
STATUTORY RULES OF NORTHERN IRELAND

1997 No. 315

**Special Educational Needs Tribunal
Regulations (Northern Ireland) 1997**

Part IV

Determination of Appeals

Power to determine an appeal without a hearing

25.—(1) The tribunal may—

- (a) if the parties so agree in writing; or
- (b) in the circumstances described in regulations 14 and 23,

determine an appeal or any particular issue without a hearing.

(2) The provisions of regulation 27(2) shall apply in respect of the determination of an appeal, or any particular issue, under this regulation.

Hearings to be held in private: exceptions

26.—(1) A hearing by the tribunal shall be held in private unless—

- (a) both the parent and the board request that the hearing be held in public; or
- (b) the President, at any time before the hearing, or the tribunal at the hearing, orders that the hearing should be held in public.

(2) The following persons (as well as the parties and their representatives and witnesses) shall be entitled to attend the hearing of an appeal, even though it is held in private—

- (a) subject to the provisions of paragraph (8), any person named by the parent in response to the enquiry under regulation 17(b) unless the President has determined that any such person should not be entitled to attend the hearing and has notified the parent accordingly;
- (b) a parent of the child who is not a party to the appeal;
- (c) the clerk to the tribunal and the Secretary of the Tribunal;
- (d) the President and any member of the chairmen's panel or lay panel (when not sitting as members of the tribunal);
- (e) any person undergoing training as a member of the chairmen's panel or lay panel or as a clerk to the tribunal;
- (f) any person acting on behalf of the President in the training or supervision of clerks to tribunals;
- (g) an interpreter.

(3) The tribunal, with the consent of the parties or their representatives actually present, may permit any other person to attend the hearing of an appeal which is held in private.

(4) Without prejudice to any other powers it may have, the tribunal may exclude from the hearing, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the tribunal, to disrupt the hearing.

(5) For the purposes of arriving at its decision a tribunal shall, and for the purposes of discussing any question of procedure may, notwithstanding anything contained in these Regulations, order all persons to withdraw from the sitting of the tribunal other than the members of the tribunal or any of the persons mentioned in paragraph (2)(c) to (e).

(6) Except as provided in paragraph (7) none of the persons mentioned in paragraph (2)(a) to (g) or (3) shall, saving in the case of the clerk to the tribunal or an interpreter as their respective duties require, take any part in the hearing or (where entitled or permitted to remain) in the deliberations of the tribunal.

(7) The tribunal may permit a parent of the child who is not a party to the appeal to address the tribunal on the subject matter of the appeal.

(8) Where the parent has named more than two persons in response to the enquiry under regulation 17(b) only two persons shall be entitled to attend the hearing unless the President has given permission before the hearing or the tribunal gives permission at the hearing for a greater number to attend.

Failure of parties to attend hearing

27.—(1) If a party fails to attend or be represented at a hearing of which he has been duly notified, the tribunal may—

- (a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the appeal in the party's absence; or
- (b) adjourn the hearing.

(2) Before disposing of an appeal in the absence of a party, the tribunal shall consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this regulation the notice of appeal, any reply by the board under regulation 12 or 13 and any response by the parent under regulation 8 shall be treated as representations in writing.

Procedure at hearing

28.—(1) At the beginning of the hearing the chairman shall explain the order of proceeding which the tribunal proposes to adopt.

(2) The tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues and generally to the just handling of the proceedings; it shall, so far as appears to it appropriate, seek to avoid formality in its proceedings.

(3) The tribunal shall determine the order in which the parties are heard and the issues determined.

(4) The tribunal may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in his notice of appeal or, as the case may be, his reply or response and to adduce any evidence not presented to the board before or at the time it took the disputed decision.

(5) If at or after the commencement of any hearing a member of the tribunal other than the chairman is absent, the hearing may, with the consent of the parties, be conducted by the other two members and in that event the tribunal shall be deemed to be properly constituted and the decision of the tribunal shall be taken by those two members.

Evidence at hearing

29.—(1) In the course of the hearing the parties shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal both on the evidence and generally on the subject matter of the appeal:

Provided that neither party shall be entitled to call more than two witnesses to give evidence orally (in addition to any witnesses whose attendance is required pursuant to paragraph (2)) unless the President has given permission before the hearing or the tribunal gives permission at the hearing.

(2) Evidence before the tribunal may be given orally or by written statement, but the tribunal may at any stage of the proceedings require the personal attendance of any maker of any written statement:

Provided that neither party shall be entitled to give evidence by written statement if such evidence was not submitted with the notice of appeal or submitted in accordance with regulation 8 or (as appropriate) regulation 12 or 13.

(3) The tribunal may receive evidence of any fact which appears to the tribunal to be relevant.

(4) The tribunal may require any witness to give evidence on oath or affirmation, and for that purpose there may be administered an oath or affirmation in due form, or may require any evidence given by written statement to be given by affidavit.

Decision of the tribunal

30.—(1) A decision of the tribunal may be taken by a majority and where the tribunal is constituted by two members only under regulation 28(5) the chairman shall have a second or casting vote.

(2) The decision of the tribunal may be given orally at the end of the hearing or reserved and, in any event, whether there has been a hearing or not shall be recorded forthwith in a document which, save in the case of a decision by consent, shall also contain, or have annexed to it, a statement of the reasons (in summary form) for the tribunal's decision, and each such document shall be signed and dated by the chairman.

