

2005 No. 339

EDUCATION

**Special Educational Needs and Disability Tribunal
Regulations (Northern Ireland) 2005**

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The Department of Education, in exercise of the powers conferred by Articles 22(3), 23(1), (2), and (4A), and 28(2) of the Education (Northern Ireland) Order 1996(a) and Articles 23(1), (2), (3) and (6), and 49(4) of the Special Educational Needs and Disability (Northern Ireland) Order 2005(b) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

PART I GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Special Educational Needs and Disability Tribunal Regulations (Northern Ireland) 2005 and shall come into operation on 1st September 2005.

(2) These Regulations apply to all appeals and claims to the Tribunal where the notice of appeal or claim is entered in the records of the Tribunal on or after 1st September 2005.

Interpretation

2. In these Regulations—

“the 1996 Order” means the Education (Northern Ireland) Order 1996;

“the 2005 Order” means the Special Educational Needs and Disability (Northern Ireland) Order 2005;

“appeal” means an appeal to the Tribunal under Part II of and Schedule 2 to the 1996 Order;

(a) S.I. 1996/274 (N.I. 1); paragraph (2) of Article 23 was amended and paragraph (4A) was inserted by paragraph 7 of Schedule 5 to S.I. 2005/1117 (N.I. 6)

(b) S.I. 2005/1117 (N.I. 6)

“the board” means the education and library board which made the disputed decision;

“the case statement period” means the period specified in the notice given under regulation 28(1), including any extension ordered by the President under regulation 60(1);

“chairman’s panel” means a panel of persons appointed under Article 22(2)(b) of the 1996 Order who may serve as chairman of the Tribunal;

“child” means the child in respect of whom an appeal or claim is brought;

“the child’s statement” means the statement of special educational needs relating to the child made under Article 16 of the 1996 Order;

“claim” means a claim to the Tribunal under Article 22 of the 2005 Order;

“the clerk to the tribunal” means the person appointed by the Secretary of the Tribunal to act in that capacity at one or more hearings;

“the disputed decision” means the decision or determination in respect of which an appeal is brought;

“hearing” means a sitting of the Tribunal constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawfully requisite to enable the Tribunal to reach a decision on any question;

“lay panel” means a panel of persons appointed under Article 22(2)(c) of the 1996 Order who may serve as the other two members of a Tribunal apart from the chairman;

“parent” means a parent who has made or who may make an appeal to the Tribunal under the 1996 Order or a claim under the 2005 Order;

“records” means the records of the Tribunal;

“the Secretary of the Tribunal” means the person for the time being acting as the Secretary of the office of the Tribunal;

“the Tribunal” means the Special Educational Needs and Disability Tribunal for Northern Ireland but where the President has determined pursuant to regulation 4(1) that the jurisdiction of the Tribunal is to be exercised by more than one tribunal, it means, in relation to any proceedings, the tribunal to which the proceedings have been referred by the President;

“working day” means, except in regulation 38, any day other than a Saturday, a Sunday, any day from 25th December to 1st January (both dates inclusive), a public holiday or a day in August;

“written evidence” includes evidence recorded in any way.

Members of lay panels

3. No person may be appointed to the lay panel unless the Department is satisfied that the person—

- (a) is not eligible for appointment to the chairman’s panel;
- (b) has knowledge of children with—
 - (i) special educational needs; or
 - (ii) disabilities; or
 - (iii) if required, both.

Establishment of tribunals

4.—(1) The jurisdiction of the Tribunal shall be exercised by such number of tribunals as the President may from time to time determine.

(2) The tribunals exercising the jurisdiction conferred on them in accordance with paragraph (1) shall sit at such times and in such places as the President may from time to time determine.

Membership of tribunal

5.—(1) Subject to regulation 42, the Tribunal shall consist of a chairman and two other members.

(2) For each hearing—

- (a) the chairman shall be the President or a person selected by him from the chairman's panel; and
- (b) the two other members shall be selected by the President from the lay panel, and shall have knowledge and experience appropriate to the proceedings in question.

Proof of documents and certification of decisions

6.—(1) A document purporting to be a copy of a document issued by the Secretary of the Tribunal on behalf of the tribunal shall, unless the contrary is proved, be deemed to be a document so issued.

(2) A document purporting to be certified by the Secretary of the Tribunal to be a true copy of a document containing a decision of the tribunal shall, unless the contrary is proved, be sufficient evidence of its contents.

PARTS II to V

SEN APPEALS AND DISABILITY CLAIMS PROCEDURES

PART II

MAKING A SEN APPEAL AND STATEMENTS OF CASE

(A) THE PARENT

Notice of appeal

7.—(1) An appeal to the Tribunal shall be made by notice which—

(a) shall state—

- (i) the name and address of the parent making the appeal and if more than one address is given, the address to which the Tribunal should send replies or notices concerning the appeal;
- (ii) the name, address and profession of the representative (if any) appointed in accordance with regulation 12;
- (iii) the name and date of birth of the child;
- (iv) that the notice is a notice of appeal;
- (v) the name of the board which made the disputed decision and the date on which the parent was notified of it;
- (vi) if the parent seeks an order that the child's statement be amended, to which Part or Parts of the statement the appeal relates;
- (vii) if the parent seeks an order that a school (other than one already named in the child's statement) be named in it, either the name and address of the school or a sufficient description of the type and nature of the school which the parent considers would constitute an appropriate placement for the child;

(b) shall be accompanied by—

- (i) a copy of the notice of the disputed decision;

- (ii) where the appeal is made under Article 18 of, or paragraphs 11 and 13 to Schedule 2 to the 1996 Order^(a), a copy of the child's statement;
 - (iii) where the notice of appeal states the name of a school in accordance with subparagraph (a)(vi), written confirmation that the parent has informed the school that he proposes to request that it be named in the statement; and
- (c) shall include or be accompanied by a statement of the parent's reasons for appealing.
- (2) The parent shall sign the notice of appeal.
- (3) The parent shall deliver the notice of appeal to the Secretary of the Tribunal so that it is received no later than the first working day after the expiry of a period of 2 months beginning with the date on which the board gave him notice, under Part II of the 1996 Order, that he had a right of appeal.
- (4) The notice of appeal may include a request that the President should make an order in accordance with regulation 37 that the appeal be heard with a claim.

Reasons for appealing

- 8.**—(1) If the notice of appeal does not include, and is not accompanied by, reasons for appealing which the President considers sufficient to enable the board to respond to the appeal, he shall direct the parent to send particulars of the reasons for making the appeal to the Secretary of the Tribunal within 10 working days of his direction.
- (2) Regulations 31 and 35 shall apply to a direction under paragraph (1).
- (3) Particulars of reasons sent in response to a direction made in accordance with paragraph (1) shall be treated as part of the notice of appeal.

