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LAW
CENTRE

Placing Request
Appeal Toolkit
(Mainstream Schools)

Placing Request Appeal Toolkit for parents and young persons

This toolkit will help you to appeal against the refusal of a placing request. If your child has additional support needs, separate rules apply and you should read our separate factsheet on this topic.

Education Appeal Committee

Where your placing request has been refused, you have a right of appeal to the education appeal committee at your education authority. You have 28 days from receiving the refusal letter to lodge your appeal. If there is a good reason for your appeal being late, the appeal committee may allow a late appeal. However, you should try to make sure that your appeal letter is sent with plenty of time to spare. You may wish to send the appeal letter by recorded delivery post or seek a certificate of posting, so that you can prove that it has been sent and received.

The Appeal Letter

Your letter of appeal is called a “reference” to the appeal committee. You should send it to the address specified in the letter of refusal.

Remember:

- State clearly that the letter is a reference or letter of appeal against the refusal of a placing request.
- State the name of the school you made a placing request for and give the name and date of birth of your child, together with your own contact details (address, telephone, e-mail).
- Explain in summary why you want your child to attend that school. It is best to focus on why the school is a good placement for your child, rather than why it is a

good school in general. You will have an opportunity to add more detail to your case later.

- There is no need to send any supporting documents at this stage as you will be able to do this later.
- If there are any dates in the next month or so when you will be unable to attend an appeal hearing, you should mention them in the appeal letter so that the clerk to the appeal committee can avoid those dates, if possible.
- Send the appeal letter by recorded delivery post and keep a copy of the letter so that you can remember what you wrote.
- You can only make a placing request reference to an education appeal committee once every 12 months.

We would suggest that you use our template placing request letter at the end of this document.

You should be given a date for the appeal hearing no later than 14 days after the appeal committee clerk receives your appeal letter.

Paperwork

If you want to make reference to any documents in support of your appeal, these have to be sent to the appeal committee no later than 10 days before the hearing date. Again, you may wish to send these by recorded delivery post. The Council also have to provide any supporting documents by the same time. Copies of all the documents will then be sent to both you and whoever is representing the Council. You should include any documents that you may wish to refer to during the appeal hearing.

The Legal test

The education appeal committee must grant your appeal unless:

1. there is a ground for refusal and
2. it is appropriate (in all the circumstances) to refuse your appeal.

It is up to the Council to provide enough evidence to satisfy the committee on both of these points.

The appeal committee is considering whether there is a ground for refusal on the day of the hearing, not whether there was a ground for refusal at the time the original decision was made. Circumstances often change between these dates and you should make sure that you have up-to-date information to support your case.

There are several possible grounds for refusal of a placing request and we will consider only the most frequently used grounds below.

Grounds for refusal

Grounds relating to school capacity

Placing the child at the specified school would ...

- i. make it necessary for the authority to take an additional teacher into employment.
- ii. give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school.
- vi. assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child's primary education, for the authority to elect either to create an additional class (or an additional composite class) in the specified school or to take an additional teacher into employment at that school
- vii. though neither of the tests set out in sub-paragraphs (i) and (ii) above is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers

In each of the above cases, the authority are claiming that the school, or the year group is full. The authority are also permitted by law to keep some “reserved places” open to allow for families who may move into the school’s catchment area after placing request decisions have been taken.

Maximum class sizes

While there are some exceptions, the maximum class sizes which usually apply are as follows:

Primary Schools

P1 - 25 pupils

P2-P3 - 30 pupils

P3-P7 - 33 pupils

Composite Classes – 25 pupils

Secondary Schools

S1-S2 - 33 pupils

S3-S6 - 30 pupils

Practical classes - 20 pupils

If you wish to check the authority’s figures, you should ask for the details to be confirmed as part of your appeal letter. See the style letter at the end of this document.

The authority is also entitled to consider the potential effect on future years of admitting additional pupils.

For example, a primary school with 3 P1 classes, each with 20 pupils, would have room for an additional 15 pupils this academic year. However, that would mean that the following year, the school would have to create an additional P2 class. The 60 P1 pupils this year fit neatly into two P2 classes next year of 30 pupils each. Extra P1 pupils would mean that an additional P2 class would be required next year.

Other Grounds of Refusal

Placing the child in the specified school would ...

- viii. be likely to be seriously detrimental to order and discipline in the school.
- ix. be likely to be seriously detrimental to the educational well-being of pupils attending the school.

This may sound like the education authority is suggesting that your child is badly behaved or disruptive. Usually, this is not the case. It is more likely that the authority is arguing that the impact of granting additional placing requests would be an overcrowded school which would have the stated effect on order and discipline and/or educational wellbeing. The same suggestions relating to capacity, as above, can be used to challenge these grounds.

Reserved places

These are held for children of families moving into the area. Education authorities have discretion to create as many reserved places as they consider will be “reasonably required.” This term is not defined or limited. You may wish to ask the Council for details of:

- the number of reserved places held in the last three years by the school;
- the number of children who filled the reserved places in the previous five years;
- the number of reserved places held for the next academic year; and
- any written policy in respect to reserved places.

This will help you establish whether or not the number of reserved places for the school are indeed “reasonably required”.

Appropriateness

This appeal committee also consider whether it is appropriate in all the circumstances to refuse your appeal. Even when a ground has been established, the decision of the education authority cannot be upheld unless in all the circumstances it is appropriate to do so. Special considerations about the individual child can be put forward. A range of factors can be taken into account, for example:

- social and emotional welfare;
- the journey to school;
- particular educational considerations.