(3) Neither a decision given orally nor the document referred to in paragraph (2) shall contain any reference to the decision being by majority (if that be the case) or to any opinion of a minority.

(4) Every decision of the tribunal shall be entered in the records.

(5) As soon as may be the Secretary of the Tribunal shall send a copy of the document referred to in paragraph (2) to each party, accompanied by guidance, in a form approved by the President, about the circumstances in which there is a right to appeal against a tribunal decision and the procedure to be followed.

(6) Where, under regulation 7(1)(c) or 11(1) or (2)(a) a parent has stated the name of a representative the Secretary of the Tribunal shall (notwithstanding regulation 42) send a copy of the documents referred to in paragraph (5) to the parent as well as to the representative.

(7) Every decision shall be treated as having been made on the date on which a copy of the document recording it is sent to the parent (whether or not the decision has been previously announced at the end of the hearing).

Review of the tribunal's decision

31.—(1) Any party may apply to the Secretary of the Tribunal for the decision of the tribunal to be reviewed on the grounds that—

(a) its decision was wrongly made as a result of an error on the part of the tribunal staff;

- (b) a party, who was entitled to be heard at a hearing but failed to appear or to be represented, had good and sufficient reason for failing to appear;
- (c) there was an obvious error in the decision of the tribunal which decided the case; or
- (d) the interests of justice require.

(2) An application for the purposes of paragraph (1) shall be made not later than 10 working days after the date on which the decision was sent to the parties and shall be in writing stating the grounds in full.

(3) An application for the purposes of paragraph (1) may be refused by the President, or by the chairman of the tribunal which decided the case, if in his opinion it has no reasonable prospect of success, but if such an application is not refused—

- (a) the parties shall have an opportunity to be heard on the application for review; and
- (b) the review shall be determined by the tribunal which decided the case or, where it is not practicable for it to be heard by that tribunal, by a tribunal appointed by the President.

(4) The tribunal may of its own motion review its decision on any of the grounds referred to in sub-paragraphs (a) to (d) of paragraph (1), and if it proposes to do so—

- (a) it shall serve notice on the parties not later than 10 working days after the date on which the decision was sent to the parties; and
- (b) the parties shall have an opportunity to be heard on the proposal for review.

(5) If, on the application of a party under paragraphs (1) to (3) or of its own motion under paragraph (4) the tribunal is satisfied as to any of the grounds referred to in sub-paragraphs (a) to (d) of paragraph (1), the tribunal may review and, by certificate under the chairman's hand, set aside or vary the relevant decision.

(6) If, having reviewed the decision, the decision is set aside, the tribunal shall substitute such decision as it thinks fit or order a rehearing before either the same or a differently constituted tribunal.

(7) If any decision is set aside or varied under this regulation or altered in any way by order of a superior court, the Secretary of the Tribunal shall alter the entry in the records to conform with the chairman's certificate or order of a superior court and shall notify the parties accordingly.

Review of the President's decision

32.—(1) If, on the application of a party to the Secretary of the Tribunal or of his own motion the President is satisfied that—

- (a) a decision by him was wrongly made as a result of an error on the part of the tribunal staff;
- (b) there was an obvious error in his decision; or
- (c) the interests of justice require,

the President may review and set aside or vary the relevant decision of his.

(2) An application for the purposes of paragraph (1) shall be made not later than 10 working days after the date on which the party making the application was notified of the decision and shall be in writing stating the grounds in full. Where the President proposes to review his decision of his own motion he shall serve notice of that proposal on the parties within the same period.

(3) The parties shall have an opportunity to be heard on any application or proposal for review under this regulation and the review shall be determined by the President.

(4) If any decision is set aside or varied under this regulation the Secretary of the Tribunal shall alter the entry in the records and shall notify the parties accordingly.

Orders for costs and expenses

33.—(1) The tribunal shall not normally make an order in respect of costs and expenses, but may, subject to paragraph (3), make such an order—

- (a) against a party (including any party who has withdrawn his appeal or reply) if it is of the opinion that that party has acted scandalously, frivolously or vexatiously or that his conduct in instituting, pursuing or resisting an appeal was wholly unreasonable;
- (b) against a party which has failed to attend or be represented at a hearing of which he has been duly notified; or
- (c) against the board where it has not delivered a written reply under regulation 12.

(2) Any order in respect of costs and expenses may be made—

- (a) as respects any costs or expenses incurred, or any allowances paid; or
- (b) as respects the whole, or any part, of any allowance (other than allowances paid to members of tribunals) paid by the Department under Article 23(3) of the 1996 Order to any person for the purposes of, or in connection with, his attendance at the tribunal.

(3) No order shall be made under paragraph (1) against a party without first giving that party an opportunity of making representations against the making of the order.

(4) An order under paragraph (1) may require the party against whom it is made to pay the other party either a specified sum in respect of the costs and expenses incurred by that other party in connection with the proceedings or the whole or part of such costs as taxed (if not otherwise agreed).

(5) Any costs required by an order under this regulation to be taxed may be taxed in the county court in accordance with the scales prescribed by the county court rules for such proceedings in the county court as shall be directed in the order.