Statement of parent's case and supplementary provisions

- 9.**—(1) During the case statement period, the parent may deliver to the Secretary of the Tribunal a written statement of his case, which may include the views of the child, and must submit all written evidence on which he intends to rely and which he has not already submitted.
- (2) In exceptional circumstances the parent may amend the notice of appeal, deliver a supplementary statement of reasons for appealing or statement of case or amend a supplementary statement of reasons for appealing or statement of case, if permission is given by—
- (a) the President; or
 - (b) the tribunal at a hearing.
- (3) The parent shall deliver to the Secretary of the Tribunal a copy of every amendment and supplementary statement for which permission was given.
- (4) If the President gives permission under paragraph (2)(a) he may extend the case statement period under regulation 60(1) or, if it has expired, grant such further period as he considers appropriate.
- (5) Where the board has lost its entitlement to be represented at the hearing in accordance with regulation 15 or 35, the giving of permission under paragraph (2) shall restore such entitlement and, if necessary, the hearing shall be re-arranged or adjourned, so that the board can be represented.

Withdrawal of appeal

- 10.** The parent may withdraw his appeal—
- (a) at a hearing;
 - (b) at any other time, by sending written notification to the Secretary of the Tribunal.

(a) Schedule 2 was substituted by Article 12 of and Schedule 1 to S.I. 2005/1117 (N.I. 6)

Further action by parent

11.—(1) The parent shall give to the Secretary of the Tribunal the information requested in the enquiry made under regulation 30.

(2) If the parent does not intend to attend or be represented at the hearing, he may, not less than 5 working days before the hearing, send to the Secretary of the Tribunal written representations in support of his appeal.

Parent's representatives

12.—(1) The parent may, by giving written notice to the Secretary of the Tribunal at any time—

- (a) appoint a representative;
- (b) appoint another representative to replace the representative previously appointed, whose appointment is cancelled by the later appointment;
- (c) state that no person is acting as the parent's representative, which cancels any previous appointment.

(2) To appoint a representative, the parent must give to the Secretary of the Tribunal the name, address and profession of the representative.

(3) If a person whom a parent has appointed as a representative notifies the Secretary of the Tribunal in writing that he is not prepared, or is no longer prepared, to act in that capacity—

- (a) the Secretary of the Tribunal shall notify the parent;
- (b) the appointment of the representative is cancelled.

(4) Subject to paragraph (5), at any time after the parent has appointed a representative, and until that appointment is cancelled—

- (a) the Secretary of the Tribunal shall send all documents and notices concerning the appeal to the representative instead of the parent;
- (b) references in these Regulations (however expressed) to sending documents to, or giving notice to, the parent shall be construed as references to sending documents to, or giving notice to, the representative.

(5) Paragraph (4) applies—

- (a) unless the parent notifies the Secretary of the Tribunal that he does not wish it to apply;
- (b) subject to regulations 46(6) and 58(5).

(6) Subject to paragraph (7), at a hearing, the parent may conduct his case himself (with assistance from one person if he wishes) or may appear and be represented by one person.

(7) If permission is given by the President or the tribunal at a hearing, the parent may obtain assistance from or be represented by more than one person.

(B) THE BOARD

Statement of board's case, and supplementary provisions

13.—(1) During the case statement period, the board shall deliver to the Secretary of the Tribunal a written statement of its case and all written evidence on which it intends to rely.

(2) The statement of the board's case shall be signed by an officer of the board who is authorised to sign such documents, and shall state whether or not the board intends to oppose the appeal and if it does intend to oppose the appeal shall state—

- (a) the grounds on which it relies;
- (b) the name and profession of the representative of the board and the address for service of the board for the purposes of the appeal;
- (c) a summary of the facts relating to the disputed decision;
- (d) the reasons for the disputed decision, if they are not included in the decision;
- (e) the views of the child concerning the issues raised by the appeal, or the reasons why the board has not ascertained those views.

(3) In exceptional circumstances the board may amend its statement of case, deliver a supplementary statement of case or amend a supplementary statement of case if permission is given by—

- (a) the President; or
- (b) the tribunal at a hearing.

(4) The board shall deliver to the Secretary of the Tribunal a copy of every amendment and supplementary statement for which permission was given.

(5) If the President gives permission under paragraph (3)(a), the case statement period may be extended under regulation 60(1), or if it has expired, grant such further period as he considers appropriate.

(6) Where, the parent has lost his entitlement to attend or be represented at the hearing in accordance with regulation 35, the giving of permission under paragraph (3) shall restore such entitlement and, if necessary, the hearing shall be rearranged or adjourned, so that the parent can attend or be represented.

Board's representative

14.—(1) The board may at any time change its representative for the purposes of the appeal by notifying the Secretary of the Tribunal of the name and profession of its new representative.

(2) References in these Regulations (however expressed) to sending documents to, or giving notice to, the board shall be construed as references to sending documents to, or giving notice to, the representative named in accordance with regulation 13(2)(b) or paragraph (1).

Failure to deliver a statement of case and absence of opposition

15.—(1) If the Secretary of the Tribunal does not receive a statement of case from the board within the case statement period subject to Article 18A of the 1996 Order^(a) or if the board states in writing that it does not resist the appeal, the tribunal shall—

- (a) determine the appeal on the basis of the notice of appeal and any other documentation already received or amended in accordance with regulation 9(1) and (2) without a hearing; or
- (b) without notifying the board hold a hearing at which the board is not represented.

(2) Where the parent's appeal relates to the contents of the child's statement, no statement that the board does not resist the appeal or that it withdraws its opposition shall take effect until the board sends the Tribunal a written statement of the amendments (if any) to the statement which it agrees to make.

Representation at hearing and further action by the board

16.—(1) Subject to paragraph (2), at a hearing the board may be represented by one person.

(2) If permission is given by the President or, at a hearing the tribunal the board may be represented by more than one person.

(3) The board shall supply the Secretary of the Tribunal the information required in the enquiry made under regulation 30.

(4) If the board does not intend to be represented at the hearing it may, not less than 5 working days before the hearing, send to the Secretary of the Tribunal additional representations in support of its case.

(a) As inserted by Article 8 of S.I. 2005/1117 (N.I. 6)

PART III
MAKING A DISABILITY DISCRIMINATION CLAIM AND STATEMENTS
OF CASE
(A) THE PARENT

Notice of a claim

- 17.**—(1) A claim to the Tribunal shall be made by notice which—
- (a) shall state—
 - (i) the name and address of the parent making the claim and, if more than one address is given, the address to which the tribunal should send replies or notices concerning the claim;
 - (ii) the name, address and profession of the representative (if any) appointed in accordance with regulation 22;
 - (iii) the name and date of birth of the child;
 - (iv) that the notice is a notice of claim;
 - (v) where it is alleged that a school has discriminated against the child, the name and address of the school;
 - (vi) where it is alleged that a board has discriminated against the child, or where a school named under head (v) is grant-aided by a board, the name of the board;
 - (b) shall include, or be accompanied by, a statement of the parent's reasons for making the claim which must include information relating to the following matters—
 - (i) the nature of the child's disability;
 - (ii) the way in which it is alleged the child has been discriminated against;
 - (iii) the date or dates on which the alleged discrimination took place.
- (2) The parent shall sign the notice of the claim.
- (3) The parent must deliver the notice of claim to the Secretary of the Tribunal.
- (4) Where the parent delivers a notice of claim, or otherwise seeks to institute proceedings, after the end of the period specified in paragraph 2(1) (and any extension under paragraph 2(2)) of Schedule 2 to the 2005 Order (Period within which proceedings must be brought), the Tribunal in deciding under paragraph 2(3) of that Schedule whether the tribunal will consider the claim which is out of time, and the Tribunal may seek further information from the parent before making the decision.
- (5) The notice of claim may include a request that the President should make an order in accordance with regulation 37(2) that the claim be heard with an appeal.

