



Section 29 Appeals

An important restatement by the High Court

Background

The Case of Board of Management of Presentation College Athenry-v-Secretary General of the Department of Education and Skills and others is an important restatement of the position regarding what a S.29 Appeals Committee can take into account when making its decision.

In this case, parents transferred their child (the "Child") into a specific National School (the "School") in the expectation that this would secure him a place in a specific second level school (the "College"). The expectation of admission apparently arose due to advice given to the parents from a former principal of the College and the transfer resulted in the Child having to repeat fifth class for reasons independent of academic performance.

Upon application for enrolment in the College, the Child was placed into a random selection process, in accordance with the College's enrolment policy. After being informed that their child was

not successful, the parents made an appeal to the Department of Education and Skills under S.29 of the Education Act 1998 (the "Act"). They argued that the Board of Management ("BoM") was legally obligated not to refuse enrolment of a student, unless such refusal is in accordance with a school's published policy¹.

The S.29 Appeals Committee (the "Committee") found that the parents made significant changes to the Child's education based on the advice received from the former Principal and so they had a "reasonable expectation that their child would be offered a place". The Committee concluded with the recommendation that the Child should be offered a place for the 2017/2018 Academic Year.

¹ Section 15(2)(d) of the Education Act (1998), Section 19(1) of the Education (Welfare) Act 2000.

High Court Decision

The College brought judicial review proceedings against the Committee's decision. This raised an important legal issue for the High Court to consider, namely, the scope of the Committee when considering a S.29 appeal. This involved examining whether the Committee could take into account the family's personal circumstances or if it was restricted to only considering the parameters of the College's enrolment policy.

The High Court relied on previous High Court decisions in order to determine the appropriate scope of a S.29 appeal. It stated that the Committee does not have jurisdiction to criticise a school's enrolment policy based on what it deems appropriate² and cannot take into account superfluous matters that are irrelevant to the implementation of the enrolment policy³. Therefore, the Committee's role is to determine whether the policy was correctly interpreted and to enforce its application⁴.

The Court found that the Committee erred in interfering with a BoM decision not to enrol the Child, given the fact it was made in accordance with the College's enrolment policy.

Conclusion

This case underlines that the powers of a S.29 Appeals Committee are limited to consideration of whether the refusal was in accordance with the school's enrolment policy. Thus, Boards of Management need to ensure that they have a robust enrolment policy in place.

The Education (Admission to Schools) Bill 2016 (the "Bill") is now at the Report Stage. The Bill, if enacted, sets a number of requirements for school enrolment policies such as setting out the characteristic spirit and general objectives of the school and including an admission statement.

We will provide further updates on the Bill as it progresses.

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² *Lucan Educate Together National School -v- Department of Education* [2011] IEHC 86.

³ *City of Waterford V.E.C. -v- Department of Education* [2011] IEHC 278.

⁴ *County Westmeath V.E.C. -v- Department of Education* [2010] 1 I.R. 192.