The education appeal committee can consider all material factors presented to them and have a degree of discretion in whether or not to allow the appeal. Issues of resources and policies do not necessarily mean that you will be unsuccessful. The education appeal committee have the power to decide that in all of the circumstances, notwithstanding that a ground for refusal exists, that the placing request should be allowed. It is therefore well worth explaining in full all the circumstances which are relevant to the placing request.

Please note that the education appeal committee are unlikely to regard logistical reasons (e.g. the specified school is nearer the parents' places of work) as sufficient to justify overturning a refusal of a placing request. The reasons you give for your appeal should clearly state why it is important that your child should attend the specified school in particular.

It can sometimes be helpful to produce letters of support, especially where there are medical or social work professionals who may support the placement.

Representation

You have the right to appear or be represented at the hearing, be accompanied by up to 3 other people, including the person representing you. While you can opt to have the appeal decided on the basis of the paperwork alone, we strongly recommended that you attend personally, with or without representation. Anyone can represent you. You may wish to seek the assistance of an advocacy group or a family friend. You have the right

to be represented by a solicitor, but there is no Legal Aid available for an education appeal committee hearing. It is not usually necessary to be legally represented at an education appeal committee.

Even though you are appearing personally, or have representation, at the hearing, you can produce written submissions and other documents to refer to during your appeal. These documents should be sent to the committee clerk at least 10 days before the hearing.

Education Appeal Committee

The appeal committee is made up of (usually) 3, (sometimes) 5 or (almost never) 7 members. The majority of these are likely to be councillors from the local authority, with the remainder being parents from parent councils of other schools in the area or other local people with a knowledge of education in the area.

Procedure at the hearing

Unless the chairperson decides otherwise, there is a set order for proceedings.

1. Presentation of case for the education authority
2. Questioning by the appellant (you or your representative)
3. Presentation of case for the appellant
4. Questioning by the education authority
5. Summing up by the education authority
6. Summing up by you

Decision of education appeal committee

The decision may be delivered at the conclusion of the hearing or, if the education appeal committee require time to consider the decision, you should be notified in writing within 14 days of the hearing. The education appeal committee are supposed to give reasons for its decision, but rarely do so.

Appeal to the Sheriff Court

A parent who has made an unsuccessful reference to an education appeal committee has a further right of appeal to the Sheriff Court. This right must be exercised within 28 days of the decision. You should seek legal advice promptly before contemplating an appeal to the Sheriff. The Sheriff follows broadly the same approach as the education appeal committee. Legal Aid may be available for this stage.



Govan Law Centre can be found online at: www.govanlc.com

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Where to get help

Unfortunately, Govan Law Centre's Education Law Unit is not able to provide you with representation for your appeal against a refused placing request, either at the education appeal committee or at the Sheriff Court.

If you wish to arrange legal representation, you can contact any of the law firms below. Legal Aid may be available for Sheriff Court appeals, but is not available for education appeal committee hearings.

Moore Macdonald

2 Scott Street
Motherwell
ML1 1PN
Tel: 01698 262111

Hughes Dowdall Solicitors

205 Bath Street
Glasgow
G2 4HS
Tel: 0141 240 7020

McWhinney Richards

66 Stirling Street
Airdrie
ML6 0AW
Tel: 01236 754571

A J Gordon and Co

St. Georges Building
5 St Vincent Place
Glasgow
G1 2DH
Tel: 0141 275 4853

Style Letter of Appeal

Date

Clerk to the Education Appeal Committee

Address 1

Address 2

CITY

Postcode

Ref: Appeal against placing request refusal

Your Ref:

Dear Sir or Madam,

[Child's name, date of birth & address]

Placing Request for [specified school]

I am writing to you to appeal against the decision made by [Name of Council] on [Date of Refusal Letter] to refuse the placing request I made for my daughter/son to attend [name and address of specified school]. I would like to exercise my right of appeal in terms of Section 28C of the Education (Scotland) Act 1980, as there are a number of factors which led me to make the initial request which I would like taken into consideration.

This letter is a reference of the refusal decision to an education appeal committee set up under Section 28D of the Education (Scotland) Act 1980.

It is my view that the grounds of refusal relied upon by [Name of Council] do not apply in this case.

[List reasons for disputing the grounds of refusal specified by the Council in the decision letter].

Further, and in any event, it is not appropriate in all the circumstances to confirm the education authority's decision.

[Detail any further information you feel may be useful and relevant to your child's placement at the specified school].

I look forward to receiving confirmation of a date for the hearing of my appeal. I understand that a hearing should be set down within 28 days of the receipt by you of this letter. A later hearing date is permissible only where the appeal committee are unable to convene within that period due to circumstances beyond their control.

I intend to appear in person at the hearing [and to be represented by Name of Representative]. I will be accompanied by [list up to three friends / witnesses].

[* For cases refused on grounds of capacity, insert the following.]

[In order to allow me to present my case properly, please provide the following information:

- a copy of the schedule of accommodation for [specified school];
- a note of the projected roll for the coming academic year, broken down by year group;
- details of the anticipated staffing complement for the coming academic year, and
- a copy of the authority's policy or guidance on the calculation of the capacity of primary schools / secondary schools.]

[* For cases refused on the grounds of reserved places being required, insert the following.]

[In order to allow me to present my case properly, please provide the following information:

- the number of reserved places held in relation to the specified school in each of the previous five years;
- the number of children who filled those reserved places each of the previous five years;
- the number of reserved places held for the next academic year, and the reasons why the authority consider them to be reasonably required; and
- any written policy in respect of reserved places.]

I look forward to hearing from you.

Yours sincerely

[Your name]