Reasons for making a claim

- 18.**—(1) If the notice of claim does not include, or is not accompanied by, a statement of the parent's reasons for making the claim, including the information set out at regulation 17(1)(b), which the President considers sufficient to enable the responsible body to respond to the claim, he shall direct the parent to send particulars of the reasons for making the claim to the Secretary of the Tribunal within 10 working days of his direction.
- (2) Regulations 31 and 35 shall apply in relation to a direction under paragraph (1).
- (3) Particulars of reasons sent in response to a direction made in accordance with paragraph (1) shall be treated as part of the notice of claim.

Statement of parent's claim, and supplementary provisions

- 19.**—(1) During the case statement period, the parent may deliver to the Secretary of the Tribunal a written statement of his case which may include the views of the child, and the parent must submit all written evidence on which he intends to rely and which he has not already submitted.

(2) The parent may amend the notice of claim or his statement of case, deliver a supplementary statement of reasons for making the claim, deliver a supplementary statement of case, or make further amendments to any of these documents, if, in exceptional circumstances, permission is given by—

- (a) the President; or
- (b) the tribunal at a hearing.

(3) The parent shall deliver to the Secretary of the Tribunal a copy of every amendment and supplementary statement for which permission was given.

(4) If the President gives permission under paragraph (2)(a), he may extend the case statement period under regulation 60(1) or, if it has expired, grant such further period as he considers appropriate.

(5) Where the responsible body has lost its entitlement to attend or be represented at the hearing in accordance with regulation 25 or 35, the giving of permission under paragraph (2) shall restore such entitlement and, if necessary, the hearing shall be rearranged or adjourned, so that the responsible body can be represented, or where the responsible body is an individual, attend.

Withdrawal of a claim

20. The parent may withdraw his claim—

- (a) at a hearing; or
- (b) at any other time, by sending written notification to the Secretary of the Tribunal.

Further action by the parent

21.—(1) The parent shall give the Secretary of the Tribunal the information requested in the enquiry made under regulation 30.

(2) If the parent does not intend to attend or be represented at the hearing, he may, not less than 5 working days before the hearing, send to the Secretary of the Tribunal additional written representations in support of his claim.

Parent's representatives

22.—(1) The parent may by giving written notice to the Secretary of the Tribunal at any time—

- (a) appoint a representative;
- (b) appoint another representative to replace the representative previously appointed, whose appointment is cancelled by the later appointment;
- (c) state that no person is acting as the parent's representative, which cancels any previous appointment.

(2) To appoint a representative, the parent must give the name, address and profession of the representative.

(3) If a person whom the parent has appointed as a representative notifies the Secretary of the Tribunal in writing that he not prepared, or is no longer prepared, to act in that capacity—

- (a) the Secretary of the Tribunal shall notify the parent;
- (b) the appointment of that representative is cancelled.

(4) Subject to paragraph (5), at any time after the parent has appointed a representative, and until that appointment is cancelled—

- (a) the Secretary of the Tribunal shall send all documents and notices concerning the claim to the representative instead of the parent;
- (b) references in these Regulations (however expressed) to sending documents to, or giving notice to, the parent shall be construed as references to sending documents to, or giving notice to, the representative.

(5) Paragraph (4) applies—

- (a) unless the parent notifies the Secretary of the Tribunal that he does not wish it to apply;
- (b) subject to regulations 46(6) and 58(5).

(6) Subject to paragraph (7), at a hearing, the parent may conduct his case himself (with assistance from one person if he wishes) or may appear and be represented by one person.

(7) If permission is given by the President or, at a hearing, the tribunal, the parent may obtain assistance from or be represented by more than one person.

(B) THE RESPONSIBLE BODY

Statement of the responsible body's case, and supplementary provisions

23.—(1) During the case statement period, the responsible body shall deliver to the Secretary of the Tribunal a written statement of its case and all written evidence on which it intends to rely.

(2) The statement of the responsible body's case shall be signed by a person who is authorised to sign such documents on the responsible body's behalf and shall state whether or not the responsible body intends to oppose the claim, and if it does intend to oppose the claim it shall state—

- (a) the grounds on which it relies;
- (b) the name, address and profession of any representative authorised to deal with the claim on the responsible body's behalf.

(3) The responsible body may amend its statement of case, deliver a supplementary statement of case or amend a supplementary statement of case if, in exceptional circumstances, permission is given by—

- (a) the President; or
- (b) the tribunal at a hearing.

(4) The responsible body shall deliver to the Secretary of the Tribunal a copy of every amendment and supplementary statement for which permission was given.

(5) If the President gives permission under paragraph (3)(a), he may extend the case statement period under regulation 60(1) or, if it has expired, grant a further period not exceeding 15 working days.

(6) Where the parent has lost his entitlement to attend or be represented at a hearing in accordance with regulation 35, the giving of permission under paragraph (3) shall restore such entitlement and, if necessary, the hearing shall be rearranged or adjourned, as appropriate, so that the parent can attend or be represented.

Responsible body's representative

24.—(1) The responsible body may at any time change its representative for the purposes of the claim by notifying the Secretary of the Tribunal of the name and profession of its new representative.

(2) References in these Regulations (however expressed) to sending documents to, or giving notice to, the responsible body shall be construed as references to sending documents to, or giving notice to, the representative named in accordance with regulation 23(2)(b) or paragraph (1).

Failure to deliver a statement of case and absence of opposition

25. If the Secretary of the Tribunal does not receive a statement of case from the responsible body within the case statement period or if the responsible body states in writing that it does not resist the claim, or withdraws its opposition to the claim, the tribunal shall—

- (a) determine the claim on the basis of the notice of claim, and any other documentation already received or amended in accordance with regulation 19(1) and (2), without a hearing; or

- (b) without notifying the responsible body hold a hearing at which the responsible body is not represented.

Representation at hearing and further action by the responsible body

26.—(1) Subject to paragraph (2), at any hearing the responsible body may—

- (a) where the responsible body is an individual, appear; or
- (b) be represented by one person.

(2) If permission is given by the President or at a hearing of the tribunal, the tribunal may grant that the responsible body may be represented by more than one person.

(3) The responsible body shall give the Secretary of the Tribunal the information requested in the enquiry made under regulation 30.

(4) If the responsible body does not intend to be represented (or being an individual does not intend either to attend or be represented) at the hearing it may, not less than 5 working days before the hearing, send to the Secretary of the Tribunal additional representations of its case.

