

Appeal Procedure Information Sheet

Parents, young persons over statutory school age and children who are considered to have legal capacity have the right to appeal against a decision to exclude.

This right is given either by Section 28H of the *Education (Scotland) Act 1980* (if a parent or young person over statutory school age) and Section 41 of the *Standards in Scotland's Schools etc. Act 2000* (if a child who is considered to have legal capacity).

The meaning of a child who has legal capacity

The *Age of Legal Capacity (Scotland) Act 1991* states that a person under the age of 16 years has legal capacity to instruct a solicitor in connection with civil proceedings where they have a general understanding of what it means to do so. A child of 12 years or more is presumed to have sufficient age and maturity. Such a person also has legal capacity to sue or defend in any civil proceedings. Section 41 of the *Standards in Scotland's Schools etc. Act 2000* extended appeal rights under section 28H of the *Education (Scotland) Act 1980* to a pupil with such legal capacity.

If you wish to appeal against a decision to exclude, you should express this wish in writing for the attention of:

Chief Education Officer
East Dunbartonshire Council
12 Strathkelvin Place
Kirkintilloch
G66 1TJ

The letter should provide the Chief Education Officer with the following:

- the name of the pupil
- a clear statement requesting the referral of an appeal against the decision to exclude to an appeal committee set up under Section 28D of the *Education (Scotland) Act 1980*
- the name of the person who wishes to appeal (stating in particular if it is the child or his/her parents who intend to appeal).

Receipt of the letter of appeal will be acknowledged within 5 working days.

Education Services may allow you to return to school after the exclusion while the appeal is being considered. This is a decision that will be made by the Chief Education Officer. The parent, young person or child with legal capacity who is making the appeal (appellant) will be given the opportunity to go to the hearing and to speak to the appeal committee. Up to three people may accompany the appellant. The appellant may ask one of those three to speak on his/her behalf. Parents have a right to support their child during the appeal process where the child is the appellant.

Should the appellant not wish to attend the hearing he/she can nominate someone to attend and speak for him/her.

If the appellant decides to make a written submission to the appeal committee he/she should send his/her submission to the appeal committee to the Chief Education Officer

not less than 10 days before the date of the hearing.

Deemed Decisions

In the following circumstances, an appeal committee will be deemed to have confirmed the decision of the education authority where within:

- one month of receiving an appeal, the appeal committee has failed to hold a hearing.
- 14 days immediately following an adjournment of a hearing the appeal committee has failed to fix a date for a resumed hearing.
- 14 days following the conclusion of a hearing the appeal committee has failed to notify the parent, young person or child with legal capacity and the education authority of their decision and the reasons for it.

If the appeal committee confirms the decision of the authority, or is deemed to have done so, an appeal may be made to the Sheriff of the area in which the school is situated.

This is in line with the Education (Placing in Schools etc. - Deemed Decisions) (Scotland) Regulations 1982. The timescales referred to in respect of deemed decisions shall be amended to reflect the timescales applying to such Regulations, from time to time.

If you believe that you have been excluded because of a disability or an additional support need, you should make your appeal to the Additional Support Needs Tribunal for Scotland. Further details can be found at <http://enquire.org.uk/service/additional-support-needs-tribunals-for-scotland-2>