admission policy was in breach of 'recent legislation' but did not specify which legislation they were referring to.

In his ruling, Mr Justice O'Keeffe ruled that the appeal committee was correct in deciding that the school had the capacity to enrol the pupil. However, he stated that the committee was incorrect to conclude that the school's enrolment policy was inappropriate. He stated that:

committee cannot strike down or disregard a provision in the enrolment policy of a school and substitute what it may consider as appropriate. The enrolment policy when published has to have regard to the matters set out in Section 15 (2) (d) of the Education Act. This includes respecting the right of parents to send children to a school of the parents' choice, but it does not confer on a parent the right to send a child to the school of their choice.

Mr Justice O'Keeffe also struck down the assertion by the appeal committee that the pupil was functioning within the mild range of a learning disability.

### **Judicial Review City of Waterford VEC v Department of Education and Science and Others (2011 266 JR)**

This case involved a first year student who was expelled from a Community College in Waterford. The family appealed the expulsion through the VEC and the appeal was not upheld. They then appealed it to the Secretary General where it was upheld. The school had just been granted a National Behaviour Support Service (NBSS) unit and, although the student behaviour was poor, the committee was of the opinion that the boy had been given "every opportunity but not every support" and that the NBSS might be of support to him. In addition, the committee said that it would be "nigh impossible to find another place in Waterford City".

The High Court judgement was delivered by Mr Justice Charleton on 27 July 2011. Mr Charleton stated that:

The function of a school board in deciding on the expulsion of a pupil is to consider what is relevant to that decision. This does not include whether other placements may be available in the immediate area should the expulsion take place. Instead, the decision focuses on the behaviour of the pupil and the context within which that behaviour occurred.

He stated that the appeal committee “is in precisely the same position” and set out what factors can be taken into account by a Board of Management and an appeal committee when considering an expulsion:

In considering whether to require a student to leave a school, it is appropriate to focus on the behaviour of the pupil and the effect of that behaviour on the school; the track record of the pupil up to the point of the precipitating issue or issues; the attempts by the school at diverting, correcting or checking the behaviour; the merits of whatever mitigation is offered for the behaviour (by which, I mean contrition, any explanation that is offered for behaviour, and any response of the pupil to the school’s efforts); and the demerits of mitigation (by which I mean a lack of contrition, wilfulness, spite or any unwillingness to accept help). What a school board, and thus what an appeal committee, cannot take into account are the alternatives which the education welfare officer may be in a position to offer; the resources of the school; and external resources.

Mr Charleton concluded that the matter should be “remitted for a fresh hearing”.

## **Appendix 29: Revised Procedures for Hearing and Determining Appeals under Section 29 Following the Results of the Judicial Reviews in 2009**

### **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 appeal 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 appeal 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 appeal hearings.

The Department's Section 29 Appeals Administration Unit administers the appeal 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, Cornamaddy, Athlone, Co. Westmeath.].

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

- a) 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.
- b) 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).

- c) 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.
  - d) 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.
  - e) 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. Appellants will be asked to set out the grounds for their appeal. A number of High Court judgments have established that the scope of Section 29 committees is confined to reviewing decisions made by school boards of management to consider whether the board acted reasonably in following its own lawful policy and procedures. The Section 29 application form therefore asks that the grounds of appeal be set out in this context.
7. The Appeals Application Form should be completed in full, and should specify:
- g) the appellant/ student's full name, address and, where relevant, telephone number

- h) the decision being appealed
  - i) the grounds on which the decision is being appealed
  - j) the full name and address of the school concerned
  - k) the date that the parent or student was informed of the decision
  - l) the outcome of any relevant appeal proceedings at school level.
8. 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.
9. 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**

10. An appeal may only be considered where it meets the conditions set down in paragraphs 1 to 6 of these procedures and when all of the requisite information, as outlined in paragraph 7 above, has been provided.
11. 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.



12. 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. Please note the Section 29 committee can only consider the material that should have been before the Board of Management when it made its decision. Such documentation, if requested, could include school reports, documentation relating to any local procedures used, psychological or medical reports.
  
13. 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, documentation and information that it had available to it at the time of its decisions 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. Boards of Management may subsequently be asked to provide additional material which, in the view of the Committee should have been in the possession of the Board at the time of its decision.
  
14. 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.
  
15. 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.

16. An appeal may be withdrawn at any time by the appellant by notifying the Appeals Administration Unit to that effect.

### **Composition of Appeal committee**

17. An Appeal 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**

18. Where the Appeal 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.
19. The facilitator will attempt to broker an agreement between the parties to the appeal.
20. Where agreement is reached, the facilitator will provide the parties to the appeal with a copy of the agreement.
21. 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.

22. A period of up to one week will generally be allowed for the facilitation process. This may be extended in exceptional circumstances.

### **Appeal hearing**

23. 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 Appeal committee and a report of the facilitation process will be provided to the Appeal committee.
24. A date, time and venue for the hearing will be arranged in consultation with all concerned.
25. Where the appeal relates to a decision under paragraph 1 (a) or 1 (c), the National Educational Welfare Board and the National Council for Special Education (where appropriate) may make a submission and such submission shall be made within the same time limits. Such submissions shall refer to the situation at the time of the decision of the Board of Management.
26. 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 Appeal 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.

27. The Committee may invite persons with relevant expertise to attend and make statements at the hearing.
28. 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.
29. 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.
30. 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 Appeal committee.
31. 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.
32. 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**

33. The remit of the appeal committees is to review the decision under appeal and whether the Board of Management acted reasonably in coming to their decision. The material and documentation for consideration by committees

must therefore be that which was (and/or should have been) before the Board of Management at the time that they made their decision. 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 scope of Section 29 committees to consider whether a school Board of Management has followed its own lawful procedures and policies and has done so reasonably.

34. In making its determination, the Committee may take advice from such persons as it considers appropriate.
35. 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.
36. Notwithstanding paragraph 16, the Committee may hear and determine an appeal notwithstanding a vacancy for the time being in its membership.
37. 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.
38. 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.