PART IV

PREPARATION FOR THE HEARING OF AN APPEAL OR A CLAIM

Acknowledgement of appeal or claim and service of documents by the Secretary of the Tribunal

27.—(1) Upon receiving a notice of appeal or claim the Secretary of the Tribunal shall—

- (a) enter particulars of it in the records;
- (b) send to the parent—
 - (i) an acknowledgement of its receipt and a note of the case number entered in the records;
 - (ii) notification of the address to which notices and communications to the Tribunal should be sent;
 - (iii) notification that advice about the appeals and claims procedures may be obtained from the office of the Tribunal; and
 - (iv) subject to regulation 28(2)—
 - (aa) in relation to an appeal, a notice stating the time for submitting a statement of the parent’s case and written evidence under regulation 28(1);
 - (bb) in relation to a claim, a notice informing the parent of the requirements of regulation 19(1) and the case statement period;
- (c) at the same time as sending to the parent the notice referred to in sub-paragraph (b)(iv), send to the other party—
 - (i) a copy of the notice of appeal or claim and any accompanying papers;
 - (ii) notification of the address to which notices and communications to the Tribunal should be sent; and
 - (iii) a notice stating the time for delivering a statement and written evidence under regulation 13(1) or 19(1) and in either case the consequences of failing to do so;
- (d) if, in accordance with regulation 7(1)(a)(vii), the notice of appeal names a grant-aided school, other than one grant-aided by the board, give the principal of that school notice of the appeal, stating the name and date of birth of the child and the name of the board.

(2) Where it is necessary to determine the identity of the responsible body in relation to any claim, the President may make such enquiries as are necessary for this purpose.

(3) Where it appears to the President or the Secretary of the Tribunal that there may be more than one responsible body in relation to any claim, the President or the Secretary of the

Tribunal may send the documentation specified in paragraph (1)(c) to any or all such bodies as may be appropriate.

(4) Where the Secretary of the Tribunal is of the opinion that, on the basis of the notice of appeal or claim, the parent is asking the Tribunal to do something which is not or is no longer within its jurisdiction, he may give notice to the parent—

- (a) stating the reasons for his opinion; and
- (b) informing the parent that the notice of appeal or claim will not be entered in the records unless, within a specified time (which shall not be less than 5 working days), the parent notifies the Secretary of the Tribunal that he wishes to proceed with it.

(5) Where the Secretary of the Tribunal is of the opinion that there is an obvious error in the notice of appeal or claim—

- (a) he may correct the error and if he does so shall notify the parent accordingly and such notification shall state the effect of sub-paragraph (b); and
- (b) unless within 5 working days the parent notifies the Secretary of the Tribunal that he objects to the correction, the notice of appeal or claim so corrected shall be treated as the notice of appeal or claim for the purpose of these Regulations.

(6) If the Secretary of the Tribunal has given a notice under paragraph (4), the notice of appeal or claim shall only be treated as having been received for the purposes of paragraph (1) when the parent notifies the Secretary of the Tribunal that he wishes to proceed with it.

(7) In paragraph (1)(c) “the other party” means—

- (a) in relation to an appeal, the board;
- (b) in relation to a claim, the responsible body.

Statements of case

28.—(1) Both parties shall be allowed the same period of 30 working days, commencing on the date on which notification issued further to regulation 27(1)(b)(iv) and (c)(iii) is taken to have been delivered in accordance with regulation 59(6), to send a statement of their respective cases and written evidence to the Secretary of the Tribunal.

(2) Where the President makes a direction in accordance with regulation 8, the period specified in paragraph (1) shall not start, and the Secretary of the Tribunal shall not send a notice as required by regulation 27(1)(b)(iv) or any documents as required by regulation 27(1)(c), until particulars of reasons are received in response to the direction.

Copy document for parties

29.—(1) Subject to paragraph (2), the Secretary of the Tribunal shall—

- (a) forthwith send to the board or responsible body a copy of any amendment to the notice of appeal or claim received during the case statement period;
- (b) at the end of the case statement period send a copy of each party’s statement of case and written evidence to the other party;
- (c) forthwith send copies of any documents (other than written evidence of which a copy is received in accordance with regulation 43(2)(b)) received from a party after the end of the case statement period to the other party to the proceedings.

(2) If a notice of appeal or claim, or other document is delivered to the Secretary of the Tribunal after the time prescribed by these Regulations, the Secretary of the Tribunal shall not send a copy of it to the other party unless the President extends the time limit pursuant to regulation 60.

(3) If a notice of appeal is amended in accordance with regulation 9(2) so that the parent seeks an order that a grant-aided school, or a different grant-aided school, other than the one already named in the child’s statement be named in the statement, the Secretary of the Tribunal shall give the principal of that school notice of appeal, stating the name and date of birth of the child and the name of the board unless the school is grant-aided by the board.

(4) In the event of a school referred to in paragraph (3) not being grant-aided by the board the notice required by that paragraph shall also be given to the board by which the school is grant-aided.

(5) Where the Secretary of the Tribunal sends any of the copies of documents referred to in paragraph (1) to a party who has already informed the Secretary of the Tribunal in response to enquiries made under regulation 30(a)(i) and (ii) that the party does not wish to attend or be represented at the hearing, the Secretary of the Tribunal shall ask whether the party wishes to amend that response on the basis of the copies received.

Enquiries by the Secretary of the Tribunal

30. The Secretary of the Tribunal shall, at any time after he has received the notice of appeal or, in respect of a claim at any time after having sent each party's statement of case and written evidence to the other party in accordance with regulation 29(1)(b)—

- (a) ask each party—
 - (i) whether or not the party intends to attend the hearing;
 - (ii) whether the party wishes to be represented at the hearing in accordance with regulation 12(6) or 16(1) and if so the name of the representative;
 - (iii) whether the party wishes the hearing to be in public;
 - (iv) whether the party intends to call witnesses and if so the names of the proposed witnesses and in the case of a claim, their occupation, the likely subject matter of the evidence of each witness and whether any of the witnesses is a medical or other expert;
 - (v) whether the party or a witness will require the assistance of an interpreter;
- (b) enquire of the parent whether he wishes any persons (other than a person who will represent him or any witness whom he proposes to call) to attend the hearing if the hearing is in private and if so the name of such persons; and
- (c) inform each party of the effect of regulation 40(4)(c) and the provisions of regulation 44(1) and (2);
- (d) inform the parties that where an answer to the enquiries under sub-paragraph (a) or (b) changes after the party has responded to the enquiries, the party concerned must inform the Secretary of the Tribunal in writing forthwith.

Directions in preparation for a hearing and determination of preliminary issues

31.—(1) The President may, on the application of a party or on his own motion, at any time before the hearing give such directions on any matter arising in connection with the proceedings as appear to him to be appropriate, including such directions as are provided in regulations 33 and 34 to enable the parties to prepare for the hearing or to assist the tribunal to determine the issues.

(2) An application by a party for directions shall be made in writing to the Secretary of the Tribunal and, unless it is accompanied by the written consent of the other party, shall be served by the Secretary of the Tribunal on that other party. If the other party objects to the directions sought, the President shall consider the objection and, if he considers it necessary for the determination of the application, shall give the parties an opportunity of appearing before him.

(3) If in the opinion of the President there would not be a reasonable time before a hearing of which notice has been given under regulation 38 to comply with a direction for which a party applies, he shall refuse the application.

