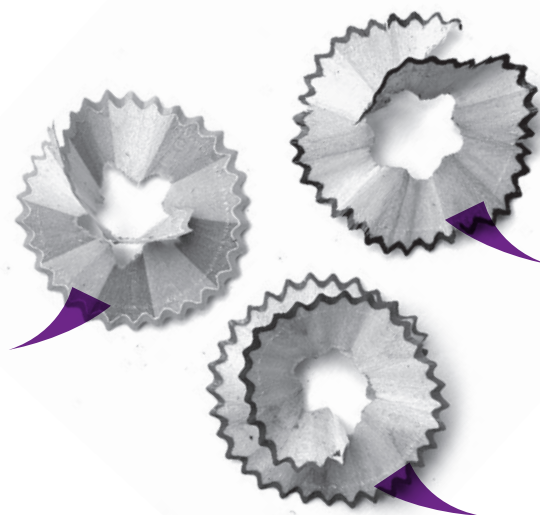


Sharpening up grievance procedures

Education (Student and
Parent Charter) Bill 2019



On 10 September 2019, the Minister for Education and Skills (the “**Minister**”) published the Education (Student and Parent Charter) Bill 2019 (the “**Bill**”), which is presently at the third stage of the Seanad.

The Bill proposes further amendments to the Education Act 1998 so as to provide a framework for engagement between schools, students and parents with the objective that any issues or grievances will be addressed through that framework without giving rise to grievances. The Bill, if enacted, will require a board of management (“**Board**”) to prepare, publish and implement a student and parent charter (“**Charter**”), in accordance with charter guidelines (“**Charter Guidelines**”) made by the Minister. In addition to the Charter, a notable provision in the Bill is that the Minister’s Charter Guidelines may relate to the grievance procedures for dealing with complaints of students or their parents relating to the school. The Bill also prescribes for standardised grievance procedures in such circumstances setting out the minimum features of such procedures. Other key provisions in the Bill include an additional statutory function on the part of a school to promote the involvement of students and their parents in the provision of education to students and to ensure the implementation of its Charter. The Bill also provides for the Minister to give a direction to a Board on the matter of non-compliance with a Board’s obligations in and around the Charter and to publish such direction on the website of the Department of Education and Skills.

What is a Student and Parent Charter?

Whilst the Bill provides for consultation by the Minister with education stakeholders before making the Charter Guidelines, the Bill outlines the subject matter of the Charter Guidelines to include the process and procedures a Board will follow in preparing a Charter, the title and content of a Charter and procedures for review and amendment by a Board of a Charter. The Bill further provides that the Charter Guidelines dealing with the content of a Charter may provide for procedures for consultation on matters relating to school plans and policies, procedures for informing students and their parents of matters relating to the operation and performance of the school and providing information on the structures and systems for the management of the school. There is provision in the Bill for the Charter Guidelines to deal with the following content of a Charter:

- (i) the information to be provided to students and their parents relating to monies that the school receives (including voluntary contributions made by parents) and the expenditure of those monies by the school, and the form and manner in which that information is to be provided
- (ii) the procedures for dealing with grievances of students or their parents relating to the school
- (iii) the provision of aggregated and anonymised information to students and their parents relating to grievances of students or their parents dealt with by the school, which may include the number or type of such grievances and related outcomes, and the form and manner in which that information is to be provided
- (iv) such other information, procedures and matters relating to the school as the Minister considers necessary and appropriate for the purposes of the Charter Guidelines

Grievances procedures

The Bill, if enacted, will replace the existing Section 28 of the Education Act, 1998 to provide for minimum, standard features in grievance procedures as follows:

- a) the requirements to be complied with by the school and the student or parent concerned in relation to the grievance process
- b) the investigation of grievances in a manner appropriate to the nature of the grievance concerned, whether informally, including by way of mediation, or formal investigation, or a combination of both
- c) the resolution of grievances
- d) the giving of reasons for decisions in relation to grievances
- e) the implementation of decisions in relation to grievances, including any remedial action required

There is also provision that a school may, in accordance with the Charter Guidelines, decide not to deal with a grievance where the grievance is, in the opinion of the school, vexatious or frivolous. Decisions of a Board or person acting on behalf of a Board in respect of an expulsion, suspension or refusal to enrol are excluded from the scope of the grievance procedures referred to herein.

The original Heads of the Bill envisaged expanding the role of the Ombudsman for Children. However, the proposed Bill would provide for the Ombudsman for Children to investigate an administrative action of a school where the grievance procedures set out in the Charter have been exhausted.

Consequences for Non-Compliance with the Charter

The Bill enables the Minister to give a direction to a Board where the Minister is of the opinion that a Board has failed to comply with its obligations to prepare, consult, publish and implement a Charter in accordance with the Charter Guidelines. The Minister must, prior to giving such a direction, be satisfied that other available and appropriate mechanisms to address the failure have been exhausted and that it is appropriate and necessary to give a direction.

Further, before giving a direction, the Minister must by notice in writing to the patron and the Board inform of his/her proposal to give such a direction which must include the Minister's opinion, reasons for that opinion and proposed remedial action to be taken by the Board. This notice will also provide the patron and/or Board with an opportunity to make representations to the Minister in relation to the proposed direction which, if made, must be considered by the Minister in deciding whether or not to give a direction. A direction published on the Department's website will include the name of the school concerned.

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Conclusion

The Minister has not set a timeline for implementation of the Bill and, given that there must be consultation with stakeholders before the Minister makes the Charter Guidelines, there will be a period before the obligations on the part of a Board in and around the Charter and any revised grievance procedures commence. In the meantime, schools should be considering their current procedures for engagement with and addressing any grievances on the part of students and their parents. The Bill clearly proposes greater levels of consultation and information sharing with students and their parents and the potential for a more comprehensive and considered approach for dealing with such parties including in respect of any grievances they may have.

We have extensive experience of working with schools to advise on the practical application and implications of legislation, including drafting policies and procedures on foot of legislation. We are available to discuss any issues that may arise for you as a result of evolving statutory obligations and to provide guidance on how to prepare for what can best be described as a crucial piece of legislation in the Irish education sphere.

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