- (4) A direction shall—
 - (a) include a statement of the possible consequences for the appeal or the claim, as provided by regulation 35, of a party's failure to comply with the requirement within the time allowed by the President;
 - (b) if made under regulation 34, contain a reference to the fact that, under Article 23(5) and (6) of the 1996 Order in respect of an appeal or under Article 23(7) and (8) of the 2005 Order in respect of a claim, any person who without reasonable cause fails to comply with requirements regarding disclosure or inspection of documents shall be guilty of an

offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale; and

- (c) unless the person to whom the direction is addressed had an opportunity to object to the direction, or he gave his written consent to the application for it, contain a statement to the effect that the person may apply to the President under regulation 32 to vary or set aside the direction.
- (5) Where in accordance with regulation 37—
 - (a) the President orders that an appeal be heard together with a claim the directions given under paragraph (1) shall relate to the appeal only; but in giving such directions the President may consider whether it is in the interests of the efficient disposal of the appeal and the claim, and in the interests of the parties, that the directions given with respect to the appeal are the same as, or similar to those given in the claim.
 - (b) the President orders that a claim be heard together with an appeal the directions given under paragraph (1) shall relate to the claim only; but in giving such directions the President may consider whether it is in the interests of the efficient disposal of the claim and the appeal, and in the interests of the parties, that the directions given with respect to the claim are the same as, or similar to, those given in the appeal.
- (6) Where it appears to the President that there is an issue in the appeal or the claim, as the case may be, which must be determined prior to the substantive hearing of either the appeal or the claim, he may direct the parties to appear before him.

Varying or setting aside directions

32. Where a party to whom a direction is addressed had no opportunity to object to the giving of such direction and he did not give his written consent to the application for it, he may apply to the President, by notice to the Secretary of the Tribunal, to vary it or set it aside, but the President shall not do so without first notifying the other party and considering any representations made by that party.

Particulars and supplementary statements

33. The President may give directions requiring any party to provide in or with that party's statement of case, such particulars or supplementary statements or other evidence as may reasonably be required for the appeal or the claim to be fairly disposed of.

Disclosures of documents and other material

- 34.—**(1) The President—
- (a) may give directions requiring a party to deliver to the tribunal any document or other material which the tribunal may require and which it is in the power of that party to deliver;
 - (b) shall impose a condition on the supply of a copy of any document or other material delivered in compliance with a direction given under this paragraph that the party receiving it shall use such document only for the purposes of the appeal or claim;
 - (c) may require a party to give a written undertaking to observe that condition before receiving a copy.
- (2) The President may grant to a party an order for such disclosure or inspection of documents (including the taking of copies) as might be granted by a county court.

Failure to comply with directions

- 35.—**(1) If a party has not complied with a direction within the time specified in the direction the tribunal may—
- (a) where the party in default is the parent, dismiss the appeal or the claim without a hearing;
 - (b) where the party in default is the board or the responsible body, determine the appeal or the claim without a hearing; or
 - (c) —

- (i) hold a hearing (without notifying the party in default) at which the party in default is not present or represented; or
- (ii) where the parties have been notified of the hearing in accordance with regulation 38(1), direct that neither the party in default nor any person whom he intends should represent him or give evidence on his behalf be entitled to attend the hearing.

(2) In this regulation “the party in default” means the party which has failed to comply with the direction.

Summoning witnesses

36.—(1) The President may by summons require any person in Northern Ireland to attend as a witness at a hearing of an appeal or claim at such time and place as may be specified in the summons, and at any adjournment of that hearing, and at the hearing to give evidence or produce any documents or other material in his custody or under his control which relate to any matter in question in the appeal or claim:

Provided that—

- (a) no person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce at a trial of an action in the High Court;
- (b) in exercising the power conferred by this regulation, the President shall take into account the need to protect any matter that relates to intimate personal or financial circumstances or consists of information communicated or obtained in confidence;
- (c) no person shall be required to attend in obedience to such a summons unless he has been given at least 5 working days’ notice of the hearing or, if less than 5 working days, he has informed the President that he accepts such notice as he has been given;
- (d) no person shall be required in obedience to such a summons to attend and give evidence or to produce any document unless the necessary expenses of his attendance are paid or tendered to him;
- (e) no summons shall require a child under the age of 12 to attend and give evidence at a hearing except where the President determines that the evidence of such a child is necessary to enable the fair hearing of the appeal or claim.

(2) A party seeking a witness summons shall apply in writing to the Secretary of the Tribunal at least 8 working days before the hearing, or later if the person to whom the summons is to be addressed consents in writing.

(3) A witness summons shall contain—

- (a) a reference to the fact that, under Article 23 of the 1996 Order or Article 23 of the 2005 Order, any person who without reasonable excuse fails to comply with any requirement to attend and give evidence and, if the summons so requires, to produce documents shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
- (b) a statement of the effect of paragraph (4).

(4) A person to whom a witness summons is addressed may apply to the President, by notice to the Secretary of the Tribunal, to vary it or set it aside, but the President shall not do so without first notifying the party who applied for the issue of the summons and considering any representations made by that party.

Consolidating appeals or claims and hearing claims together with appeals under the Education (Northern Ireland) Order 1996

37.—(1) Where more than one appeal or claim, or an appeal and a claim relates to the same child, or requires a decision on substantially the same issue, the President may order that they be heard at the same hearing.

(2) Subject to paragraphs (3) and (4), where a claim relates to the same child and either arises from the same circumstances or requires a decision on substantially the same issue as an

appeal against a Board under Part II of and Schedule 2 to the 1996 Order, the President may order that the claim be heard with the appeal.

(3) Nothing in paragraph (2) shall permit the President to make an order under that paragraph where a parent has failed to bring an appeal within the time limit for such appeals provided for by regulation 7(3) or any extension of time granted under these Regulations.

(4) The President may only make an order under paragraph (2) if, in addition to complying with the requirements of paragraph (7), the making of an order would not cause undue delay to the determination of the appeal.

(5) The President may make an order varying or revoking an earlier order made under paragraph (1).

(6) Subject to paragraph (7), the President may make an order under this regulation on the written request of either party or on his own motion.

(7) An order made under this regulation shall only be made if it appears to be just and convenient to do so, and before an order is made the parties to every appeal or claim shall be given an opportunity to be heard.

Notice of place and time of hearings and adjournments

38.—(1) Subject to regulation 39, the Secretary of the Tribunal shall, after consultation with the parties, fix the time and place of the hearing and send to each party a notice that the hearing is to be at such time and place.

(2) The notice of hearing referred to in paragraph (1) shall be sent—

(a) not less than 5 working days before the date fixed for a hearing under regulation 15, 25, 35, 47, 48 or 53;

(b) not less than 10 working days before the date fixed for the hearing in any other case; or

(c) in any case, within such shorter period before the date fixed for the hearing as the parties may agree.

(3) The Secretary of the Tribunal shall include in or with the notice of hearing—

(a) information and guidance, in a form approved by the President, as to attendance at the hearing of the parties and witnesses, the bringing of documents, and the right of representation or assistance as provided by regulation 12(6) or 16(1); and

(b) a statement explaining the possible consequences of non-attendance and the right to make representations in writing enjoyed by—

(i) the parent if he does not attend and is not represented; and

(ii) the board or responsible body if, being an individual, he does not attend, or otherwise if it is not represented and if it has submitted a statement of its case, unless it stated in writing that it did not resist the appeal or claim or withdrew its opposition to the appeal or claim.

(4) The tribunal may alter the time and place of any hearing and the Secretary of the Tribunal shall give the parties not less than 5 working days (or such shorter time as the parties agree) notice of the altered hearing date:

Provided that any altered hearing date shall not (unless the parties agree) be before the date notified under paragraph (1).

(5) If the time and place of an adjourned hearing are announced at the hearing before the adjournment, no further notice shall be required.

(6) Nothing in paragraphs (1) to (4) shall oblige the Secretary of the Tribunal to consult, or send a notice to any party who is not entitled to be represented at a hearing.

(7) In this regulation “working day” means any day other than a Saturday, a Sunday, or a public holiday.

PART V

DETERMINATION OF APPEALS AND CLAIMS

Power to determine an appeal or a claim without a hearing

39.—(1) The Tribunal may determine an appeal or a claim or any particular issue without a hearing—

- (a) if the parties so agree in writing; or
- (b) in the circumstances described in regulation 15, 25 or 35.

(2) The provisions of regulation 41(2) shall apply in respect of the determination of an appeal or claim, or any particular issue, under this regulation.

Hearings to be in private: exceptions

40.—(1) A hearing shall not be in private if—

- (a) all the parties request that the hearing be in public; or
- (b) the President, or the tribunal at a hearing, orders that the hearing should be 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 or a claim, even though it is in private—

- (a) the child;
- (b) subject to the provisions of paragraph (9), any person named by the parent in response to the enquiry under regulation 30(b) unless the President has determined that any such person should not attend the hearing and has notified the parent accordingly;
- (c) a parent of the child who is not a party to the appeal or the claim;
- (d) the clerk to the tribunal and the Secretary of the Tribunal;
- (e) the President and a member of the chairman's panel or lay panel (when not sitting as a member of the tribunal);
- (f) a person undergoing training as a member of the chairman's or lay panel or as a clerk to the tribunal;
- (g) a person acting on behalf of the President in the training or supervision of clerks to the tribunal;
- (h) an interpreter;
- (i) any person giving other necessary assistance to a person sitting as a member of the tribunal or entitled to attend the hearing further to this regulation.

(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 or a claim 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—

- (a) a person whose conduct has disrupted or is likely, in the opinion of the tribunal, to disrupt the hearing;
- (b) a person, including the child, whose presence is likely, in the opinion of the tribunal, to make it difficult for any person to adduce the evidence or make the representations necessary for the proper conduct of the appeal or claim;
- (c) a representative or witness whom a party omitted to name, without reasonable cause, in response to the enquiry by the Secretary of the Tribunal under regulation 30.

(5) For the purposes of arriving at its decision a tribunal shall, and for the purpose of discussing a 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 and any of the persons mentioned in sub-paragraphs (d) to (g) of paragraph (2) or, as their respective duties require, sub-paragraphs (h) and (i), of that paragraph.

(6) Except as provided in paragraphs (7) and (8) none of the persons mentioned in paragraph (2) or (3) shall, save in the case of the persons specified in sub-paragraphs (d), (h) and (i) of

paragraph (2) 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 the child to give evidence and to address the tribunal on the subject matter of the appeal or the claim.

(8) The tribunal may permit a parent of the child to give evidence and to address the tribunal on the subject matter of the appeal or the claim.

(9) Where the parent has named more than two persons in response to the enquiry under regulation 30(b) only two persons shall be entitled to attend the hearing unless the President, or the tribunal at a hearing gives permission for a greater number to attend.

Failure of parties to attend a hearing

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

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

(2) Before disposing of an appeal or a claim 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 or claim and the parties' statements of their cases shall be treated as representations in writing.

Procedure at hearing

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

(2) The tribunal shall conduct the hearing in such manner as it considers the most suitable to the clarification of the issues and generally to the just handling of the proceedings; it shall, as far as it 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) in the case of an appeal, the parent to rely on grounds not stated in his notice of appeal or the statement of his case and to adduce evidence not presented to the board before or at the time it took the disputed decision;
 - (b) in the case of a claim, the parent to rely on grounds not stated in his notice of claim or the statement of his case;
 - (c) the board or responsible body, as the case may be, to rely on grounds not specified in the statement of its case.

(5) If, at or after the beginning of a 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 two other 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.

Late written evidence

43.—(1) At the beginning of the hearing, a party may submit further written evidence which satisfies the conditions set out in paragraph (2) unless the tribunal, after considering any representations from the other party, is of the opinion that the admission of such evidence would be contrary to the interests of justice.

- (2) The conditions are that—
- (a) the evidence was not, and could not reasonably have been, available to that party before the end of the case statement period;

- (b) a copy of the evidence was sent or delivered to the Secretary to the Tribunal and to the other party to arrive at least 5 working days before the hearing;
 - (c) the extent and form of the evidence is such that, in the opinion of the tribunal it is not likely to impede the efficient conduct of the hearing.
- (3) If paragraph (1) does not apply, the tribunal may give a party permission to submit further written evidence at the hearing if it is of the opinion that—
- (a) the case is wholly exceptional; and
 - (b) unless the evidence is admitted, there is a serious risk of prejudice to the interests of the child.
- (4) Before the hearing the tribunal may refer to copies of the evidence sent to the Secretary of the Tribunal under paragraph (2)(b) for the purpose of considering whether or not it satisfies the conditions in that paragraph; but if the evidence is not admitted the tribunal shall disregard it in determining the appeal or claim.

Evidence at hearing

44.—(1) In the course of the hearing the parties shall be entitled to give evidence, to call witnesses, to question any witness and to address the tribunal both on the evidence, including the written evidence submitted before the hearing, and generally on the subject matter of the appeal or the claim:

Provided that neither party shall be entitled to call more than 2 witnesses in the case of an appeal or 5 witnesses in the case of a claim to give evidence orally (in addition to any witness whose attendance is required pursuant to paragraph (2)) unless the President, or the tribunal at a hearing gives permission.

(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 a party shall not be entitled to give evidence by written statement if such evidence is submitted with the notice of appeal or claim or the statement of his case or in accordance with a direction under regulation 33.

(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.

Adjournments and directions

45.—(1) The tribunal may from time to time adjourn the hearing.

(2) When a hearing is adjourned—

- (a) the tribunal may give directions to be complied with before or at the resumed hearing;
- (b) the chairman may announce provisional conclusions reached by the tribunal but the provisional conclusions are not a decision of the tribunal.

(3) A direction under paragraph (2)(a) may require a party to provide such particulars, evidence or statements as may reasonably be required for the determination of the appeal or claim.

(4) If a party fails to comply with such a direction, the tribunal shall take account of that fact when determining the appeal or the claim or deciding whether to make an order for costs.

Decisions of the tribunal

46.—(1) A decision of the tribunal may be taken by a majority and where the tribunal is constituted by two members under regulation 42(5) the chairman shall have the 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 decision 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 practicable 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 decision and the Tribunal procedure to be followed.

(6) Where, under regulation 12 or 22 a parent has appointed a representative the Secretary of the Tribunal shall 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 previously been announced at the end of the hearing).

Application or proposal for review of tribunal's decision

47.—(1) A 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 the hearing but failed to appear or be represented, had good and sufficient reason for failing to appear;
- (c) there was an obvious error in that decision; or
- (d) the interests of justice require.

(2) An application that a decision of the tribunal be reviewed shall—

- (a) be made not later than 10 working days after the date on which the decision was sent to the parties; and
- (b) be in writing stating the grounds in full.

(3) An application that a decision of the tribunal be reviewed 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 grounds of success.

(4) Unless an application that a decision of the tribunal be reviewed is refused in accordance with paragraph (3), it shall be determined, after the parties have had an opportunity to be heard, by the tribunal which made the decision or, where that is not practicable, by a tribunal appointed by the President.

(5) The tribunal may on its own motion propose to review its decision on any of the grounds referred to in paragraph (1), in which case—

- (a) the Secretary of the Tribunal shall serve notice on the parents not later than 10 working days after the date on which the decision was sent to them; and
- (b) the parties shall have an opportunity to be heard.

(6) If, on the application of a party or on its own motion, the tribunal is satisfied as to any of the grounds referred to in paragraph (1)—

- (a) it shall order that the whole or a specified part of the decision be reviewed; and
- (b) it may give directions to be complied with before or at the hearing of the review.

(7) A direction under paragraph (6) may require a party to provide such particulars, evidence or statements as may reasonably be required for the determination of the review.

(8) If a party fails to comply with such a direction, the tribunal shall take account of that fact when determining the review or deciding whether to make an order for costs.

Review of tribunal's decision

48.—(1) A tribunal which reviews all or part of a decision may—

- (a) by certificate under the chairman's hand set aside or vary that decision and substitute such other decision as it thinks fit; or
- (b) order a rehearing before the same or a differently constituted tribunal.

(2) If the decision is set aside or varied, the Secretary of the Tribunal shall alter the entry in his records to conform to the chairman's certificate and shall notify the parties accordingly.

Review of the President's decision

49.—(1) On the application of a party to the Secretary to the Tribunal or on his own motion, the President may review and set aside or vary any decision of his if he is satisfied that—

- (a) the decision 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 so require.

(2) An application by a party for a review under paragraph (1) shall be made—

- (a) in writing stating the grounds in full;
- (b) not later than 10 working days after the date on which he was notified of the decision.

(3) Where the President proposes to review his decision on his own motion he shall serve notice of that proposal on the parties not later than 10 working days after they were notified of that decision.

(4) 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.

(5) 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.

(6) A decision by the President not to extend the parent's time for delivering a notice of appeal under regulation 7(3) or a notice of claim under regulation 17(3) shall be capable of being reviewed under this regulation on the application of the parent as if he were party to such an appeal or claim. In such a case, the board or responsible body shall not be entitled to be heard or notified.

Orders for costs and expenses

50.—(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 a parent who has withdrawn his appeal or claim or a board or responsible body which has withdrawn its opposition to the appeal or claim, as the case may be) if it is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal or claim was wholly unreasonable;
- (b) against a party who has failed to attend or be represented at a hearing of which he has been duly notified;
- (c) against the board where it has not delivered a statement of its case under regulation 13;
- (d) against a responsible body where it has not delivered a statement of its case under regulation 23; or
- (e) against the board in the case of an appeal where it considers that the disputed decision was wholly unreasonable.

(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 the tribunal) paid by the Department under Article 23(3) of the 1996 Order or Article 23(4) of the 2005 Order to any person for the purpose 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.

PART VI

ADDITIONAL POWERS OF AND PROVISIONS RELATING TO THE TRIBUNAL

Transfer of proceedings

51. Where it appears to the President that an appeal or a claim pending before a tribunal could be determined more conveniently in another tribunal he may at any time, upon the application of a party or on his own motion, direct that the proceedings be transferred so as to be determined in that other tribunal:

Provided that no such direction shall be given unless notice has been sent to all parties concerned giving them an opportunity to make representations against the giving of the direction.

Miscellaneous powers of a tribunal

52.—(1) Subject to the provisions of the 1996 Order, the 2005 Order and these Regulations, a tribunal may regulate its own procedure.

(2) A tribunal may, if it thinks fit, make a decision in terms agreed in writing by the parties.

Power to strike out

53.—(1) The Secretary of the Tribunal shall, at any stage of the proceedings if the board or responsible body applies or the President so directs, serve a notice on the parent stating that it appears that the appeal or claim should be struck out on one or both of the grounds specified in paragraph (2) or for want of prosecution.

(2) The grounds referred to in paragraph (1) are that—

- (a) the appeal or claim is not, or is no longer, within the jurisdiction of the Tribunal;
- (b) the notice of the appeal or the claim is, or the appeal or the claim is or has become, scandalous, frivolous or vexatious.

(3) The notice under paragraph (1) shall invite the parent to make representations.

(4) The tribunal may, after considering any representations duly made by the parent, order that the appeal or claim should be struck out on one or both of the grounds specified in paragraph (2) or for want of prosecution.

(5) The tribunal may make such an order without holding a hearing unless the parent requests the opportunity to make oral representations, and if the tribunal holds a hearing it may be held at the beginning of the hearing of the substantive appeal or claim.

(6) The President may, if he thinks fit, at any stage of the proceedings order that a statement of a party's case should be struck out or amended on the grounds that it is scandalous, frivolous or vexatious.

(7) Before making an order under paragraph (6), the President shall give to the party against whom he proposes to make the order a notice inviting representations and shall consider any representations duly made.

(8) For the purpose of this regulation—

(a) a notice inviting representations must inform the recipient that he may, within a period (not being less than 5 working days) specified in the notice, either make written representations or request an opportunity to make oral representations;

(b) representations are duly made if—

(i) in the case of written representations, they are made within the period so specified; and

(ii) in the case of oral representations, the party proposing to make them has requested an opportunity to do so within the period so specified.

Power to exercise powers of President and chairman

54.—(1) An act which these Regulations require or authorise the President to do may be done by a member of the chairman's panel authorised by him.

(2) Where a member of the chairman's panel authorised under paragraph (1)—

(a) selects the chairman of a tribunal, he may select himself;

(b) makes a decision, regulation 49 (Review of the President's decision) applies in relation to that decision as if it referred to the member of the chairman's panel in place of the President.

(3) Subject to regulation 58(6), in the event of the death or incapacity of the chairman, or if he ceases to be a member of the chairman's panel, following the decision of the tribunal, the functions of the chairman for the completion of the proceedings, including any review of the decision, may be exercised by the President or any member of the chairman's panel.

Power to exercise the functions of a lay member

55.—(1) In the event of the death or incapacity of a member of the tribunal other than the chairman, or if he ceases to be a member of the lay panel, following the decision of the tribunal, the functions of the tribunal in relation to any review of that decision may be undertaken by the two other members.

(2) This regulation shall not apply to a tribunal—

(a) which is constituted of two members in accordance with regulation 42(5);

(b) of which any person is authorised to act in place of the chairman in accordance with regulation 54(3).

The Secretary of the Tribunal

56. A function of the Secretary of the Tribunal may be performed by another member of the staff of the Tribunal authorised by the President.

Orders of the Court

57.—(1) If any decision of the tribunal is set aside, varied 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 to that order and shall notify the parties accordingly.

(2) If an appeal or claim is remitted to the tribunal by order of a superior court to be reheard, the Secretary of the Tribunal shall notify all parties that, during a period of 15 working days beginning with the date of that order of the superior court (or such shorter period as the parties may agree in writing) each may submit a supplementary statement of his case and further written evidence.

(3) If an order to strike out an appeal or claim is quashed or set aside by order of a superior court, the Secretary of the Tribunal shall notify the parties—

(a) in the case where the case statement period has not expired before the order to strike out took effect—

(i) in accordance with regulation 27(1)(b)(iv), that a new case statement period shall be commenced; and

(ii) that, within the new case statement period, the parties may submit the documentation referred to in sub-paragraph (b) in respect of a statement of case or evidence submitted before the strike out order took effect;

(b) where sub-paragraph (a) does not apply, that each party has a period of 15 working days beginning with the date of the order of the superior court to submit a supplementary statement of his case and further written evidence.

(4) The Secretary of the Tribunal shall forthwith send a copy of all statements and written evidence received from a party during the periods referred to in paragraphs (2) and (3)(b) to the other party.

Irregularities

58.—(1) An irregularity resulting from failure to comply with any provision of these Regulations or of any direction of the tribunal before the tribunal has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the tribunal, the tribunal may, and shall, if it considers that any person may have been prejudiced by the irregularity, give such directions as it thinks just before reaching its decision to cure or to waive the irregularity.

(3) Clerical mistakes in any document recording the decision of the tribunal or a direction or decision of the President produced by or on behalf of the tribunal or errors arising in such documents from accidental slips or omissions may at any time be corrected by the chairman or President (as the case may be) by certificate under his hand.

(4) The Secretary of the Tribunal shall as soon as may be send a copy of any corrected document containing reasons for the tribunal's decision, to each party.

(5) Where a parent has appointed a representative in accordance with regulation 12 or 22, the Secretary of the Tribunal shall (notwithstanding regulation 12(4) or 22(4)) send a copy of the document referred to in paragraph (4) to the parent as well as the representative.

(6) Where these Regulations require the chairman to sign a document, but by reason of death or incapacity he is unable to do so, the other members of the tribunal shall sign it and certify that the chairman is unable to sign.

Method of sending, delivering or serving notices and documents

59.—(1) A notice given under these Regulations shall be in writing and a party whom the Regulations require to notify a matter to the Secretary of the Tribunal shall do so in writing.

(2) Notices and documents required by these Regulations to be sent or delivered to the Secretary of the Tribunal or to the Tribunal may be sent by post, by facsimile transmission or by electronic mail to or delivered at the office of the Tribunal or such other office as the Secretary of the Tribunal may notify to the parties.

(3) Notices and documents which these Regulations authorise or require the President or the Secretary of the Tribunal to send may (subject to paragraph (5)) either be sent by first class post or by facsimile transmission to or delivered at—

(a) in the case of a party—

(i) his address for service specified in the notice of appeal or claim or in a written reply or in a notice under paragraph (4), or

(ii) if no address for service has been so specified his last known address; and

(b) in the case of any other person, his place of residence or business or if such person is a corporation, the corporation's registered or principal office.

(4) A party may at any time by notice to the Secretary of the Tribunal change his address for service under these Regulations.

(5) The recorded delivery service shall be used instead of first class post for service of a summons under regulation 36 requiring the attendance of a witness.

(6) A document or notice sent by the Secretary of the Tribunal by post in accordance with these Regulations, and not returned, shall be taken to have been delivered to the addressee on the second for normal postal deliveries after it was posted.

(7) A notice or document sent by facsimile transmission or electronic mail shall be taken to have been delivered when it is received in legible form.

(8) Where for any sufficient reason service of any document or notice cannot be effected in the manner prescribed under this regulation, the President may dispense with service or make an order for substituted service in such manner as he may deem fit and such service shall have the same effect as service in the manner prescribed under this regulation.

Extensions of time

60.—(1) Where these Regulations or a direction made under them requires or authorises a person to do something within a period of time, the President may, on the application of that person or on his own motion, in exceptional circumstances extend that period of time.

(2) Where the President has extended a period of time reference in these Regulations to that period of time shall be construed as a reference to the period of time as so extended.

Change of Board (SEN appeals only)

61.—(1) This regulation applies if, after the date on which the disputed decision is taken, the child becomes the responsibility, within the meaning of Article 13 of the 1996 Order, of a Board (“the new Board”) other than the Board which made the disputed decision (“the old Board”).

(2) On receiving evidence that this regulation applies, the President may order that, for all the purposes of the appeal, the name of the new Board be substituted for the old Board.

(3) The old Board, the new Board and the parent shall have an opportunity to be heard before an order is made under paragraph (2).

(4) When an order is made under paragraph (2)—

- (a) the Secretary of the Tribunal shall notify the old Board, the new Board and the parent;
- (b) the old Board shall no longer be a party to the appeal;
- (c) the new Board shall become a party to the appeal;
- (d) these Regulations shall apply as if the new Board had made the disputed decision;
- (e) the Secretary of the Tribunal shall send to the new Board copies of all the documents and written evidence relating to the appeal duly received by the Tribunal from the parent and the old Board;
- (f) the procedure for determining the appeal shall re-start, and regulation 27 shall apply as if the documents and written evidence sent in accordance with sub-paragraph (e) were the notice of appeal referred to in regulation 27(1).

Revocation and saving

62.—(1) Subject to paragraph (2) the Special Educational Needs Tribunal Regulations (Northern Ireland) 1997(a) are hereby revoked.

(2) In relation to any appeal where the notice of appeal was entered in the records of the Tribunal before 1st September 2005, those Regulations shall continue to apply to such an appeal.

(a) S.R. 1997 No. 315

Sealed with the Official Seal of the Department of Education on 15th July 2005.

(L.S.)

June Ingram
Assistant Secretary of the Department of Education

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make provision in relation to the establishment of and regulate the procedure of the Special Educational Needs and Disability Tribunal established by Article 22 of the Special Educational Needs and Disability (Northern Ireland) Order 2005.

The Regulations make provision for and regulate the procedures for both appeals under Part II to and Schedule 2 of the Education (Northern Ireland) Order 1996, and claims in respect of disability discrimination in schools under Article 22. They revoke the Special Educational Needs Tribunal Regulations (Northern Ireland) 1997, subject to a saving provision for existing appeals.

The procedures are set out in Parts II to VI of the Regulations and broadly follow, with modification, the procedures for special educational needs appeals under Part II to and Schedule 2 of the Education (Northern Ireland) Order 1996.

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